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न्यायः मम धर्मः

Nyayapravah

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राष्ट्रीय अधिवेशन

National Conference

पुनरुत्थानशील भारत के पचहतर वर्ष- विधि एवं न्याय की बदलती स्फरणों

75

Years of Resurgent Bharat
Changing Contours of
Law and Justice





Late Advocate Suman Chauhan

Late Advocate Suman Chauhan started her journey as an advocate in the year 1997. She did her LLB from Campus Law Center, Faculty of Law, University of Delhi, Delhi. She had also done advanced course in Constitutional Litigation and authored a law book for Civil Service aspirants.

She did her Graduation in Hindi from Delhi university and she had a great love and respect for the Hindi language. She had written multiple poems and two short "Kavya" and one of which was on conversation between Eklavya and Guru Dronacharya.

She was a great champion for women causes and always stood up for woman's rights. In her practice of an advocate, she had more than 40% cases which were pro-bono, as whenever any downtrodden or women victims were before her, she never looked for professional fees in these matters and always stood for their causes.

Her love for the society and people all around got her drawn to Akhil Bhartiya Adhivakta Parishad. It gave her the opportunity and medium to reach out to society and women all across the country and stand up for the causes that were troubling the nation.

She started her journey in Adhivakta Parishad from being Secretary in Delhi High Court unit. During her time, she organised for the first time Woman's day in the premises of Delhi High Court. The then Chief Justice of the High Court Justice G. Rohini was the chief guest and along with her five Judges of Delhi High Court graced the occasion.

From there on her journey in Adhivakta Parishad never stopped, when she was Vice President of Delhi Prant under her guidance Woman's Day was celebrated at Indian Society of International Law at Krishna Menon Bhawan, opposite Supreme Court and the hall which has capacity of around 260 advocates, had more than 350 lady advocates and the male advocates were standing in the auditorium or outside the auditorium. And sitting Judge of Supreme Court Justice Indu Malhotra was the Chief Guest of the function.

From there on she moved on to be the National Secretary of Akhil Bhartiya Adhivakta Parishad and she took up the challenge of organizing first ever judicial coaching by the Delhi

State team. She held numerous meetings and developed a model for providing free judicial coaching by the advocates, however the Corona Pandemic stopped the physical classes but online classes were held for the same.

That she also took the challenge of getting signatures of more than 2500 lady advocates across the country on Representation to be given to Finance Minister during Covid Times and the task which seemed impossible was completed in her guidance.

She always believed that karyakartas of Adhivakta Parishad are supreme and should always be given due respect and honour and all should respect the time and energy that they contribute to the organization with their utmost dedication. Her magnetic personality easily attracted young advocates especially lady advocates and they were inspired to act and be part of Adhivakta Parishad. Her speeches and oratory commands on the Hindi language and her thoughts were great motivation for all and often left the audience spell bound. She had travelled all across the country and given numerous speeches which were a source of inspiration and is still remembered by all.

Inspite of being a very busy advocate with more 25 years in practice, whenever any duty of Adhivakta Parishad was given to her, she gave all her time and energy to the same with full faith and energy and never disappointed them. She always dreamed of Adhivakta Parishad being the torch bearer for all the advocates and fulfilling the dreams Late Sh. Dattopant Thengdi ji had.

During her struggle with cancer when she was undergoing treatment, few days before departing from this world in morning at around 3 am when she was back from ICU in her room, she picked her mobile and typed a long message addressed to all the lady lawyers of the group for the works that are pending and needs to be carried forward by them. Her life is an example and inspiration for all.

Her untimely demise is a big setback for all of us and to Adhivakta Parishad and the nation which she loved dearly. Her thoughts and talks will be a source of inspiration for all the karyakartas of Adhivakta Parishad. May Sh. Ram bless her and all of us. She always believed: I AM A VOICE WITHOUT A FORM. ●

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माननीय न्यायमूर्ति श्री आनन्द पाटक द्वारा 12 जनवरी 2020 को गवालिएर में आयोजित युग्मित्व पर दिए भाषण के मुख्य अंश 64

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Changing Contours of law and justice The road ahead

The Nation is Celebrating 75 years of Independence. The fight for freedom was not a simple political struggle in nature. The people were fighting against the cultural repression, economic exploitation by the East India company and then the British crown. The plundering of Bharat by the colonists and how the masses were repressed is well documented. The enslavement of India by Middle East Colonial attackers and later by the European colonists who had scant respect for the Indian, Bharatiya ethos prompted the Indian people to revolt and fight for freedom. This urge for justice with cultural roots reflected in the slogans like 'Rama Rajya' being adopted by the then leaders.

After the political independence was achieved in 1947, the people expected the ruling elite to replace the colonial systems of governance. The people wanted the institutions to respond to the aspirations of the population. The work culture of the colonial institutions was expected to be replaced. They wanted the rulers and the state machinery (including the judiciary) to respect the native culture and adopt to the Indic realities, needs and ethos.

The people of this country were shocked when the ruling elite did not respond to the aspirations but the nation was made to run after foreign models of governance, and so called development. Everything 'local' was mocked at. Every thing which belonged to this soil was sought to be pushed under carpet as being regressive etc., This atmosphere reflected in law making and judicial system. The common man slowly felt alienated.

But due to relentless efforts of patriots 'Bharat' started questioning the colonial systems. The renaissance ,as Swami Vivekananda called it was the under current. This journey of 75 years of renaissance and resurgence of Bharat was taken note and acknowledged by many scholars though some of them did so reluctantly.

What was the contribution of Law makers and Judicial system to this renaissance and resurgence after 1947? What was the changing landscape of the law and justice here for the last 75 years. This is time for introspection and genuine self audit. The courts played spectacular role in defending basic fundamental political rights of the citizens. The courts have helped realising the constitutional spirit to some extent.

But the docket explosion and inability of justice delivery system to be in sync with the needs and aspirations of society have overshadowed the achievements of judiciary.

The common man has been kept out, rather cheated out of the present law making process and court systems. The legal system is literally out of bounds for most of suffering Indians. It is because the colonial Anglo Saxon jurisprudence was imposed upon this Bharat. The courts and the whole system has been founded for the colonial masters. The law ,the rule, the court the whole echo system was for them.

The lack of Bharatiya jurisprudence has led to suffering of common man who feels alienated from the present system of courts. This thought process has to be changed. The way we look at problems/issues has to undergo radical change. The law making, the adjudication of disputes have to be reinvented . The laws must be person – Centric, Society Centric, NOT Court Centric.

Let all the persons connected with the law making process and justice delivery systems start the process of bringing change in 'echo system'. This is relentless long struggle. We are ready to embark upon this and wish all the good intentioned persons irrespective of political affiliations will be part of this struggle. ●

K. SRINIVASA MURTHY

“75 Years of Resurgent Bharat - Changing contours of Law and Justice”

**Ms. Pinky Anand, Senior Advocate
Mr. Balendu Shekhar, Advocate**

After a long-drawn battle of independence against the British, India was in a tumultuous position in 1947, where a single misstep would have proven disastrous for its newfound democracy. Fortunately, the arduous task of drafting the Constitution was spearheaded by the most vibrant and well qualified set of persons under the chairmanship of Dr. B.R. Ambedkar. This resulted in the production of a dynamic and comprehensive constitution which came in effect on 26th January, 1950. The Indian Constitution is particularly remarkable for fostering an environment of democracy and rule of law to flourish. By distinctly highlighting the roles and duties of the Legislature, Executive and the Judiciary, it paved way for a highly functional democratic system which has managed to sustain itself for over 75 years.

A crucial role was played by the Indian Judiciary in ensuring the success of the Constitution. The Supreme Court as well as the High Courts have passed a catena of judgments over the years which have served as a benchmark for democracy. In a land where the voice of the people is elected, the Judiciary has managed to provide a forum for the millions of poor and disadvantaged who go unheard. Despite the various power struggles between the Judiciary and the Executive, the former has continuously acted as the savior of the liberal ethos enshrined in the Constitution, so much so that it is has often been seen as a “counter-majoritarian institution”.

This article is an attempt to discuss some of the major milestones in the development of the judiciary and examine the role of the courts in strengthening democracy and personal liberties in post-independence India.

Indianizing the Judiciary

In the early years of independence, the role of the Judiciary was marked by its limited interference in the matters concerning the powers of the Legislature. At a time where the unity of “India” as



a State was carved on tumultuous grounds, the Judiciary exercised extreme caution in examining the validity and constitutionality of the statutes which were presented before it. Three aspects particularly stand out in this regard. First is the Judiciary’s emphasis on holding the text and the textual interpretation of the Constitution as paramount. It maintained a strictly positivist approach during the early years. The other noticeable point is the refusal of the Judiciary to be swayed by a form of governmental ideology, including socialism, policies of affirmative action, politics of restraint and so on. Lastly, the Judiciary also laid much trust in the Legislature’s prudence and authority to amend the Constitution in the manner it deemed fit.

While the Court declared the removal of the

zamindari system in the Kameshwar Prasad as illegal and violative of property rights, it fell short of imposition a review provision when the Parliament hurriedly passed the First Amendment, thereby placing the said provision outside the scope of the Judiciary. Similarly, the Court in Champakam Dorirajan overturned the Center's decision to make reservations in educational institutions on the basis of caste as violative of the right to equality under Article 14. In all such cases, the Judiciary adopted a position wherein it avoided any institutional confrontation with the Parliament.

Doctrine of Basic Structure and Scope of Judiciary as a Pillar of Democracy

A more turbulent and charged phase began for the Judiciary when it entered political waters with the Golak Nath decision, where it broadened the interpretation of fundamental rights, thereby going beyond the standard textual interpretation which it had earlier been championing. Here, the Hon'ble Supreme Court overruled Sankari Prasad and Sajjan Singh by reviewing the constitutionality of the 17th Amendment and declaring it unconstitutional. The Court further placed the power of the Parliament to amend laws as subject to the test of fundamental rights. It thereby denied the legislature the unprecedented sovereignty it has so far enjoyed thus setting the stage for a confrontation between the two institutions. This led to the 24th Amendment, which effectively repealed Golak Nath, and the unfettered powers of the Parliament were thus returned.

The constitutionality of the 24th Amendment was put to test when the matter came up in the historic Keshvananda Bharati case, where a thirteen-judge bench of the Supreme Court, declared the said Amendment as unconstitutional. The Court drew a balance by ruling that while the Parliament's power to amend the Constitution under Article 368 is supreme, it cannot alter the 'basic structure' of the Constitution. This is known as the basic structure doctrine. The matter of what precisely constitutes the basic structure was a matter left for the prudence of the Courts to decide as and when it would come for consideration.

The above decision of the Court was met with staunch resistance from the Parliament, which in an unprecedented manner, appointed Justice AN Ray as the Chief Justice, while superseding three senior

judges. The ensuing confrontation peaked when the Allahabad High Court nullified Indira Gandhi's elections, the result of which was a declaration of a nationwide emergency to undo the effects of the nullification. The period of Emergency, which began in the June of 1975, was marked with an increased politicization of the Judiciary. The supersession of judges, and the marginalization of the Judiciary contributed to its meek judicial surrender the controversial ADM Jabalpur case, where the Government's suspension of the Right to Life under Article 21 was upheld. This period marked a new and deep low for the Judiciary in India.

Judicial Activism – A Revolution in Judiciary with Public Interest Litigation.

The post-ADM Jabalpur phase was followed by an institutional churning of the courts. The constitutional courts wasted no time in correcting their course at the earliest possible opportunity. An ardent attempt was made to rectify the damage which was thus far caused. The subsequent decisions passed in Maneka Gandhi and others broadened the scope of the fundamental rights and particularly widened the meaning of "life" under Article 21 to encompass within its ambit all factors which make life meaningful. The procedure established by law was understood in a new light wherein fairness, justness and non-arbitrariness was also being taken into account.

A new revolution was also started with the landmark judgement of S.P. Gupta v. President of India, which led to the emergence of Public Interest Litigations (PIL). To put in the words of Justice P.N. Bhagwati, the result of the judgement was that now "any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury could move the court" The Court thus granted workers, residents, and the general public the right to appeal to the courts against violation of their collective rights. It further expanded "access to justice" by treating letters written to it as writ petitions.

The court's active promotion of PILs encouraged scores of public-spirited individuals, lawyers, and NGOs to file litigations on all kinds of issues ranging from human rights violations, women's rights, child rights, bonded labour, environmental pollution, and even constitutional and governance issues.



A new era of Judicial Activism was heralded with the rise of PILs in India, as more and more substantive rights such as the Right to Life were being broadened beyond the text to cover implicit rights such as right to livelihood and a healthy environment provided therein.

Additionally, the Court ensured its independence and limited intervention from the Executive by bestowing upon itself the power to appoint judges. Apart from maintaining autonomy by insulating executive interferences in judicial appointments, it also cemented judicial dominance in a period marked by weak coalition governments. The Three Judges case of 1998 is renewed for creating the collegium system under which other judges were also actively consulted for appointments.

The collegium system was sought to be replaced by the National Judicial Appointments Commission in 2015. The government passed the legislation to set up the National Judicial Appointments Commission (NJAC) to make a judicial appointment a not-so-exclusive judicial matter with minimal executive interference. However, upon observing certain troublesome provisions under the Act, the Judiciary struck it down as unconstitutional, thereby standing for its own rights.

Separations and Balance of Powers - The Pillars of Democracy as created by the Constitution

The institutional positioning of the executive, legislature and judiciary were under scrutiny again when in 2014, after a hiatus of three decades, a single party managed to secure an overwhelming majority in the Parliament. While the Judiciary is often criticized for delivering pro-executive judgements, multiple instances substantiate the claim otherwise. The Courts have taken all opportunity to protect the fundamental freedoms and liberties of individuals, and the several suo moto proceedings initiated in the last two years are testimony to the fact that judicial activism still stands strong.

It becomes quite evident that the role of the Judiciary, notwithstanding its varied responses at different times in the history, has been extremely vital in upholding and safeguarding democracy in India. Despite the centralization of the executive's powers, the Judiciary has nonetheless managed to remain as an accountable and independent institution, which marks its true success. Nonetheless, as the country celebrates its 75 years of independence, the time is ripe for judicial introspection and action to make justice a reality for all. ●

"75 Years of Resurgent Bharat - Changing contours of Law and Justice" with reference to Uniform Civil Code

Mr. Kirti Uppal, Senior Advocate

Uniform Civil Code(UCC hereinafter) marks the state of equality in the country, meaning that every section of the society is treated alike, concerning the national civil code, without any discrepancy for any religion. The term Uniform Civil Code, originating from the Sanskrit term Samāna Nāgrika Saṃhitā, is a promise of secularism in India by the Preamble. It is also a source of dispute for many minority communities, including Muslims, and various other conservative groups in the Indian society. The conflict arises due to when the question of making certain laws applicable to all citizens without abridging the fundamental right of right to practice religious functions. The debate then focused on the Muslim Personal Law, which is partially based on the Sharia law, permitting unilateral divorce, and polygamy and putting it among the legally applying the Sharia law. UCC was proposed twice, in November 2019 and March 2020 but was withdrawn soon both times without introduction in parliament.

My views on UCC would envisage in favour of UCC:

Uniformity in cases: India does have uniformity in most criminal and civil matters like the Criminal Procedure Code, Civil Procedure Code, etc

Gender Justice: If a UCC is enacted, all personal laws will cease to exist. It will do away with gender biases in existing laws.

Secularism: A secular nation needs a common law for all citizens rather than differentiated rules based on religious practices.

Various communities in India: Example: All Hindus are not governed by a homogenous personal law even after the enactment of the Hindu Code Bill.

Shariat Act: There is no uniform applicability when it comes to the Muslim personal law or the Shariat Act 1937.

Hindu Marriage Act of 1955: It prohibits marriages amongst close relatives, but they are considered auspicious in the south of India.

Hindu Succession Act of 1956: Wives are not coparceners (a person who shares equally with others in the inheritance of an undivided estate) nor do they have an equal share in inheritance.

On the other, the critics of UCC have some reservations such as

Plurality in already codified civil and criminal laws: So, the concept of 'one nation, one law' cannot be applied to diverse personal laws of various communities.

Constitutional law experts: Framers did not intend total uniformity. Example: Personal laws were placed in Concurrent List (power to legislate being given to Parliament and State Assemblies).

Customary laws: Many tribal groups in the country, regardless of their religion, follow their own customary laws.

Communal Politics: The demand for a uniform civil code is considered to be framed in the context of communal politics.

Article 25: It seeks to preserve the freedom to practice and propagate any religion.

As per my understanding of U.C.C.it aims

to provide protection to vulnerable sections as envisaged by Dr Ambedkar including women and religious minorities, while also promoting nationalistic fervour through unity. When enacted the code will work to simplify laws that are segregated at present based on religious beliefs like the Hindu code bill, Shariat law, and others. The code will simplify the complex laws around marriage ceremonies, inheritance, succession, and adoptions making them one for all. The same civil law will then be applicable to all citizens irrespective of their faith. In fact Uniform Civil Code marks the state of equality in the country, meaning that every section of the society is treated alike, concerning the national civil code, without any discrepancy for any religion.

UCC is also a concept to formulate and implement personal laws of citizens which apply to all citizens equally regardless of their religion, gender, and sexual orientation in India . Currently, the personal laws of various communities are governed by their religious scriptures. It is an important issue regarding secularism in Indian politics and continues to remain disputed by India's political left wing, Muslim groups and other

conservative religious groups and sects in defence of sharia and religious customs.

The Muslim Personal law (based on Sharia law) was enforced in different parts of India. It had no uniformity in its application at lower courts due to the diversity of the local cultures of Muslims in different parts of India. Even though some communities converted to Islam, the local indigenous culture continued to be dominant in their practice of Islam and therefore the application of Sharia Law was not uniform across the country. This led to the customary law, which was often more discriminatory against women, to be applied to it. Women, mainly in northern and western India, often were restrained from property inheritance and dowry settlements, both of which the Sharia provides. Due to pressure from the Muslim elite, the Shariat law of 1937 was passed which stipulated that all Indian Muslims would be governed by Islamic laws on marriage, divorce, maintenance, adoption, succession, and inheritance.

To demonstrate the importance of UCC in our society we can take an example of the Shah Bano took the matter to Supreme court, saying that she had fulfilled all his demands. The Supreme court ruled in favour of Shah Bano in 1985., The All India Muslim Board defended the application of Muslim Personal Law which was based on Sharia Law and denied divorced Muslim women the right to The judgement of the Supreme Court, which sought to offer protection to muslim women was argued to be an of the Supreme Court's decision. The members of the an independent Muslim parliament member proposed a bill to protect their personal law in The Muslim Women (Protection of Rights of Divorce) Bill 1986, sought to make section 125 of Criminal Procedure Code inapplicable to Muslim women, which meant that the reversal of the Supreme Court judgement. This was a colossal defeat of liberal movements and protection of women conservatives versus the liberal groups, women's organisations and the Left.

The present Government in India had taken up this issue to ensure that every citizen of the country is treated equally before the law, specifically which will be beneficial to Muslim women who have been denied justice in the name of religion.

This government was the has promised , that if, elected into power it will bring the Uniform civil Code.

The Supreme Court of India stated the necessity for an unified civil code in October 2015 and stated that, " "This cannot be allowed because otherwise every religion will declare that it has the authority to resolve different matters in accordance with its own law. This

is not at all what we think. There must be done with a court order".

In a recent case pending before the Hon'ble Supreme Court of India, the Central Government has stated that the purpose of Article 44 was to strengthen the object of the 'Secular Democratic Republic' enshrined in the Preamble of the Constitution. The Government further said that "This provision is provided to effect integration of India by bringing communities on the common platform on matters which are at present governed by diverse personal laws," The issue has been at the centre of political narrative and debate for over a century and a priority agenda for the for the government is to bring the legislation in Parliament.

In all humility and wisdom,I think ,it is high time to implement the Uniform Civil Code to ensure protection to vulnerable sections as envisaged by Dr Ambedkar, including women and religious minorities, while also promoting nationalistic fervour through unity. Certainly, when the code will be enacted; it will work to simplify laws that are segregated at present on the basis of religious beliefs like the Hindu code bill, Shariat law, and others. The code will simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all. The same civil law will then be applicable to all citizens irrespective of their faith.

There is no hesitation in stating that Uniform Civil Code would ensure welfare of minority community and will further ensure gender justice. Apart thereof, in long term it will ensure unity, harmony and balance in all phenomena of human life.

The Uniform Civil Code ought to carve a balance between protection of basic fundamental and non-secular dogmas of people.

I may hasten to say that ,Goa is the only state in India which has a uniform civil code. The Goa Family Law, is the set of civil laws, originally the Portuguese Civil Code, continued to be implemented after its annexation in -1961.

Today, Goa is a leading example of different religious groups - Catholics, protestants, Hindus and Muslims living in harmony due to its Uniform Civil Code.

India being a country filled with different types of cultures, religious communities, different castes, and races the UCC must adhere to the interest of everyone and be implemented. A special UCC programme towards its awareness and benefits to the different communities including the remote backward groups must be taken up. **Jai Hind . •**

Article 129: Sentence for its Contempt

**Ms. Sonia Mathur, Senior Advocate,
Mr. Divik Mathur & Mr. Sambit Kumar Patri Advocates**

Judiciary is considered as the protector of the constitution and as an institution, courts have been equipped with number of constitutional safeguards and the power to punish for contempt is one such safeguard. The rule of law, which is considered a part of basic structure of the constitution, entails the maintenance of dignity of court as a cardinal principle.

The law of contempt is aimed with larger motive. For judiciary to function in democracy, it must be able to instil a sense of confidence of public in it. The power to punish for contempt protects the justice system and consequently, the confidence of public in a just, fair and speedy administration of justice. The earlier Act was replaced and in 1971 a new Act was enacted which gave effect to the recommendations of Sanyal committee report of 1963. As the law of contempt has outreaching consequences on fundamental rights, personal liberty and freedom of speech and expression, it had to evolve.

Evolution of contempt law is not a recent factor but its existence can be traced from mythology and colonial era where an offender for acting against the dictate of ruler or ruling body was subjected to punishment. The modern system just shows the evolution of former in a better, codified, and reasonable manner. History shows it has always been the human nature to flout on the directions issued by authority or going beyond its scope for which law has been devised and further to even prevent this dismay of legitimate, legal orders the law of contempt has been devised.

Contrary to popular belief, a contemnor is not an accused in a criminal case when a contempt procedure is brought before a Court of Record but the Courts have extended the standard of proof to beyond reasonable doubt only to emphasise that they must offer full chance to the contemnor to plead his innocence. This is why the term “quasi-criminal proceedings” is often used to characterise contempt hearings. The adjudication of the culpability of contemnor for wilful disobedience of the court is often decided on accepted and uncontested facts, and the exercise of contempt jurisdiction is typically summary in nature. That the Supreme Court and the High Courts have inherent jurisdiction to prosecute for contempt by virtue of Article 129 and 215 respectively, regardless of the Contempt of Courts Act, 1971 or any other statutory legislation dealing to

contempt. These articles preserve the powers of Supreme Court and High Court to punish for contempt of itself being the Court of records.

Contempt jurisdiction has been conferred upon superior courts not only to preserve the majesty of law by taking appropriate action one howsoever high he may be, if he violates court’s order, but also to keep the stream of justice clear and pure. The contempt power serves as means to ensure that participants in judicial process will observe these rules. It said that a contemnor carries keys of his prison in his own pocket.

The Supreme Court in RL Kapur v State of Madras noted that, this inherent authority or jurisdiction did not originate from the statutory law pertaining to contempt, and that the statutory legislation did not modify or bestow any additional power or jurisdiction on the courts. Since the Supreme Court and the High Courts have such constitutionally recognised powers, neither a legislation passed by a legislature nor a subsequent law may remove the jurisdiction that has been granted to the Supreme Court and the High Courts or grant it again on its own authority. The court went on to hold that this jurisdiction, being constitutional in nature, isn’t subject to change by virtue of any legislation. The power of contempt is not infallible even there exists limitation for actions of contempt that a court cannot initiate any proceedings of contempt on its own motion or otherwise after expiry of one year period from date on which the alleged contempt was committed.

CONTEMPT IN DIFFERENT JURISDICTIONS :

In the United States, there are both civil and criminal penalties for contempt of court. Further, contempt can also be direct or indirect. If a contemptuous conduct is committed right in front of the sitting judge (in facie curiae), that is considered direct contempt. Whereas, in the instance of indirect contempt, the contempt has been done outside of court and consists of disobedience of a previous order of the court. The standard of proof for criminal contempt is beyond reasonable doubt, but if the offense is proved, the punishment is imposed unconditionally.

In the United Kingdom, the Contempt of Court Act of 1981 serves as the governing statute for such cases.

Civil and criminal contempt are the two categories of contempt recognised in UK. According to the Contempt of Court Act of 1981, the maximum sentence for criminal contempt is two years in prison. Strict liability in cases of contempt was inserted to protect the judicial proceeding from being sensationalized by the media. Under this provision, publishing anything which creates a risk that the course of justice may be seriously impaired is considered as Criminal contempt.

CONSECUTIVE AND CONCURRENT SENTENCES :

Over the years with growing and varying instances of contempt, Courts have adopted different approach for sentencing.

In case of **Dilbag Singh v. State of Punjab**⁴, Supreme court has recognised that a sentence must neither be too short and nor be too severe for the offence committed by perpetrator.

- ▶ (1972) 1 SCC 651.
- ▶ Re: Vinay Chandra Mishra, (1995) 2 SCC 584.
- ▶ Section 1 of contempt of courts act 1981.
- ▶ 1979 AIR 680.

In the Indian system, in case of multiple sentences, the courts are not only to decide the quantum of sentences but also to the manner in which these sentences shall run. In the code of criminal procedure, sections 31 and 427 provide for concurrent or consecutive running of sentences. While section 31 deals with the cases where a person is convicted of two or more than two offences at a trial, section 427 deals with cases where a person is sentenced of an offence when he is undergoing imprisonment for another offence in a separate trial.

The Hon'ble Supreme court has observed in **Mohd. Akhtar Hussain vs Assistant Collector of Customs**⁶ that whether the sentences in a case would run concurrently or consecutively is to be based on the rule of Single transaction. In *State of Maharashtra & Anr. vs. Najakat Alia Mubarak Ali*, the rule of same transaction was elaborated as when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently.

There is no straitjacket formula to decide whether the sentences should run consecutively or concurrently. In case of contempt of court, though mostly the sentences

run concurrently, there have been instances of consecutive sentences too.

It is not always that the courts have adopted a stricter approach while sentencing for contempt, there has been a thought upon the reasonableness looking at the myriad factors that surrounds a contemnor that is his standing in the society, quantum of involvement in offence, and the magnitude of action undertaken by him in order to make a contempt. Contempt is not always committed upon straightly by flouting the order of court, it varies and may range from portrayals, writings or speeches of such things so as to constitute contempt of court.

Therefore different principles are employed while governing the power to punish summarily for contemptual offences.

Application of the **One Transaction Rule** is a concept of common law that was recognized by DA Thomas as: where two or more offences are committed in the course of a single transaction, all sentences in respect of these offences should be concurrent rather than consecutive.

But Australian Courts have cautioned that the 'rule' is not a true rule but rather a guideline or limiting principle. In other words it is a 'rule of thumb only, to the effect that concurrent sentences may well be imposed in respect of multiple offences which occur in a continuing episode of offending'.

Whether the series of acts are so connected as to form the same transaction would depend on the facts and circumstances of each case.

- ▶ Sharad Hiru Kolambe vs. The State Of Maharashtra, MANU/SC/1024/2018.
- ▶ 1988 AIR 2143.
- ▶ (2001) 6 SCC 311.

Recently Supreme Court in the case of **Re : Perry Kansagra**⁸, taking note of the fact that the contemnor showed neither remorse nor tendered any apology and further committing both civil and criminal contempt of court the court ordered the sentences to run consecutively. Each consecutive direction mandated consecutive action to comply with it and such failure led to consecutive sentences for contempt.

However the court noted that such a situation is exceptional.

This shows how courts with transforming acts of contempt or contemponer have paced with sentencing for the requisite actions and offenders. ●

“75 Years of Resurgent Bharat - Changing contours of Law and Justice”

Mr. Sunil Dalal, Senior Advocate



This year's theme is in continuation of last year's theme of decolonizing the Indian legal system.

The topic for this year and last year are somewhat connected in my view as only a Decolonised India would be a resurgent India.

Our Constitution starts with India, that is Bharat... Change is the only constant in nature and to is the legal system. Bharat is no exception to it. We see the shift of the pendulum from smritis and shastras to rule imposed by invaders, to the colonizers, to our Constitution framed by our framers. This Constitution was framed in the modern era under the influence of specific cultures: these cultures are not Bhartiya—where the position of man is not above nature but man is a part of nature. In non-Bhartiya cultures, man is placed higher than nature and all of nature is at his disposal / to conquer / colonize nature. . .

In Hinduism, there are several references to man's position vis-à-vis nature. For example, Bhagavad Gita (7.19, 13.13) and Bhagavad Purana (2.2.41, 2.2.45), contain multiple references to the omnipresence of Supreme divinity, including its presence throughout and within nature. Hindus have worshipped nature

since times immemorial: from the Saraswati river to the Ganges: they are not mere rivers but goddesses! In Hinduism, every object in nature has been created as an abode of the Supreme God meant for the benefit of all, implying that individual species should enjoy their role within a larger system, in relationship with other species.

The above is not stating that Our Constitution does not have any connect with the Bhartiya ethos: it provided equal rights to women right from day one as far as voting was concerned, when the other so called developed countries brought these rights in much later.

We all know that science teaches us that no system operates in isolation. And no system can be observed in isolation from inside the system: One has to go outside to observe it. Thus we need to the legal system, we need to see it from the perspective of an outside observer.

The last 75 years have been a somewhat subtle shift that is almost imperceptible in the legal system. We started with the structure left by the colonizers and attempted to work our way forward. The result is pretty apparent: the system is bursting at its seams. The

¹ Genesis 1:26 Then God said, “Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground.”

² Quran (Surah Al-Nahl) 16:5–8: He created the livestock for you, to provide you with warmth, and many other benefits, as well as food. They also provide you with luxury during your leisure, and when you travel. And they carry your loads to lands that you could not reach without a great hardship. Surely, your Lord is Compassionate, Most Merciful. And (He created) the horses, the mules, and the donkeys for you to ride, and for luxury.

docket for every court is ever increasing—And so we started to see alternate means of dispute resolution starting with arbitration followed by mediation. At present mediation is mandatory in specific area commercial matters.

Connecting it to our topic, the roots of mediation can be traced to Mahabharata where Bhagwan Krishna became the mediator between the Kauravas and Pandavas. It is less known that in the end Yudhister tells Draupadi- Looking back if I could do something, I would have practice more “kshama”. It is this uniquely Bhartiya ethos that goes to the root of solving the rival side issues Madhyam/Mediation/”Kshma”.

The practice of Kshama needs to be built into society. This can be achieved by teaching Indian/Bhartiya knowledge systems to children/students in schools and colleges.

Indian Knowledge System

For the first 75 years, we have been taught the culture of the colonies in the colonizer’s language. I can go back to 1815 when the British realized that there were more “gurukuls”/schools in just the Madras presidency then were in the mainland UK—these gurukuls taking care of students as well as educating them –seniors teach juniors: Gurus supervise-more like our midday meal system into the schools except that gurukuls were for the village ecosystem—the rich giving land/money for running—get assured supply of students. This system was dismantled post 1835 when the British East India Company changed the charter to include proselytization. Ours was a rich culture that focused on knowledge. We were world’s first knowledge society and we were the ones to give the world its first writings, epics, poems.

Our teaching methods were advanced and there was prolific output in content. Today if we draw a parallel, we see China, Russia, Germany, and other countries (most of them who teach in their mother tongue), have scientific output / technical papers etc. that are magnitudes higher than that of India. There may be multiple reasons for higher output in China and other countries, but surely teaching in their mother-tongue is one factor that goes in increasing output.

The new Bharat Education Board is a step in the right direction. But we need to undo at least part of the education system that teaches that we are a nation of losers and who lost one battle after another.

The contrary proportion is true / had we not fought and triumphed, we would not have been here today. we have our ancestors to thank—they had a value system:

Bhartiya ethos—they fought and repelled the invaders it is their history that needs to be taught.

The world knows about Indian numbers as Arabic numerals. Arabs themselves call numerals as Hinse / this is from Hind se...from India. Another less-known fact is that what people call Damascus steel or Arab steel is from India. The process by which Damascus steel is produced is called Wootz method and steel produced thus is Wootz Steel. This steel has got varying carbon content. However, Indians have been using this at since before Christ. The Arab word for sword is Hinsi – or you can guess the reason—Hind si. Swords made like the one in India. These were the swords that ruled from 1000AD onwards.

These examples are provided to show what we are capable of.

We must not forget that our ethos comes from our culture: our roots—we have learnt of living alongside nature. Unlike other cultures and religions where the earth and being are there for exercising dominion over by man. Bhartiyas have always been attached to knowledge and great intellectual effort has gone into maintaining the texts of knowledge. We do not just maintain, but there is a complete freedom to interpret and come up with competing interpretations, a freedom that is not always present in other cultures and religions.

Our Constitution, we must not forget, is a product of a system that placed man above nature. We on the other hand, believed in ecology: Bhagwan Rama forefather, Bhagirath could have been one of the world ecologists to have brought together different streams running together as one. This is possible in a system that teaches living alongside nature rather than living off nature.

The ways of the western are strange: they destroy ecologies and then have chairs of ecology. They destroy peoples and entire races, and then have chairs for linguistic studies of lost cultures and languages.

The point here is for a resurgent Bharat, we need to shed our old dogma’s, beliefs and accept the truth: this truth is the fountainhead of knowledge that our ancestors so cherished. Whether a legal system based on these values would be able to withstand the pressures of adversarial system, only time will tell but thing that can definitely be said is that amongst all legal systems that are so far ours is best placed to be able to withstand its pressures.

Example of the case of use of Mimangsa Rules of Interpretation in the interpretation of the statutes: UP Bhoodan Yagna Samiti, UP V. Braj Kishore:

"In this country we have a heritage of rich literature, it is interesting to note that literature of interpretation also is very well-known. The principles of interpretation have been enunciated in various Shlokas which have been known for hundreds of years. One such Shlok (Verse) which describes these principles with great precision is:

**"UPKRAMOP SANHARO ABHYASO UPPURWATA
FALAM ARTHWADOPPATTI CH LINGAM
TATPARYA NIRNAYE"**

This in short means that when you have to draw the conclusion from a writing you have to read it from beginning till end. As without doing it, it is difficult to understand the purpose, if there is any repetition or emphasis its meaning must be understood. If there is any curiosity or a curious problem tackled it should be noticed and the result thereof must be understood. If there is any new innovation (Uppurwatta) or something new it should be taken note of. Then one must notice the result of such innovation. Then it is necessary to find what the author intends to convey and in what context.

- Point is how different are our systems and rules any different from modern ones today and for that we may refer to the following judgments:
- Beni Prasad v Hardai Bibi: Referring to the Mimansa principles:
- Vijay Narayan Thatte and Ors. Vs. State of Maharashtra and Ors
- Amit Plastic Industry, Ghaziabad v Divisional Level Committee, Meerut
- Mimamsa principle Gunapradhan Axiom was applied for interpretation of section 419 of UP Sales Tax Act
- Tribhuwan Mishra v Distt. Inspector of Schools, Azamgarh

All of the above are authored by M. Katju, J.

“....we may also refer to the Gunapradhan Axiom of the Mimansa Principles of Interpretation, which is our indigenous system of interpretation (see K.L. Sarkar's 'Mimansa Rules of Interpretation, Second Edition p.71).

It is deeply regrettable that in our Courts of Law, lawyers quote Maxwell and Craies but nobody refers to the Mimansa Principles of Interpretation. Few people in our country are aware about the great intellectual achievements of our ancestors and the intellectual treasury they have bequeathed us. The

Mimansa Principles of Interpretation is part of that intellectual treasury, but it is distressing to note that apart from a reference to these principles in the judgment of Sir John Edge, the then Chief Justice of Allahabad High Court, in Beni Prasad v. Hardai Devi, (1892) ILR 14 All 67 (FB), and in the judgments of one of us (Markandey Katju, J.) while a Judge of Allahabad High Court (which have been annexed to the Second Edition of K.L. Sankar's book), there has been almost no utilization of these principles even in our own country.

It may be mentioned that the Mimansa Rules of Interpretation were our traditional principles of interpretation laid down by Jaimini in the 5th Century B.C. whose Sutras were explained by Shabar, Kumarila Bhatta, Prabhakar, etc. The Mimansa Rules of Interpretation were used in our country for at least 2500 years, whereas Maxwell's First Edition was published only in 1875. These Mimansa Principles are very rational and logical and they were regularly used by our great jurists like Vijnaneshwara (author of Mitakshara), Jimutvahana (author of Dayabhaga), Nanda Pandit, etc. whenever they found any conflict between the various Smritis or any ambiguity or incongruity therein. There is no reason why we cannot use these principles on appropriate occasions even today. However, it is a matter of deep regret that these principles have rarely been used in our law Courts. It is nowhere mentioned in our Constitution or any other law that only Maxwell's Principles of Interpretation can be used by the Court. We can use any system of interpretation which helps us solve a difficulty. In certain situations Maxwell's principles would be more appropriate, while in other situations the Mimansa principles may be more suitable. One of the Mimansa principles is the Gunapradhan Axiom, and since we are utilizing it in this judgment we may describe it in some detail. 'Guna' means subordinate or accessory, while 'Pradhan' means principal. The Gunapradhan Axiom states :

"If a word or sentence purporting to express a subordinate idea clashes with the principal idea, the former must be adjusted to the latter or must be disregarded altogether".

This principle is also expressed by the popular maxim known as 'matsya nyaya', i.e. 'the bigger fish eats the smaller fish'. According to Jaimini, acts are of two kinds, principal and subordinate. In Sutra 3 : 3 : 9 Jaimini states :

"Guna mukhya vyatikramey tadarthatvan mukhyen vedasanyogah"

Kumarila Bhatta, in his Tantravartika (See Ganganath Jha's English Translation Vol. 3, p. 1141) explains this Sutra as follows:

"When the Primary and the Accessory belong to two different Vedas, the Vedic characteristic of the Accessory is determined by the Primary, as the Accessory is subservient to the purpose of the primary."

It is necessary to explain this Sutra in some detail. The peculiar quality of the Rigveda and Samaveda is that the mantras belonging to them are read aloud, whereas the mantras in the Yajurveda are read in a low voice. Now the difficulty arose about certain ceremonies, e.g. Agnyadhana, which belong to the Yajurveda but in which verses of the Samaveda are to be recited. Are these Samaveda verses to be recited in a low voice or loud voice ? The answer, as given in the above Sutra, is that they are to be recited in low voice, for although they are Samaveda verses, yet since they are being recited in a Yajurveda ceremony their attribute must be altered to make it in accordance with the Yajurveda.

In the Shabar Bhashya translated into English by Dr. Ganga Nath Jha, published in the Gaekwad Oriental Series, the Sutra is read as follows :

"Where there is a conflict between the use and the substance greater regard should be paid to the use"

Commenting on Jaimini 3 : 3 : 9

Kumarila Bhatta says :

"The Siddhanta laid down by this Sutra is that in a case where there is one qualification pertaining to the Accessory by itself and another pertaining to it through the Primary, the former qualification is always to be taken as set aside by the latter. This is because the proper fulfillment of the Primary is the business of the Accessory also as the latter operates solely for the sake of the former. Consequently if, in consideration of its own qualification it were to deprive the Primary of its natural accomplishment then there would be a disruption of that action (the Primary) for the sake of which it was meant to operate. Though in such a case the proper fulfillment of the Primary with all its accompaniments would mean the deprival of the Accessory of its own natural accompaniment, yet, as the fact of the Accessory being equipped with all its accompaniments is not so very necessary (as that of the primary), there would be nothing incongruous in the said deprival". (See

Ganganath Jha's English translation of the Tantravartika, vol. 3 p. 1141).

The Gunapradhan Axiom can also be deducted from Jaimini 6 : 3 : 9 which states

"When there is a conflict between the purpose and the material, the purpose is to prevail, because in the absence of the prescribed material a substitute can be used, for the material is subordinate to the purpose".

To give an example, the prescribed Yupa (sacrificial post for tying the sacrificial animal) must be made of Khadir wood. However, Khadir wood is weak while the animal tied may be restive. Hence, the Yupa can be made of Kadar wood which is strong. Now this substitution is being made despite the fact that the prescribed wood is Khadir, but this prescription is only subordinate or Accessory to the performance of the ceremony, which is the main object. Hence if it comes in the way of the ceremony being performed, it can be modified or substituted".

In our opinion, the Gunapradhan principle is fully applicable to the interpretation of Rule 9(2). Rule 9(2) is subservient to Section 14. We must, therefore, interpret it in such a way as to make it in accordance with the main object that is contained in Section 14 of the Customs Act. It may be that in isolation Rule 9(2) conveys some other meaning, but when it is read along with Section 14 of the Act, it must be given a meaning which is in accordance with the object of Section 14. The object of Section 14 is 'primary' whereas the conditions in Rule 9(2) are the 'accessories'. The 'accessory' must, therefore, serve the 'primary'.

In our opinion, it is really not necessary to decide whether the place of importation is the jetty or the BFL. Whether the place of import is deemed to be the BFL or Dharamtar jetty it would make no difference to the conclusion we have arrived at because the cost of transportation of the imported goods has already been included for delivery at the Dharamtar jetty and has already been paid to the seller in the CIF or FOB contract. Hence, a further addition to the transport charges in the form of barge charges for the transportation by barges cannot be said to be contemplated by Section 14 of the Act."

Conclusion: Thus we note that we have an existing rich body of Bhartiya thought and knowledge that has been used to regulate society for a period much longer than 75 years. It is these thoughts and knowledge system that may be used to regulate society yet again. ●

The Gold Rush In Indian Electoral Politics

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On 16th July 2018, after months of political turmoil, Pema Khandu of the Indian National Congress (INC) became the Chief Minister of Arunachal Pradesh, only to give rise to further instability. Just two months after coming into power the Chief Minister triggered a mass defection and 42 other MLAs followed suit to merge with the People's Party of Arunachal (PPA). In the theatrics that followed, the Chief Minister and six other legislators were suspended from the PPA on the grounds of a possible defection to the Bharatiya Janata Party (BJP). Ultimately, coming as no surprise, the suspended seven MLAs joined the BJP along with 26 other legislators, to form a government that finally brought an end to passing the power from one party to another.

The seeds of defection were sown as early as the general elections of 1967 when the strength of the Congress party diminished from 361 seats to just 283. In that year, Congress lost power in as many as seven states due to elected legislators shifting their political allegiance to other smaller parties. The menace of political defections since then has persisted with the latest development unfolding in Maharashtra, where the 'Maha Vikas Aghadi' (MVA) government collapsed because of a mass defection conjured by the Eknath Shinde faction of the Shiv Sena.

In 1969, for the first time in the history of the Republic, a recommendation was submitted by the YB Chavan Committee on this issue. The report attempted to define



the term 'defection', regulate defections by putting a bar on holding ministerial positions, and also laid out the exceptions for genuine defectors. Though the recommendation had its fair share of critics, two separate legislative attempts were made before the incorporation of the Tenth Schedule by the passing of the 52nd Amendment in 1985. The first one was made by Uma Shankar Dikshit in the Indira Gandhi cabinet and the second one was by Shanti Bhushan, of the Janata Party government led by Morarji Desai.

From 1967 to 2022, several attempts have been made to bring about an Anti-Defection law and make amendments to strengthen it, yet the politics of money

TABLE 1
Gains and Losses through Political Defections (MPs and MLAs) 2014-2021

Name of the Political Party	Defections 'to' the Party	Defections 'from' the Party	Net Gains/Losses (+/-)
Bharatiya Janata Party (BJP)	61	33	+28
Indian National Congress (INC)	173	177	-4
Samajwadi Party (SP)	13	18	-5
Trinamool Congress (TMC)	31	26	+5
Nationalist Congress Party (NCP)	8	25	-17

¹ Editorial, "With mass defection, Cong loses govt in Arunachal" *The Hindu*, January 16, 2018.

² Supratim Dey, "Arunachal CM Pema Khandu suspended from PPA, joins BJP", *Business Standard*, December 31, 2016.

³ Election Commission of India, *Statistical Report on General Elections, 1967 to The Fourth Lok Sabha (1968)*.

⁴ Ashish Tripathi, "Anti-defection law cannot be used as a weapon against dissenting members, Shinde, other MLAs tell SC", *Deccan Herald*, August 3, 2022.

⁵ Government of India, *Report: The Committee on Defections, (Ministry of Home Affairs, 1969)*.

and muscle power of the bigger parties continue to dominate the ethos of an ideal democracy. It might appear cynical, but as a rule, it can be observed that the larger the party, the more equivocal has been its attitude toward political defections. The smaller parties have usually been against defections. E.M.S Namboodiripad once stated that the Congress, through defections, "developed the art of turning a defeated party into a victorious one". The same has been true for other parties as well in varying situations from time to time and state to state.

The data tabulated above is representative of a few select national and state-level parties for a brief seven-year period, yet one can observe the mass defection of lawmakers across the carpet. More than 560 legislators and 1100 electoral candidates gave up their fidelity to the former parties to switch sides. "The fact that it's all too common to see politicians leave loyalty and ideology and jump ship to the highest bidder in lust for power and position makes for an abysmal poster for the world's largest democracy. But this is not a new problem. Leaders of modern India have been grappling with this flaw in our system for ages".

Anti-Defection-A Comprehensive Critique

On 18th February 1992, the Supreme Court of India settled a case that struck at the very core of the basic structure of the Constitution of India. Ostensibly trivial at first, the case *Kihoto Hollohan v Zachillu and Others* opened a whole new pandora's box with its verdict addressing, *inter alia*, the various intricacies of the Tenth Schedule and the need for judicial intervention in matters related to political defection.

In the case the five-judge bench held the following:

1. Paragraph 2 of the Tenth Schedule to the constitution is valid. Its provisions do not suffer from the vice of subverting the democratic rights of elected Members of Parliament and the legislatures of the States. It does not violate their freedom of speech, freedom of vote, and conscience; nor does it violate any rights or freedom under Articles 105 and 194 of the Constitution. The provisions are statutory and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.
2. Paragraph 7 of the Tenth Schedule to the Constitution

in terms and effect excludes the jurisdiction of all Courts including the Supreme Court and High courts and brings about a change in the operation and effect of Articles 136, 226, and 227 of the constitution of India, and therefore, the amendment would require ratification in accordance with the proviso to Articles 368 (2) of the constitution of India.

3. The finality clause in Para 6 (1) of the Tenth Schedule to the Constitution is not decisive. Such finality, being for the statute alone, does not exclude the extraordinary jurisdiction of the Supreme Court under Article 136 and of the High Courts under Articles 226 and 227 of the Constitution.
4. The Speakers/Chairmen while functioning under the Tenth Schedule exercise judicial power and act as Tribunal adjudicating rights and obligations under the Tenth Schedule, and their decisions in that capacity are amenable to judicial review.

Contained in the Tenth Schedule are the provisions as to disqualification on grounds of defection which are covered under Articles 102 (2) and 191 (2) of the Indian Constitution. There are eight provisions (or Paragraphs), amongst which some seem to portray a sense of ambiguity when it comes to defining the powers of various bodies under the law.

Adducing Paragraph 2 (1) (b) of the Tenth Schedule, the expression "any direction" leaves a rational person with the idea that any and every direction issued by the political party the party members would be forced to obey the same and if they act in contravention to the aforementioned norm, they shall be deemed to have defected.

This, in turn, can lead to the reasonable assumption that the right of an individual to dissent which is a fundamental part of Article 19 (1) (a) gets compromised. It must also be noted that none of the reasonable restrictions mentioned in Article 19 (2) is under consideration while issuing a whip to follow the party mandate. Hence overriding the Doctrine of Proportionality, which states that "there should be a rational nexus between the objects and the means adopted to achieve them".

Even though Paragraph 2 was declared to be valid for purposes of maintaining the integrity of the House, there have still been cases where party domination over matters such as voting, whips, etc. has superseded individual rationality and dissent, and such authoritarianism has

⁶ Chakshu Roy, "The limits of anti-defection" *The Indian Express*, July 25, 2019.

⁷ P.M. Kamath, "Politics of Defection in India in the 1980s" 25 AS 1051 (1985).

⁸ Editorial, "Congress saw the maximum defections, DMK the least since 2014: Report" *The Times of India*, September 9, 2021

⁹ Shivam Bhagat, "Defections are a threat beyond election results today. Here are five ways we can fix it" *The Print*, March 10, 2022.

¹⁰ (1992) 2 SCC 651.

inevitably led to further defections by switching parties and factionalism etc. Thus, laws that were made to prevent defections unknowingly are now some of the reasons why defection rates have reached their zenith today.

Paragraph 7 of the Tenth Schedule, now declared invalid, earlier addressed judicial intervention by effectively nullifying it, insofar as a reasonable deduction of the same was made as: “Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule”. This provision, in hindsight, seemed to be in complete violation of Articles 136, 226, and 227 i.e. barring the jurisdiction of the High Courts as well as the Supreme Court. Hence, the Supreme Court invalidated Paragraph 7 by applying the Doctrine of Severability i.e. “when a particular provision of a statute is against a constitutional limitation, but that provision is severable from the rest of the statute, then that offending provision will be declared void by the Court”.

One of the essential features of our democracy is the Doctrine of Separation of Powers between the Judiciary, the Executive, and the Legislature. Along with this fair separation comes a duty to ensure a method of checks and balances to maintain the holy nature of the doctrine. With Paragraph 7, the Judiciary was unable to exercise its constitutional obligation under articles 136, 226, and 227. Furthermore, this way the ruling party, by way of their Speaker/Chairman, exercised unchecked powers over defections.

Arising from this is another issue: To what extent does the finality of the decisions made by the Speaker/Chairman, as mentioned under Paragraph 6(1), extend and is it fair that the Speaker/Chairman stalls their decision on a case of defection indefinitely as they are under no obligation to discharge such cases expeditiously?

There have been contentions in the past when it has come to the discretionary powers of the Speaker/Chairman in deciding defections. One of the salient features of the Anti-Defection law was the fact mentioned in Paragraph 5 (a) that if for matters of maintaining a neutral stance, the Speaker/Chairman voluntarily gave up their party membership, they won't be disqualified. This is worth noticing as it promotes a

neutral and fair process of law.

However, it has seldom been practised and there is a catena of cases where there have been skirmishes over biased judgement while deciding the defection of opposition members of parliament/legislatures.

One recent case is of Mukul Roy, who left the BJP to rejoin the Trinamool Congress (TMC) in June 2021. Since then, the BJP had been trying to get him disqualified from the West Bengal legislative assembly. BJP approached the Calcutta High Court and the Supreme Court, but the Speaker stalled his judgement for almost a year, post which only the courts can intervene. On 8th June 2022, Speaker Biman Banerjee ultimately rejected the plea to disqualify Roy, after a severely delayed decision.

Being given the discretion under Paragraph 6 of the Tenth Schedule, these responsibilities must also come with a proportionate set of checks and balances not just to ensure a democratic process, but to ensure that misuse of office is prevented and the purity of our legislature is upheld.

The 2003 Amendment brought by the Atal Bihari Vajpayee government, removed the provision for a one-third split in a party, as mentioned in Paragraph 4 (1) of the Tenth Schedule, on the suggestions submitted by the Pranab Mukherjee Committee. But, the provision for the merger of the defected members (not less than two-thirds of the total strength) as given in Paragraph 4 (2) leaves a legal lacuna to be exploited by political parties and legislators eager to topple democratically elected governments and reach the lucrative offices of profit (ministerial berths). Consequently, the removal of the split provision has prompted political parties to engineer wholesale defections (to merge) instead of smaller ‘retail’ ones.

Politicians and political parties have found several ways to circumvent the anti-defection law. In March 2020, Jyotiraditya Scindia defected from the Indian National Congress (INC) with 22 other MLAs in the Madhya Pradesh state assembly, resulting in the fall of the government led by Kamal Nath of Congress. Within 4 months on a BJP ticket in a bye-election, 18 of the 22 MLAs managed to retain their seats. In a similar instance in Karnataka, in 2019, 14 members of the INC and 3 members of the Janata Dal Secular [JD(S)] defected to

¹¹ X Schedule of the Indian Constitution, available at: <https://www.mea.gov.in/Images/pdf1/S10.pdf> (Visited on September 4, 2022).

¹² K.S. Puttaswamy v. Union of India [(2018) 1 SCC 809].

¹³ Parliament of India, One Hundred-Fourth Report on The Constitution (Ninety-Seventh Amendment) Bill, 2003 (Standing Committee on Home Affairs, 2003).

¹⁴ Chakshu Roy, “The limits of anti-defection” *The Indian Express*, July 25, 2019.

¹⁵ Editorial, “Stealing a mandate: On Madhya Pradesh Crisis” *The Hindu*, March 23, 2020.

¹⁶ Krishnadas Rajagopal, “Supreme Court upholds Speaker’s disqualification of 17 Karnataka MLAs”, *The Hindu*, November 28, 2021.

the BJP.

One of the most mesmerising lines ever said by Rajiv Gandhi was, “I too have a dream”. A dream, of a public life free of corruption, petty politics, and rampant horse-trading. He said, “this bill is the first step towards cleaning our public life”. However, the dream of such a polity is yet to be realised.

Conclusion: Fostering an Anti-Defection Zeitgeist in the 21st century

As citizens living in an era of reform and activism where the public is not only aware of who governs them, but also participates actively in ensuring that the rule of law reigns supreme, the citizenry has to try and plug the loopholes in the anti-defection laws as mentioned explicitly in the Tenth Schedule of the constitution.

Following are some recommendations regarding suitable amendments so that the Anti-Defection Law becomes more efficient and serves the purpose to truly stand for its aim to curb the menace of defection:

- Under the Whip system, the Whips, along with the senior leadership often impose their seniority and direct the voting mandate for any legislation in their favour. Hence, due to the intervention of the state in such matters through laws, it is difficult to have room for dissent and/or debate. Unlike India, the US and the UK follow a model where such matters are generally considered to be an intra-party affair handled internally and procedurally, instead of state intervention, following the chain of command and yet still leaving room for debates, etc. Modelling some changes based on such systems removes the need for state intervention in intra-party affairs.

The Law Commission of India in its 170th report on 'Reform of Electoral Laws' (1999) had given various suggestions and recommendations for the amendment of the Anti-Defection Law. Among those was the suggestion that "Political parties should limit the issuance of whips to instances only when the government is in danger (eg. No-Confidence Motion)".

- In the landmark judgement of *Keisham Meghachandra Singh v Manipur Legislative Assembly* The court held that the Speaker's decision is open to judicial review and provided room for setting up independent tribunals/bodies headed by former judges that are responsible for reviewing such

decisions. A similar idea was reflected in the Constitution Review Commission (2002) wherein it was suggested that the power to decide whether or not a sitting legislator has defected should rest with an independent body like the Election Commission Of India so that there remains no scope for bias within the decision-making process.

- It is also a proposition that the "Defectors should be debarred from holding any office of profit during the ongoing term." This is especially interesting because, unlike the existing legislation that penalises defectors by terminating their membership in the Parliament/legislative assembly/legislative council, this would not only result in them losing a seat but also losing the right to hold office, thus helping in restricting defections for fear of losing power.
- Post the 91st Amendment in 2003, the Tenth Schedule was amended to exempt only disqualifications for defections involving 2/3rd of the party switching allegiances in form of a merger as valid. However, this has raised valid concerns. Such concerns were also addressed in the Law Commission Report (1999). Hence, "Provisions which exempt factionalism and mergers from disqualification should be amended."

"We are not alone and much is not lost of freedom and democracy. A new political pattern is taking shape. We are witnessing only a prelude to the coming democratic maturity and stability of the Indian political system. The country is gradually adjusting itself to the change, and the process of growth and adjustment is bound to be painful."

The Anti-Defection law, which was once hailed as a historic legislation, has struggled to keep up with the expectations and hopes of many. The disappointing fact is that several instances of defections have occurred in Goa, Uttrakhand, Andhra Pradesh, Manipur, Nagaland, Telangana and several other states in recent years.

Nevertheless, it is a step in the right direction, a small step towards a longer journey of securing for ourselves an honest and efficient administrative machinery. As citizens of the world's largest democracy, our job doesn't end after we elect our leaders, it is our duty to hold them accountable for any and every wrongdoing. Hence, while anti-defection is the need of the hour, our constant participation and constructive criticism of the same shall ultimately be the impetus for achieving a free and fair electoral democracy. ●

¹⁷ Bhupinder Singh Hooda, "How Rajiv Gandhi left the imprint of modernity on an ancient country", *The Indian Express*, August 21, 2021.

¹⁸ Ayushi Saumya & Aishik Majumder, "Anti Defection Law-A Boon Or Bane" 6 SA 34 (2018).

¹⁹ (2020) SCC 55.

²⁰ Law Commission of India, 170th Report on Reform of the Electoral Laws (May 1999).

²¹ Subhash CKashyap, "The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India" 10 AS 208 (1970).

Gambling and Betting Laws: Analytical Solutions

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Sir Salmond's jurisprudence says that rights are the interest that is recognised and protected by a rule or justice. In Indian jurisprudence it is remarked that legal rights and legal duties are co-relative and are defined as the interests that are protected by casting corresponding duties on others.

In the same context, betting and gambling have the connotation of following the co-relativity between rights and duties. It cannot be disputed that human behaviour is influenced by economic gain. The urge for money makes humans to engage in the diverse nature of trade and occupation with an aim of maximum gain. Gambling and betting are such routes and such activities are not accepted in society and hence, they fall into the categories of activities that are disapproved by society.

On contra, various reasons that are cited in favour of approving gambling include an economic gain for the State, a monitored economy, and the promotion of games with limited State control. One of the arguments made before the Hon'ble Court was that the activities like gambling were possibly intended to raise the status of trade in the country by our constitution-makers.

Contemporary society is in the age of materialism. It can also not be denied that the trades which can be said to be illegal, immoral, injurious to health, and against the welfare of people can be restricted by the State. Therefore, the bone of contention is how gambling and betting in sports should be regulated under the law when there is a deadlock between morals, society, and the threat of crimes with economical and tourism growth.

Gambling Laws in Various Jurisdiction

The trend of gambling and betting varies from the factor of time, space and norms. Hence, one of the reasons that have made gambling and betting a problem of morals and against law is its self-inflicted damage by one's own risk that is pursuant to the factors mentioned hereinabove. Therefore, we examine the practice of gambling and betting in ancient India and various countries.

Gambling in Ancient India

Ancient practices have always been a source of

knowledge for any civilisation. It is necessary to look into the ancient frame to assess the existence of gambling and betting because most of the time whatever practice exists today in western and European countries, it has its roots and source in ancient India.

The texts like Yajnavalkya, Narada Smriti, and the work of Kautilya advocate permitting gambling and betting in the kingdom under the control of the State. The verse no. 935 to 939 Katyayana Smriti translates and says:

That in the kingdom gambling cannot be stopped, it shall be regulated. It also remarks that the tax should be imposed on gambling and it can be a very good source of income. Only after the taxes are paid, gambling can be carried out openly.

In Manu Smriti:

द्यूतं समाहृयं चैव राजा राष्ट्रनिवारयेत् ।
राजान्त्करणावेतौ व्लौ दोषौ पृथिवीक्षीताम् ॥ (मनुस्मृ. 9.221)

In this part of the Smriti, Manu advises that the king should exclude gambling and betting from his kingdom as they cause destruction to his realm, the reason being the lack of vigilance of the State.

प्रकाशमेतत्तास्कर्यं यद्वेनसमाहृयौ ।
तपोर्नित्यं प्रतिघाते नृपतिर्यन्नवान् भवेत् ॥ (मनुस्मृ. 9.222)

In this verse, Manu made a general observation that the cause open to theft are gambling and betting and the king should make all his endeavours to suppress them both.

प्रच्छन्नं वा प्रकाशं वा तन्निषेवेत यो नः ।
तस्य दण्डविकल्पः स्याद्यथेऽन् नृपतेस्तथा ॥ (मनुस्मृ. 9.228)

In this verse, Manu allowed inflicting punishment on each man who gets addicted either openly or secretly to gambling or betting. Further Manu, remarked that the cause to avoid and prohibit such activities is they destroy truth, honesty, and wealth.

However, Vrihaspati, in verse No. 199 Ch. XXVI commented that Manu, proscribed gambling but the other political advisors allowed gambling and betting subject to the laws laid down by the King.

However, if we study how other countries in the present time have adopted gambling and betting then a few ideas can be transformed from ancient India to the existing position.

1 B.B. Pande, "Forum: State Lotteries", (1971) 1 SCCJ-55, 1-57.

2 Clerks and Depot Cashiers of Calcutta Tramways Co. Ltd. v. Calcutta Tramways Co. Ltd., AIR 1957 SC 78.

3 Shri Cooverjee B. Bharucha v. Excise Commissioner & The Chief Commissioner, Ajmer & Ors., AIR 1954 SC 220.

4 M.B. Majumdar, Commentary on the Bombay Prevention and Gambling Act, 1887 (N.M. Tripathi Private Limited, Bombay, 1965).

5 Sailendra Nath Sen, Ancient Indian History and Civilization (New Age International Private Limited, Delhi, 2017).

6 Reeba v. State Of Kerala, (2004) 3 KLT 599.

7 Manu Smriti, Ch. 9 Verse 221-228.

Global Standards of Gambling & Betting

The countries according to their methodology can be divided into three blocs. First, those completely ban gambling and betting. Second, those completely allow such activities for revenue generation, and third, are between these two which are not extreme. These countries prefer to allow gambling and betting in a controlled environment with strict rules and regulations. It is an assumption here that the revenue collected and generated by means of these activities can be used for promoting sports activities, games, charitable trusts, and any activity for the welfare of economic gain and growth. In the light of this assumption we need to analyse various laws existing in different countries to regulate gambling and betting.

The United Kingdom

In the United Kingdom the gambling activities are governed by The United Kingdom Gambling Act, 2005. Firstly, the scheme of this act lays the introduction part and definition of activities irrespective of whether their practice is legal or not. Furthermore, it lays emphasis on division by whom betting, gambling, or lotteries are allowed and the penal consequence in case of any violation thereof.

Secondly, the object and jurisprudence behind the Act are to avoid the ill effects of gambling and betting activities. It aims to prevent vulnerable persons and children from exploitation. Before the United Kingdom Gambling Act, 2005 gambling and betting activities were governed by the Public Gambling Act, 1845. Section 6 of the 2005 Act describes gaming as game of chance which has the element of chance and skill is involved. It also says that in any game in which chance is an element and that chance can be eliminated by the application of a skill required in that game.

Betting is separately defined in section 9 of the Act. According to this section, betting is an acceptance of a bet on activities that may or may not exist in the future. It is applicable to activities where there is a likelihood of occurring or not.

The act divides the person of different age groups to practise activities of betting gambling and lotteries, for e.g.: According to sec. 50 of the Act, persons above 18 years of age are only allowed to gamble whereas a person not less than 16 years of age is allowed to place a bet, or buy lotteries.

Sec. 1(c) of the Act specifically clears the jurisprudence of the application of the Act i.e. to prevent children from exploitation. Sec. 20 of the Act, directs to establish a “gambling commission” which shall be a regulatory body that governs and regulates the licensed operators. These operators have to pay a duty (Remote Gaming Duty) that makes the functioning of the Commission.

The United States

The laws relating to gambling, betting, and activities of chance and skill are recognised and practiced in a very wide range. The laws in the United States are divided on the ground of enforcement i.e. at the standard to which they are applicable; there are three sets of applicability of laws that are at the Local level, State level, and Federal level.

The Illegal Gambling Business Act, 1973 : This act was enacted to control the syndicate gambling. It is a part of Organised Crime Control Act. The other legislation includes The Professional and Amateur Sports Protection Act and Unlawful Internet Gambling Act.

France

Law No. 2010-476 regulates gambling and betting activities in France. This law is of 12th May 2010. The Code de la sécurité intérieure (also the domestic security code) is the enforcing authority. The objective of this code is to have controlled betting and gambling and it rests upon the principle that games of chance, either betting, gambling, or lotteries are prohibited. These activities are disallowed unless the operator has got authorization and approval. Likewise, the law of Australia, horse racing, and sports betting online are allowed if approved by the Autorité de régulation des Jeux en ligne (ARJEL). Lotteries are regulated by an authority named the Française des Jeux.

Russia

During the time period when Russia was the Union of Soviet Socialist Republic i.e. USSR gambling was completely prohibited and this was the time period 1928-1987. After keeping in mind the tourism aspect and active participation of the hospitality in the sector in 1987 gambling was legalized and 226 slots were installed. The authority in Russia that aid in providing the license for gambling is the Federal Space Agency.

⁸ *State of Bombay v. RMD Chamarbaugwala, AIR 1957 SC 699.*

⁹ *Regulating Sports Betting in India: FICCI, available at:*

<http://blog.ficci.com/archives/3708> (last visited on November 02, 2019).

¹⁰ *The United Kingdom Gambling Act 2005, available at:*

<https://www.legislation.gov.uk/ukpga/2005/19/contents> (last visited on September 28, 2019).

¹¹ *The United Kingdom Gambling Act, 2005, s.6.*

¹² *Id., s.9.*

¹³ *Id., s.50.*

¹⁴ *Id., s. 1(c).*

¹⁵ *Id., s. 50.*

¹⁶ *18 United State Code, ch. 95, s. 1955, available at:*

<https://www.law.cornell.edu/uscode/text/18/1955> (last visited on January 29, 2019).

¹⁷ *LAW n° 2010-476 of May 12, 2010 relating to the opening up to competition and the regulation of the online gambling sector, available at:*

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022204510> (last visited on September 04, 2022).

Later, in 2006 the Federal LAW N244-FZ was passed by virtue of which gambling was prohibited including that of slot machines and table games (online gaming as well) except in four of the special zones as given in Ch2, Art. 9:

- Altai region;
- Primorsky Krai;
- Kaliningrad region;
- Krasnodar Territory and Rostov Region.

Malaysia

Art. 3 of the Act declared that the state can regulate, organise and conduct in the zones unrestricted for gambling. Also, Art.4 gives a brief inter-relation for all the terms like gambling, gambling zones, betting, etc.

Islamic jurisprudence is applicable in Malaysia since the official religion practiced in the country is Islam. The citizen of the country is ruled by the Sariah Criminal Offences Act and sec. 18 of the Act says that even the presence of a person who is even found in the casino will be punished irrespective of the issue of whether he was gambling or not.

Switzerland

In Switzerland, for the first time gambling activities were governed by the Federal Law of Lotteries and Commercial Betting Law and in 1929, the Gambling Houses Act was passed. By the end of 2018, The Federal Act on Games of Chances and Casino (also known as “FGA”) was enforced as the main federal law. From 1st January 2019, the new Money Gaming Act regulates casino games and lottery/betting in one single law. The taxation policy in the Swiss system is that taxed funds go into its pension system. The basic tax rate on terrestrial casinos is 40% and can be extended to 80% by the Federal Government. In the case of online gaming, it is 20% and can be extended up to 80%.

European Union

For the European Union, an industrial body represents the online betting and gaming operators within the UN. The body is known as The European Gaming and Betting Association (EGBA) and is applicable to all the operators licensed registered and regulated in the EU. It is a very liberal organisation with an objective to provide a safe and secure environment for betting and gambling activities.

¹⁸ Palev V. Vasiliev, “Global Gaming Industry: A Genealogy and Media Content Analysis of Gaming Restrictions in Contemporary Russia”, *Gaming Research & Review Journal* (2011).

¹⁹ *Federal Law of the Russian Federation of December 29, 2006 N 244-ФЗ on state regulation of the organization and conduct of gambling and on amendments to some legislative acts of the Russian Federation*, available at:

<https://rg.ru/2006/12/31/azart-dok.html>, (last visited on September 5, 2022).

²⁰ *Id.* art. 9.

²¹ *Id.* art. 3.

Opinion & Suggestions

During this time on September 02, 1949, the discussion began to add currently existing entry 34 and then introduced entry 45 dealt with gambling and betting in sports in the seventh schedule. There legislators like Hukam Singh, Shri Sahu, and Prof. Shibban Saxena who opposed and cited gambling as a crime and that both betting and gambling shall be disallowed.

It was stated that if there will be no entry existing for gambling and betting in the Constitution then there should be an expressed provision declaring these activities as unconstitutional. With these debates and ideas, the subject was enumerated in the state list, so that there can be individual State control over these activities, and as per the socio-economic conditions, it may be legalized or criminalized.

In case of *Kishan Chander & Ors. v. State of Madhya Pradesh*, the Apex Court made an observation that the law to root out gambling is in the public interest. Unless there is a special procedure that is not arbitrary and provides sufficient safeguards gambling cannot be permitted.

There can be two sides to the argument, one that supports these activities on the grounds of individual autonomy and lasses faire policy. On the other hand, those who oppose the move argue on the grounds of immorality, a recognized restriction of Fundamental Rights. Therefore, there can be a distinction of class on the basis of economic investment.

The term “immorality” was explained by the Supreme Court in the case of *Gherulal Parakh v. Mahadeodas Maiya & Ors.* where the Court observed that immorality is the conduct or an act by which is a deviation from the standard norms of life. It can also be referred to as the act which is opposite to the good conscience. Ultimately it was observed that it is a comprehensive term with no universal standard.

The most celebrated case for gambling and betting is *State of Bombay v. RMD Chamarbaugwala*. In this case, the Supreme Court remarked that it encourages the spirit of recklessness as it is for making gains by luck, which may amount to a loss of money and may call indebtedness and finally leads to the loss of peace and happiness of the home of a person. In the case of *R.M.D. Chamarbaugwala v.*

²² *Id.* art.4.

²³ *Syariah Criminal Offences (Federal Territories) Act, 1997*, available at:
http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen/2011/Eng_act_lib.nsf/858a0729306dc24748257651000e16c5/bced11b697691518c8256826002aaa20?OpenDocument (last visited on September 05, 2022).

²⁴ *Id.* s. 18.

²⁵ *Andreas Glarner and Stefan Keller, Gambling Laws and Regulations Switzerland 2022 (ICLG, 2021)* available at:
<https://iclg.com/practice-areas/gambling-laws-and-regulations/switzerland> (last visited on September 25, 2019).

Union Of India the Court went to the extent of determining the gambling as not a trade but a res extra commercium. Similar views were taken in the case of M/s. B.R. Enterprises v. State of U.P. & Ors. . The Court held that these activities are not constitutionally protected and are discouraged in society. It was the case that res in commercio were the things available for ownership, and some of which were not available for private ownership were res extra commercium. The resources by its very nature only available for common use were known as res communes, eg., wild games, rivers, and the sea, etc., It can be seen that morality has no role in deciding such ownership.

The concept of res extra commercium was wrongly applied by saying that gambling is not a trade. For the last fifty years, such mistake is carried upon in the jurisprudence of determination of res extra commercium. The later cases were Nashirwar v. State of M.P. , Khoday Distilleries v. State of Karnataka , and then in State of Punjab v. Devans Modern Ltd. , where the phrase was erroneously used.

Gambling and betting activities that are determined by the courts as res extra commercium is wrong and therefore shall not be termed as activities without ownership. The state government has full power to enforce such activities in a regulated and controlled environment.

The only difficulty that can be seen in implementing any law pertaining to the issue is deciding the rate at which such activities be allowed. For instance, it is very difficult to create a class based on economic standards, and in deciding taxes and investment amounts.

Also in the cases of online gambling where the general statute is the Information and Technology Act but since cyber-crimes are still in development the lacunae still persist. Therefore, controlled and registered cyber systems can be one of the ways in keeping a check on online gambling and betting.

Hence, there is a dire need to bring a law that can regulate and control gambling activities in the country. The current existing situation is a complete ban on activities of gambling and betting activities subject to state laws.

In the last decades, there has been only an increase in the global gambling and betting market, for eg: in Europe, there is an increase of 41% and in the Asian continent approximately 39% Gross Gamin Yield has been there.

It is further suggested that the activities are mainly done by way of media sources i.e. under the supervision Information and Technology Act, which is the matter of List I under entry 31 of the seventh schedule. Therefore, a fresh provision regarding this control procedure with limited number of phones and websites over which there is control of the government shall be instituted. If we understand from France and USA, India being a developing nation can take a middle path like in France, there is an authority that keeps an eye on all the sports activities and in the USA there are bifurcated laws on federal laws and state laws. The middle path can be establishment of enforcement authority with government control, meaning thereby central law with punishment amended, altered or added by the state government. Since India is developing in IT sector and world is transforming Aadhar Card and PAN card holders shall only be allowed and the money that is linked to the PAN card can only be allowed to use in order to prevent black marketing. The limit to take part in gambling shall be according to the tax paid by an individual. There can be another way that the number of times a gamble can be played is restricted according to the money that can be put on stakes. Like person having "a" amount of money can gamble "b" number of times in slabs. In order to regulate the gambling houses there can be slabs for high stakes and low stakes. The advantage of the division can be fair play and equity can be done. A person of around equal stakes plays with the same standard. Therefore a calculated amount of money and tax revenue can be generated at a specific time. Also, the crimes if any happen can be easily traced and prevented. Moreover, the Law Commission in its report suggested that all the transactions shall be cashless. This step will help in keeping an eye on the transaction made and it will prevent the unlawful currency from circulating. The money so won or gained shall be made taxable at the same time from the source i.e. TDS so tax evasion can be avoided.

Therefore, to the extent the legislators are willing, there can be regulated and observed gambling in the State. As far the concept of morality is concerned, it is an illusion for which there is no straight jacket formula. Moreover, various factors discussed hereinabove can be a roadmap to bring and modify the gaming and gambling in the country for the economic and social gains. ●

²⁶ Kishan Chander & Ors. v. State of Madhya Pradesh, AIR 1965 SC 307.

²⁷ Bobby Art International, etc. v. Om Pal Singh Hoon & Ors., AIR 1996 SC 1846.

²⁸ Gherulal Parakh v. Mahadeodas Maiya & Ors., AIR 1959 SC 781.

²⁹ State of Bombay v. RMD Chamarbaugwala, AIR 1957 SC 699.

³⁰ R.M.D. Chamarbaugwala v. Union of India, AIR 1957 SC 628.

³¹ M/s. B.R. Enterprises v. State of U.P. & Ors., AIR 1999 SC 1867.

³² Arvind P. Datar and Rahul Unnikrishnan, "Kerala Liquor Ban:

"Revisiting Extra Commercium & Police Power", (2017) 3 SCC (J) 1.

³³ Nashirwar v. State of M.P., (1975) 1 SCC 29.

³⁴ Khoday Distilleries v. State of Karnataka, (1995) 1 SCC 574.

³⁵ State of Punjab v. Devans Modern Ltd., (2004) 11 SCC 26.

³⁶ The Law Commission of India, "276th Report on Legal Framework: Gambling and Sports Betting Including in Cricket in India" (2018).

³⁷ Id.

Victim Support: The True Consummation Of Justice

Mr. Anshuman Kar, Student

The concept of dharma (धर्म) etching out of the Indian subcontinent is what is deemed as “natural law” in definitions of the western society today, which are pondered upon in subjects like jurisprudence as a branch of legal philosophy. However, viewing “dharma” from a larger lens, gives us an outlay on the various concepts which come together to constitute the concept of dharma, one of which stems down to doing justice. In the Mahabharat, we see a non-conventional, yet logical approach undertaken by Shrikrishn, wherein he describes Arjun’s dharma to be that of a warrior and fight, even against his relatives, to fight for goodwill, and the establishment of justice.

Segregating the various aspects of the ancient Indian justice system, we come across the concept of true justice (धर्म) which is a part of dharma. This concept believes in the consummation of justice, only and only when an equal amount of retribution is inflicted upon the wrongdoer. This punishment inflicted upon the victim is the base of the modern criminal justice system that has developed in India, wherein the victim is granted an equal amount of compensation in tandem with the damages suffered by him/her, by the court in the interest of justice. This article talks about the concept of victim support hence, and the various measures that criminal jurisprudence has developed for the Indian courts which have facilitated the growth of the victim support system in India.

Who is a victim?

The United Nations defines ‘victims’ to be those persons who have suffered losses and harm, be it emotional, physical, mental, pecuniary, or through any such activities which are in contravention of their basic fundamental rights. Additionally under

this Declaration, a person may be deemed a victim irrespective of whether or not the offender is recognized, captured, prosecuted, or punished, notwithstanding of the culprit's family ties with the victim. The word “victim” also includes, if applicable, the direct victim's immediate family or relatives, as well as those who have experienced injury while interfering to aid those who were suffering or to avoid victimization. ‘Victim’ can also refer to a person's legal position and it specifies the amount and scope of involvement in a criminal proceeding that the person is entitled to. This position provided is crucial as, just as a person accused of a crime gets the legal position of ‘defendant,’ a ‘victim’ whose statutory rights have been affected can exercise certain legal rights that the general public does not have in ordinary course of life unless affected by an aggressor party.

The Indian criminal justice system recognizes victims in different senses- those who are victims of civil or criminal nature and those who are victims of abuse of power, which are mostly related to government agencies and state-established bodies. In either of these scenarios, it becomes the duty of the judiciary to act as an adjudicating body who decides matters in order to impart adequate justice to the victim and an equal amount of punishment on the culprit, even if it is the state.

Additionally, as per Section 2(wa) of the Criminal Procedure Code of 1973, explicit recognition has been given to a victim wherein the perpetrator must be identified and prosecuted before a victim may be involved. In the case of Alister Anthony Pareira v. State of Maharashtra , the Apex Court laid down provisions wherein facilities for protection of victims, be it in the interest of safeguarding them or providing them with required compensation were elaborated. This was primarily in respect of those



¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

victims who had suffered losses due to abuse of power by the authorities.

While the criminal justice system might not ensure an all-round check or consider an approach which prioritizes rights, yet there are various other solutions available to such individuals who have suffered harm. This, we call the victim support framework in which a witness or victim of a crime can seek such services successfully in order to feel insured.

Rights granted to victims

The recognition of victims as a class of affected persons has been facilitated at the international level wherein guidelines have been provided to ensure that appropriate judicial measures exist, which ensure their support and safety. These guidelines act as a statute for member nations of the United Nations and in a way compel them to take appropriate steps to safeguard the interests of victims of crime and state power. The United Nations recognizes three suitable steps which can be undertaken to support victims of crime by the judicial organizations, namely restitution, compensation and assistance to victims. While this might not ensure complete restoration of the victims to their previous state of normalcy, yet they stand as the nearest adjoining neighbor to fulfil the principle of natural justice which can be provided to a victim.

- i. **Restitution** in raw terms can be referred to as restoration wherein the aggressing party returns the property which he/she has acquired out of the aggrieved. In case the property has been traded further/damage has been caused, the aggressor can be ordered to provide an adequate amount in return of the property thus traded. The UN has laid down specific provisions for member nations to ensure that restitution is practiced while providing justice to victims of crime.
- ii. **Compensation** with respect to criminal offences refers to arrangement of sufficient financial support which can help sustain a victim in case he/she has suffered either physical or mental incapacitation as a result of infliction of violence, be it physical or mental on himself/herself. Herein, the United Nations has urged the state to facilitate adequate measures for strengthening of a national fund for the support of victims of grievous crime.

iii. **Assistance** has been encouraged by the United Nations as a means of providing aid to victims of crime. The suggestion of either involvement of state or that of non-governmental independent and indigenous organizations has been encouraged in order to extend support to victims of crime. This support can range from financial help for the coverage of medical bills, to covering legal aid expenses for victims of crime. The importance of sensitization has also been emphasized upon with regard to police, social service staff, provision of justice and all other involved personnel in order to facilitate a smoother process of assistance to victims.

The concept of Victim Support

Broadly stemming down from the principle of victim assistance provided for by the UN, victim support programs are responsible for ensuring that proper care is provided to victims of crime, be it professional or emotional. The concept of victim support is yet not well established in the Indian criminal justice system, and is seen as synonymous with providing compensation to victims of crime, which is a flawed concept. It is necessary to segregate the support provided to victims from compensation provided. The same can be done by noticing the fundamental differences between the two- while compensation is a judicial mechanism provided to a victim after the initiation of court proceedings, victim support extends to not only as much as provision of help in legal matters, but also provision of adequate care and assistance which should be provided to any individual who has suffered physical or mental impairment.

The lack of awareness in India regarding the provision of victim support in India makes it necessary to come up with a grievance redressal cell for victims of crime urgently whose sole purpose would be to provide assistance to victims. While there already might be certain NGOs, etc. which provide such help, the only way to ensure that such practices get implemented on a large scale would be by making it an official procedure in the redressal of grievances during judicial proceedings.

In the case of *Delhi Domestic Working Women's Forum v. Union of India*, the Supreme Court of India after hearing the matter and calling for adequate compensation, directed the state in para 18 to work out a scheme for the redressal of grievances

of rape victims. While talking about providing compensation, the court also addressed the point of rehabilitation of the victims. Additionally, the Court established new criteria for authorities dealing with rape victims, including providing victims with legal representation, psychological counselling and medical aid, advising the rape victim of all her rights prior to interrogating her, and maintaining the victim's identity as anonymous throughout trial. Although not explicitly, yet such a ruling serves as a precedent on explaining the fact that the court acknowledges other victim support mechanisms to provide assistance to the victims in all ways, i.e. physically, financially and emotionally.

The rigid sense of criminal justice in India additionally also creates hindrances in matters of compensation. As per Indian courts, a victim can claim compensation only and only after the accused has been convicted and sentenced. Additionally, the amount of compensation to be granted is at the dispensation of the court. A large bulk of victims of crime in India go unpunished. Although victim support is uncommon in India, victim care concepts exist in the Indian Constitution, as the state is required to protect "the right to public assistance in circumstances of disablement and in other cases of undeserved want." Minimal compensation under criminal law is meted out to victims even after the offender is convicted and punished. In case a penalty is involved, it can be used to alleviate victim injuries, but only if the court deems that the losses incurred by the victim are recoverable in civil court.

The effect of police support

The mechanism of crime redressal owes its first authoritarian step in the hands of the police, i.e the first statutory authority which the victim approaches. While in general notion police is considered as one of the larger hindrances in the crime redressal mechanism today, the establishment of the police system was done so as to etch the principle of retribution and prevent further crime. Additionally, it becomes the inherent responsibility of the police to provide support and assistance to a victim, be it emotional, physical or via professional means through provision of redressal of their issues, by solving their problems. General ethics as per police sensitization programmes include awareness towards the psychological conditions of victims

after having been subjected to criminal outcomes. While such sensitization is not very extensive and widespread in India, the concept of victim assistance through police sensitization programmes is largely increasing.

This is notable in the state of Maharashtra wherein Majlis teams drafted a 2 page circular which was submitted to the Joint Commissioner of police, Maharashtra. This circular consisted of tabled guidelines which would provide to the police accurate and crystal clear measures for recording FIRs in cases of sexual offences and their investigation. The team also suggested constitution of Trauma Teams which would provide timely support to victims of such crimes so as to ensure the sustenance of their mental condition by providing emotional support and required assistance. Such teams would constitute of members drawn from police, hospitals, the judiciary, and non-governmental organizations

Thereby, police support is of paramount importance in the victim support system owing to its involvement in the mechanism of redressal of crime. Improved police sensitization programs by experts making police officials aware of victim support can have a considerable effect on the system of victim support in India, especially those victims subjected to rapes, acid attacks, and children and women who have been victims of abuse.

Role of legal professionals in victim support

Similar to the police, lawyers and other professionals related to the criminal machinery of the country play an important role in victim support. This also includes professionals involved with government of non-governmental organizations which cater to victims. Lawyers serve as a link between the police and the victims and acting as the bridge, have the responsibility of accurately presenting the victim's case as the prosecution, whilst also maintaining professional ethics, keeping in mind the victim's emotional state. The Victim Advocacy Program caters to victims who have been subjected to heinous crimes, and the manual also provides for how advocates should deal with such clients. These provisions largely constitute of the following guidelines.

- i. Ample opportunity should be provided to victims to speak out regarding the true incidents which

³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

- happened, and assisting them accordingly.
- ii. Assisting in planning an agenda ahead in order to support the victim in conformity with the law by letting them know of the legal support which they can resort to, in order to penalize the miscreants.
 - iii. Presence of the advocate in important decisions and meetings between the client and the required authorities/aggressor or his client in order to provide professional and emotion support to the aggrieved.

Addressing and strengthening the victim support system in India

The abovementioned facts related to victim support lead us to this point wherein we discuss suggestions as to how victim support can be brought out into the mainstream in India and thereby, can be strengthened. Understanding victim support and where it comes from requires a deeper understanding of its history, and how international law treats it in the spectrum of broader laws which are mainly centered merely around punishing the accused, compensation the victim, and calling it the deliverance of justice. The history of recognizing the agony faced by victims and throwing light on their rights was discussed following the adoption of UN resolution for the establishment of the "international criminal and penitentiary commission" wherein the "crime prevention and offender treatment" was established in 1955 as an ad hoc advising body for the prevention of such crimes, alongside recognizing rights which the victims inherently possess. Maintenance of victim support as per international standards is of utmost importance since compliance with the same would prevent victims of crime from shying away from reporting incidents which they face, which is a stark reality in countries like India, wherein almost 99 percent of sexual offences, etc. are not even reported.

The Victim Advocacy Program manual specifically mentions the demeanor which should be practiced by professionals dealing with such victims.

In the case of Rattiram and Ors. vs. State of MP⁴, the court has laid emphasis on the rights of victims in India, and said that as per the provisions of criminal jurisprudence and victimology, it is the primordial duty of the court to safeguard the rights of victims. Victim support now, is an implied provision which can be stated as a right granted to victims in order to strengthen the criminal justice system of India.

Additionally, strengthening the criminal justice system would require being in tandem with progressive foreign precedents which highlight victim rights, thereby acting as a boost in supporting the growth of victim assistance system. The various enactments and guidelines mentioned in this paper are a result of such precedents being taken into cognizance by Indian courts for the purposes of providing professional and emotional assistance to the victim, also providing safeguard to those victims who suffer a threat to their life for reporting crimes which have been committed against them.

In toto, while the mechanism of victim support exists in India, it cannot be said that it provides an accelerated opportunity to victims to address and narrate the incidents they have faced in an elaborate manner, while receiving the required support from authorities and non-governmental organizations. The Victim Support Scheme provides for relevant assistance required by victims, which needs to be brought in to the mainstream. The addressal of financial assistance, need for counselling, legal assistance and advice on information and referrals for the purpose of victim aid can be provided by such organizations, be it governmental or non-governmental. Only in such a manner, can victim support be brought into the mainstream in India.

Additionally, victim support is supposed to aid those who are near and dear to the victims, for they too, are subject to the trauma in some ways which the victim has been subjected to, for such a person is among the first and the closest people to know the victim. Therefore, the strengthening of victim assistance should also extend to such persons, so as to increase the efficiency of victim support in India.

⁴ (1995) 1 SCC 14

⁵ Manonmaniam Sundaranar University, *Victimology and Victim Assistance* (2016-17)

⁶ Centre for Criminology and Victimology, National Law University Delhi, *Duties of Front Line Professionals towards Securing Justice for Victims* (2018)

⁷ Surja Kanta Baladikari, *Victim: A Forgotten Story in the Indian Criminal Justice System*, Vivekananda Journal of Research (July-December 2020)

⁸ Sudarshan Varadhan, "One woman reports a rape every 15 minutes in India", Reuters, Jan. 9, 2020.

⁹ AIR 2012 SC 1485.

¹⁰ Victim Support India Org. available at: <https://victimsupportindia.com/>

USHERING ECONOMIC JUSTICE IN INDIA: POST 2014

Mr. Vivek Sood, Senior Advocate

The Preamble of the Indian Constitution speaks of economic justice as one of the ideals to be achieved:

"WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic, and political...."

Economic justice has many facets and dimensions. Fairness in the economy is one of the characteristics of economic justice. Yet another feature of economic justice is equality of opportunity for all citizens to prosper. When the common man as well as business enterprises, are made stakeholders in the economy, economic justice can be said to be ushered. Economic justice is not a one-way street, only for a few to prosper at the cost of the common man. Equity is a significant feature of economic justice. Expedited resolution of commercial disputes is also a dimension of economic justice. Economic legislation and government policies play an important role in ushering economic justice.

In this piece, I have examined certain significant economic legislations and Government policies, that have ushered economic justice in India post 2014 the Narendra Modi became the Prime Minister of India.

Prior to 2016, millions of homebuyers in India were victims of mass-scale frauds by innumerable builders across the country, leaving aside a small fraction of honest real-estate companies. Hard-earned and life savings of homebuyers that included senior citizens, retired people, widows and other citizens was entrusted to builders who misappropriated and laundered away the money that was meant for construction of the homes. In other words, homebuyers were in a precarious condition before 2016.

The Government led by Shri. Narendra Modi as the Prime Minister swung into action to protect the interests of homebuyers by bringing RERA (Real Estate (Regulation and Development) Act, 2016 into the statute books. RERA is a significant legislation that regulates the functioning of the real-estate sector from the inception of a project to its completion. Today, homebuyers are empowered in their dealings with real-estate companies. The law ensures the completion of the real-estate projects on time and as agreed in terms of the quality of homes to be delivered, otherwise, the real-estate companies can be penalized. Independent supervisory, adjudicatory, and appellate



bodies and tribunals have been set-up to protect homebuyers from any wrongdoings by builders. The law is an instance of ushering economic justice in India.

Commercial disputes would take decades in our courts to be decided before 2015. In fact, commercial disputes were not even recognized as a separate class of disputes and were bundled with civil disputes. I have seen commercial disputes taking as long as half a century for being decided in the courts. The Modi Government has kicked in the Commercial Courts

Act, 2015 that creates a robust commercial justice system in India. Separate commercial courts have been carved out to decide commercial disputes expeditiously. This legislation is yet another facet of economic justice that has been ushered in India in 2015.

Prior to 2016, the Indian economy was a debtors' paradise and a creditors' hell. Companies would take huge loans from banks and default in repayment with impunity. In other words, the managements of such companies would continue to run these companies even after non-repayment of debts. The Insolvency and Bankruptcy Code, 2016 has ushered economic justice in the Indian economy, by throwing out the defaulting managements of corporate debtors and handing over these companies to resolution professionals. The NCLT (National Company Law Tribunals) have been set up to approve the revival plan that is voted by the Committee of Creditors and the corporate debtors is handed over to managements whose revival plan is so approved. Strict timelines have been put in place to complete the corporate insolvency resolution process (CIRP). The IBC has brought fairness and justice in the Indian economy.

Since 2016, numerous amendments have been brought into the arbitration law, that have created a robust alternative dispute resolution landscape in India. These amendments include minimal court interference against arbitral awards, expeditious disposal of arbitrations, and bringing credibility in the arbitral tribunals. Alternative dispute resolution (ADR) is a significant dimension of economic justice that has been ushered in India by the present government.

The Fugitive Economic Offenders Act, 2018 is yet another statute that ushers a facet of economic justice in India. Fugitives, after committing financial frauds, abscond to other countries to evade criminal investigations and trials in India. This law deters fugitives from fleeing the country and imposes deterrent measures such as attachment of their properties in India.

The Government of India in 2018 has brought certain significant amendments in the Prevention of Corruption Act with a view to protect honest public servants who were earlier vulnerable to prosecution and persecution because of over-broad definition of certain offences in the PC Act. Protection of honest servants from harassment has brought robustness in the Indian economy as effective decisions can be taken by public decisions without any fear of harassment by

prosecution agencies on false allegations of corruption. This is yet another facet of economic justice being ushered in India.

Integration of J&K with the Indian economy with the dilution of Article 370, is another significant dimension of ushering economic justice in India. The citizens of J&K are immensely benefitting from the ONE NATION ONE ECONOMY scenario that has been ushered by the Government of India led by the Prime Minister Shri Narendra Modi.

The Modi Government has put the common man at the forefront for ushering economic justice in his life since 2014 onwards. Innumerable schemes have been rolled out for the benefit of the common man.

For instance, Jan Dhan Yojana has created an opportunity for the commoners at the lowest economic level to derive benefits of investment schemes and soft loans etc. The Hon'ble Prime Minister, Shri Narendra Modi had on 15 August 2014 launched the 'Pradhan Mantri Jan Dhan Yojana' (PMJDY) under the umbrella of the Ministry of Finance, Government of India. Under this scheme the aim is to provide access to various financial services including a basic savings and deposit account, remittance services, credit, insurance, pension, and so on. Jan Dhan Yojna is a revolutionary financial inclusion plan for the citizens of India. The World Bank has defined 'financial inclusion' as:

Financial Inclusion means that individuals and businesses have access to useful and affordable financial products and services that meet their needs- transactions, payments, savings, credit and insurance- delivered in a responsible and sustainable way.

Through the PMJDY, the government aims to open a large number of accounts as this would help the beneficiaries take advantage of the welfare schemes being brought out by the government. With a bank account, every household would gain access to banking and credit facilities. This will enable them to come out of the grip of moneylenders, manage to keep away from financial crises caused by emergent needs, and most importantly, benefit from a range of financial products.

The Pradhan Mantri Awas Yojna (PMAY) was launched by the Ministry of Housing and Urban Affairs on 25 June 2015. The scheme aims at providing 'pucca' (concrete) houses to the poor with water connection, toilets and 24x7 electricity

supplies. The eligibility criteria for PMAY scheme are basic: the maximum age limit of the beneficiary is seventy years; the beneficiary should have a family that comprises husband, wife and unmarried children; the beneficiary should not own a pucca house either in their names or in the name of any member of the family in any State of India; the annual income should be between 3 lakh and 6 lakh if the beneficiary is from Low Income Group (LIG) and membership of one adult female member of the family is mandatory in the ownership of the house.

The Mission seeks to address the affordable housing requirements in urban areas through the following program verticals: slum rehabilitation of slum dwellers with participation of private developers using land as a resource; promotion of affordable housing through credit-linked subsidy; affordable housing in partnership with public and private sectors and subsidy for beneficiary-led individual house construction/ enhancement.

A home for the common man and his family is a major step towards economic justice. A concrete home with basic facilities such as water, electricity and toilets with clean surroundings means the family is out of the zone of poverty and has major socio-economic implications. It brings generations of poverty in a family to an end forever. It provides dignity to human life and empowers every family member to lead a decent life rather than an animal existence. A home for all would be the end of poverty in India.

Start-up India is a campaign that was first spoken of by the Prime Minister Narendra Modi on 15 August 2015 at the Red Fort, Delhi. This campaign was introduced by the Government of India as an initiative to develop over seventy-five start-up support hubs in the country, to foster sustainable economic growth and increase employment opportunities. It was launched on 16 January 2016 by the Ministry of Commerce and Industry under the Department for Promotion of Industry and Internal Trade.

The Pradhan Mantri Shram Yogi Mann-Dhan was launched in 2019 as a voluntary and contributory pension scheme that aims to provide security and protection to unorganized workers (UWs). It is meant to benefit workers in the unorganized sector and this includes street vendors, rickshaw pullers, agricultural workers, mid-day meal workers, construction workers or workers in similar other occupations. There are an estimated 42 crore such UWs in the country who can benefit from the scheme.

The National Skill Development Mission was launched in 2014 to provide an institutional framework at the Centre and States for implementation of skilling activities in the country.

There are millions of semi-educated and uneducated people who are benefitting from this skill development program that empowers citizens to develop skills and earn a secure livelihood. The Mission seeks to do distributive economic justice thus creating a landscape for a more egalitarian society with opportunities for the downtrodden to come up in life by developing a skill for a respectable life.

The aforesaid schemes of the Government of India usher economic justice in India. One can see the beginnings and endeavours towards economic justice. The Constitutional goals of an egalitarian society, distributive justice, dignified life for the downtrodden, housing and sustainable income for all, and freeing the country from poverty are being pursued by the Government of India. The efforts of the government are visible. The journey towards economic justice for the common man has begun. The pursuit of economic justice for the common man is a never-ending and continuous process. It's a dynamic process that has no end and the government must keep striving to promote the welfare of the people.

The above economic legislations and Government policies ushered in India since 2014 when Narendra Modi became the Prime Minister, from the constitutional perspective, form and constitute the emergence of economic justice for the citizens of India. Economic justice is a significant component of the Prime Minister's Mantra of 'Sabka Saath, Sabka Prayas, Sabka Vikas', when understood in the constitutional sense as stated in the Preamble of the Indian Constitution. There cannot be real democracy without social and economic justice, as has been emphasized by the Apex Court:

"The Fundamental Rights are no doubt important and valuable in a democracy, but there can be no real democracy without social and economic justice to the common man and to create socio-economic conditions in which there can be social and economic justice to everyone, is the theme of the Directive Principles. It is the Directive Principles which nourish the roots of a democracy, provide strength and vigour to it and attempt to make it a real participatory democracy which does not remain merely a political democracy but also becomes a social and economic democracy." ●

Facing Challenges of the 21st Century – The Changing Contours of Law and Justice in Modern India

**Dr. Charu WaliKhanna
Advocate Supreme Court & Former Member N.C.W.**

India once known as a ‘Sone ki Chidiya’ (golden bird), gained independence in 1947, due to the struggle and sacrifices of our freedom fighters, who fearlessly laid down their lives for ‘ma bharti’. Now in 2022, India is poised to become the world’s most populous country having a large young population, with rising aspirations; underpinning the need for every Indian, irrespective of gender, caste, class, religion, or region, to realise their full potential, enabled and supported by the state. So, as India celebrates 75 years of Independence let’s evaluate how the changing contour of law and justice will assist in fulfilling the Prime Minister’s vision of India playing a larger role in the global economy.

LAW

"Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation loses its individuality." - SAVIGNY

In the view of Savigny, law by nature is a dynamic concept, transforming with the evolution of society under different socio-economic and political conditions. Needless to say that the rapid changes in today’s modern India have given rise to new challenges and concerns, which need to be tackled not only by fresh laws but also a pragmatic approach by the judiciary in interpreting the law. While doing so, modern jurisprudence must take into consideration the social ethos and changing patterns of society. Whether it relates to the way of doing business or family life, the law has no separate existence, but acts as a guideline as to what is accepted in society - without law there would be lawlessness, and conflict.

Since coming to power in 2014 the Narendra Modi government has brought about several economic reform measures through a mix of legislative and policy changes, namely the abrogation of Article 370 which was added to the Constitution of India, as a 'temporary provision', alongwith Article 35A which gave the residents of the former State of Jammu and Kashmir a separate Constitution and set of laws; Prohibition of Triple Talaq to protect the rights of Muslim women; radical amendments in laws relating

to terrorism which have been made more stringent, among others. Since 2014 around 1486 obsolete and redundant laws have been repealed by the Government of India, so that they do not become an impediment/hindrance in the progress of the State.

Yet much more need to be done specially since, not only India, but the world is changing faster than ever before. Advancements in technology are impacting all facets of life, environmental pressures are reaching alarming levels, and social conflicts are resulting in rising crimes, specially violence against women; and in the last few years cybercrime, such as phishing, identity theft, and fraud, have skyrocketed; all which require regulations and rules based on new concepts of law & justice.

ENVIRONMENT: In India environmental laws are adopted, implemented, and enforced by 3 main entities - the Ministry of Environment, Forest, and Climate Change along with the Central Pollution Control Board at the National level as well as the State Pollution Control Boards at the State level. The main environmental laws which set parameters such as industry specific air emissions, discharge standards etc are - The Environmental (Protection) Act 1986 ; Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981. Heightened awareness of the environment is evident by frequent judgements pronounced by the Courts, National Green Tribunal and notable interventions by Central/State Level Pollution Control Boards. Regrettably, ineffective enforcement and outdated laws which are not in line with current needs due to which water & air pollution remains a major concern, including dumping of hazardous material in water bodies, pouring of sewage, urban waste, industrial effluents and use of toxics (pesticides and weedicides) in agriculture. Laws regulating these activities need amendments since they have not been updated from the time they were formulated in the mid-1970s and 1980s. The need of the hour is stricter penalties to be imposed for transgression, and the provision for environmental compensation to be included in the law.

The sacred rivers Ganga, Yamuna on which ancient civilizations thrived, and thousands depend on for

their need livelihood and spiritual sustenance, need to be cleansed of toxins and pollution. Cleaning the Ganga is a flagship project of the government who has launched the National Mission for Cleaning Ganga and Namami Gange programme in 2015, with a budget outlay of Rs 20,000 crore; and also framed is a draft National River Ganga (Rejuvenation, Protection and Management) Bill; all which will go a long way in reviving and restoring our sacred rivers.

AGRICULTURE SECTOR: Adverse impact on the environment is a critical factor for agriculture in India, specially since sixty per cent of India's population lives in rural areas, and are mostly engaged in agriculture, both as labor and land owners. The harsh reality is that with the passage of time the size of landholdings is shrinking, and the farmers are getting displaced from agriculture, but unable to find employment opportunities in other sectors. The government had undertaken a reform agenda which despite good intentions was stalled. The reforms need to continue aiming at nutritional security, addressing climate change & the vagaries of nature, ensuring dignified livelihoods for farmers, including women; and creating a comprehensive ecosystem that includes credit and disaster compensation systems. Most importantly, there is a need for Minimum Support Price (MSP), a lifeline for farmers, to be made into a legally guaranteed entitlement. Price levels should also be used as a policy tool to incentivise sustainable cropping patterns and induce import substitution. Agricultural Produce Market Committees (APMC), established by the state governments in order to eliminate exploitation of farmers by intermediaries, and to ensure that they are not forced to sell their produce at rock bottom prices, need reforms, including the setting up more mandis need over the country. The regulated markets should have adequate infrastructure, and when facilities are created, needs of women farmers should also be kept in mind.

When there is any discussion on agriculture production, issues related to pollution should also be kept in mind. Presently, crop residue burnings in the northern states leads to increase in air pollution, generates health hazards, and contribute to global warming, and poses a significant challenge in agricultural waste management. Since there is not much of a time gap between the kharif harvest and the rabi sowing in the northern states, small and marginal farmers tend to opt for in situ residue burning, which contributes to air pollution. Experts have proposed a number of potential solutions, namely better and more effective mechanisation for in situ residue

management (such as briquetting and the conversion of wastes into fuel forms), various industrial uses, and the recent introduction of microbial decomposition solution, etc - all which need to be examined, tried and tested.

LABOUR LAW : Automation will displace jobs over the next decade, while simultaneously creating many others which require different skill sets. On one hand, improvements in technology has unfavorably affected wages and employment through the 'displacement effect', in which robots or other automation complete tasks done traditionally by workers. It is said that women workers could be more affected by automation in the next decade. While on the other hand technology also has 'positive productivity effects' and make tasks easier to complete, in addition to creating new jobs for workers. There will always be a demand for human labor, for whether it is digitization, automation, robotics, or artificial intelligence—they all require people.

The Central Government and State Governments to generate employment and to facilitate ease of doing business ha undertaken various legislative, administrative and e-governance initiatives. However, the major challenge in labour reforms is to facilitate employment growth while protecting workers' rights. In order to simplify labour laws by consolidating 29 central laws, the central govt has notified 4 Labour Codes- the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020.

While the Codes have tried to rationalise definitions of different terms, there is no uniformity. For example, the Codes on wages, occupational safety and social security contain the same definition of "contractor", but the Code on Industrial Relations does not define the term. Further, the Code on Social Security taking cognizance of new employment platforms, creates enabling provisions to notify schemes for 'gig' and 'platform' workers; however, there is a lack of clarity in these definitions. It is essential to plan ahead and adopt a futuristic approach when it comes to protecting workers and handling disputes in the emerging territories like Automation, Robotics, and AI powered workforces, which in the future may create hurdles for rights of workers.

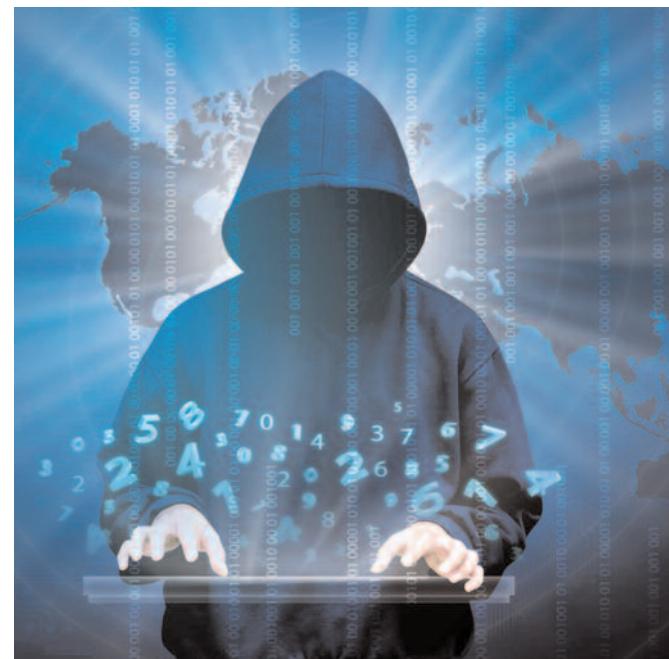
LAW AND ORDER: The rising crime graph in India specially gender based violence continues to spiral, in spite of passing making more stringent legislations. Although law and order is a state subject, the central government needs to engage with states for police

reforms. It is a common grouse that the police shirks from registering complaints of an ordinary citizen, specially in rural areas; if registered then the copy of the FIR is not given to the complainant, nor are they informed of their rights. Reforms need to be initiated on priority in the FIR registration system with greater usage of technology; police needs to be trained and sensitised; and adoption of the Model Police Act of 2015. Repeatedly stressed is the need to reduce criminalization by compounding of minor offences with penalties as a deterrent. Expansion in the number of laboratories for high quality forensics and ballistics testing, so that conviction rates increase based on scientific evidence.

In 2007 the Prof. N.R. Madhava Menon Committee in the ‘Draft National Policy on Criminal Justice 2007’, recommended that keeping in mind the three yardsticks of efficiency, effectiveness and fairness for reform, the legislations on crime and criminal procedure need to be re-organized with a view to re-classifying crimes for purposes of more efficient management of the system. The committee advocated a four-fold classification of all offences now covered by the Indian Penal Code, special and local laws ie Social Welfare Offences Code & Correctional Offences Code for which the committee suggested modifications be made in evidentiary procedures through rebuttable presumptions, shifting of burden and less rigorous standards of proof. They should be treated as summons cases with provision for summary trials. Being more of the nature of civil justice, they can be dealt with largely by compensatory remedies and, in extreme cases with imprisonment. The third set of offences, to be included in the Penal Code, would comprise of grave offences punishable with imprisonment beyond three years and with death. It was suggested that for these offences the maximum energy, time and resources of the state should be spent. A separate Economic Offences Code was recommended for select offences from the Indian Penal Code and other relevant economic laws which pose threat to the economic security and health of the country; which may require multi-disciplinary, inter-state and transnational investigation and demand necessary evidentiary modifications to bring the guilty to book.

Further in view of the large pendency of cases in courts, the focus needs to be more on arbitration to resolve cases out of court. The court processes all

across the country need to be automated with electronic court and case management. Besides an All India Judicial Services examination on ranking basis on the lines of the civil service, is also recommended. Most importantly, the focus of the public needs to move from litigation to creation of a law abiding society by sensitizing citizens right from the school level, in which education plays an important role.



Cyber Crime – The advent of the Internet has led to the emergence of numerous legal challenges relating to law and order and crime. Internet commenced as an unregulated research and information exchange platform, followed by e-business, e-commerce, e-governance, and e-procurement. In today's digital environment as use of internet increases, so does cyber-crime by preying upon the vulnerability of the user - phishing attacks, email hacking, pornography, are becoming rampant. Cybercrimes adversely impacts both business and individuals, specially women & children, who are vulnerable to sexual exploitation, stalking and cyber bullying. In 2021, the state of Assam reported 1,147 cases on sexual exploitation as motive for cyber crime. This was followed by 628 cases in the state of Maharashtra, and 512 cases in the state of Uttar Pradesh. These crimes came under the purview of numerous sections of the Indian Penal Code and under the Information Technology Act. Harmful effect of cyber crime on

¹ Report of the Committee on DRAFT NATIONAL POLICY ON CRIMINAL JUSTICE, Ministry of Home Affairs, Government of India JULY, 2007. <https://www.mha.gov.in/sites/default/files/DraftPolicyPaperAug.pdf>

industry include data breaches, ID theft and internet time theft. Notable is that cyber crime is different from others crimes, since in this form of crime there are no geographical boundaries and is person committing the crime is an unknown anonymous person.

The world is becoming an inter-connected global village and greater connectivity via world wide internet is exposing India's digital population to new vulnerabilities. A few years ago who could have imagined a crime like the hacking of the All-India Institute of Medical Sciences (AIIMS) servers, will have such wide spread ramifications, and cause distress to an ordinary person who is dependent on the server for online appointments, medicines and other facilities. According to reports the hackers demanded Rs 200 crore (\$30 million) worth of cryptocurrency. AIIMS is a leading institution of national importance, which in addition to comprehensive facilities for teaching, research and patient-care has twenty-five clinical departments including four super specialty centers, managing practically all types of disease conditions with support from pre- and para-clinical departments. On an average daily about 15,000 patients visit AIIMS, and fears persist that the ransomware attack may have exposed the personal information of between 3 and 4 crore patients, with five of the hospital's most important servers being compromised. The stolen information was reportedly sold on the dark web, with patient care services in the Emergency, outpatient, inpatient, laboratory wings being totally disrupted and managed manually.

In India, the Information Technology Act, 2000 deals with issues related to cyber crime and electronic

commerce; alongwith the Indian Penal Code, 1860. In the year 2008, the IT Act was amended and outlined were definitions and punishments. Several amendments were also made to the Indian Penal Code 1860 and the Reserve Bank Act. However, in Chapter XI of the Information Technology Act, 2000 under the chapter on Offences, the term cyber terrorism has been specifically used, but there has been no mention of words 'cybercrime or cyber fraud'. Even after being amended by the IT Act 2000, the Indian Penal Code does not mention cyber crime. According to the Ministry of Home Affairs, cybercrime complaints rose 15.3% in Q2 2022 over Q1, when Q2 2022 saw 237,658 complaints. This figures clearly indicate that the current laws in India cannot cover all cyberspace operations. It may sound strange, but email has no legal standing on its own unless it is supported by an application under section 65B of IT Act, making it abundantly clear that without explicit legislation, even courts have been reluctant to acknowledge email.

The dangerously fast growing challenge requires alertness, and, need for stringent and specific laws on cybercrime. The Data privacy/Protection Bill, landmark legislation meant to regulate how various companies and organizations use individuals' data inside India, needs to be legislated on priority. In addition it is important to store personal information of Indian citizens on Indian servers (in the United States, this is known as HIPAA compliance). Payment Banks and Wallet Services the main objective of which is to widen the spread of payment and financial services to small business, low-income households, migrant labour workforce in secured technology-driven environment; need to be included within the IT Act's tight requirements.

JUSTICE

Justice is often defined as "fairness" or "equal treatment" and a complex concept since there are various forms of justice – criminal justice, social justice, restorative justice. Justice is dispensed through the medium of judges, and the words justice and judge have similar meanings, both being derived from the same Latin term, "jus", which is defined as "right" and "law." In a free society, with the advent of social media, and the ability of persons to engage in discussion about legal matters on Facebook, Twitter, and other platforms, serious questions are being raised on the justice delivery system and those who dispense justice - the Judges.



² <https://www.timesnownews.com/health/aiims-server-hacked-hackers-suspected-to-be-in-hk-china-demand-rs-200-cr-in-cryptocurrency-article-95967798>

At the apex of the entire judicial system, exists the Supreme Court of India and the law declared by the Supreme Court becomes binding on all courts at all levels within India and also by all of the Union and State Governments. Article 124 of the Constitution of India gives the power of appointment of Supreme Court judges to the Union (through the President) after consulting with the Chief Justice of India. In the article also is specified the eligibility, age, appointment and removal process. However, the process of appointment of judges to the apex court has been criticised for operating under a ‘cloud of secrecy’, with the question arising ‘who judges the judiciary’, since it appoints its own members via the Collegium system introduced in the early 1990s. The collegium, an off spring of the Judges-2 case, has been imputed with abuse of the power of appointment, with the higher judiciary being reduced to the exclusive province of a ‘few’, since four-fifth of the judges of the Supreme Court and the Chief Justices of High Courts are the kith and kin of judges or powerful lawyers.

In 2014, Parliament passed the National Judicial Appointments Commission Act, 2014 (NJAC), replacing the collegium with a commission led by the Chief Justice of India (CJI) comprising the two senior-most judges of the Supreme Court, the Minister for Law and Justice and two eminent persons (selected by the CJI, Prime Minister and the Leader of the Opposition). It was meant to limit the authority exercised by the judiciary and involve non-judicial

members in the appointments process. However, the NJAC was challenged and struck down by the Supreme Court in 2015, on the ground that it violated the independence of the judiciary.

The solution lies in abolition of collegium system of appointment (as is being done presently) and the NJAC inviting applications from eligible candidates and putting the list of applicants in the public domain for transparency. Other urgent reforms include introduction of the policy of transfer of 1/3rd of judges out of their parent High Court to as a deterrence to the practice the “Uncle Judges Syndrome”; creation of a Judicial Ombudsman to handle complaints of corruption and malpractices against judges; RTI should be applicable to the Supreme Court and High Courts; and open access of audio/video-recording of proceedings of all Courts should be available to the litigants, lawyers and the general public.

To conclude Justice Frankfurter once said “There is no surer way to misread a document than to read it literally”. His remark was a jibe on the inherent complexities of law that render it incomprehensible for majority of the populace. There is an apprehension among people that the law has become an exclusive domain, beyond the reach of general public; which makes it all the more imperative to bring about reform so that law is not only both, accessible and comprehensible by professionals and the lay persons alike, but justice is also affordable, so that “the dignity of man supersedes all other considerations.” ●



75 Years of Resurgent Bharat - Changing contours of Law and Justice

**Mr. Pavan Narang & Ms. Aishwarya Chhabra
Advocates**

Bharat'- Our Nation has been a pluralist society with distinct social identities based on culture, territory, language, race and religion and yet weaved together maintaining the institutions and processes of democracy appreciated by leaders worldwide and even referred to as an 'Unnatural Nation', given the diversity. After being plundered by the ever-growing rapacity of the British for over 200 years, India, that is 'Bharat', rose from its ashes much like a phoenix. Coping and bouncing back from the "conscious and deliberate bleeding", as the American historian and philosopher Will Durant calls it, has been a slow but steady process. The despotic British rule under the garb of governance or rather (if) correctly called the 'sophisticated' oppression and discrimination by the whites by rendering us incapable of being an independent self-governed nation, led us to be controlled by a combination of atrocities such as extortion, double-dealing, corruption coupled with violence and force. Though it's true in every sense to say that the nation will never be the same, we are still in the process of recuperating from the catastrophe mete by our mother nation.

In the recent years, various cities and towns have witnessed a modification of their names - Bombay to Mumbai, Calcutta to Kolkata, Madras to Chennai, in the zest to rediscover what has been long lost during the British reign- sense of 'identity'. Even Professor Ram Chandra Guha in his finest works, 'India after Gandhi', acknowledges that the name 'India' was merely a label of convenience given to a great region.

In the year 1947, when the constituent assembly set up the drafting committee for the formulation of the Constitution of India, under 'Article 1' of the Constitution, the committee's decision to add the narration, "**India, that is Bharat...**", giving the nation a dual identity, seems more like a lip serve to the colonists than articulation of the constitution of an independent nation. In fact, in the Preamble to the Constitution adopted on November 26th, 1949, we have referred to ourselves as, "We the People of

India", a name given by the colonists which is a constant reminder of their barbaric rule over the citizens of the country.

Though due to the diversity found in our country and being thoroughly connected with public discussions and logical reasoning, heterodoxic point of views have also find their existence for the sake of argument, what has remained common is the acknowledgement of the impact the years of slavery imposed by the British Raj that had crippled the nation's sense of identity and its impact upon the intellectual confidence of the citizens of the country by reducing it to being one of the colonies of the British.

However, since 2014, this much spoken about 'sense of identity' which has formed part of books by eminent scholars has gained ground amongst the citizens of our country and also helped the nation get recognition at the global level. This Resurgence of Bharat has led to regaining the lost confidence of our nation before the world, restoring faith in the value system and our history while making commendable achievements in the fields of science and technology, world literature, international trade/business, etc. at the international platform. The BJP led government's tenacious persistence at achieving this goal is praiseworthy.

Since 2014, our global civilisation has witnessed effective changes to the contours of Law & Justice by bringing in changes in law and also taking a firm stand in the courts of law for the benefit of the downtrodden and neglected, the last person in the food chain by ensuring that benefits of social & economic changes reach all the citizens of India without any discrimination under the mantra of "Sabka Saath & Sabka Vikas".

Identifiable changes in the process of dispensation of justice have been seen since the year 2014, also the beginning of the BJP led Government regime. Obsolete laws carrying forward the colonial legacy have been abolished and in that process till date about 1500 Acts have been done away with. A significant step towards strengthening the unity of

the masses has been the abolition of Article 370 of the Constitution, whereby process of integration of State of Jammu & Kashmir and Ladakh with the main stream ‘Bharat’ was initiated with the object of solidifying the nation as one by integrating the states which had remained neglected and met with step-motherly treatment by all the previous governments. The unification has shown positive results and has encouraged growth in economic activities, improved education and infrastructure for children, increase in the number of job opportunities, resulting in economic growth in the region and better law and order situation in the region making it a conducive place to live for our fellow brothers and sisters, resulting in achieving the ultimate aim of serving the people of an “Akhand Bharat”.

To curb the menace of black money or parallel economy various steps were taken, including Demonetization in November 2016, introduction of digital mode of payments by way of UPI transfers, creation of digital platforms to ensure the monies due to farmers or actual beneficiaries reaches them directly. In this process another reform has been introduction of Open Network for Digital Commerce (ONDC) whereby the smallest kirana stores would get connected to Indian e-commerce platform thus providing greater market share to the lowest rung of business people.

One of the most remarkable and bold attempts ever made were the introduction of the reforms in the agriculture sector under the grand vision of the Hon’ble Prime Minister whereby reformative farm laws were kept forth with the foresight of enabling farmers to derive maximum profits for their produce while abolishing certain legacy laws and practices in the greater interest of the public. However, this reform went unappreciated by a section of people and in the best traditions of democracy, our Prime Minister withdrew the same, with a promise to keep working towards the interest of small farmers so that they are not deprived of what is due to them and not fall into the clutches of middlemen who rake themselves in maximum profits at the peril of the poor farmers.

To further strengthen the hands of the farmers and as the agriculture produce is dependent on vagaries of nature, a very ambitious and widely accepted insurance scheme has been introduced which ensures no loss on farm produce impacted the ‘Annadata’ which result in a spat of suicides every year.

This is intended to make the farmers self-sufficient/self-reliant and has led to improvement in lives and status of our farmers.

We should not forget that our villages are not only base of our agriculture economy but they also not only provide but also satisfy our basic needs of dairy products. It’s a common knowledge that based on ‘white revolution’ which started as a co-operative movement and led to large scale co-operatives societies being formed not only in milk sector but later on this co-operative movement ensured substantial growth in sugar & other ancillary products derived from sugar cane. This co-operative movement then went forward with providing local level easy finance to our villagers by start of Co-operative Banks. This co-operative movement has become core of growth of our “Resurgent Bharat” and is now being taken forward by creation of a Co-operative Ministry under the central government and introduction of “Multi State Cooperative Societies, Bill 2022” in the current session of Parliament when we are celebrating our 75th year of independence.

Various schemes / projects have been introduced for uplifting the lives of our people including the poor & from lower strata. Medical Insurance, PM Awas Vikas Yojana, toilets for all houses so that women of our country are not shamed, provision of gas connection, electricity & drinking water for all villages so that their lives become better are few of the numerous schemes which have started showing results in ensuring resurgence of Bharat as majority of our citizens live in villages and had been leading a tough lives due to non-availability of basic needs. Construction of roads & rail network in border areas of north east region of ‘Bharat’ has brought all our brothers & sisters living in out posts much closer and this has resulted in national integration.

It's an established fact that when the majority of citizens of a country get the social benefits and get empowered then only a country can become strong. This is the endeavour of the present dispensation wherein all efforts are being made to have a “Resurgent Bharat”. Women had always been back bone of a resurgent society and of our country. Since ancient times and till we were invaded and foreign powers started governing us by imposing their culture on us, women of this great country “Bharat” were always enjoying not only equal, but in fact, superior status in our great society. No social or religious function was complete without

involvement of women folks and they always led from the front and participated in all spheres of social & political lives/activities of society.

In the process of social justice and to provide equal status of all women of the country and with a view to end the misery of Married Muslim Women who were left to fend for themselves because of option of “Triple Talaq”, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was enacted whereby such archaic practice was made illegal & punishable under the law. It's common knowledge that ‘Sati’ system and ‘Triple Talaq’ were the major stumbling blocks in empowering women and with continuance of ‘Triple Talaq’ practice a large section of our Indian women were suffering. Abolishment of this practice has been welcomed by all and has been a giant step towards women empowerment.

Most significant stepping stone in the legal history of our country has been the reform in the ‘Abortion laws’ wherein the autonomy a woman deserves as a matter of right over her body has been acknowledged. Historically, induced abortion (hereinafter referred to as ‘abortion’) was not a criminal offence. It was neither prohibited nor legally regulated. The movement controlling abortion started from Europe and European nations were the first to frame laws prohibiting the practice. These laws were then exported worldwide alongside other colonial laws and by the end of the nineteenth century, abortion was legally restricted in almost every country. The **Present Situation in the Indian Context**, while the term ‘abortion’ is so used in the US, the commensurate legally recognised phraseology in India is ‘medical termination of pregnancy’. Medical termination of pregnancy in India is regulated by the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the ‘MTP Act’) as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021 and the Medical Termination of Pregnancy (Amendment) Rules, 2021. Pregnancies impact not only the body of the pregnant woman, rather the cascading impact transcends physiological aspects and takes into its fold, the psychological, educational, social and economic aspects of the woman’s life. This has been an extremely progressive and welcome step by our Government in furtherance of women empowerment.

The other very important aspect of our “Resurgent Bharat” has been pro-active role being played by

our current Government under the able guidance of our Hon’ble Prime Minister, whereby, Bharat now from just waiting on the side lines, has now started taking active part in all international issues with not only an independent mind but also keeping in forefront the economic & social requirements of our great country. Whether its participating in World affairs through UNO, G-20, ASEAN, BRICS, QUAD, etc. The world has also now started recognizing, that Bharat cannot be bullied into towing the lines of either Europe or America to suit their interests, but in fact needs, requirements & aspirations of ‘Bharat’ have to be recognized as paramount, if social order is to be maintained. With emergence of such an attitude, our great country has been accorded seat at the front row of all decision-making bodies or organizations.

For the first time world realised and acknowledged an independent, vocal and resurgent “Bharat” was when in spite of international & internal pressure from certain pressure groups, our country opposed and refused to take part in ‘OROB’ conference on the sole ground that such an initiative would not only impact our economic independence but also sovereignty. This now in hindsight has been accepted by majority of countries as correct stand and vindicated our foresight.

The ministers under the able guidance of our Hon’ble Prime Minister have started putting forth agenda of “Resurgent Bharat” on all global platforms. Recently in the world environment conference ‘COP15’ the views of our country as propounded by our Hon’ble Environment Minister, were not only considered seriously but also taken on board in the joint statement issued. Bharat has taken a bold step in furthering the environment issues by not only ensuring that we would become zero emission country by 2070 but also that energy needs are our country specific and we cannot be bullied to adopt energy norms as per dictates of developed countries, who for their own benefits try to bully the developing nations.

Similarly, on the foreign policy issues, ‘Bharat’ has started taking independent & strong stand as seen recently during ‘Ukraine’ crisis, issues impacting our neighbours and efforts in stopping dominance of our neighbour in Indo Pacific region. QUAD, is one example of multi cooperation between countries with common interest. Further on the issue of buying crude oil for our energy needs from Russia, the international community was forced to accept our

economic needs & requirements. Similarly, with our great country taking our mantle of Presidency of G-20, this year the entire world would see the idea of “Resurgent Bharat” and it’s commitment to maintain social order in the entire world without impacting our economic independence & sovereignty.

On the judicial front also there have been great changes in the mindset and this can be seen from the progressive judgments which have come in recent times and have made a great positive impact of our social order. The Indian Government with the 124th Constitution Amendment Bill of 2019 introduced by Dr. Thaawarchand Gehlot, Ministry of Social Justice & Empowerment brought a 10% reservation for the Economically Weaker Section of society which had been neglected by the erstwhile governments. The said Bill formed the 103rd Constitution Amendment Act of 2019, the constitutionality of which has been upheld in the **Janhit Abhiyan vs. Union of India**, WP(C) 55 of 2019. The said Act is a welcome amendment to the reservation law in the country as it is the singular law based on economic criteria for the purpose of doing away with the economic disparity caused due to lack of opportunities in education and employment in the country.

Further, another notable stride made is ‘**The Registration of Marriage of NRI Bill, 2019**’ -A Bill which owes its existence to the leadership of Ms. Sushma Swaraj, the then Union Minister of the Ministry of Home Affairs which, introduced in the Rajya Sabha on February 11th, 2019, is demonstrative of an interplay between progressive

legal development and social change though has since been in the cold storage. The Bill seeks to provide for compulsory registration of marriage of Non Resident Indians within a period of 30 days from the date of marriage; amending The Passport Act of 1967, empowering the Passport authority to impound/ cause to be impounded/ revoke a passport or travel documents of the NRI who do not register their marriage within the stipulated period; and amending the Code of Criminal Procedure Code, 1973 to empower courts for issuance of summons, warrants through specifically designated website of the Ministry of External Affairs, Government of India along with attachment of properties, both movable and immovable belonging to the proclaimed offender.

While concluding, though it is undeniably crucial to resist the impact colonial dominance that has caused us much loss, it is also equally compelling appreciation that the Resurgence of Bharat is forward-looking and has been carefully inspecting the rear-view mirror not turning a blind eye to the lessons from the past. Since 2014 governance is more dialectively engaged and interactive than isolated in approach, the development in times to come under the reign would also be significantly constructive in 75 years since independence. What has been initiated by “Sabka Saath & Sabka Vikas” with addition of “Sabka Vishwas” would lead to achieving the dream of “Resurged & Akhand Bharat” by the time we celebrate 100 years of our independence. ●



“75 Years of Resurgent Bharat - Changing contours of Law and Justice”

Mr. Sridhar Potaraju
Advocate On Record, Supreme Court of India

Justice and Liberty - Civilizational Values of India, that is Bharat -Sridhar Potaraju

“In the Jamboodweepa, Bharata is regarded as great because this is the Land of duty in contradistinction to others, which are lands of enjoyment.” - Vishnupurana

Mahatma Gandhi echoed this thought and said “India is essentially Karmabhoomi (land of duty) in contradistinction to Bhogabhoomi (land of enjoyment)”

Bharat is probably the world’s oldest living civilization that survived many attempts to decimate its identity and existence and ways of life over hundreds of years, some of which still continue. In spite of all odds loaded against it, the innate resilience of its people rooted in satya and dharma ensured that it did not catapult the way several other ancient civilizations had given way to invaders to lose their identity and ways of life. No wonder the Constitutional Courts have ‘Satyameva Jayate’ and ‘Yatoh Dharmah statoh Jayah’ as their mottos.

Bharat has witnessed its heroes live and walk on this land over several thousands of years. Our itihasas like Ramayana and Mahabharata epitomized the superiority of character and conduct over everything else as the cornerstone of judging human conduct. These values are ingrained in the consciousness of the people of India through the narration of our Itihasas and puranas wherein the spiritual and philosophical traditions practiced and pursued by the inhabitants of Bharat were narrated by highlighting the significance of adhering to dharma and satya as much as highlighting the consequences meted out to the deviants.

The concepts of law and justice are nothing but aspects of satya and dharma. The makers of the Constitution envisaged a nation that pursues truth and practices dharma while drafting the Preamble.



“We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; And to promote among them all Fraternity assuring the dignity of the individual and the unity of the Nation³”

Justice, Liberty, Equality and Fraternity encompass our civilizational values which have defined the outlook of the citizens and were the benchmarks on which their conduct is still judged. The idea behind these expressions can be seen both from our spiritual and social outlook towards life duly recorded in our itihasas.

¹ The Beginnings: Indigenous Judicial Structures. (2016). In Courts of India: Past to present (p. 27). New Delhi: Supreme Court of India.

² The motto of all the High Courts in India is ‘Satyameva Jayate’ and the motto of the Supreme Court of India is ‘Yatoh Dharmah statoh Jayah’, these mottos are engraved on the emblems of the respective Courts.

"Ancient India's quest for perfection in social order explored and prescribed the ways of good conduct of individuals and aspired for considerable degree of social harmony by balancing between authoritarianism and local autonomy. Flowing elegantly in poetic expression, the distant revelation of Vedas had mixed prayer, philosophy and commitment to explore and gain a macrocosmic order of high moral conduct (rita)."

Administration of justice is something that has existed for as long as human memory goes. In this regard, the following excerpt from a scholarly work of Judge Christopher Gregory Weeramantry, former Vice President of the International Court of Justice, puts across the great importance given to justice in Ramayana times,

"The literature of Hinduism, apart from philosophical analyses of the judicial function, illustrates the importance of correct judicial decisions by many allegorical stories. An illustration of this is the story of the monkey king who misjudged his brother without hearing the evidence. This resulted in the splitting of the monkey tribe into two groups who were in conflict with each other for a long period. The Ramayana relates how Rama, who befriended the monkey clan, solves the problem by drawing attention to the miscarriage of justice that has resulted from an improper decision which had not taken account of the relevant evidence. Justice related stories of this sort abound in Hindu literature and they were later used by scholars to illustrate the importance of principles of justice and the resulting damage to the engine community through a deviation from those principles."

The above anecdote from the Kiskindhakanda of Valmiki Ramayana refers to the injustice meted out to Sugriva by his older brother Vali who is later brought to justice by Sri Rama. The conversation between Vali after he falls mortally wounded by the arrow of Sri Rama brings out the right of the accused to know the reason why he has been punished, as much as the need to give reasons in support for the punitive action being taken.

Sri Rama cites his competence and legal authority to punish Vali as a representative of King Bharata under whose domain the entire world was, while holding him guilty of violating the moral precept of treating Ruma, wife of his younger brother Sugriva as his daughter and instead cohabiting with her through lust while Sugriva was alive.

Sri Rama further narrates that as a consequence of undergoing the punishment inflicted by the King thereby absolves the guilty of his sin, even if the King shows mercy and lets him go free. However, by not punishing, the King incurs his sin.

Justice, therefore, has always been an essential element for maintaining social harmony in India, with the power of punishment being conferred on a person with proper authority and for reasons that accord with the law governing the subjects.

The freedom of thought, expression, belief, faith, and worship without fear is an essential feature of our civilisation which has given birth to various modes of worship and pursuit of truth about the creator without any fear. The liberty to question existing modes of worship and challenging their truth through intellectual discourses has flourished in India unlike anywhere else in the world. This is quite evident from the fact that unlike other civilizations there is no fear either of "inquisitions" or "Blasphemy laws" which curtail liberty of thought and expression even to discuss reverentially in a rational manner the beliefs or gods.

India has been a land of spirituality and philosophers for ages, every generation from times immemorial has had its own philosophers who guided the society towards peace and harmony both internally and externally. Ensuring the mental health of the people is taken care of by taking them on the path of spirituality through philosophical discourses which engage the turbulent human mind and many a time brings them to a grinding halt when they are unable to make sense of what they are upto in life. It is this Liberty to explore possibilities of alternative narrations and intellectual debates to arrive at truth which can calm an agitated mind. In the absence of Liberty faced with the fear of serious and fatal consequences, the natural rational mind is restrained and enslaved to dogmas leaving humans as slaves of ideology without the core freedom of thought and expression which makes a human rational.

³ Preamble to the Indian Constitution as originally adopted by the Constituent Assembly

⁴ The Beginnings: Indigenous Judicial Structures. (2016). In Courts of India: Past to present (pp. 32-33). New Delhi: Publications Division, Ministry of Information and Broadcasting, Government of India.

⁵ Weeramantry, C. G. (2015, November 22). Hinduism and The Judicial Process. *The Sunday Times*. Retrieved December 8, 2022, from <https://www.sundaytimes.lk/151122/sunday-times-2/hinduism-and-the-judicial-process-172384.html>

“Philosophy in its widest etymological sense means ‘love of knowledge’. It tries to search for knowledge of himself, the world and God? These are some of the many problems, taken at random, which we find agitating the human mind in every land, from the very dawn of civilisation. Philosophy deals with problems of this nature. As philosophy aims at the knowledge of truth, it is termed in Indian literature, ‘the vision Every Indian school holds, in its own way, that there can be a direct realisation of truth (tattvadarsana). A man of realisation becomes free; one who lacks it is entangled in the world.” (emphasis supplied)

In the history of Western philosophy we usually find the different schools coming into existence successively. Each school predominates till another comes in and replaces it. In India, on the other hand, we find that the different schools, though not originating simultaneously, flourish together during many centuries, and pursue parallel courses of growth. The reason is to be sought perhaps in the fact that in India philosophy was a part of life. As each system of thought came into existence it was adopted as a philosophy of life by a band of followers who formed a school of that philosophy. They lived the philosophy and handed it down to succeeding generations of followers who were attracted to them through their lives and thoughts. The different systems of thought thus continued to exist through unbroken chains of successive adherents for centuries.” (emphasis supplied)

The world of philosophy would be poorer without India’s contribution to it by way of Bhagavadgeeta which forms part of the Bhishma Parva of the Mahabharata. The discourse in the midst of two raging armies rearing to go to war, the mental turmoil that makes Arjuna despondent and needing counseling, gave the world answers to all philosophical questions which every human mind undergoes in some form or the other at some stage of their life. After the entire discourse was made Sri Krishna reminds Arjuna of the Liberty every individual has, to choose his path in the following words,

“Thus, has this wisdom, the most profound secret of all secret knowledge, been imparted to you by

Me; deeply pondering over it, now do as you like.”

Ch.18 V.63, Srimad Bhavagita, Bhishma Parva of Mahabharata

The liberty which Sri Krishna gave Arjun epitomises the LIBERTY of thought, faith and religion which our civilization grants to every individual to choose his path from times immemorial.

India was subjected to a series of genocides over hundreds of years pursuant to “Muslim colonization in Hindustan”, wherein Hindus were brutalised and subjugated by making the majority second-class citizens in their own land by the ruling Islamic invaders. Unfortunately, this faith-based racism continued to dominate the mind space of some even during the British rule after the end of Islamic rule, which led to the eventual partition of the country leading to another massive genocide again on the basis of faith. The superiority based on his faith made Mr. Jinnah offer “...to join the Hindus in the struggle for freedom if the Muslims were conceded master-race privileges qua Hindus!”

Human society recognizes the need for equality of status and opportunity amongst equals, not those who are not equal. The concept of equality may vary from time to time in the course evolution of Nations. In fact, nations that were built by decimating the native populations and importing humans as slaves have in the course of evolution gradually started recognizing humans as humans.

In our own lived experience over the past 1000 years, equality was a mirage. The inequalities were based on a person’s birth, faith, and later color after European invasions under the pretext of trade in the last phase of foreign rule. Fraternity prevalent in the society was targeted as part of State policy to divide and rule. Instead of promoting harmony, the foreign rulers played on the social fault lines and promoted mischievous and malafide interpretations of our texts to further their cause.

The impact of foreign rule was such that gradually Indic knowledge systems were gradually removed from mainstream education and relegated to small pockets where individuals preserved them with their own commitment and passion. The innate racist outlook of the rulers towards the ruled created social friction leading to the disenfranchisement of the

⁶ Chatterjee, S., & Datta, D. (2018). General Introduction. In *An introduction to Indian philosophy* (p. 2). New Delhi: Rupa.

⁷ Ibid pg.9

⁸ Hardy, P. (Reprint 2011. First Published 1960). *The Historians and the History of Medieval India*. In *Historians of Medieval India: Studies in Indo-Muslim Historical Writing* (p. 128). New Delhi: Munshiram Manoharlal.

majority of the people on account of their faith and social identities. The education system was used as a tool to instil a sense of inferiority towards the Indic knowledge systems which promoted adherence to dharma in all aspects of individual conduct and also made the individual interest subservient to the larger public good. In its place, a homogenous education system was gradually imported and promoted as a policy in order to enslave the intellect of the masses under the guise of providing them with modern education. This process of colonising the minds of the literate members of the society had a trickle down effect which enabled the rulers to further extend their control over the nation. The intellectual enslavement gave the rulers foot soldiers to retain their control over the territories as well as the socio-political and economic aspects of the nation. The inequalities in the society were rampant due to the economic policies which furthered the penury of the already ravaged nation.

In the above background, India attained its political freedom after the amputation of part of its territory due to a false sense of superiority based on faith, referred supra. The Framers of the Constitution recognized the deep impact of invasions and conquests had left the nation fragmented. In order to revive the cohesive and strong sense of fraternity amongst the citizens introduced equality and fraternity as the guiding lights for the Constitution and provided for Directive Principles of State Policy in Part IV of the Constitution.

A nation whose memory was all but erased has since gradually commenced the journey in pursuit of its destiny, while acknowledging its past, to rebuild itself by adopting a written Constitution. As noticed supra, the Preamble was originally conceived and brought into force as a sovereign democratic republic without any political or ideological moorings.

During the dark days of National Emergency, the Preamble was amended to make India a Socialist and Secular Republic. The third invasion at an intellectual level commenced with the Socialist ideology entering our public discourse with state patronage. Our academic and cultural space was gradually taken over to accommodate persons who had a commitment to Marxist ideology more than

truth. It was done with the objective of continuing the colonial agenda of divesting the people from their own real identity and truth.

The backdoor entry of ideology into our Constitution was prophetically predicted and in fact frowned upon by Sri N.A. Palkhivala years before the Forty-Second Amendment,

"The Constitution (as it stood prior to 1972) fully permitted legislation for redistributing wealth, but it had no truck with unsound ideologies which aimed at distributing poverty.

The Constitution visualizes the fundamental rights as the common platform on which divergent political ideologies and practices may meet. These rights provide the iron framework within which experiments in social and economic fields may be tried out. They constitute the anchor of the Constitution and provide it with the dimension of permanence."¹¹

The role of Marxists in trying to deflect the Courts from reaching the truth was exposed in the course of the trial in the Sri Ramjanmabhoomi title dispute . The unsound ideologies were not only an economic disaster but also sought to eliminate truth and integrity in social sciences for obvious political ends which their ideology justified and rationalised irrespective of the means. Bharat has not only survived invasions prior to 1947 but is also battling ideological invasions into our social fabric which undermine the Nation's economic progress and social harmony. The resurgence of the Nation is due to the innate nature of its people from times immemorial, to preserve Liberty of thought and belief. This has now found a medium of expression with the digital revolution which is dismantling the stranglehold of biased narrative building editorial boards over public discourse. Re-establishing Liberty of thought, expression, belief, faith, and worship without fear of being judged as being uncivilized and practitioners of superstition, by applying imported standards.

Bharat in its evolution from being culturally, politically, and intellectually enslaved is now seeking to resurrect its place in the community of nations with pride while objectively exploring 'truth' regarding its own ancient civilization through the recourse to law seeking Justice. ●

⁹ Munshi, K. M. (2012). Chapter III: Nehru Report. In Indian Constitutional Documents: Pilgrimage to Freedom, 1902-1950 (p. 25). Mumbai: Bharatiya Vidyabhavan.

¹⁰ Forty-Second Amendment to the Constitution, w.e.f. January 03, 1977.

¹¹ Palkhivala, N.A. (1974). Fundamental Rights. In Our Constitution Defaced and Defiled (p. 32). New Delhi: Macmillan.

¹² Potaraju, S. (2020, October 28). The Marxist Spin To Indian History Unearthed In The Sri Ram Janmabhoomi Case. Swarajya. Retrieved December 8, 2022, from <https://swarajyamag.com/politics/the-marxist-spin-to-indian-history-unearthed-in-the-sri-ram-janmabhoomi-case>

75 Years of Resurgent Bharat - Changing contours of Law and Justice

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India got Independence in 1947 but the umpteen laws of the colonial era still remain in the Statute Book. The Colonial period has ended but the colonial laws still hold fort. While the Indian Government from time to time has made efforts to revoke these colonial laws related to the supremacy of the then British government but despite that many laws and acts are still alive without any use and do not serve any practical purpose.

The word ‘Repeal’ as defined in Merriam-Webster is “to rescind or annul by authoritative act”. It is further observed that “Statutes unlike human do not die a natural death. The statutes life unless predetermined by legislature survives until it is killed or repealed”. The motive is to repeal those laws and acts that have turned otiose, redundant and were made with a purpose to suppress the Indian citizens and their freedom.

The Indian Constitution vide its Article 372 provides for continuance in force of existing laws and their adaptation. By way of this Article, the

earlier colonial era laws were adopted in the Post-Independence legal system of the India. Some of these laws were not only archaic but were also draconian as they were meant for curbing the spirit of Independence in the Indian citizens and further regulating the socio-economic status of the inhabitants of the country as per the western values. It was for this purpose that various governments after Independence through Law Commission Reports and other Expert Committees have tried to identify the colonial laws which do not have any relevance in the present day administration.

Therefore the laws which have turned otiose and redundant need to be obliterated so that fresh laws which are in tune with the economic and social landscape of the present India and represent the value system of our ancient land can be put in place.

Various Commissions have through their research have worked on to remove clutters from the Statute Book and provide clarity and enhance the applicability and purpose of law. The main

¹ Law Commission India Report No. 248 dated 12.09.2014

² Report of the Commission on Review of Administrative Law dated 30.09.1998

focus of the reports of various Law Commissions & Committees in the above said context were (i) revision of the statute book as “the co-existence of dead law with living law creates confusion in understanding”. (ii) reducing the burden of statute book by repealing laws that were lying idle without any practical purpose and having turned obsolete and redundant. Thus, the main objective was to provide clarity in the statute book as old laws without any purpose leads to turmoil among readers and is a hinderance in accessing justice.

The Law Commission of India headed by Dr. Justice A.R. Lakshman in its 18th Report sought to repeal the Converts Marriage Dissolution Act 1866, along with recommendations and proposals to amend Section 304B of the Indian Penal Code, Section 438 of the Code of Criminal Procedure among other important proposed amendments.

The Law Commission of India headed by Justice P. V. Dixit in its 81st Report recommended the repeal of Hindu Widows Remarriage Act 1856, as it had become obsolete and it had no practical utility.

The Law Commission of India headed by Justice K.K Mathew in its 96th Report recommended repeal of certain Central Acts. It was suggested that there should be a periodic revision of the Statute Book so as to find out and get rid of laws that are redundant and obsolete. This Report recommended repeal of Continuance of Legal Proceedings Act 1948, Exchange of Prisoners Act 1948, Federal Court Act 1937 and many other Acts.

The Law Commission of India in its 148th Report recommended repeal of certain Pre-1947 Central Acts. The motive of the Report was to identify the “dead wood on the Indian statute book” with regard to Pre-1947 Central Acts. The Report recommended repeal of Certain Acts such as the Forfeiture Act, Ganges Toll Act 1867, the Acting Judges act 1867, the Promissory Notes (stamps) Act 1926.

Further the law commission of India headed by Justice B.P. Jeevan Reddy in its 159th Report was with reference to repeal and amendment of laws. The Acts recommended for repeal were Banking Service Commission Act 1984, Currency Ordinance 1940, Indian Coinage Act 1906, Tokens Act 1889 and many other Acts.

The Law Commission report headed by Justice D. K. Jain and Mr. Justice A. P. Shah in its 248th Report titled as Obsolete Laws: Warranting

Immediate Repeal (Interim Report) recommended a set of 72 statutes fit for repeal. The statutes are recommended for repeal because they fall into one or more of the following categories as defined by the Commission’s Report viz :— (i) the subject matter of the law in question is outdated, and a law is no longer needed to govern that subject, (ii) the purpose of the law in question has been fulfilled and it is no longer needed and (iii) there is newer law or regulation governing the same subject matter.

The PC Jain Commission on Review of administrative laws dated 30.09.1998 focused on many aspects including the repeal of old, dysfunctional and redundant legislation. The aforesaid Commission recommended repeal of the following :-

- ▶ “166 Central Acts including 11 pre-nationalization acts and 20 validation acts such as the livestock importation act 1898, the dourine act 1910, the tobacco board Act 1975, the gift tax 1958, the federal court act 1937, the coal mines emergency provision act 1971, the life insurance (emergency provisions) 1956, the bangalore marriage accommodation act 1936, the bar councils (validation of state laws act, 1956).
- ▶ 11 British Statutes still in force such as colonial probates act 1892, Indian and colonial divorce jurisdiction act 1926.
- ▶ 17 wartime permanent ordinances and
- ▶ 114 Central acts relating to State subjects for repeal by State Governments ”.

The findings of the above Commission are focused on to view each of the statutes which was enacted prior to the commencement of the constitution and those statutes which are proposed to be retained should be reviewed thoroughly, so as it brings its provision in tune with the current time requirements. The Commission emphasizes to repeal all those laws that have turned dysfunctional, otiose and are just overburdening and cluttering the Statute Book.

The Prime Minister Office on 01.09.2014 has constituted a two-member committee headed by shri R Ramanujam “to identify the Central Acts which are not relevant or no longer needed or require repeal/reenactment in the present socio-economic context.” The committee is famously known as Ramanujam Committee. The main objectives of the Committee are viz :-

³ Report of the Committee to ‘identify the central acts which are not relevant or no longer needed or require repeal/re-enactment in the present socio-economic context’ dated 05.11.2014.

- (i) “process the act of repealing the central acts which are not relevant or no longer needed as on date and can be repealed whole or in part immediately based on recommendation of various reports, departmental/ministry, the Law Commission and other Commissions and Committee,
- (ii) to identify the acts amending the central acts which can be wholly or partially repealed in view of Section 6-A of the general clauses act;
- (iii) to identify the central acts which would require revisiting in the present socioeconomic context through appropriate amendments thereto or re-enactment thereof.”

This Committee has prepared and worked on the Central Acts enacted from the year 1834 to 15.10.2014. The committee indicated that :-

- (I) The total number of Central Acts enacted before the commencement of the constitution from the year 1834 to the year 1949 were 2910 out of which 2530 have been repealed.
- (II) The total Central Acts enacted after the commencement of the constitution i.e. 26th January 1950 upto 15.10.2014 were 3702 out of which 1301 have been repealed.
- (III) Of the total 2781 acts existing as on 15.10.2014 still on statute book, the committee recommended total of 1741 Central Acts for repeal.

So as to identify the Central Acts for repeal, the Committee perused all Central Acts enacted from the year 1834 upto October 2014 and put them under categories of Central Acts namely :-

- (i) *the Central Acts which are very old and have become obsolete or redundant in today's socio-economic context;*
- (ii) *the Central Acts enacted before independence which relate to the matters pertaining to one specific individual or his descendants;*
- (iii) *the Central Acts which exist on Statutes Book as they contain one or more validation or saving provision or transitional provisions;*
- (iv) *the Central Acts which exist on Statutes Book as they contain one section being the short title and commencement;*
- (v) *the Central Acts exist on Statutes Book even after expiry of the period of their applicability or validity provided in such Acts;*

- (vi) *the Central Acts (being an amendment Act) which exist on the Statutes Book even after repeal of the principal legislations, to which amendments were made by such amendment Act; and*
- (vii) *the amending Central Acts which have become redundant in pursuance of provisions contained in section 6A of the General Clauses Act, 1897.”*

The Committee after noting its observations and reasons recommended repealing of the laws that have turned otiose such as the Public Accountant's Defaults Act 1850, the Caste Disabilities Removal Act 1850, the Sheriffs Fees Act 1852, the Howrah Offences Act 1857, the Hackney-Carriage Act 1879 and many other Acts.

The present Government has introduced the Repealing and Amending Act 2019 which is a pragmatic approach in governance. The Repealing and Amending Bill 2019, was introduced in Lok Sabha on 25th July 2019. The Bill sought to repeal 68 Acts in whole and makes minor amendments to two other laws. The following Act of the parliament received assent of the President on the 8th August, 2019. The motive of the Act is to repeal Acts that have turned obsolete and to amend certain acts that require amendment. Further, the present Union Minister for Law and Justice Shri Kiran Rijiju in an interview in October 2022 said that centre will repeal more than 1500 obsolete and archaic laws during the winter session of the parliament. He also observed that obsolete laws are impediments in the normal life of common people and do not have relevance in the present time nor deserve to remain in the Statute Book.

In pursuit of this objective as discussed above, it can be said that the legal system has to be updated as due to the changing social and economic dynamics, the laws which are redundant and non-comprehensive should not be a part of the system. The presence of archaic laws in the statute book prevents a common man from facilitating the desired justice. Therefore, it is in the above terms that the present Government under the leadership of Shri Narendra Modi is determined to relegate obsolete Central Acts and other laws out of the Statute Book. This step of the Central Government will establish and set a smooth administration and ensure the economic growth of India as has always been cherished by our leaders and pave the way for the supremacy of ‘Rule of Law’ as enshrined in the constitution. ●

⁴ Supra (Report dated 05.11.2014)

Perspectives on Education Law

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The last decade has witnessed a remarkable growth in opportunities for higher education in India. The stimulus for this change has been a liberalising economy and a greater recognition that higher education in particular is a fundamental instrument of personal and national development. With demand consistently outstripping supply, it is no surprise that public and private spending on universities and university-level institutions and colleges has risen exponentially.

However, the gap is not always filled by quality. The problem of sub-standard institutions is acute in higher education where regulatory bodies such as the UGC, AICTE and MCI have been hard-pressed to maintain uniform standards with the

'mushrooming' of colleges and universities as the Hon'ble Supreme Court phrases it in *Laxmi Sharma v. Vice-Chancellor, Chhatrapati Shahaji Maharaj University*². The fact that institutions usually have to interact with multiple agencies at the federal and state levels, is also a challenge in maintaining academic standards. This has often resulted in institutions without the best credentials slipping through the cracks and becoming eligible to award degrees and diplomas in a bid to profit from education.

Many a times, the consequences can be far more disastrous, such as when unsuspecting candidates

spend substantial time and money before realizing that the courses in which they enrolled were not even accredited, or were conducted in blatant violation of the Hon'ble Supreme Court's verdict in *Prof. Yashpal v. State of Chhattisgarh*³

that proscribes State Universities from operating beyond their territorial jurisdiction. Of course, the reverse cannot be ignored either where over-regulation and administrative delays may unfairly



impede the growth of institutions that actually meet the stipulated standards. These disputes naturally find their way to courts of law. The result is that judges often find themselves treading a delicate line between the complex problems of upholding academic standards on the one hand, and the constitutional right to establish and run educational institutions on the other, while, at all times, respecting the well settled

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² *Laxmi Sharma & Ors. v. Vice-Chancellor, Chhatrapati Shahaji Maharaj University & Ors.*, (2006) 9 SCC 138.

³ *Prof. Yashpal & Anr. v. State of Chhattisgarh & Ors.*, (2005) 5 SCC 420.

position that a Court must avoid substituting its view for that of subject-matter experts. Such cases, which were previously few and far between, are now frequent as litigants (both, educational institutions and students) increasingly question regulatory policies, decisions and rules. Unlike the routine service dispute, however, these cases may have far-reaching and significant consequences for society and the nation at large. To give an obvious example, an erroneous decision by a regulatory body or a Court to grant or validate the academic recognition of an undeserving institution may lead to successive generations of insufficiently trained graduates who are ill-equipped to be productive members of the nation's workforce. Moreover, the nature of disputes related to the field of higher education has evolved from cases largely on reservation and minority rights (see, T.M.A. Pai Foundation v. State of Karnataka⁴ for example), to those more recently on the extent of regulatory oversight and quality standards.

A way forward is to recognize that higher education cases are a class apart since they relate to a field that, in the words of the Hon'ble Supreme Court, is "distinct and special in contradistinction with other economic activities as the purpose of education is to bring about social transformation and thereby a better society."⁵

To that end, amicus briefs must become commonplace in this branch of the law. Though amicus briefs are not unusual in our country in public interest litigations, they are rare in adversarial cases. In advanced common law jurisdictions, such as the United States and the United Kingdom, amicus briefs are entertained in a wide variety

of subject matters, including on education. In fact, the website of the United States Department of Justice lists several subjects in which the U.S. Government itself has filed amicus briefs.⁶ Many of those cases involved non-State parties where the implications for the public at large necessitated such pleadings. As far as the United States is concerned, Courts in that

country are very liberal in entertaining amicus briefs,⁷ but sometimes weigh the merit in accepting an amicus brief by assessing whether the amicus curiae would actually add value to the debate.⁸ In the United Kingdom, amicus curiae are subsumed within the familiar concept of 'interveners'. Their role has been appreciated by the U.K. Courts since they bring a "fund of knowledge or particular point of view" which will provide the Court with "a more rounded picture than it would otherwise obtain."⁹

However, the amicus curiae need not always be an advocate—he or she can be a subject-matter expert who can assist the Court and counsel in reaching a fair decision. The appointment of an amicus curiae may be especially important in cases where the regulator itself is a contesting party. This may also help ease the burden on the regulator itself which may be expected, particularly in cases involving hapless students, to find a solution that it may consider unfeasible. Needless to state, the decision to appoint an amicus curiae would depend on the Court's assessment, based on the age-old truism of the 'facts and circumstances of the case'.

Time is also of the essence in disputes in the field of higher education. Since academic calendars cannot be subject to the inherently uncertain nature of court dockets,

delays in reaching a final verdict may impact students who are the beneficiaries of educational services or affect legitimate institutional claims. For instance, an order permitting an institution to conduct a course until a final judgment is passed may create equities in favour of the students that a Court may find nearly impossible to reverse later, even if that course is ultimately found to be sub-standard. One way in which Courts have dealt with such situations is by clarifying that the decision is being rendered in the given facts of the case and should therefore not be treated as a precedent.¹⁰ Such decisions pose a peculiar problem for the regulator because, in the final analysis, there is a judicial pronouncement that

⁴ *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*, (2002) 8 SCC 481.

⁵ *Modern Dental College and Research Centre & Ors. v. State of Madhya Pradesh & Ors.*, (2016) 7 SCC 353, at para. 91.

⁶ Details can be accessed at: <https://www.justice.gov/crt/appellate-briefs-and-opinions-20> (last visited on December 12th, 2022).

⁷ See, for e.g., *United States v. State of Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990), available at: http://www.leagle.com/xmlResult.aspx?page=5&xmlDoc=19901359751FSupp608_11249.xml&docbase=CSLWAR2-1986-2006&SizeDisp=7 (last visited on December 12th, 2022).

⁸ See, for e.g., *Voice for Choices v. Illinois Bell Telephone Company*, 339 F.3d 542, 545 (7th Cir. 2003), available at: <http://law.justia.com/cases/federal/appellate-courts/F3/339/542/603399/> (last visited on December 12th, 2022).

⁹ See, *Re E (a child)*, (2008) UKHL 66 at para. 2, available at: <http://www.publications.parliament.uk/pa/Id200708/ljudgmt/jd081112/inrea-1.htm> (last visited on December 12th, 2022).

another Court or litigant can look to, so that the exception is in danger of becoming the rule. Conversely, a valid academic program may be indefinitely stalled because a Court is yet to opine on a regulator's decision to refuse recognition. The Hon'ble Supreme Court has therefore rightly observed that interim orders should be discouraged in academic matters, and a final verdict should be expeditiously reached.¹¹

Naturally, the Bench and the Bar are both stakeholders in this respect. The sheer number of cases filed each year in our Courts, coupled with the large pendency, make it extremely difficult for judges and lawyers alike to adhere to a strict time-frame for any type of case, let alone education disputes. But, it may just be possible to manage the docket by identifying and categorizing the types of disputes in the field of education which would require an expedited hearing. Cases brought to Court regarding accreditation for new academic courses, and the grant or continuation of institutional recognition are some disputes which may need an early disposal. On the other hand, cases relating to career advancement schemes and the constitutionality of long-standing statutes and rules made by the regulator, are examples of cases that may not demand the same level of urgency. That is not to say the latter are any less important, but the limited time available to Courts in India today warrant prioritizing between categories.

It is pertinent to note that the Law Commission of India has also recommended such

'case management' techniques which categorises writ petitions into three heads: Fast Track, Normal Track and Slow Track. Though the Law Commission has also acknowledged that mandatory time-limits cannot be enforced as each case has to be judged on its own merits, the Commission has observed in its 245th Report that,

*"[a]s a staple part of systematic case management strategies, such timetables provide clear time frames for dispute resolution, define litigant expectations of timeliness, and thus impact the litigant experience of delay. They allow the judge flexibility to take into account the specific aspects of an individual case in framing a time schedule for that case. When accompanied by general time frame guidelines, the possibility of abuse of the power by setting long time frames can be avoided."*¹²

A more enduring program would be to encourage the study of the interface between higher education and the law to build a robust Bar in this field. Specialized courses in law schools and continuing legal training programs by Bar Associations would definitely help promote awareness of the laws, issues and challenges relevant to higher education in India. A case in point is the success of similar programs in the

field of environmental and disability laws that were relatively unknown a few decades ago, but are administered today by dedicated fora such as the National Green Tribunal and the Chief Commissioner for Persons with Disabilities. Much of the credit for creating public awareness about these subjects goes to our superior courts. For example, awareness about the environment became widespread after the Hon'ble Supreme Court in M.C. Mehta v. Union of India¹³ directed the UGC and the State Governments to introduce courses in universities and university-level institutions and colleges in their respective domains.

The next few years are an exciting time for higher education in India. There is already a paradigm shift in the prevailing regulatory regime and increasing internationalization of higher education, through collaborations, joint degree arrangements and the mobility of students and faculty, will further broaden the narrative. It is important that the Bench and the Bar are ready to meet the challenges arising from this change. ●

¹⁰ See, for e.g., the Hon'ble Supreme Court's order dated September 21, 2015 in the matter of University Grants Commission v. Sikkim Manipal University & Ors., S.L.P. (C) No. 26223 of 2015, where the Court observed: "Insofar as the questions of law raised by the petitioner-University Grants Commission before the High Court were concerned, they have been decided in favour of the petitioner. However, in the peculiar facts of the case as noted by the High Court, relief is granted to the students who had undergone the distant learning courses. We are not inclined to interfere with those directions passed by the High Court on those facts. ... Obviously, such an order would not be cited as a precedent in any other case."

¹¹ Tamil Nadu Dr. M.G.R. Medical University v. Meenakshi Ammal Trust & Anr., 1995 Supp (4) SCC 694.

¹² Law Commission of India, Arrears and Backlog: Creating Additional Judicial (wo)manpower, Report No. 245, at pg. 8. A copy of the Report is available at:

<https://cdnbbsrs3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081643.pdf> (last visited on December 12th, 2022).

¹³ M.C. Mehta v. Union of India & Ors., (1992) 1 SCC 358.

75 Years of Resurgent Bharat

Changing Contours of Law and Justice

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“The only constant in life is change” – Heraclitus.

INTRODUCTION

Vande Bharat- is a gist of 75 years of resurgent Bharat. India has approached towards an Aatmanirbhar Bharat, in all the 75 years of independence.

Embellished in the Tricolour, the Indian Constitution enshrines the contours of Law and Justice. The glory of 75 years of Independence torches light towards the miles it has travelled from the time when India i.e. Bharat, was at a nascent stage of development. The initial 25 years of Independence were critical in shaping the country's territory, leadership, law and justice system. Today, as we stand strong with the title of a 'Jagruk Nagrik', a realization dawns upon us; that even after years of Independence, there prevails certain gaps in the justice delivery system. We still follow the archaic laws legislated by the British Raj, for example, the criminal, property laws, etc. For a vibrant democracy, the strengthening of our judicial system is the need of the hour. And this is not the sole responsibility of those in power in the government and judiciary, but also the citizens of India through an abridgement of the gap between social reality and law.

CHANGING DYNAMICS SINCE 1947-1999

The Indian Independence Act, 1947, laid the groundwork for India's independence from British rule. The Act was passed by the British Parliament, and partitioned British India into two independent dominions i.e. India and Pakistan. As independent India's journey commenced, it commemorated its first major milestone through the enactment of the Factories Act, 1948 and Minimum Wages Act, 1948, ensuring the rights of employees. Another pivotal year following independence, was 1949. On November 26, 1949, some parts of the Indian Constitution came into effect, which led to it being celebrated as the Indian Constitution Day every year.

The Indian Constitution came into effect on January

26, 1950, the day that is now celebrated as the Republic Day. A set of fundamental rights were established and the role of the Indian Judiciary came into picture. The same year, after a government Order prohibited the circulation of a weekly magazine in parts of Madras, the extent of the right to freedom was questioned. Subsequently, the Supreme Court, in the case of Romesh Thappar v. The State of Madras (1950 AIR 124), ruled that the freedom of speech and expression includes freedom of propagation. The following year, the Representation of The People Act, 1951, came into effect, which laid the groundwork for modern-day elections and constituencies. Not forgetting that the first legislation pertaining to children in India was enacted under the name of Apprentice Act of 1850. The year 1953 was significant because of the classic case of Kalawati v. State of Himachal Pradesh (1953 AIR 131). The said revolved around the question of a person who was being tried of murder but due to lack of evidence was acquitted. It held that Article 20 (2) shall be invoked only if a person is convicted or prosecuted of offence.

Furthermore, a watershed moment in the history of laws relating to marriage in India came in 1954 with the enactment of the Special Marriage Act. The same year, in the Shirur Mutt case (1954 AIR 282), the test of essential religious practice was established, which was recently upheld in the Karnataka High Court's Hijab case. The following years witnessed many changes through the enactment of various laws including the Hindu Marriage Act in 1955, the Companies Act in 1956 (replaced by Companies Act, 2013), and the Hindu Secession Act in 1956. A critical role in the 75 glorious years of Independence in protecting the rights of artists and writers was played by the enactment of the Copyright Act of 1957. The same year, the validity of Section 295A of the India Penal Code, 1860 (IPC) was challenged as a violation of freedom of expression under Article 19 (1) of the constitution of India. In the case of Ramjilal Modi v. The State of U.P. (1957 AIR 620), the provision of

295A of IPC was deemed critical for maintaining public order.

The era of 1958, witnessed deliberations upon the term ‘equality’ under Article 14 of the Constitution of India, 1950 through the case of *R. K. Dalmia v. Shri Justice S.R. Tendolkar & Ors.* (1958 AIR 538) which clarified the concept of the right to equality under the Indian Constitution. Few other classical constitutional development precedents in India were by way of cases such as Berubari Union case, 1960 which held that the parliament does not have the power to give the territory of any state to another country under Article 3 of the Indian Constitution held that the parliament does not have the power to give the territory of any state to another country under Article 3 of the Indian Constitution and that the preamble is not an integral part of the Indian constitution, and therefore it is not enforceable in a court of law.

The year of 1961 saw one of the most famous case of jury trial in the country with that of *K.M. Nanavati v. The State of Bombay* (1961 AIR 112), a case widely believed to be the last of the Jury system. In the same year, the Maternity Benefit Act of 1961 was passed which regulated the employment of women in certain establishments for a certain period before and after child birth and provided for maternity benefits and such other benefits to such women. Furthermore, in 1962 a landmark case titled *Kedarnath Singh v. State of Bihar* was adjudicated which upheld the constitutional validity of sedition laws of India and also held that government established by law is the visible symbol of the State. Further development arose with respect to the passing of the Customs Act of 1962, regulating import and export of goods in India, passing of the Limitation Act of 1963, the Specific Reliefs Act and others. Thereafter, 1965 was the year in which the Apex Court of India legislated in affirmative that the Parliament had the power to amend any part of the constitution including Fundamental rights. Also similarly seen in *Shankari Prasad case* (1951).

The said period of 1951 till 1994 was a crucial period in the historical development of the Indian Judiciary and Indian Law as the said period was an evolution of the concept of the basic structure of the constitution which evolved from time to time. As witnessed in *Shankari Prasad* (1951) and *Sajjan Singh* (1965) held that Parliament can amend any part of the Constitution including the Fundamental Rights. However, in 1967, India witness the *Golaknath* case which reversed the previous mentioned Apex Court

judgements and held that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13 and that to amend the Fundamental rights a new Constituent Assembly would be required. In 1973, India witnessed a landmark case, *Kesavananda Bharati* which defined the concept of the basic structure doctrine. It was held in the said case that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament’s amending power, the “basic structure of the Constitution could not be abrogated even by a constitutional amendment.” The judgement implied that the parliament can only amend the constitution and not rewrite it. By virtue of the said case, the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution, was emphasized. And further developments were seen in the year 1975, 1980, 1981, 1992 and 1994 in cases namely *Indira Nehru Gandhi v. Raj Narain* case (1975), *Minerva Mills* case (1980), *Waman Rao Case* (1981), *Indra Sawhney and Union of India* (1992), *S.R. Bommai* case (1994), which were all landmark cases relating to adjudication of the basic structure of the Constitution of India.

In furthering years, India witnessed the passing of the Wildlife Protection Act of 1972 providing protection of wild animals, birds and plants; and for matters connected therewith or ancillary or incidental thereto. Wherein the same year, the horrific case of Mathura rape case occurred involving incident of custodial rape of a young tribal girl which lead to amendments in Indian rape law via The Criminal Law (Second Amendment) Act 1983 (No.46). The years between 1950 to 1973 were very important years with regards to the freedom of press guaranteed under Article 19(1)A of the Constitution of India. Starting form 1950 wherein *Romesh Thapar v. State of Madras* held that a law authorizing a state government to impose a ban upon entry and circulation of a journal within the State was held restrictive of the freedom of speech and expression guaranteed by Article 19(1)A and that such laws could be valid only if it felt within the provisions of Article 19(2). Similarly, imposition of pre-censorship on a newspaper, or prohibiting it from publishing its own views on burning topics of the day was held to be a restriction of the freedom of speech and expression by the Apex Court in *Brij Bhushan v. State of Delhi* (1950). This said span of years embarked upon the subject that press has the right of free propagation and free circulation without

any previous restraint on publication. Finally in the landmark judgement of *Bennet Coleman v. Union of India* (1973) took the view that freedom of speech guaranteed by Article 19(1)A includes the freedom of the press as well.

Further, the 42nd Amendment, officially known as The Constitution (Forty-second amendment) Act, 1976, was enacted during the Emergency (25 June 1975 – 21 March 1977). Almost all parts of the Constitution, including the Preamble and amending clause, were changed by the 42nd Amendment, and some new articles and sections were inserted. The Parliament was given unrestrained power to amend any parts of the Constitution, without judicial review which essentially invalidated the *Kesavananda Bharati* (1973) ruling. At this juncture, while India was juggling with the evolution of the basic structure doctrine of the Constitution of India, deliberations upon one of the most important organs of the government, the Indian Judiciary, were being speculated. A lot of ambiguity with respect to the procedure of appointment of judges was looming around at the time, rendering judiciary bias. The famous 'three judges case' titled *S.P. Gupta v. Union of India* played an important role in introduction of the collegium system for the appointment of judges in the Supreme Courts and the High Courts and held that no other organ of the government except the judiciary itself will interfere in the election of judges. While the second case, in 1993, made the system effective in the country and the third case, in 1998, clarified the loopholes in the system.

And in the fourth case in 2015, the Court abolished the National Judicial Appointment Commission that helped the President in the selection of judges for the Supreme Court and High Courts. The *S.P. Gupta* case was one of the most important cases relating to the question of appointment of judges in the Supreme Court and High Courts of India which further paved the way for future development in the judiciary. However, there is still a long way to go with regards to the transparency involved in the appointment of a judge, especially in light of recent comments/observations made by the current law minister Shri. Kiren Rijiju.

In the furthering years, 1965 onwards, India witnessed various socio-legal developments with respect to marginalized and oppressed classes. The *Shah Bano* case from 1985 was a classic example of upholding equal rights in matters of marriage and divorce in regular courts. The most recent example

being the *Shayara Bano* case in which the Apex Court invalidated the practice of instant triple talak came as a legal milestone in battle for protection of rights of Muslim women. Indira Gandhi's murder case shocked the country in 1984 as the rarest of the rare instances and to be a landmark verdict concerning the rights of the accused. The unfortunate year of 1984 was that of Indira Gandhi's murder witnessed a landmark verdict in the case titled *Kedar Singh and Ors. V. State* (1988) which was based on the essential structure of the Constitution on rights of the accused. Furthermore, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, reaffirmed the rights of oppressed groups. In 1993, the Other Backward Classes (OBC) were given reservation and in 1997 guidelines to deal with workplace sexual harassment were issued by the Supreme Court pursuant to the Brutal case of *Vishakha and Ors. V. State of Rajasthan*.

INDIA IN THE 21ST CENTURY



While India was juggling in questions regarding the interpretation of the provisions of the constitution of India, human rights, victim rights and rights of the accused, the world was progressing towards technological advancements such as the advent of computers, artificial intelligence, internet, electronic press, etc. which demanded interpretation and inclusion of IT, IP, data protection, etc. laws. And further in 2018 and 2019, India saw major breakthroughs in the advancement of Artificial Intelligence other than creating humanoids.

The enactment of the Information and Technology Act, 2000 brought India legally up to speed with the

evolving technological world and in 2002 with the addition of Article 21A, the 86th amendment to the Constitution recognized the right to education. The lawsuit launched by Sakshi (an NGO for the protection of women and children) prompted the Parliament to broaden the definition of rape u/s 375 of the Indian Penal Code, 1860. In 2005, the legislature passed the Right to Information Act, which enabled the disclosure of any information by the authorities with a few restrictions, empowering freedom of speech under Article 19 (1)(a) and 2006 onwards were also watershed moments as regards child rights and their protection in India.

In 2012 the Delhi gangrape/Nirbhaya case shocked the country. It compelled the legislature to modify atrocities against women related laws. Significantly the societal uproar against atrocities committed over women of India led to the implementation of the Criminal Law (Amendment) Act, with addition of Section 326A which criminalized and punished any person who causes permanent or partial deformity by use of acid, Section 326B which criminalized the attempt to commit a crime under Section 326A. Section 354A which defines Sexual Harassment, Section 354B which defines assault with the intention to disrobe, Section 354C which defines voyeurism, and Section 354 D which defines stalking.

Apart from this, the amendment to the 1956 Companies Act was brought about in 2013 which lead to an updation of the company laws in India.

In 2014, third gender rights were acknowledged by the judgment passed by the Apex court in National Legal Services Authority v. Union of India, which mandated the government to provide transgender class with employment, education, and other benefits.

In the same year, in the case of Shreya Singhal, the Supreme Court knocked down Section 66A of the Information Technology Act, 2000, since it infringed the freedom of speech and did not fall within reasonable restraints.

Various other reformative developments took place with respect to Navtej Singh Johar v. Union of India (2018) under Section 377 of the Indian Penal Code which decriminalized consensual sexual intercourse between two consenting adults of the same sex, Joseph Shine v. Union of India decriminalizing ‘adultery’ u/s 497 of the Indian Penal Code, and State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai (2022) where the Supreme Court declared ‘two finger test’ unconstitutional. This reiterates that that resurgent Bharat has always complied with the roaring calls of

society towards wrongs, and developed as per need of the hour.

The above mentioned is further evident with the nationwide anger and agitation with regard to Kathua and Unnao rape cases, where due to the said uproar, positive and relief seeking amends were made to the Indian Penal Code, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012 etc.

Entering into 2020, the world was struck with the outbreak of COVID-19 virus which devastated the country forcing the Government to proclaim a nationwide lockdown. In the same year, in case titled Anuradha Bhasin, while observing how internet is important and understanding changing dynamics, the Supreme Court recognized the access to the internet as part of the freedom of speech provided by Article 19 (1)(a), even to Indian nationals of Jammu and Kashmir.

Furthermore, during the said year, when families were forced to live indoors and not venture outdoors, the government even presented the Surrogacy (Regulation) Act, 2021 observing change in trends of family planning. Major developments were even observed when labor laws were amended and repealed.

DELIBERATION

There is still a long way ahead, in order to include amendments with respect to changing societal dynamics of India, viz. repealing age-old archaic legislations.

The need of the hour remains, to voice out deliberations and changes needed. An inclusion of educated class of people to the law-making bodies and political realm requires an observation. Opposition in the country needs to act as a positive critique in order to supplement societal upbringing. As on date, opposition is concerned about how the ruling parties may be troubled with frivolous criticisms and objections towards progressive steps the ruling party might be undertaking. Talking about the ruling parties, the percentage of educated masses is less than 50% who can even deliberate upon amendments and/or changes to existing legislations, due to which voicing of such changes to the law becomes unavailable.

However, one fact cannot be denied which is that the law makers of Bharat has been vividly receptive towards socio economic dynamics and has so far considered it appropriate to legislate, as per the need of the hour. ●

A Mirror to Biased Bail Laws Need of Separate Bail Legislation

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Abstract

I woke up to the news of a young boy of 18 years arrested by police for an alleged offence of theft. As the boy belonged to a backward area of UP and helped his father in running tea stall, he and his family didn't know much of their right to bail. They didn't have enough money to engage a lawyer and seek legal advice. The person who filed complaint against him was owner of a famous restaurant located in front of the tea stall. As hotel owner is an influential person, lodged a fake complaint against this poor guy to remove the tea stall in front of his hotel, and also deprive him of bail. What should his family do, what should he do? How can someone trust the justice system which is influenced by people with power. Isn't this miscarriage of justice? In seconds his life shattered, and the bread earner of this family's future got destroyed. The question is do we need such laws that destroy life of innocents and their whole family or do we need such laws that help each and every accused in getting speedy and proper justice. The rich or the poor should not be the bar to decide the fate of justice. The authors of this article have made an attempt to bring out the bias behind the prevailing bail laws and the need for separate bail legislation.

Introduction

The current situation of the Indian jails can be seen as one sprawling with people who although are accused of a crime are still under judicial proceedings. As of the latest data provided by the states and centers, India currently has 371,848 prisoners in pre-trail detention. While the global average of prisoners awaiting trial stands to be 34%, India stands at a startling figure of 74% in comparison. With the prevalence of Section 41 (CrPC), upon the violation of which the police attain a right to arrest without a warrant has noticeably increased the unwarranted arrests while the rate of actual conviction remains supremely low.

In a situation where in the arrest is currently being used as a punitive tool, bail is a method by which a person who is accused of a crime gives an assurance to comply with courts orders and in turn granting the liberty and right to fair trial. But a lack of uniformity, delays in bail application and existence of a colonial mindset has driven the rule of 'Bail, not Jail' into act of whammy. Although before reforming or indulging in any change in the existing law, it is imperative to understand and analyze the reasons and existing practices that are resulting in higher number of under trail incarceration. Lack of repercussions faced by the police for arrests made in wrongful terms or more yet, indiscriminative arrests can be state as one.

It was in May 2017, when the Law Commission of India said that, 'The existing system of bail in India is inadequate and inefficient to accomplish its purpose'. In July 2022, Supreme Court put its foot across to demand the Union Government to consider a bail act which would not only streamline the bail granting authority but would also consider factors including level of existing under trials, matters of violation and acceptance to the right to access bail. A Bench of Justices Kaul and M.M. Sundresh said there is a "pressing need" to bring the bail law due to no existing law of a similar nature exists in the constitution. In more precise terms, the Supreme court brought out that the arrest measure should be used more sparingly.

Provisions Under the Present Law

As an established fact, Bail is a fundamental right in a criminal justice system. In addition to the same, it was the concept of bail that ensures safeguarding the fundamental right to liberty.

The current legal system in India, categorizes offence into two parts under the CrPC, i.e.,

1. Bailable offence – Section 436 requires the police and the court to release the accused to furnish a bail bond with/without surety
2. Non-bailable offence – Section 437 adds that an

¹ AIR 1979 SC 1360

² AIR 1978 SC 597

accused cannot claim bail as a right under certain offences. In this situation, it is the courts on whom the discretion of bail lies upon.

Further, a provision under the law mandates the act of granting bail to an accused who is below the age of 16 years, a woman or someone who is sick. Similarly, the CrPC also lists out provision for cancellation of bail.

Right to Bail-As a Constitutional Right:

Article 21

Bail jurisprudence in India is auxiliary of the adversarial system that helps an accused to remain out of jail until or unless after completion of criminal trial, the guilt of accused is proved beyond reasonable doubt. The underlying concept of Bail in India is Bail a rule and jail an exception, therefore bail is a matter of right in case of bailable offence meaning thereby a person has a constitutional and statutory right to be released from arrest on granting bond as per the requirement of Law and in case of non bailable offence appropriate court has power to release the accused on Bail after giving an opportunity of being heard to both the side i.e. prosecution and the accused and after furnishing of proper security that accused will be present as and when required by the Hon'ble court of law. On the other hand, police and prosecution has the right to oppose the Bail of the accused so the court of justice and the law of Land has to construe in such a way that a balance is maintained between rights of both the parties and no undue justice is caused to one them. But the fact that in past we have seen that the duration of imprisonment of under trial prisoners was so long that it surpasses the actual period of imprisonment prescribed for that particular offence. This matter went to Hon'ble apex court and Hon'ble apex court in two landmark judgements i.e., **Hussainara Khatoon v. State of Bihar**¹ and **Maneka Gandhi v. Union of India**² held that;

- (i) The reason behind arising of such a alarming situation is that these undertrial prisons are poor and not much literate as a result of which they cannot produce of afford a bail thereby suffers in prisons.
- (ii) Illiteracy about free legal aid also led to lack of justice to these undertrial prisoners.
- (iii) SC further held that right to speedy trial and right to fair procedure as foreseen in Article 21

is being violated as a result of which law of Bail in India is deteriorated thereby causing injustice to accused.

(iv) Therefore, SC in these remarkable ordered released of those prisoners who have completed duration of maximum imprisonment of the offence committed by them as right to personal liberty of undertrial prisons was hampered which is part and parcel of most important FR granted by our constitution.

SC again in **Mantoo Majumdar v. State of Bihar**³ rightly upheld Article 21 i.e., personal liberty of under trial prisoners and ordered release of prisoners who have spent more than six years in prison in wait of their trials. Supreme Court further pointed out lacunas in bail process, delay in police investigation and functioning of process of remand by the magistrate causes prejudice to right of personal liberty of undertrial prisoners thereby causing great injustice to them and violating their most important fundamental right i.e., right to life and personal liberty.

Veena Sethi v. State of Bihar⁴ and **Sant Bir v. State of Bihar**⁵-legal Aid Clinic- SC in these two very important judgements held that undertrial prisons are not provided with proper legal aid and because they are poor and lack resources, they are unable to fight for their right thereby resulting in biased implementation of law of bail in India.

Right to Bail & Free Legal Aid-

Article 22 r/w Article 39 A

Hon'ble SC in **Hussainara Khatoon v. State of Bihar**⁶ observed that reason behind undertrial prison deteriorating in jail is either they are not aware of bail jurisprudence in India i.e Bail a rule and jail an exception or they lack resources to obtain bail.

Article 22 of the Constitution of India provides that no individual who is arrested shall be denied right to access to lawyer and get defended by him and Article 39 A inserted by 1976 amendment provides that states should provide free legal aid to those who are unable to afford it due to economic or other reasons thereby ensuring opportunity of justice is not denied to them.

Furthermore, SC in case of **M.H. Hoskot v. State of Maharashtra**⁷ and **Hussainara Khatoon**'s case held that if legal aid is denied to a accused then it will be against basic principle of reasonable, Fair and just procedure.

³ AIR 1980 SC 846

⁶ AIR 1979 SC 1360

⁴ (1982) 2 SCC 583.

⁷ AIR 1978 SC 1548

⁵ (1982) 3 SCC 131

Hence it's a constitution right of every citizen to get access to free legal aid

Article 21 of Constitution of India envisages right to speedy trial of the accused and section 167(2) of CRPC states that police have to complete the investigation and submits report within period of 60 or 90 days as the case may be. Moreover Sec 167 covers only investigation aspect and other important elements of criminal justice system are not covered thereby hampering the right of speedy trial.

Critical Analysis of Bail reforms in India

In landmark case of **Narasimhulu v. Public Prosecutor⁸** it was observed by hon'ble apex court is that the most blurred area of criminal justice system of India is law of Bail and Bail in India largely depends upon discretion of the court, famously known as judicial discretion.

The gross denial of justice to the under-trial prisoners is because of the notorious delay in disposal of cases. Detention of under trials should be an exception and not a rule of law. According to world legal system the presumption is accused is innocent unless proven guilty. But in practice the nature of the offence dictates the mind of the judge or magistrate who grants or refuses the bail. the grant of bail should depend on the evidence and understanding of the judge as to the probability of the accused committing the offence and not depend on the Section which a person is charged.

Therefore, several statutes and sections that bypass the principle of innocence prior to being proved guilty. No doubt offences under narcotic drugs and psychotropic substances act, 1985, rape section 375, cruelty against a married woman section 498 A, IPC structured in order to prevent people from committing atrocities against women which are the oppressed classes of the society but the statutes should emphasize the principle of innocence unless proven guilty.

The bail system is based on sureties and bonds, which serve as a deterrent to the poor. Repeated bail petitions are denied because the poor lack financial resources. As a result, there is a widespread belief that bail is not available to the poor. As a result, bail should not be granted solely on the basis of monetary considerations. Other methods should be developed.

Section 436A of the Criminal Procedure Code More reforms may be required. Under-trial prisoners suffer greatly in the Indian legal system. The prosecution, which is overburdened with cases, frequently takes an

inordinate amount of time to complete investigations and file charge sheets. As a result, the accused may be held in custody for years. This can continue for up to half the maximum punishment prescribed for the offence, and even for the entire maximum punishment prescribed for the offence. This violates the principle of life and liberty guaranteed by the Constitution, and worse, valuable years of his life are wasted if the accused is found not guilty at the end of the trial. This is a heinous act against humanity.

Problems in Pandemic era

Due to overcrowding of Indian prisons many pre trials accused were released from prisons either on parole or on bail during COVID 19. Pandemic in order to maintain social distancing between prisoners but when they return to prison after some time again problem of social distancing arose as suspected COVID prisoners can't be identified and authorities don't have enough space to maintain social distancing between them.

Moreover, some prisoners were cut off from the outside world even states were not able to arrange video call conferencing to enable them to talk to their family members thereby violating basic human rights.

So, laws should be such as would help to face any unforeseen situation just like COVID pandemic

Supreme Court direction

In case of Satender Kumar Antil vs CBI⁹ - Supreme Court underlined that "there is a pressing need" for reform in the law related to bail and called on the government to consider framing a special legislation on the lines of the law in the United Kingdom.

SC further observed that bail continues to be the rule and jail an exception. These observations are based on certain important principles of criminal justice system:

1. To reduce arbitrariness in bail provision government should come up with separate bail law so that timely and speedy justice should be provided.
2. In cognizable cases also arrest can be avoided and it must be necessary if it is for the purpose to prevent further committing of offence etc.
3. Bail application must be disposed within a period of 2 weeks and this can be possible via separate bail legislation and special courts
4. Investigation officers and agencies concerned with investigation must follow proper procedure.

⁸ 1978 SCR (2) 371

Suggestions and Way forward

1. **Need for Special Courts:** Special courts dedicate special for the purpose of deciding whether to grant bail or not should be constituted at the earliest so that existing burdened courts can work properly and one seeking bail gets proper justice so special courts will be win-win situation for judiciary, accused and all the concerned persons
2. **Check on Power abuse:** Special committee should be constituted which should look after all the barbaric actions of police, judiciary and executives.
3. **Filing up existing vacancy:** Meanwhile govt takes decision on constituting special courts, vacancy in existing court should be fulfilled so that proper justice should be granted
4. **Principle of Natural Justice:** Separate laws, separate procedure along with special dedicated courts must be formed for obtaining one of the most important principles of nature justice that is speedy trial that meets end of justice.
5. **Unforeseen Situation:** Such a law should be made that can face unforeseen situation just like COVID.
6. **Overcrowded Jails:** Proper jails should be constituted along with adequate facility so that human rights of prisoners are not violated
7. **Awareness Program:** Proper literacy program should be implemented so that each and every citizen of the country must know about their rights and existing laws.
8. **Legal Aid:** Proper legal aid should be provided to one who can't afford justice.
9. **Awareness at school level:** School and college student should be taught about law of bail so that they know about their rights
10. **Implementation of Court's Direction:** Directions of SC and HCs regarding new bail law should be properly and timely implemented so that arbitrary action of the courts can be stopped and constitutional as well as personal rights of the accused are not violated
11. **Enactment of a Comprehensive Code:** - Performance of the existing bail law would require enactment of a comprehensive code to replace the existing law on the subject. The proposed code must reflect the basic concepts, need philosophy, utility as well as guidance for grant or refusal of bail.

12. **Check the Administration of Criminal Justice:** - Urgent attention is needed towards proper functioning of police power and developing the devices to control the police power, availability of legal aid services during preliminary steps and speed trial of the accused.
13. **Must be clear and certain:-** There should be reformation in the bail law. Uncertainty replaces by clearly matters which are related to jurisdiction, granting bail during successive steps, and extent of power of court for granting and refused of bail should be clearly defined.

Conclusion

Separate Bail Legislation would not only help in obtaining speedy justice but in turn will be a war on arbitrariness and whims and fancies of courts/judiciary. It will also help in speedy disposal of pending bail application and further it will help in reducing undertrial prisons thereby preserving fundamental and human rights of accused. If a separate code on bail along with special courts are implemented then friends like ours won't be suffering this much as mentioned in the abstract. So, it's the high time that legislature should take into account this hot and debatable topic and make necessary law/amendments as per the need of changing society thereby preserving the most valuable rights of the citizens of the country. Thus, it can be concluded that to keep alive most important principle of law i.e., Bail and not jail, legislature must listen to the voice of citizens who are deprived of their Fundamental and basic human rights and do the needful.

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COMPANY LAW COMMITTEE REPORT-2022: STRENGTHENING THE CORPORATE SECTOR OF INDIA

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ABSTRACT:

In this article, we are going to discuss the recommendations related to the corporate sector of India, which were recommended by the Company Law Committee in March 2022. Those suggestions were proposed to expand and develop the corporate sector, some of the main objectives of this report were digitalization, facilitating the use of technology in various business activities, and promoting ease of doing as well as aligning the Indian practices with the international ones. After this, we will discuss the acceptance and implementation of those recommendations by the central government means which suggestions were accepted and implemented by the central government. We will also take a look at the various new amendments and notifications by the government related to the implementation of these proposals.

KEYWORDS: Recommendations, Suggestions, Companies Act, LLP Act, CLC, Ease of doing business, Company, Digitalization, etc.

INTRODUCTION TO THE CLC AND 2022 REPORT:

The Company Law Committee submitted its report in March 2022; in which it contemplates a significant overhaul of the act by easing compliance burdens, recognizing various new concepts, and also making some clarification regarding the articles or sections in the Companies Act, LLP Act, etc. The CLC proposed some amendment in the Companies, LLP acts to implement their recommendations and to reduce the burden from the corporates. The present chairperson of the CLC is the secretary of corporate affairs Shri Rajesh Verma, and the committee consists of 11 people including him.

RECOMMENDATIONS BY THE CLC:

We will be going to discuss the recommendations by the CLC, concerned with the Companies Act, 2013; which are as follows:-

01. The first recommendation that the company law committee made, is regarding section 2(41) of the Companies Act, 2013. In which the committee has recommended adding or amending the provision to enable the Companies of India which are operating in foreign to revert or realign their financial year from that country's system to India's system. This allows the company that ceases to be associated with the foreign entity, to revert their financial year through a new application to the central government.

It should be noted that there were provisions in the Companies Act

for aligning/ changing the financial year of the company according to the nation, which it is incorporated into; but there was no provision to revert it. So, it would help the Companies and it promotes the ease of doing business for any company.

2. Special Purpose Acquisition Companies (SPACs):-

The Company Law Committee recommended recognizing the Special Purpose Acquisition Companies (SPACs) through amendment in the Companies Act, 2013, and allowing the entrepreneurs to list a SPAC incorporated in India on domestic and global exchanges. The primary target of this suggestion is to align Indian laws with international practices. Any successful Indian company will grab attention, which is listed on NASDAQ via a SPAC transaction; however, it is a booster to recognize SPAC transactions within the ambit of the companies act of 2013.

03. The committee made a recommendation to facilitate the electronic form of communication. It proposed that the central government should come up with prescribed rules and regulations for a certain class of Companies for whom it would be adequate to serve certain documents to all the members in electronic form. Further, they suggested that, if any member requests a physical copy of that document, the company shall provide it in the physical form under section 20 of the Companies Act.

Secondly, under proviso section 20(2), if a member requests the delivery of any particular document in a particular mode, the company should provide it as per the member's request; but he has to pay a fee for the same determined by the company in "ANNUAL GENERAL MEETING"; the CLC recommended to change the term "ANNUAL GENERAL MEETING" with "ANY GENERAL MEETING".

04. The CLC recommended the insertion and introduction of a new concept of fractional shares. The CLC also suggested that the fractional shares should be in Demat form and also consultation with SEBI will be required for the listed Companies and should only pertain to cases involving fresh issues and not in cases due to corporate actions like; mergers, acquisitions, buy-backs, etc.

This proposed to enable the retail investors to invest an amount as per their budget in those Companies as well whose shares are inaccessible to them due to high prices. It will also increase the purchasing power of retail investors in the capital market and also increase the inflow of cash in Indian blue-chip Companies.

05. The CLC also recommended recognizing the RSUs (Restricted Stock Units) and SARs (Stock Appreciation Rights);

¹ The Companies Act, 2013 (Act 18 of 2013) s. 2(41).

² Company Law Report 2022-Setting New Norms, available at: <https://www.theweek.in/news/biz-tech/2022/06/01/company-law-committee-report-2022-setting-new-norms.html> (last visited on 6th September 2022).

RSUs are the schemes under which the employees of a company are entitled to shares at the end of the vesting period as long as conditions regarding the duration of employment and performance are met. On the other hand, SARs are the incentives for an increase in the price of equity shares of the company.

This suggestion was to enable unlisted Companies and startups to provide benefits to their employees.

06. The CLC recommended amending a 2016 amendment of section 53 of the Companies act, 2013. It was given under section 53(2A), that Companies are allowed to issue shares at discount under a resolution plan or debt restructuring plan, but now it is proposed to amend it and to enable distressed Companies should be allowed to issue shares at a discount to the central government or state government or other class of persons or as may prescribe.
 07. The CLC recommended amending section 406 of the companies act of 2013, to ensure the higher due diligence which takes place at the incorporation stage and the need for more stringent regulation for NIDHIS (NIDHIS are a specific type of company in the non-banking finance sector in India recognized under the companies act, 2013).
 08. Another recommendation is concerning replacing the affidavits with self-declaration. The affidavits in some sections like; section 68(6) : Buy-Back affidavit of insolvency, section 374(C) : Conversion of partnership into a company; Rule(7)(i) : conversion into OPC; section 248(2) : Voluntary strike off, etc. in these cases affidavit should be replaced with the self-declaration, except filing with the NCLT, NCLAT, and RD offices.
 09. This is clarification regarding section 68(2)(C) and section 68(5) related to the Buy-back of securities. They clarified in the sections that for buy-back of equity shares in any financial year reference to the 25% shall be construed concerning the total paid-up equity capital and “FREE RESERVES” in that financial year under section 68(2)(C) of the Companies act, 2013. In section 68(5); it is clarified that a company can buy back only those shares in respect of which the option is being exercised by the employees of that company.
 10. The Company Law Committee recommended to the central government to insert some provisions corresponding to section 153 of the Companies act, 1956; which prohibits Companies from entering notice of any trust which is expressed, implied, or constructive on their register of members.
- This aims to provide relief to the company from taking notice of 3rd party rights concerning shares that are registered in the name of any member.
11. The committee recommended the central government amend the Companies act and allow the Companies to hold their annual general meetings and Extraordinary General meetings physically and virtually through the use of technology in a prescribed manner. They also suggested that

if the EGMs conducted entirely in electronic modes, then the notice period may be reduced, which will ensure wider participation of employees as well.

12. The committee proposed that certain types of Companies should be required to compulsorily maintain their register on an electronic platform. The committee recommended that the central government may set up an electronic platform for maintaining the statutory registers under the Companies act, 2013. In addition to that, the committee gives the view that these registers shall be deemed to be in the possession of the company only, and no one even the government should have access unless the company itself shares it electronically; so that company’s confidentiality and privacy would be maintained. This way of maintaining the registers on an electronic platform is also cost-effective, hassle-free, Secure, Transparent, and convenient which is also aligned with international practices.
13. The committee gave an essential clarification and recommended an important amendment concerning sections 124 and 125; which deals with IEPF-related changes. In section 124(5) , the committee clarifies that “All pending or unclaimed dividend regarding the securities being transferred to IEPF shall be transferred, if shares are transferred after 7 years, the dividend shall also be transferred for all the 7 years and not only for 1 year. In section 125(3)(a) , the CLC clarifies that IEPF can be utilized for a refund of the amount of redemption amount of preference shares, which are remaining unpaid for 7 or more than 7 years. They recommended inserting a new provision in section 125(12), which is “IEPF can delegate its functions to officers for administration purposes”, and “the amount payable to shareholders after shares have been bought back and remain unclaimed for 7 years should be transferred to IEPF”.
14. The Company Law Committee recommended that under section 132 of the Companies act, the NFRA (National Financial Reporting Authority) should be empowered to take action against other contraventions in addition to taking action against “professional” or “other misconduct”. There should be also financial autonomy for NFRA as well as operational autonomy. This suggestion aims at expanding and extending the powers of NFRA to make regulations for specific matters.
15. The committee further recommended amending section 144 which will permit a different class of Companies to avail the various non-audit services from their auditors and the central government should prescribe a more extensive list of such prohibited services in case of Companies, which involves public interest. The CLC also recommended amending section 147 to cover the penal consequences for contravention of section 143 ; which talks about the powers and duties of an auditor. They also proposed that while resigning on his own, an auditor should also mention, if the resignation was due to non-cooperation and fraud, etc. and if he did not do so, and

³ *The Companies Act, 2013 (Act 18 of 2013)* s. 20.

⁵ *The Companies Act, 2013 (Act 18 of 2013)* s. 406.

⁴ *The Companies Act, 2013 (Act 18 of 2013)* s. 53.

⁶ *Companies Act of 2013, India, available at:* https://en.m.wikipedia.org/wiki/companies_act_2013, (last visited on 07th September, 2022).

⁸ *The Companies Act, 2013 (Act 18 of 2013)* s. 374(c).

¹⁰ *The Companies Act, 2013 (Act 18 of 2013)* s. 248(2).

come to notice later then he has to suffer penalties. They also suggested that at the time of resigning from his position an auditor should assure the shareholders that there is nothing irregular in the accounts of the company.

The CLC also recommended the recognition of the “Forensic Shares” under the Companies act, 2013.

16. The CLC recommended that the central government should introduce a specific format for auditors to enable them to state the impacts of every qualification or adverse remark on the financial statements of the company.

This aims at providing help for standardizing the process and helping the shareholders to understand the impact of the qualification on the company through amending section 143 of the Companies act of 2013.

17. The committee recommended the inclusion of some new provisions for the constitution of risk management committees for certain classes of Companies, as may be prescribed which ultimately aims at the betterment of corporate governance.

18. They clarified the tenure of an independent director. They clarified that “the tenure of an independent director begins from the date the board initially appoints that independent director as an additional director. The committee also stated that the period in which an independent director functions as an additional director could not be excluded while computing the tenure of that independent director.

19. They proposed to amend section 149(11) ; “the non-association with the company during the cooling off period, to allow the legal or consulting firms to continue rendering services for the threshold of 10% of the turnover of the firm”. It is proposed to revise this “10%” in section 149(6) and in section 149(11) this “10%” to 5%. The committee proposed this recommendation to remove the ambiguity from the section.

20. The Company Law Committee has given an essential recommendation regarding the vacation of directorship under section 167(1)(a). The committee proposed that the vacation of directorship should be limited to disqualification on the ground of personal incapability and also non-filing of returns should be the reason for the disqualification or vacation of directorship under section 164(1) and not under section 164(2) which would affect only prospectively.

The CLC also recommended that the proviso to section 164(2); “for defaults under section 164(2), which deals with failure to file the annual return; 6 months is a sufficient time for the new director; and in section 164(2)(b) in the repayment of deposits, debentures, dividend, the time should be extended to 2 years. The Company Law Committee also proposed the idea that the nominee director should be immune against section 164(2)(b); through which there will be a difference between the nominee director and other directors.

21. The committee suggested that 1 year cooling off period should be mandatory from the date of cessation of office by a director; after which only the other director could be permitted to hold the position of the other director who ceases his directorship. This suggestion by the committee was aimed at assuring the

independence of an auditor.

22. The committee also recommended at least a one-year cooling off period from the date of cessation of office by managerial personnel; only after which an independent director may be permitted to hold the position of Managing director, Whole Time Director, or Manager in the same company or the in the same class of that company; for example, its holding company, subsidiary company, or fellow subsidiaries, etc.

23. Under section 168 of the Companies act, 2013; provides the provisions which are related to the resignation of directors, further in 168(1) it is provided that the director can resign from his post by giving notice to the company in writing, and further it also allows the directors to directly file their resignation with the RoC . Now the committee suggested allowing the same type of powers or authority to the Key Managerial Personnel (KMPs); The committee also said that “it should be the company’s initial obligation the RoC of resignations tendered by certain KMPs and they can also file their resignation directly with the RoC if the company fails to intimate its resignation within 30 days.

24. The Company Law Committee recommended that each company that holds the treasury shares should report the same to the central government through a declaration. The committee also proposed that for the Fast-Track Mergers, it will be necessary to have the approval of the majority of shareholders present and voting which should amount to the 75% of the shareholding of the persons present and voting and that total amount should be more than the 50% of the company’s total shareholding. The committee further suggested Fast-Track Mergers between holding and subsidiaries companies as well but the only condition is that they should be unlisted. The voting rights in such shares may be used by promoters to exercise their control over the company indirectly.

25. The committee recommended amending section 419 to enable the competent authority to constitute special benches that may deal with matters of economic importance like; Mergers, Amalgamations, etc., or any case involving public interest. This suggestion aims at declogging the benches of the National Company Law Tribunal (NCLT).

26. The committee further recommended prohibiting the conversion of a cooperative society into a company by amending section 366 ; the reason behind that is unlike the company; cooperative society societies are economic institutions that are based on cooperation principles and not to earn profit.

The other minor recommendations regarding the Companies act are as follows:-

- The committee proposed that in the case of a wholly owned subsidiary (both private and public), the holding company should be allowed to be the only member; and the requirement to meet the minimum membership condition of 2 or 7 may be waived off.
- The committee suggested amending section 136 to allow the companies to send copies of relevant documents at a shorter

¹¹ The Companies Act, 2013 (Act 18 of 2013) s. 124(5).

¹² The Companies Act, 2013 (Act 18 of 2013) s. 132.

¹³ The Companies Act, 2013 (Act 18 of 2013) s. 147.

¹⁴ The Companies Act, 2013 (Act 18 of 2013) s. 125.

¹⁵ The Companies Act, 2013 (Act 18 of 2013) s. 144.

¹⁶ The Companies Act, 2013 (Act 18 of 2013) s. 143.

notice both in the annual general meeting and the Extraordinary General Meeting.

- The committee recommended the inclusion of penalties attracted under section 188 as a ground for disqualification.
- Section 446(B) talks about lesser punishment for one person, smaller startups, and producer companies; which provides that the penalty should not more than one-half provided to other companies; the committee proposed to amend the section and change this provision to “the penalty shall be equal to precisely one-half of that provided for other companies.

RECOMMENDATION IN THE CONTEXT OFLLPACT, 2008:

The Company Law Committee recommended one amendment in the Limited Liability Partnership Act, 2008 for recognizing a new concept called “PRODUCER LLP”. The committee proposed that this new concept should be introduced and the government should also come up with rules and regulations, which aim at reducing the compliance cost and desirable options for small producers.

Considering various important benefits, the producer institutions should be allowed to run in the form of LLPs as well as there are various benefits inherited from the producer firms and the comparative advantages of LLP over a company .

AFTERMATH & CONSEQUENCES

The Ministry of Corporate Affairs, in the month of April-May, 2022 came up with some notifications and amendments in which we can see some of the recommendations of the CLC; However, it is not fully accepted by the government. The MCA amended the companies act, provisions related to the appointment and qualification of directors; in which they tightened the rules regarding the eligibility of a director. In the notification, they provided that any eligible person who registers him as a director in the independent director databank and is removed from that databank, can again apply for restoring his name by paying a sum of rupees 1000 and the company shall allow such restoration which is subject to a condition; that is that person has to pass an online proficiency assessment test within one year from the date of restoration and if failed to clear the test, his name will be removed from the databank . The MCA also issued notifications related to amendment in various provisions and rules in Companies (Prospectus

and allotment of securities) rules, but there are other two notifications in May which allows the companies to conduct their AGM and EGM through online mode (video conferencing or any other visual and audio means) before 31st December 2022, and this notification also allows the companies to conduct their EGM through video conferencing or any other visual and audio means or transact the items through postal ballot. Another notification by the MCA amended the NFRA rules and revised the penalties for non-compliance and contravention of any provision. Before the notification, the penalty referred to section 450 of the Companies Act, but this notification provided that any non-compliance or contravention to any of the provisions will attract a penalty of rupees 5000 and if that is a continuing contravention a further fine of rupees 500 each day from the day during the period of contravention is given. This rule applies to the offense for which there was no specific penalty in the law .

In April 2022 the central government also amended the LLP Act, 2008 which also added several new provisions to the act, which were mainly focused on ease of doing business, to encourage the business class to incorporate the LLP and it provides for the conversion of a partnership into LLP and the de-criminalization exercises to remove the criminality of offenses from the business laws .

So, the most important point from these many notifications is that the government stepped forward in facilitating digitalization and technological advancement, as we can see in the government came up with rules or notifications for conducting the AGM & EGM through video conferencing, although some important recommendations were not accepted till now.

CONCLUSION:

From the above discussion, we are able for understanding the significance of the company law report – 2022 which was submitted by the Company Law Committee. In this report at least 28 important recommendations were made regarding the companies act of 2013; whereas one essential recommendation was in the context of the LLP Act of 2008. This report solely wanted to help the business for smooth functioning. From facilitating ease of doing business to introducing some new important concepts for aligning Indian laws with international practices, the report covered a huge development plan for the corporate sector. However, the central government implemented a few suggestions, they may implement the rest of the recommendations according to the need in the future. ●

¹⁷ The Companies Act, 2013 (Act 18 of 2013) s. 149.

¹⁸ The Companies Act, 2013 (Act 18 of 2013) s. 167(1)(a).

¹⁹ The Companies Act, 2013 (Act 18 of 2013) s. 164.

²⁰ The Companies Act, 2013 (Act 18 of 2013) s. 168.

²¹ Key Highlights of Company Law Committee Report(2022)/CLC-2022”, available at:

<https://www.taxmann.com/post/blog/key-highlights-of-the-company-law-committee-report-2022-clc-2022/#161616> (last visited on 7th September, 2022).

²² The Companies Act, 2013 (Act 18 of 2013) s. 419.

²³ The Companies Act, 2013 (Act 18 of 2013) s. 366.

²⁴ The Companies Act, 2013 (Act 18 of 2013) s. 136.

²⁵ The Companies Act, 2013 (Act 18 of 2013) s. 446(B).

²⁶ Key Highlights of Company Law Committee Report(2022)/CLC-2022”, available at:

<https://www.taxmann.com/post/blog/key-highlights-of-the-company-law-committee-report-2022-clc-2022/#161616> (last visited on 7th September, 2022).

²⁷ Latest Amendment By MCA in May and June 2022, available at: <https://taxguru.in/company-law/latest-amendments-mca-june-2022.html> (last visited on 07th September, 2022).

²⁸ India: Relaxation and Amendments approved by Ministry of Corporate Affairs in May 2022, available at: <https://www.mondaq.com/india/securities/1192412/relaxations-and-amendments-approved-by-ministry-of-corporate-affairs-in-may-2022>? (last visited on 07th September, 2022).

²⁹ Latest Amendment By MCA in May and June 2022, available at: <https://taxguru.in/company-law/latest-amendments-mca-june-2022.html> (last visited on 07th September, 2022).

³⁰ The Limited Liability Partnership (Amendment) Rules, 2022, available at: <https://www.estartindia.com/knowledge-hub/blog/the-limited-liability-partnership-amendment-rules-2022#:~:text=It%20means%20every%20person%20has,effective%20from%201st%20April%202022> (last visited on 07th September, 2022).

Revisiting N.J.A.C.

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The constitution of India is described as a “charter of social revolution”. Constitution is the basic law of a government of the country. It says about various organs of the state and enumerates functions and demarcates fields of operation. This is vehicle of nation’s progress. It has reflection of the best in the past traditions of the nation. It has also provided a considered response to the needs of the present and to possess enough resilience to cope with the demands of the future.

The text of the Constitution that provides for appointment of the judges to the constitutional court is deceptively simple. They provide for Hon’ble President to appoint them in consultation with the other judges. In the constituent assembly it was suggested by one of the members that the part which read “in consultation with CJI” should be read as “in concurrence with the CJI”. It is needless to say that Dr. Ambedkar, Chairman of Drafting Committee rejected the same vehemently stating that “after all the Chief Justice of India was also a human being with all the prejudices, human feelings and sentiments which we all as common people have. The supreme power to give concurrence would only be providing veto over the President which the nation is not prepared to agree.”

The constitution makers decided to vest the power of appointment only with the executive subject to consultation. Till 1970, the consultation was effective and the Indian judiciary has produced extraordinary personalities like Justice V. V. Bose, Justice Patanjali Shastri, Justice K. Subba Rao, Justice Gajendragadkar and so on. After 1970, the experience shows the other way. The executive even without consultation and only by information used to appoint the judges to the High Courts. This has lead to criticism both in the press and in the legal circle. Some of the Hon’ble Judges, Chief Justices of various High Courts have resigned because of the approach of the executive.

Between 1970 to 1990 such hiccups were more. This has resulted into a challenge in S P Gupta’s case. The seven judge bench in SP Gupta’s case struck the literal meaning of consultation and comes to the conclusion that executive still continued to hold the power of appointment. It is too late in the day to dispute the position that justice has to be administered through the courts and such administration would relate to social,

economic and political aspects of justice. The Judiciary therefore becomes the most prominent and outstanding wing of the Constitutional System for fulfilling the mandate of the Constitution.

Consistent with the constitutional purpose and process it becomes imperative that the role of the institution of the Chief Justice of India be recognised as of crucial importance in the matter of appointments to the Supreme Court and the High Courts of the States. This aspect dealt with in S P Gupta’s case requires re-consideration by a larger bench.

In India the judicial institutions, by tradition, have an avowed a political commitment and the assurance of a non-political complexion of the judiciary cannot be divorced from the process of appointments. Constitutional phraseology of "consultation" has to be understood and expounded consistent with and to promote this constitutional spirit. These implications are, indeed, vital. The constitutional values cannot be whittled down by calling the appointment of Judges as an executive act. The appointment is rather the result of collective, constitutional process. It is a participatory constitutional function. It is, perhaps, inappropriate to refer to any ‘power’ or ‘right’ to appoint judge. It is essentially a discharge of a constitutional trust of which certain constitutional functionaries are collectively repositories. It could be very well said that the seeds of collegium system were sown in Subhash Sharma’s case.

It is submitted that less than 50% of the sanctioned strength of judges were appointed and judiciary was not given its due importance. The Process of consultation had become mere mockery. Justice Jitendra Veer Gupta and Justice Rama Jois had to resign upon the approach of the Executive which opted for supersession of judges owing to political inclination which seemed to be a direct attack upon independence of judiciary. At this juncture, it was all the more necessary for the judiciary to establish its own strength.

In this background, Supreme Court Advocate on Records case gets more importance. In one stroke, Supreme Court of India became the most powerful Supreme Court in the world. Its power emanated from the decisive say that it had in the appointment of judges of the Higher judiciary.

This has to be understood in the context of Gupta’s

case. Justice Kuldip Singh has observed that the Constitution has not only to be read in the light of contemporary circumstances and values but also in the light of the present circumstances of what the judiciary is today. Hence, the Supreme Court had to come to conclusion regarding the word "consultation" to be read as "concurrence".

This led to the Third Judges case , Special Reference No. 1 and under Article 143, the Hon'ble President had referred the questions for consideration and to report the same. Broadly, the Presidential reference relates to consultation between the CJI and his brother judges, transfer of judges and relevance of seniority. While deciding this case, Attorney General had made a statement that the Union of India shall accept and treat as binding the answers of this Court to the questions set out in the Reference. This undertaking was treated to be an eternal bondage upon the executive. That was one of the primary reasons that the Hon'ble Supreme Court while considering the 99th Amendment to the Constitution held the same to be unconstitutional apart from it to be violating the basic structure of the constitution.

The collegium system has got its own merits and demerits. The deficiencies of the previous system of appointing judges was continued in a more sophisticated and closed way by the new system. The experience shows that the objects of 1993 verdict and 1998 verdict were not practiced or implemented in its spirit. Hence the jurists were forced to comment that "Judiciary has failed the judiciary". Justice Krishna Iyer observed that "there is no structure to hear the public in the process of selection. No principle is laid down, no investigation is made and a sort of anarchy prevails."

The Hon'ble Supreme Court of India in NJAC case has itself noticed certain deficiency in the collegium system and has suggested MOP to be worked out with all the stakeholders. As per the author's information MOP itself was not completed. Therefore, it is the time for all three wings to revisit NJAC. It is said by one of the senior collegium members after his retirement that other collegium members used to enter and seek for support for their candidature. Therefore, a judicial reform was essential in the process of appointment of the constitutional court judges. Transparency and independence of judiciary in appointment of judges is a must.

JUDICIAL INDEPENDENCE

Preserving judicial independence is one of the most challenging task for the nascent democratic states. "Compromising with independence of judiciary,

Nation has to pay a heavy price." The independence of judiciary is not only at the higher level but the trial court also. One should not forget that no constitutional court is subordinate to one another. It is the responsibility of the wings of state that independence of the judiciary be protected. It is important to note that though the independence of the judiciary begins with the appointment of judges, it does not end there. What is need is non-interference at any stage from any pillar of the Constitution including that of judiciary itself. In order to maintain independence of judiciary, the person appointed cannot be of doubtful integrity. Therefore it is the responsibility of all the constitutional functionaries that not only deserving persons be appointed, but more importantly, the deserving people should not be deprived appointment.

It is noticed that particularly after 2000 AD the Supreme court started controlling / administering the discipline over High Courts. This approach also takes away the judicial independence. All the constitutional courts are entirely independent and are not subordinate to another. In this background, one should keep in mind administrative subordination and judicial supremacy. The judicial independence should be available to the trial courts also except certain administrative control, the High Court shall not treat the trial court as subordinate court. But the court of the first instance always responds to common people. We should not forget that once parties accept the decision of the Trial Court to that extent the judgement is final. This judgement also should be respected as the judgment of the Apex court itself.

It is not the supremacy or competition between executive and judiciary. Both have to work in complete cooperation and there shall be a mutual trust between the high functionaries. The institutional trust is the sole criteria. While interpreting and understanding the constitution, it is not only the basic structure but also the doctrine of invisible constitution that should be kept in mind. While making appointments, unrepresented section of the society, merits and social diversification has to be kept in mind. Therefore, best among the group has to be selected. Everyone will agree that something 'more' has to be done to improve the situation. The voice of the people cannot be brushed aside. Therefore, endeavour must be made by all the stakeholders to ensure constitutional supremacy, rule of law and predominance of sovereignty derived from "We, the People". ●

माननीय व्यायमूर्ति श्री आनन्द पाठक द्वारा 12 जनवरी 2020 को ठवालियर में आयोजित युवा दिवस पर दिए भाषण के मुख्य अंश



मा रत विश्व का अध्यात्मिक गुरु रहा है, भारत प्राचीन काल से ही कई स्थाओं का जनक है। ऐसा कहा जाता है कि “India is breeder of Institutions” सबसे पहले लोकतंत्र के जो प्रयोग हुए है, उनमें से एक भारत में हुआ है, लिच्छवी गणराज्य में।

हमने संस्थागत शिक्षा के केन्द्र बनाये जैसे तक्षशिला, नालंदा, हमने नगरीय व्यवस्था का केन्द्र बनाना सीखा, सिन्धु घाटी की सभ्यता में, शून्य, दशमलव पद्धति खगोलीय गणनाओं, आयुर्वेद एवं नृत्यशास्त्र जैसे विविध विषयों को संस्थागत रूप दियां इसी प्रकार हमने धर्म को व्यापक तौर पर परिभाषित किया, जो हजारों साल से प्रवाहित होता हुआ हमारे संविधान में परिलक्षित हुआ है। जस्टिस माहेश्वरी साहब ने सही कहा कि वह धर्म निरपेक्ष नहीं, पथ निरपेक्ष शब्द है, क्योंकि धर्म बड़ा व्यापक शब्द है। इसकी प्रतिघटन हम संविधान की प्रस्तावना में देखते हैं, धर्म कहता है, ‘‘धारयति इति धर्म’’ अर्थात जो धारण करें वह धर्म है।

आप वकील है, आपका काम न्याय दिलाना है, यह आपने सनद लेने के साथ ही धारित किया है, ये आपका धर्म है। मैंने जिस दिन न्यायमूर्ति पद की शपथ ली, न्याय प्रदान करना मेरा धर्म हो गया। डॉक्टर ने Hippocratic Oath ली, मरीज की शारीरिक पीड़ा हरना उसका धर्म है। ‘‘धारयति इति धर्म’’ - हमने जिसे धारण किया है, वह हमारा धर्म है। हमने, नागरिकों ने अपने आप को संविधान धारित कराया है, इसीलिए संविधान और उसकी प्रस्तावना हमारा धर्म है यानि किसी और व्यक्ति ने हमे यह प्रदान नहीं किया है। हमने इसको अपने धर्म के तौर पर धारित किया है।

जब धारित किया है तो हमने इसके कुछ गणों को समाहित किया, जिसमें सबसे पहला गुण हमने लिया, यह है - न्याय “Justice” दूसरा लिया हमने

स्वतंत्रता “Liberty”, उसके बाद हमने लिया “Equality” और फिर लिया “Fraternity” समानता और बंधुत्व। इसमें न्याय सबसे ऊपर रखा।

अब न्याय की परिभाषा क्या है, Balack’s Law में मैंने देखा तो उसमें न्याय की परिभाषा दी है, The fair and proper Administation of I, विधिक शब्दावली में देखा, जो लीगल ग्लोशरी है, भारत सरकार कानून एवं न्याय मंत्रालय की उसमें उन्होंने न्याय की परिभाषा दी, “Exercises of power in Maintenance of Right”. Right means Just, Right अधिकार भी होता और एक होता है, जो जस्ट हो, एक उन्होंने परिभाषा दी, Principle of Just Dealing. एक और बात कही श्रेनेज “just conduct”, अब जस्ट का मतलब क्या? जस्ट का मतलब बताया “Being in Conformity with Justice” और Right का मतलब बताया ठीक, proper, fit, Suitable, संस्कृत में न्याय शब्द का अर्थ पाया- नियमों के अनुकूल बात या उचित बात या नीति न्याय के साथ एक जुड़ा हुआ शब्द है जिस पर सामान्य तौर पर हमारा ध्यान नहीं जाता, वह सामान्य प्रचलन में भी नहीं है - ‘‘न्याय’’ संगत या न्या अनुकूल या उचित।

अगर हम दूसरे देशों के संविधान की प्रस्तावना देखें तो हम पाएंगे कि हमारे देश की प्रस्तावना में जो एक सारांशित है, एक सटीकता है, एक स्पष्टता है, वह अन्यत्र दुलभ है। जब हम न्याय के संर्दभ में यह बात करते हैं, तो हम यह पाते हैं कि ‘‘समानता’’ और ‘‘स्वतंत्रता’’ को संविधान के उन्हीं अनुच्छेदों के माध्यम से सीमित कर दिया गया या किसी और प्रावधान के माध्यम से उस स्वतंत्रता को या प्रस्तावना में जो दूसरे गुण दिए हैं, को व्याख्यित कर दिया गया है। लेकिन न्याय संपूर्ण है, निरपेक्ष है। वह सापेक्ष नहीं है। उसको किसी के बरअक्स खड़ा नहीं किया गया है। न्याय अपने आप में निरपेक्ष है। जितना न्याय दिया जा सकता है, उतना न्याय दिया जाये।



अब हम इन परिस्थितियों में इन परिभाषाओं के आधार पर जब हम न्याय को देखें तो हम पाते हैं कि न्याय हम कैसे पाएंगें। न्याय की एक अवधारणा संविधान के हर प्रावधान में हैं।

अगर संसद/विधानसभायें कार्य कर रही हैं तो वे न्याय दिलाने हेतु नए-नए कानून बना रही हैं। कार्यपालिका यदि कुछ कर रही है जैनता की भलाई के लिए कर रही है। तो जब हम न्यायकी यह परिभाषा देखते हैं कि “उचित कार्य, उचित नीति के अन्तर्गत कार्य या ठीक कार्य” तो हम पाते हैं कि वे अपने तरीके से न्याय संगत होने की कोशिश कर रहे हैं एक तो यह है कि अवयवों के माध्यम से दिया जाने वाले न्याय और एक है न्याय की अवधारणा, जैसे कोर्ट्स जो है वे न्याय, के प्रशासन को संचालित कर रहे हैं। वह कोर्ट्स न्याय प्रदान करेन का उपकरण हैं और एक है। न्याय, जो कि गुण है, न्याय जो नीति है, उसे प्रदान किया जाये। इसीलिए हमारे संविधान की प्रस्तावना विशेष हो जाती है, जबवह न्याय को इस अवधारणात्मक स्तर पर ले जाती है। न्याय को निरपेक्ष बना कर एक तरह से संविधान की प्रस्तावना ने संविधान का जो स्वर है, या संविधान की जो दिशा है, उसको तय कर दिया।

इसीलिए संविधान की जो प्रस्तावना है, वह संविधान की आत्मा है इसमें अगर हम अवयवों के माध्यम से देखें तो संविधान की प्रस्तावना संविधान की आत्मा है, जो कोर है, केन्द्र है, उसमें जो दूसरे अवयव है, जैसे संसद है, कार्यपालिका है, विधायिका, न्यायपालिका, ये हाथ पैर है, जिसके माध्यम से वह आम्मा विचरित करती या क्रियान्वयन करती है, और मूल अधिकार जो है, मूल अधिकार को अगर देखें तो वह शायद मस्तिष्क है, यह हमें वो अधिकार देता है, वह सोचने की शक्ति देता है, प्रतिक्रिया करने का साहस देता है, अगर हमारे ऊपर कोई विपत्ति आये। मन जो कि चंचल अवस्था है जबकि चित्त स्थिर अवस्था है, इसीलिए मूल अधिकार यदि मूल कर्तव्यों के बिना चले तो कभी-कभी अनुत्तरदायी हो जाता है। इसीलिए मूल अधिकार को मूल कर्तव्यों के साथ और नीति निर्देशक तत्वों के साथ चलना जरूरी है। इसीलिए मूल विचित्र का साथ रहना आवश्यक है।

अब न्याय की जो अवधारणा है, उसकी संविधान में तो कहीं व्याख्या नहीं की गई है। वे परिभाषाएँ हमें संविधान की प्रस्तावना और बाद में संविधान के दूसरे जो तत्व है, उनसे निकालना पड़ेगी नीति निर्देशक तत्व और मूल कर्तव्य हमको इस बारे में बड़ी सहायता कर सकते हैं, क्योंकि बाकी सारे जो अनुच्छेद हैं, वो ज्यादातर प्रक्रियागत हैं, कि संसद में संविधान संशोधन, राज्य सभा की प्रक्रिया, राष्ट्रपति का निर्वाचन ये सभी कार्य अधिकांश प्रक्रियागत हैं। जो कोर

या अलग या जो मूल तत्व है, वह प्रस्तावना, मूल अधिकार, नीति निर्देशक तत्व और मूल कर्तव्य में आकर समाहित हो जाते हैं।

एक अनुच्छेद है 48-ए Protection and Improvement of Environment हमने अगर न्यायिक प्रशासन में अच्छा वक्तव्य है, मार्टिन लूथर किंग ने एक बहुत अच्छी बात कही है। एक अश्वेत नेता थे अमेरिका के 1960 के दशक के -उन्होंने एक बहुत अच्छी बात कही- “Injustice anywhere is Threat to Justice Everywhere” किसी भी जगह अगर अन्याय हो रहा है, तो यह समझ लीजिये कि वह पूरी दुनिया में न्याय को खतरा है। इसीलिए न्याय को हमें व्यापक परिप्रेक्ष्य में देखना चाहिए। अब अनुच्छेद 48-ए एवं 51 (ए) (जी), ये प्रयावरण के संर्दृभ में कहते हैं। 51 (ए) (डी) जो है, वह कहता है National Service when called Upon to do so. 51 (A) (e) कहता है “Spirit of Harmony and Common Brotherhood” 51 A का (h) और (j) भी महत्वपूर्ण है (h) कहता है Scientific Temper, humanism, Spirit of enquiry and reform (j) कहता है Strive Towards Excellence in all Spheres of Individual and Collective Activity.

अब मैं व्यावहारिक पक्ष पर आता हूँ कि हम न्याय जगत से जुड़े हुए लोग किस तरह से संविधान की प्रस्तावना के जो मूल्य हैं, (उस मूल्य में आज मैं केवल न्याय पर ज्यादा जोर दे रहा हूँ, क्योंकि हमारा परिप्रेक्ष्य या संर्दृभ वही है)। यह विचार करें कि हम अपना Scientific Temper, dissemination of knowledge (ज्ञान का प्रसार), Brotherhood (भातृत्व) Harmony (सामंजस्य) बनाने के लिये हम कुछ कदम उठा सकते हैं क्या?

जो सामान्य सदसय है या सामान्य अधिवक्ता जो किसी दूरस्थ जगह पर बैठे है, जिन्हें शायद अंग्रेजी में समझने में परेशानी आ रही है, उनके लिए हिन्दी में ऑनलाइन सेवा बना सकते हैं क्या? क्योंकि अगर कोई संस्था यह बनाती है तो दूर बैठा हुआ वकील एक भातृत्व भाव से जुड़ेगा, एक सामंजस्य बढ़ेगा, उसका कौशल बढ़ेगा। एक वह व्यक्ति जो शायद पिछडे वर्ग से है, पिछड़ी जगह से है, उसको वापस मुख्य धारा में आने का मौका मिलेगा, जो संविधान की प्रस्तावना कहती है। संविधान की प्रस्तावना इर्हीं संर्दृभों में घूमती है। इन शब्दों की व्याख्या हम कैसे करें। व्यवहारिक जीवन में क्या हम यह कर सकते हैं? अगर हम यह कर सकते हैं तो समझिए हमने प्रस्तावना के मूल्यों को अंगीकार कर लिया। न्याय से जुड़ी हुई एक अवधारणा मेरे दिमाग में हमेशा चलती है, जिसे मैं अपने कई निर्णयों में लिखता रहता हूँ। कि वह भावना शायद सही जगह पर पहुँचेगी किसी दिन। मैंने तीन-चार जगह पर लिखा है, जिसे मैं आपको बताना चाहूँगा-

“Time has come when Rule of Law should become one of the essential components of infrastructure, like water, Electricity Roads, etc. so that these components of infrastructure and their development may not be sacrificed at the alter misgovernance.”

अर्थात् क्या हम विधि के शासन को/न्याय को आधारभूत ढाँचे के तौर पर जोड़ सकते हैं। जैसे हर जगह बात होती है कि विकास का पैमाना क्या-सड़क बन गयी, पानी आ गया, बिजली आ गयी, यातायात हो गया, ट्रेन आ गयी, हवाई जहाज आ गया। हमने इन पैमानों से विकास को जोड़ा हुआ है। क्या हम एक पैमाना विधि के शासन को भी बना सकते हैं, कि इस जगह विधि का शासन है। इस जगह अगर अपराध होता है तो अपराधी को सजा मिलती है या इस जगह Equality Before Law है या यहाँ पर किसी व्यक्ति को उसके पर या प्रतिष्ठा या पैसे के प्रभाव से तौला नहीं जाता है। रूल ऑफ लॉ जो होता है, वह विकास को परिभाषित करता है।

नमस्ते। जय हिन्द। ●



तीस हजारी कोर्ट ईकाई द्वारा संविधान दिवस पर भारतीय संविधान में भारतीय संस्कृति चित्रों की माता पर एक प्रदर्शनी का आयोजन दिल्ली बार एशोसिएसन के सहयोग से दिनांक 24.11.2022 से 26.11.2022 तक रही। जिसमें आप सभी की उपस्थिति रही।



Ms. Manisha Agarwal Narain, Advocate won the prestigious award of Lex Falcon Awards 2022, which is a global award and awarded to some of the brightest professional lawyers in the world. Proud moment for the Adhivakta Parishad.



हिमाचल प्रदेश अधिवक्ता परिषद द्वारा बिलासपुर के किसान भवन में राज्य स्तरीय संविधान दिवस पर एक दिवसीय कार्यक्रम का आयोजन किया गया। कार्यक्रम की अध्यक्षता प्रदेश हाई कोर्ट के वरिष्ठ न्यायाधीश विवेक सिंह ठाकुर ने की।



अखिल भारतीय अधिवक्ता परिषद चित्तोड़ प्रांत-उदयपुर द्वारा संविधान दिवस एवं अधिवक्ता दिवस समारोह पर नचिकेता भूपालपुरा, उदयपुर में आयोजित संगोष्ठी। मुख्य अतिथि प्रो. श्री आनंद पालीवाल सदस्य, राष्ट्रीय विधि आयोग, भारत सरकार विशिष्ट अतिथि श्री कुलदीप शर्मा सचिव, जिला विधिक सेवा प्राधिकरण उदयपुर एवं वरिष्ठ अधिवक्ता श्री ऋषभ जैन, संरक्षक एवं संस्थापक सदस्य अधिवक्ता परिषद की अध्यक्षता में संपन्न हुई।



Law day celebration at Hyderabad Telangana Honble Sri Justice Nagesh Bheemappa was the chief Guest and Sri. Srinivas Murthy ji, President ABAB was the chief guest 250+ delegates participated Topic Rights Duties and Constitutional Principles



अधिवक्ता परिषद झारखण्ड द्वारा 3 दिसम्बर 2022 को संविधान दिवस National University of Study and Research in Law Ranchi में मनाया गया।



अधिवक्ता परिषद उत्तर प्रदेश मीरजापुर जिला इकाई द्वारा आज दिनांक 2 दिसंबर 2022 दिन शुक्रवार को जिला अभिभाषक संघ मीरजापुर के सभागार में संविधान दिवस संगोष्ठी का आयोजन किया गया। संगोष्ठी का शुभारंभ दीप प्रज्जलन कर किया गया।



कासगंज। अधिवक्ता परिषद के अधिवक्ता समागम कार्यक्रम में बोले जिला जज जनपद न्यायालय कॉफेस हाल में अधिवक्ता परिषद ने अधिवक्ता समागम कार्यक्रम का आयोजन किया। शुभारंभ मुख्य अतिथि जिला जज सैयद माऊज बिन आसिम, डीएम हर्षिता माथुर एसपी बी बी जी टी एस नूरि राष्ट्रीय उपाध्यक्ष सत्यकाश राय, हाईकोर्ट अपर मुख्य रखाई अधिवक्ता अशवनी त्रिपाठी, सह प्रांत बौधिक प्रमुख सुभाषचंद्र शर्मा ने भारत माता के चित्र पर माल्यार्पण व दीप प्रज्ज्वालित कर किया।



Manipur: Observance of the National law Day celebrations at the IQAC (NAAC) Royal Academy of Law Oinam in Colabration with Adhivakta Parishad Manipur on 26.11.2022.



कुशीनगर। अधिवक्ता परिषद इकाई कुशीनगर द्वारा संविधान दिवस पर जनपद सिविल कोर्ट बार एसोसिएशन के सभागार में किया गया, जिसकी अध्यक्षता जिला अध्यक्ष संतोष कुमार द्विवेदी तथा संचालन संजीव कुमार श्रीवास्तव जिलामहामंत्री द्वारा किया गया। मुख्य अतिथि बार एसोसिएशन के कार्यक्रम में मुख्य अतिथि बार एसोसिएशन के अध्यक्ष श्री नरेंद्र कुमार मिश्र तथा विशिष्ट अतिथि श्री राकेश कुमार पांडे वरिष्ठ अधिवक्ता व श्री हरिशंकर दीक्षित वरिष्ठ अधिवक्ता थे।



West Maharashtra, Satara: On the occasion of Advocates Day, Satara District ABAP Unit of Maharashtra State felicitated 11 Eminent Senior Lawyers having practice for more than 40 years in Civil, Criminal, Revenue, Govt. Pleader and all Office bearers of District, Taluka and City Unit along with many lawyers. Senior Lawyers also expressed their views on recent legal issues.



Tamilnadu: His Excellency Mr. R. N. Ravi, Honorable Governor, State of Tamil Nadu, addressing the gathering of members of Abkhil Bharatiya Adhivakta Parishad (Akhila Bharatha Vazhakaringal Sangam), Senior and Junior Members of the Bar, young Advocates, Law students and members of the platter public.



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