

Important Constitutional and Legal Provisions

35. Article 35A

Introduction

Article 35A of the Constitution, empowered the Jammu and Kashmir legislature to define "permanent residents" of the state and provide special rights and privileges to them.

A think tank organisation, based out of Delhi and said to be close to RSS, called the 'Jammu and Kashmir Study Centre' (JKSC) had challenged Article 35A in the Supreme Court on 16 -17 July 2015.

Approximately, 1.5 lakh Hindus, mostly dalits, migrated from West Pakistan in August 1947 as an aftermath of communal partition. These migrants, even after having stayed in the State of J&K for more than 65 years, have been denied citizenship rights to the State.

Background to the Issue

On 15 Aug 1947, India and Pakistan were granted independence from the British rule to exist as independent nations. The State of J&K had opted to neither join India nor Pakistan, but to exist as an independent entity.

On 20 October 1947, Azad Kashmir Forces, supported by Pakistan army attacked the frontiers of the state and marched towards Srinagar of the state, at that time had 75% Muslim population.

Maharaja Hari Singh, the then ruler of J&K, approached India for assistance. India dispatched its troops to halt the advance of the Azad Kashmir Forces, with the condition that the state of J&K would accede to India.

Hence, an 'Instrument of Accession' was signed between the Indian PM and Maharaja Hari Singh on 26 October 1947. Sheikh Abdullah was appointed as the head of the emergency administration and he endorsed the accession to India as an ad hoc arrangement, which would ultimately be decided by taking the "will of the people of J&K" into consideration through holding of a plebiscite.

In order to keep the local population humoured and to ensure that the "will of the people of J&K" remained in India's favour, on 17 October 1949, Indian Constituent Assembly adopted Article 370 of the Constitution ensuring special status and internal autonomy to Jammu and Kashmir.

Article 370 gave the solitary State of Jammu & Kashmir the right to have a separate Constitution and separate flag, but nowhere did it say which category of Indians will enjoy all citizenship rights in Jammu & Kashmir and which section/sections will not.

Kashmiri-dominated Jammu & Kashmir Constituent-cum-Legislative Assembly was formed in 1951 and Article 370 formally became operative on 17 November 1952.

Later, incorporating the spirit of Article 370, the Jammu & Kashmir Constitution was implemented on January 26, 1957.

Article 1 of the Indian Constitution binds the State of J&K and its territory to the Indian Union, simultaneously, Article 370 granted it a special status and hence, all provisions of the Constitution of India were not applicable to the State of J&K.

Reasons Leading to the Article 35A Debate

The Kashmir Constituent-cum-Legislative Assembly, using the provisions of Article 370 of Constitution of India, adopted Sections 6, 8 and 9 for incorporation in the J&K Constitution, under which the State was to be governed in the future.

The provisions of Section 6 included the following:

(I) "Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, as on the fourteenth day of May, 1954:

- (a) He was a state subject of class I or of class II, or
- (b) Having lawfully acquired immovable property in the State, he has been ordinarily resident in

the State for not less than ten years prior to this date" and

(II) "any person who, before the fourteenth day of May, 1954 was a State Subject of class I or of class II and who, having migrated after the first day of March, 1947, to the territory – now included in Pakistan, returns to state under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State (basically meaning that Muslim migrants from Pakistan who had moved to India between March 1947 and May 1954 were given citizenship rights).

However, "no persons who had crossed over to the state of J&K after May 1954 will be considered eligible for citizenship rights". The prime motive of this legislation was to deny citizenship rights to Hindu migrants from West Pakistan, who had migrated to the State in the wake of hostile environment that existed during partition.

Sections 8 and 9 further strengthened the hands of the policy makers, as the former gave the State Legislature the right to define Permanent Residents and the latter empowers the State Legislature to alter the definition of Permanent Residents.

Provisions of Article 35A were as Follows:

- (a) Defines the classes of persons who were, or shall be permanent residents of the State of Jammu & Kashmir, or
- (b) Confers on such permanent residents any special rights and privileges or imposing upon other persons any restrictions, like:
 - Employment under the State Government;
 - Acquisition of immovable property in the State;
 - Settlement in the State; or
 - Right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other

citizens of India by any provision of this part".

Article 35A enabled the Jammu & Kashmir Constituent Assembly to deny citizenship rights to the refugees from West Pakistan and all other Indians, barring Permanent Residents of the State.

Armed with absolute power, the Jammu & Kashmir Constituent Assembly adopted Section 6 which said no persons who had crossed over to the state after May 1954 will be considered eligible for citizenship rights.

Thus, incorporation of the provisions of Section 6 meant two things:

- Denial of citizenship rights to the Indians who were not Permanent Residents of the State as per the definition of Permanent Resident of the State.
- Granted full citizenship rights to those who migrated from the State to Pakistan on or after March 1, 1947 and adopted Pakistani citizenship in case they returned to Jammu & Kashmir.

Present Debate on Article 35A

The issue at the bottom of the present debate is that, Article 35 of the Constitution of India was amended to 35A and was incorporated into the Indian Constitution through a Presidential Order on May 14, 1954, bypassing the Parliament.

Article 35 A has created more of a communal discrimination by denying rights to its migrant citizens, e.g. they do not have the right to obtain jobs under the State Government, no right to acquire immovable property anywhere in the state, no right to vote in the Assembly and local-bodies' elections, no right to higher and technical education, no right to bank loans, and so on.

Under the aegis of the 'Jammu and Kashmir Study Centre' (JKSC), several women, members of the dalit community, especially safaikarmacharis, along with members of the Gurkha community and West Pakistan refugees who had migrated to the state during the partition, lodged formal complaints of rights violations with the National Commission for Women, National Commissions for Scheduled Castes and Scheduled Tribes, National Human Rights Commission and the National Commission for SafaiKarmacharis.

Conclusion

Article 35A (1954) was incorporated in the Indian Constitution through a Constitutional amendment even much before the Constitution of J&K came into existence (1956).

All above mentioned provisions and legislations were drafted and accepted by 'senior' leaders of Independent India with the concurrence of the people of J&K and hence, it may be unfair to accuse only the people of J&K (Kashmir Valley) for creation / holding to such like provisions.

Evolution of a democracy is an ongoing process and it is never too late to bring about corrective actions that are for the overall betterment of the society.

36. Article 370 & Its Abrogation

Introduction

Article 1 of the Indian Constitution binds the State of J&K and its territory to the Indian Union, simultaneously, Article 370 granted it a special status and hence, all provisions of the Constitution of India were not applicable to the State of J&K.

There are 11 other states of India, mainly; NE states enjoy a special status. However, the rights and privileges given to the state of J&K are unparalleled.

Reasons for Providing Special Status

On 15 Aug 1947, India and Pakistan were granted independence from the British rule to exist as independent nations. The State of J&K had opted to neither join India nor Pakistan, but to exist as an independent entity.

On 20 October 1947, Tribes, supported by Pakistan army attacked the frontiers of the state and marched towards Srinagar garnering more local support along the way, as the state, at that time had 75% Muslim population.

Maharaja Hari Singh, the then ruler of J&K, approached India for assistance. India dispatched its troops to halt the advance of the Azad Kashmir Forces, with the condition that the state of J&K would accede to India.

Hence, an 'Instrument of Accession' was signed between the Indian PM, and Maharaja Hari Singh on 26 October 1947. Sheikh Abdullah was appointed as the head of the emergency administration and he endorsed the accession to India as an ad hoc arrangement, which would ultimately be decided by taking the wish of the people of J&K into consideration through holding of a plebiscite.

The Tribes and Pakistani Forces were repelled back to the present Line of Control (LOC). Hence, the area of J&K which is still in the possession of Pakistan is called Pakistan Occupied Kashmir (POK). Similarly, the area of J&K held with India is called by Pakistan as the Indian Occupied Kashmir.

Pakistan disputed the legality of Instrument of Accession, which led to the first Indo-Pak conflict in 1948. A ceasefire was proclaimed on 01 January 1949 and India took the issue to the UN Security Council for resolution.

The UN Resolution of 05 January 1949 stated that the decision regarding accession to India or Pakistan was to be decided through a fair and impartial plebiscite, conducted after the area was demilitarised. Both, India and Pakistan had their own interpretation of this Truce Agreement, like disbanding the Azad Kashmir Force, etc and hence, plebiscite was never held.

On 17 October 1949, Indian Constituent Assembly adopted Article 370 of the Constitution ensuring special status and internal autonomy to Jammu and Kashmir. It clearly stated that the provisions of this Article with respect to the State of J&K were only 'temporary' and not permanent. The Article became operative on 17 November 1952.

Government of India, while adopting Article 370, made a commitment that the people of the state, through their own Constituent Assembly, would determine the internal constitution and the nature and extent of the jurisdiction of the India Union over the state, and until the decision of the Constituent Assembly of the State, the Constitution of India could only provide an interim arrangement regarding the state i.e. October 1949 to November 1952.

The political reason for giving this special status to J&K appeared to be, that firstly, India accepted that it was a disputed territory and as per the UN mandate a fair and impartial plebiscite was required to be held in the state. Secondly, by providing the people of the state with special privileges, it would serve to win their 'hearts and minds'.

Salient Aspects of Article 370

Under the provisions of this Article, as was agreed upon in the Instrument of Accession, Indian jurisdiction in the State was only limited to the areas of Defence, Foreign Affairs, Communications and ancillary matters.

Making of laws on other subjects mentioned in the Union List and the Concurrent List, as specified by the President, could only happen with the concurrence of the state government.

The President of India could declare Article 370 non operative, or Parliament could amend and modify it only on the recommendations of the Constituent Assembly of the state.

In 1952, Government of India and the State of J&K entered into an agreement at Delhi, often referred to as the Delhi Agreement regarding their future relationship.

Further, in 1954 the Constituent Assembly of J&K approved the state's accession to India and the President issued a Constitutional Order of 1954 (Applicable only to the State of J&K).

This order superseded the Constitutional Order of 1950, which had some different provisions with respect to relationship of the State of J&K with the Union of India, like; the Governor and Chief Minister were called "Sadar-e-Riyasat" and "Wazir-e-Azam" respectively, etc.

This is the Order which was applicable as on 2019, with amendments and modifications from time to time and regulated the constitutional position of the state and its relationship with the Union. Noteworthy aspects of this Order were:

- The name, area or boundary of the state could not be changed by the Union without the consent of its State Legislature.
- The State of J&K had its own Constitution and was administered accordingly. Therefore, technically, the definition of 'State' under the Part VI of the Constitution of India did not apply to J&K.
- Preventive detention laws made by the Parliament, like TADA/ POTA were not applicable in the State of J&K and the state Legislature could make its own laws on preventive detention.
- However, Indian Parliament held the jurisdiction of making laws on important matters concerning prevention of terrorist acts, questioning or disrupting the sovereignty and territorial integrity of India and causing insult to National Flag/Anthem and the Constitution of India.

- Special rights were guaranteed to the permanent residents of the state regarding public employment, acquisition of immovable property, settlement and government scholarships.
- No outsider could buy property in J&K. Also, a girl getting married to a boy from outside the State of J&K used to lose her right to ancestral property. However, this clause had been revoked by J&K High Court.
- Directive Principles of State Policy and Fundamental Duties, as enunciated in Part IV and IVA of Constitution of India, respectively, were not applicable to the state as it had its own Constitution (refer Point 'b' above).
- National /Financial Emergency could not be declared in the state by the President of India on the grounds of internal disturbance without the concurrence of state government.
- President of India could not suspend the Constitution of the state on grounds of failure to comply with the directions given by him.
- President's Rule could be applied in the state in case of breakdown of constitutional machinery under the provisions of State Constitution and not Indian Constitution. President's Rule was imposed in the state for the first time in 1986.
- International treaty or agreement with any other nation could only be made with the consent of state legislature.
- A Presidential Order was required to be extended to the State of J&K, so that any Constitutional amendment made by the Constitution of India becomes applicable in J&K.
- The Schedules of the Constitution of India dealing with administration of tribal areas and scheduled tribes were not applicable in J&K. Hence, the underprivileged in the State of J&K were not getting benefitted by many GOI schemes for the poor.
- The special leave jurisdiction of Supreme Court (provision to appeal to Supreme Court against the High Court verdict), before 1954 was not possible. The same was now applicable in J&K.

- o) Jurisdiction of Election Commissioner and Comptroller and auditor general were also applicable in J&K.
- p) All migrants to Pakistan before 1954 were given a choice of citizenship to India and could resettle in the State of J&K.

Advantages to the People of J&K due to abrogation of Article 370

- a) The benefits of the Centre Government projects and schemes, especially for the underprivileged people of the state can be availed.
- b) Improvement of infrastructure and generation of employment through schemes like MNREGA, food for work, etc and better Public Distribution System (PDS) through targeted schemes like direct cash transfer, etc.
- c) Meeting the aspirations of deprived communities and those belonging to Scheduled castes/tribes, etc.
- d) Development of state through investments by outsiders, which would also lead to generation of quality jobs.
- e) Growth and prosperity will automatically lead to reduction in militancy related incidents and hence, motivate foreign investments also.
- f) Exploration and exploitation of abundant natural resources available in J&K and promotion of tourism will greatly enhance its economic self reliance.

Abrogation of Article 370

On 5th August 2019, the parliament of India Voted in favour of a resolution tabled by the Home Minister to revoke the temporary special status of autonomy granted under Article 370 of the Constitution to Jammu & Kashmir a region administered by India to as a State which consists

of the larger part of Kashmir, which has been the subject of dispute between India & Pakistan since 1947.

The President of India issued an order under the power of Article 370, overriding the prevailing 1954 Presidential order and notifying all the provisions of autonomy granted to the State. The state was divided into two union territories (UT) to be governed by a Lt. Governor. On 6th August 2019, Lok Sabha passed the bill recommending the revocation.

Conclusion

The impact of the revocation of the special status of J & K encompassed a year without high speed internet, changes in the politics & bureaucracy of the region, priority of counter-insurgency & counter terrorism operations, new domicile rules, talks of restoration of statehood, judicial lethargy and decline in stone-pelting among other things.

As per figures collected from Kashmir Tourism department, the number of footfalls by tourists counted at its highest 1.8 lakhs in the month of March 2022 (post abrogation of article 370) which is a record in the past 10 years.

The J & K Re-organisation Act 2019 is an Act of the Parliament of India to reconstitute the Indian administered state of J & K into two Indian Administered union territories (UT) called Jammu & Kashmir and Ladakh. It became effective on 31 October 2019. This act has given powers to the Central Government to pass a number of executive orders in relation to both the UTs. These orders have resulted in the modification or repeal of over 400 state & central laws with respect to the UTs.

37. Black Money and Various Anti Corruption Legislations

Introduction

Money that has been earned illegally through the black market, on which tax has not been paid or cash deposited through 'hawala' transactions (where real money does not exchange hands) directly into the accounts of beneficiaries is called Black Money.

The total amount of black money deposited in foreign banks by Indians is unknown. Some reports claim a total exceeding US\$1.4 trillion are stashed in Switzerland. One of the most prominent banks where majority of Indian black money is stashed is UBS.

In February 2012, CBI Director made a statement that Indians have \$500 billion of illegal funds in foreign tax havens. It was claimed that the deposits of Indians in Swiss banks constitute 0.13 per cent of the total bank deposits of citizens of all countries.

Further, the share of Indians in the total bank deposits of citizens of all countries in Swiss banks was said to have reduced considerably from 2003 till now.

Withdrawal of black money under pressure of investigations ordered by the Government could be a reason for artificial bubble in real estate market in India and also a cause of increasing inflation due to creation of imbalance in demand supply position.

Swiss Banking System

In Switzerland banking system, bank secrecy or privacy is a legal principle, under which banks are not allowed to provide to authorities, any personal or account information about their customers, unless certain conditions apply, like a criminal complaint or a connection with terrorist outfits, etc. Any bank employee violating a client's privacy could be punished quite severely by law.

In some cases additional privacy is provided to the customers, wherein they do not even have to disclose their names and are allotted a 'numbered bank account'. So, their identity is just a 'number' and no name is required to be enlisted.

In 2009, under pressure of G-20 and USA after a major UBS tax evasion scam got highlighted, Swiss Government proposed to amend its 1934 Banking Law to avoid tax evasion by non-Swiss clients. The same resulted in clients withdrawing their money and choosing other destinations like banks in Singapore and Hong Kong.

Bank secrecy is also prevalent in some other countries like, Singapore, Lebanon, Luxembourg, etc.

Indian Black Money in Swiss Banks

India tops the list of black money in Swiss banks with almost \$ 1500 billion, followed by Russia, \$470 Billion and UK \$390 Billion. The black money stashed away in Swiss banks is 13 times larger than the nation's foreign debt and 40% of the country's GDP.

In case this money comes back, India will not only be able to clear all its foreign debts, but also the government will be able to sustain the country for a long time without taking any taxes.

In April 2014, Government disclosed to the Supreme Court the names of 26 people who had accounts in banks in Liechtenstein, as revealed to India by German authorities.

The Government was bound to not to disclose the names of account holders by Double Taxation Avoidance Agreement signed between India and Switzerland in 2011.

Under this agreement information about account holders can be obtained only with effect from the date of signing this protocol, i.e. Jan 2011. Divulging information about account holders prior to it would be in contravention to the provisions of the agreement.

On 28 October 2014, Supreme Court ordered the centre Government to reveal all the names of black money account holders which they had received from various countries like Germany.

Hence, on 29 October 2014, GOI submitted the names of 627 people to Supreme Court in a sealed envelope.

Recommendations to Control Black Money

Obtain information from Switzerland under the Agreement of Double Taxation Avoidance as black money has not been revealed by these individuals in either of the country and hence, there is no question of double taxation.

In future maintain a database of all Indian investors in foreign banks and scrutinise their accounts to ensure that they do not avoid their tax liability.

Reduced taxes and simpler compliance procedures will reduce black money and tax evasion.

Removing non-tariff barriers to economic activity such as permits and licences, long delays in getting approvals from government agencies are an incentive to proceed with underground economy and hide black money.

Sectors like Gold trading and real estate are the major sources of money laundering, which need systemic reforms to prevent parking of black money.

Integration of systems and maintaining online data can ensure compliances and also have a credible deterrence mechanism by improving prosecution processes.

Ensure that the financial auditors of companies are made more accountable for lapses and strengthen Whistleblower's laws to encourage reporting and tax recovery.

Anti Corruption Legislations

Lokpal and Lokayuktas Act, 2013

The Lokpal and Lokayuktas Act, 2013, is an anti-corruption Act which provides for the establishment of the institution of Lokpal to inquire into allegations of corruption against all public functionaries.

The bill was tabled in the Lok Sabha on 22 December 2011 and was passed by the house on 27 December 2011.

The bill was passed in the Rajya Sabha on 17 December 2013 after making certain amendments to the earlier Bill and in the Lok Sabha on 18 December 2013. The Bill received assent from President on 1 January 2014 and came into force from 16 January 2014.

Composition of Lokpal, Appointment & Removal of Chairperson

Lokpal will consist of a chairperson and a maximum of eight members, of which 50% will be judicial members 50% members of Lokpal shall be from SC/ST/OBCs, minorities and women.

Selection of chairperson and members of Lokpal will be done through a selection committee consisting of PM, Speaker of Lok Sabha, leader of opposition in Lok Sabha, Chief Justice of India or a sitting Supreme Court judge nominated by CJI Eminent jurist to be nominated by President of India on basis of recommendations of the first four members of the selection committee "through consensus".

Removal of Lokpal can be done by the Government through two-third majority or through a complaint by 100 MPs to the SC.

Jurisdiction of Lokpal

Lokpal's jurisdiction will cover all categories of public servants, up to Group 'D' employees. Government and Judiciary have been excluded from the ambit of Lokpal.

All entities (NGOs) receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs 10 lakh per year are under the jurisdiction of Lokpal.

Salient Features of Lokpal and Lokayuktas Act, 2013

Lokpal will have the power of superintendence and direction over any central investigation agency including CBI for cases referred to them.

A high-powered committee chaired by the PM with recommends selection of CBI director. The collegiums will comprises PM, leader of opposition in Lok Sabha and Chief Justice of India.

PM has been brought under purview of the Lokpal, so also central ministers and senior officials.

Directorate of prosecution will be under overall control of CBI director. At present, it comes under law ministry.

Appointment of director of prosecution to be based on the recommendations of the Central Vigilance Commission.

Director of prosecution will also have a fixed tenure of two years like CBI chief.

Transfer of CBI officers investigating cases referred by Lokpal to be only done with the approval of watchdog.

Bill incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.

Bill lays down clear timelines for preliminary enquiry and investigation and trial. Provides for special courts Public servants will not present their view before preliminary enquiry if the case requires 'element of surprise' like raids and searches.

Bill grants powers to Lokpal to sanction prosecution against public servants.

CBI may appoint a panel of advocates with approval of Lokpal, CBI will not have to depend on govt advocates.

Govt or any individual making a false complaint can be jailed for up to 5 years.

Whistle Blowers Protection Act, 2011

Whistle Blowers Protection Act, 2011, was passed by the Parliament on 09 May 2014 and provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrong doing in government bodies, projects and offices.

Salient features of the Act include:

- Protect whistle blowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offense by a public servant.
- Any public servant or any other person including a non-governmental organization may make such a disclosure to the Central or State Vigilance Commission.
- Every complaint has to include the identity of the complainant.
- The Vigilance Commission shall not disclose the identity of the complainant except to the head of the department if he deems it

necessary. The Act penalizes any person who has disclosed the identity of the complainant.

- The Act prescribes penalties for knowingly making false complaints.

Right to Information Act-2005

The Right o Information Act, 2005 came into force on 12 th October 2005.

Every citizen has a right to request and obtain information from 'public authorities', subject to specified restrictions. Any information can be obtained if dates back to period of not more than twenty years.

Apex statutory body is Central Information Commission at the centre headed by Central Chief Information Commissioner and manned by maximum 10 Information commissioners.

Corresponding bodies in states are Information Commission headed by State Chief Information Commissioner and manned by maximum 10 Information commissioners.

Commission has the powers in respect of Inspection on discovery and to even impose penalty upon erring officials and recommend disciplinary action on recurring defaults.

Citizens can file direct complaint to the Commission for any grievance under the Act. Decision of Commission is final and binding, but they can grant right of further appeal at their discretion.

Public authorities have to supply information (or reject the request if restrictions apply) as early as possible. Maximum time allowed in normal circumstances is thirty days. Reasons have to be provided for rejecting request for information.

Person requesting for information has to deal with Public Information Officer (PIO) appointed by Public Authorities for making request and obtaining information.

Public Authorities to disclose information about themselves to the applicant without charging any fee, while for other information, citizens are required to apply and pay prescribed fee for obtaining information. Citizens below poverty line are exempt from most of the fee.

All three organs of governance, the Executive, legislature and judiciary, including all their organs

branches and offices, are subject to disclosure of information.

Act is applicable to all constitutional bodies, while information of private bodies can also be obtained though, scope is limited.

Suitable checks imposed on the citizens' right to information in the form of 'exemptions from disclosure', like obtaining certain classified information that may jeopardise national security.

Right to Public Services Legislation

Right to Public Services legislation, has been so far enacted in 20 states of India. It guarantees time bound delivery of services for various public services rendered by the Government to citizens and provides mechanism for punishing the errant public servants who are deficient in providing the service stipulated under the statute.

Right to Service legislation are meant to reduce corruption among the government officials and to increase transparency and public accountability.

Prevention of Corruption Act-1988

This act was enacted by the Parliament to combat corruption in Government agencies and Public Sector businesses.

2G Spectrum scam is being dealt with under this Act, in which Telecom spectrum which is a scarce resource of national importance was allotted by the then government at throwaway prices to companies through corrupt and illegal means.

Prevention of Money Laundering Act-2002

This Act was enacted by the Parliament to prevent money laundering, i.e. money obtained from certain crimes, such as extortion, insider trading, drug trafficking, illegal gambling and tax evasion.

The Act provides for confiscation of property derived from money-laundering.

Demonetization & its Implications

On 08 Nov 2016, the Government of India announced the demonetization of all Rs. 500 and Rs. 1000 and issuance of new Rs. 500 and Rs. 2000 bank notes in exchange for the Mahatama Gandhi

series of bank notes. The Indian Prime Minister claimed that the action would curtail the shadow economy, increase cashless transactions and reduce the use of illicit and counterfeit cash to fund illegal activity and terrorism.

The announcement of demonetization was followed by prolonged shortage of cash which created significant disruption throughout the economy. People seeking to exchange their banknotes had to stand in long queues and several deaths were linked to the rush to exchange the cash.

The effort appears to have failed to remove black money from the economy. The move reduced the country's Industrial production and its GDP growth rate. It is estimated that 15 lakh jobs were lost. The move was criticised as poorly planned & unfair. It failed to check the corruption and Black-money.

38. Citizenship Amendment Act-2019

Introduction

The Citizenship (Amendment) Act-2019, which was passed by the Parliament of India on 11 December 2019, seeks to amend the Citizenship Act of 1955. This Act lays down the various ways in which the citizenship of India may be acquired.

The Bill, makes illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship.

The Bill was initially introduced in Lok Sabha on 19 July, 2016 and has been a cause of nationwide debate. The contentious issue is the grant of citizenship by naturalization vis the process by which a foreigner can become an Indian citizen.

The passage of bill in the Lok Sabha led to widespread agitations in Assam and other NE states. The Assam Gana Parishad (AGP) withdrew its support from the BJP-led government in Assam. Several allies of the BJP in the northeast are also opposed to the bill.

Citizenship by Naturalization

Citizenship Act 1955 dictates that any person born on or after 26 January 1950, but prior to commencement of 1986 Act on 01 July 1987, is a citizen of India by birth. A person born in India on or after 1 July 1987 is a citizen of India if either parent was a citizen of India at the time of the birth.

Citizenship of India by naturalization can be acquired by a foreigner who is ordinarily resident in India for 12 years (throughout the period of 12 months immediately preceding the date of application and for 11 years in the aggregate of 14 years preceding the 12 months) and other qualifications as specified in Section 6 (1) of the Citizen Act, 1955.

The Citizenship Amendment Bill of 2016 relaxes the 11-year requirement to six years for people belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities from Afghanistan, Bangladesh and Pakistan.

Contentious Issues Pertaining to the Bill

The Citizenship Act, 1955 prohibits illegal migrants from applying for Indian citizenship. Illegal migrants are defined in the Act as those foreigners who entered India without a visa or valid travel documents or those who enter legally but stay beyond the permitted time.

Illegal migrants were meant to be imprisoned or deported under the Foreigners Act 1946 and the Passport (Entry into India) Act 1920.

However, the Citizenship Amendment Bill 2016 amends the Act to provide that the following minority groups will not be treated as illegal migrants: Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. The cutoff date for such illegal migrants has been mentioned in the redrafted Bill as 31 December 2014.

In other words it means that illegal migrants from these countries who are Muslims, or belonging to other communities like Jews, Atheists (who do not follow any religion) will not be eligible for citizenship.

Therefore, this legislation seeks to introduce religion as the ground for citizenship in India, which is in direct contravention to Article 14 of the Indian constitution that prohibits unequal treatment on the basis of religion.

Reasons for Assam and other NE States to be on the Boil

In early 1970s India took a considered decision to open its floodgates for migrants from erstwhile East Bengal, now Bangladesh, while it had helped that country in its struggle for independence from Pakistan.

Assam, which faced the major brunt of influx of such refugees, today has about four million illegal migrants eating into the resources of the indigenous Assamese. Consequently, Assam remained on a boil for six long years from 1979 to 1985, when an Assam Accord was signed.

This peace accord amongst other things prescribed the cutoff date to accept legal citizens

of Assam, at midnight of 24th March 1971. It means that all persons who have entered Assam after this date will become illegal migrants.

Also please read the blog :

<http://www.olivegreens.co.in/blog/final-draft-of-the-national-register-for-citizens-nrc-for-the-state-of-assam-published-on-30-july-2018>

The citizenship amendment Act clearly bypasses the Assam Accord, which earmarks 24 March 1971 as the cutoff date for NRC and will allow people who have entered the country until 31 December 2014 to be incorporated in the National Register for Citizens being updated for Assam. Until now, close to 40 lakh people have not found place on the NRC.

Similarly, other NE states also feel that the passage of such an Act will adversely affect the indigenous people, e.g. people in Mizoram fear that the Buddhists Chakmas from Bangladesh will take advantage of the Act. Also, people in Meghalaya and Nagaland are apprehensive of Bengali migrants.

Arunachal Pradesh, which is governed by the BJP, fears that the law would benefit Chakmas and Tibetans.

The Manipur government setup an Inner Line Permit System to stop migrants from entering the state. The Indigenous People's Front of Tripura and the opposition Indigenous National party of Tripura are also against the Act.

Conclusion

Notwithstanding the unpleasant noise from the NE, BJP seems to be fairly confident of appeasing the Hindu and tribal votes by granting tribal status and implementing Clause 6 of the Assam Accord-1986 which is aimed at granting constitutional safeguard to Assamese.

Indian democracy is witnessing a new low with appeasement tactics and vote bank politics overriding sensibilities and any considerations for human lives. Hope the government and the governed become alive to the values of

humankind that our constitutional democracy stands for.

The citizenship (amendment) Act 2019 was passed by the Parliament of India on 11 Dec 2019. It amended the citizenship Act 1955 by providing a pathway to Indian Citizenship for the persecuted religious minorities, specifically Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh & Pakistan who entered India prior to 2015.

39. Financial Action Task Force (FATF)

Introduction

The Financial Action Task Force (FATF) is a 37 member organization which serves as a watchdog against money laundering for terrorist financing and other related threats to the integrity of the international financial system.

United States and the other member states of the FATF have decided to remove Pakistan from the "grey list" of nations. This new development has far reaching ramifications, especially for India.

Details about the Organisation – FATF

The Financial Action Task Force (FATF) is an inter-governmental body that was established in 1989 by a Group of Seven (G-7) Summit in Paris, initially to examine and develop measures to combat money laundering.

In October 2001, the FATF expanded its mandate to incorporate efforts to combat terrorist financing, in addition to money laundering.

The FATF currently comprises 35 member jurisdictions and 2 regional organisations, representing most major financial centres in all parts of the globe. Israel and Saudi Arabia are observer countries.

The decision making body of FATF is the Plenary, which holds meetings three times in a year to monitor progress on implementation of its recommendations and also to issue new recommendations, if and when required.

Objectives of FATF

The Financial Action Task Force (FATF) is in effect a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in combating terror financing. The key objectives of the organisation are:

- Set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, proliferation of weapons of mass destruction and other

related threats to the integrity of the international financial system.

- Issue internationally accepted recommendations from time to time which form the basis for a co-ordinated response to these threats to the integrity of the financial system.
- In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.
- Review new techniques of money laundering and terrorist financing being adopted by rogue nations/ organisations and put into place appropriate counter-measures.
- The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.

The Decision of Putting Pakistan on "Grey List" of FATF

The move to put Pakistan on the "Grey List" was pushed by four member countries, the U.S., the U.K., Germany and France, who, in mid-January had written to the FATF stating that even though Pakistan had an anti-money laundering/anti-terror funding regime in place, effectiveness of the implementation was inadequate.

The initial discussions during the said Plenary meet failed to build a consensus on putting Pakistan again on the watch list, after China, Turkey, Saudi Arabia and Gulf Cooperation Council (GCC) countries objected to Pakistan's nomination.

FATF rules state that if a minimum of three members vote against the proposal, then it cannot go through.

It is believed that a lot of behind the scenes talks and persuasions led to revising the initial decision.

Informed sources reveal that the United States worked hard to bring Saudi Arabia around, Germany worked on the GCC, while India was able to speak to Russia.

Furthermore, China appears to have consented because it was offered the Vice-Chair of the FATF committee, where it can be seen to play a responsible role at the international grouping.

Lastly, the ill-timed rally by LeT Chief Hafiz Saeed, and the Khyber Pukhtunkhwa state's decision to

raise funds for Haqqani group-linked seminaries over the week didn't help Pakistan's case, at the Plenary Meet.

The other countries on this list include North Korea, Iran and Uganda.

40. Land Reforms

Land Reforms Post Independence

Abolition the Zamindari System

Intermediaries like Zamindars, Talukdars, Jagirs and Inams had dominated the agricultural sector in India at the time when country attained independence.

Soon after independence, measures for the abolition of the Zamindari system were adopted in different states. The first Act to abolish intermediaries was passed in Madras in 1948.

Since then, state after state passed legislation abolishing Zamindari rights and by 1955 abolition of intermediaries had been completed in almost all the states.

The same had some advantages and disadvantages which are stated below:

Advantages:

Nearly 2 crore tenants, who were the tillers of the land came into direct contact with the State making them owners of land.

Large chunks of land came into government possession for distribution to the landless farmers.

Cultivable waste land and private forests belonging to the intermediaries could be used more productively for the food security of the growing population.

Disadvantages:

Abolition of intermediaries led to a heavy burden on the State exchequer, as a compensation amounting to Rs. 670 crores in cash and in bonds had to be doled out to the intermediaries.

It has led to large-scale eviction as the land rights were altered, which gave rise to several problems – social, economic, administrative and legal.

Instead of the abolition of the official land-lords, absentee land-lords or "land sharks" as a class have emerged.

Hence, in the present times the intermediaries have changed their garb into big real estate

companies and people in high positions, thereby defeating the very purpose of the legislation.

Ceiling on Land Holdings

Ceiling on land holdings implies the fixing of the maximum amount of land that an individual or family can possess.

Land ceiling has two aspects: one, the fixation of ceiling limit and two, the acquisition of surplus land and its distribution among the small farmers and landless workers.

The necessity for introducing this land reform was that small farms provide more employment opportunities and requires less capital as compared to the large farms.

Ceilings on land holdings resulted in raising individual incomes and bringing about social equality amongst the masses of the country.

In the first phase, i.e., prior to 1972, the basis of ceiling fixation was an individual as a unit instead of a family.

Since 1972, a family has been accepted as the unit of application of ceilings. The family is defined as a unit consisting of husband, wife and children.

Lands which have assured supply of water and where at least two crops are raised, the upper limit has been fixed at 10 to 18 acres depending on the productivity of the land.

In areas where there is irrigation provision only for one crop, the ceiling has been fixed at 27 acres. However, for the remaining types of land, the ceiling limit is fixed at 54 acres.

Certain types of land were exempted from ceiling laws. Among the types of land exempted were orchards, grazing lands, sugar-cane fields of sugar factories, cooperative farms etc.

The sixth plan target was that the entire surplus land was to be taken possession of and distributed by 1982-83. But this is far from being achieved still.

Consolidation of Holdings

Consolidation of Holdings means bringing together the various small plots of land of a farmer scattered all over the village as one compact block, either through purchase or exchange of land with others.

Subdivision and fragmentation of holdings results in several disadvantages such as wastage of land, difficulties in land management, difficulty in the adoption of new technology, disputes over boundaries, disguised unemployment, low productivity etc.

Consolidation of holdings prevents the endless subdivision and fragmentation of land holdings, saves the time and labour of a farmer, effects improvement on land in the form of bunding, fencing etc, promotes large-scale cultivation and brings down the cost of cultivation and reduces litigation among farmers.

There are various obstacles to the speedy implementation of the consolidation programme. There are poor response from cultivators, wide variation in the quality of land, complicated process of land consolidation, lack of enforcing machinery and lack of political will etc.

Compilation of Land Records

Compilation and updating of the land records are an essential condition for the effective implementation of land reforms programme.

In recent years the states have been urged to take all measures for updating land records with the utmost urgency by adopting a time-bound programme. Efforts are also being made to maintain the land records through computerization.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Land Acquisition Bill received the Presidential assent on 27 September 2013 and the Act came into force with effect from 01 January 2014. It replaced the Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule.

The Act establishes regulations for land acquisition, including laying down rules for grant of fair compensation, rehabilitation and

resettlement of the affected persons and bringing about transparency in the land acquisition process.

Applicability of the Act

Applicability of the Act extends to all type of land acquisition, whether it is done by the Central Government or any State Government's.

The scope for acquisition of land under this Act may be either for:

Government use for Public Sector Undertakings or in national interest, e.g. purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people.

Use by private companies for stated public purpose, in public-private partnership (PPP) for infrastructure development projects, like industrial corridors, mining activities, agro processing, etc.

Use by purely private entities for certain declared public purposes, like housing and other planned development like improvement of villages, etc.

The provisions of the Act does not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

Salient Provisions of the Act

When government declares that the land would be acquired for public purpose, it shall control the land directly; consent of the land owners shall not be required.

When the government acquires the land for **private companies**, the consent of at least 80% of the project affected families shall have to be obtained through a prior informed process, called the Social Impact Assessment (SIA) within six months of the land having been acquired.

In case of a **public-private** project at least 70% of the affected families should consent to the acquisition process.

The Act includes an urgency clause for expedited land acquisition. The urgency clause may only be invoked for national defence, security and in the

event of rehabilitation of affected people from natural disasters or emergencies.

The Act forbids land acquisition when such acquisition would include multi-crop irrigated area. However, such acquisition may be permitted in exceptional cases and as a last resort.

In addition to the above condition, wherever multi-crop irrigated land is acquired an equivalent area of cultivable wasteland shall be developed by the state for agricultural purpose.

These limits shall not apply to linear projects which include projects for railways, highways, major district roads, power lines, and irrigation canals.

Compensation equivalent to four times (in case of land holding up to 3 acres) the market value of the land if it is acquired in the rural area, and an upfront payment of Rs.1,36,000, as a subsistence, transportation and resettlement allowances to be given by the acquirer.

An additional entitlement of a job to the family member, or a payment of Rs.5,00,000 up front, or a monthly annuity totalling Rs.24,000 per year for 20 years with adjustment for inflation – the option from these three choices shall be the legal right of the affected land owner family, not the land acquirer.

A constructed house to be provided with no less than 50 square meters in plinth area for rehabilitation of uprooted families.

Additional benefits may apply if the land is resold without development, used for urbanization, or if the land owner belongs to SC/ST or other protected groups per rules of the Government of India.

An additional payment of Rs.6, 36,000 each, to any additional families, claiming to have lost their livelihood because of the acquisition, even if they do not own the land will be required to be made.

Reasons for Criticism and Proposal of Amendments to the Act by the Government

The provisions of the Act are apparently, highly in favour of land owners and ignores the needs of poor Indians who need affordable housing, impoverished families who need affordable

hospitals, schools, employment opportunities and infrastructure and industries.

Once the compensation is made, one or more of the affected families may seek to delay the progress of the project to extract additional compensation, thereby adversely affecting other beneficiary families and also the completion of the projects.

The beneficiaries of the Act with guaranteed jobs, housing and monetary compensation may have little incentive to be productive.

Acquisition for “public purpose” is too vague and porous; it would ensure that land acquisition will remain hostage to politics and all kinds of disputes. Hence, more clarity is needed in its interpretation.

Prohibiting the use of fertile agricultural land for industries is ultimately self-defeating. As even though the land may be very fertile, industrial production generates many times more than the value of the product produced by agriculture.

The Confederation of Real Estate Developers' Association of India claims that the proposed Act is, kind of one-sided, its ill-thought-out entitlements may sound very altruistic and pro-poor, but these are unsustainable and will kill the goose that lays the golden egg.

The cost of land will get inflated and therefore, it will amount to helping a small minority of Indians at the cost of the vast majority of Indian citizens, as less than 10% of Indian population owns rural or urban land.

Even farmers will suffer, as fringe development of urban centres will largely be in the form of unauthorized developments owing to high land cost, if acquired and they will not realize the true economic potential of their lands.

Actions by Government to Address the above Constraints

In order to ease the process of land acquisition, the Government had amended the “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” using the Ordinance route in December

Article 123 of Constitution of India gives legislative power to President, to issue Ordinances when Parliament is in recess i.e. not in session, and if there is an urgent need to have a law on some urgent public matter.

In order to convert this Ordinance into a legislation, the Government is required to present it for discussion within six weeks of Parliament coming into session and get it passed after due discussion in both the houses of the Parliament.

Since, BJP has absolute majority, it can easily get the Bills passed in the Lower House. In case it is defeated in the Rajya Sabha or an approval is delayed for six months due to opposition, the option of calling a Joint Session of Parliament can be employed by the Government.

According to the rules, a Joint Session of Parliament can be called for passage of any law if any bill has been approved by one House but either defeated or held back for six months by the other.

In the Joint Sitting of Lok Sabha and Rajya Sabha, NDA has the numbers to get this legislation through easily.

Rural development ministry had been directed to get the draft ordinance vetted by the law ministry so that it could be cleared by the Cabinet.

Amendments Proposed by the Union Cabinet

Five new categories of projects are proposed to be included that would not require prior consent from affected families as well as Social Impact Assessment (SIA).

These include projects for defence and defence production, rural infrastructure including rural electrification, affordable housing and housing for the poor, industrial corridors as well as infrastructure and social infrastructure projects including public private partnership projects wherein the ownership continues to vest with the government.

The amendment also includes 13 legislations that are currently exempted under the purview of the Act in the compensation, rehabilitation and resettlement provisions. These legislations were conflicting with the provisions of the Land Acquisition Act 2013.

Higher compensation and R&R package would apply to the 13 exempted legislation as well.

The 13 legislation included Land Acquisition (Mines) Act 1885, Atomic Energy Act, 1962, Railway Act 1989, National Highways Act 1956 and Metro Railways (Construction of Works) Act, 1978.

In addition, procedural difficulties in the acquisition of lands required for important national projects have been further streamlined.

The sensitive provisions relating to compensation, relief and rehabilitation have been left untouched.

Conclusion

The aim of the Government, through its proposed amendments appears to be making the Act more industry-friendly, including doing away with the consent clause for PPP projects, and removing the requirement for mandatory SIA.

Civil society activists Anna Hazare has called the amendments anti-farmer and will result in diluting the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

In the final analysis, it is essential to strike a reasonable balance between food security and industrial growth. In order to give a boost to the manufacturing sector and sending the right signals to a lot of developed economies that are willing to undertake co-production in India, it is essential to relax some of the stringent provisions given in the Act.

Hence, amendments like exempting projects in certain important sectors like defence, rural electrification, rural housing and industrial corridors from the mandatory 80% consent from affected families is a welcome step.

The Budget 2022 has introduced key reforms in land records management that highlights the adoption of an unique land identification number, that

41. Legislations to Prevent Child Labour in India

Introduction

The International Labour Organisation (ILO) defines 'child labour' as "the work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development".

Further, it refers to work that is mentally, physically, socially or morally dangerous and harmful to children, or work whose schedule interferes with their ability to attend regular school, or work that affects in any manner their ability to focus on school or experience a healthy childhood.

In India, **The Child Labour (Protection and Regulation) Act 1986** prohibits employment of children below 14 and 15 years in certain hazardous employments. Presently, there are 83 such employments, occupations or processes in which the employment of children is banned.

However, there are no laws to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions.

The major sectors in which child labour is largely prevalent in India are, Diamond, Firework, Silk, Carpet, Mining and Domestic labour.

The Child Labour (Protection and Regulation) Act 1986

The Child Labour (Prohibition and Regulation) Bill, 1986 having been passed by both the Houses of Parliament received the assent of the President on 23rd December, 1986.

Objectives of the Act include:

- (a) Ban the employment of children, i.e.those who have not completed their fourteenth year, in specified occupations and processes.
- (b) Lay down a procedure to decide modifications to the Schedule of banned occupations or processes.

- (c) Regulate the conditions of work of children in employments where they are not, prohibited from working.
- (d) Lay down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children.
- (e) To obtain uniformity in the definition of "child" in the related laws.

Other Existing Legislations to Prevent Child Labour

The Factories Act of 1948: The Act prohibits the employment of children below the age of 14 years in any factory. The law also legislates as to who, when and how long can pre-adults aged between 15–18 years can be employed in any factory.

The Mines Act of 1952: The Act prohibits the employment of children below 18 years of age in a mine.

The Juvenile Justice (Care and Protection) of Children Act of 2000: This law made it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage.

The Right of Children to Free and Compulsory Education Act of 2009: The law mandates free and compulsory education to all children aged 6 to 14 years. This legislation also mandated that 25 percent of seats in every private school must be allocated for children from disadvantaged groups and physically challenged children.

Penalties

- (1) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 of the Act shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under section 3, commits alike offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever-

- (a) Fails to give notice as required by section 9; or
- (b) Fails to maintain a register as required by section 11 or makes any false entry in any such register; or
- (c) Fails to display a notice containing an abstract of section 3 and this section as required by section 12; or
- (d) Fails to comply with or contravenes any other provisions of this Act or the rules made there-under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

The Child Labour (Prohibition and Regulation) Amendment Bill, 2012

The Bill seeks to amend the Child Labour (Prohibition and Regulation) Act, 1986. The major amendments proposed are as given below:

- The existing Act prohibits employment of children below 14 years in certain occupations such as automobile workshops, bidi-making, carpet weaving, handloom and power loom industry, mines and domestic work. In light of the Right of Children to Free and Compulsory Education Act, 2009, the Bill seeks to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours.
- The Bill adds a new category of persons called "adolescent". An adolescent means a person between 14 and 18 years of age. The Bill prohibits employment of adolescents in hazardous occupations as specified (mines, inflammable substance and hazardous processes).
- The Bill recommends that the central government be empowered to add or omit

any hazardous occupation from the list included in the Bill.

- The Bill enhances the punishment for employing any child in an occupation. It also includes penalty for employing an adolescent in a hazardous occupation.
- The penalty for employing a child was recommended to be increased to imprisonment between 6 months and two years (from 3 months-one year) or a fine of Rs 20,000 to Rs 50,000 (from Rs 10,000-20,000) or both.
- The penalty for employing an adolescent in hazardous occupation is recommended to be imprisonment between 6 months and two years or a fine of Rs 20,000 to Rs 50,000 or both.
- The government may confer powers on a District Magistrate to ensure that the provisions of the law are properly carried out.
- The Bill empowers the government to make periodic inspection of places at which employment of children and adolescents are prohibited.

On 19 July 2016, The Child Labour (Prohibition & Regulation) Amendment Bill, 2012, was approved by the members of Rajya Sabha.

Union Labour Minister said, "The Bill is aligned with the statutes of the International Labour Organisation (ILO) convention".

Further, also promised to move forward with the National Child Labour Project by spending more funds on it.

Conclusion

Nobel Laureate Satyarthi's NGO Bachpan Bachao Andolan has been relentlessly working and rescuing children working under hazardous condition. In last five years his organisation had rescued more than 5,254 children.

Despite best efforts from various quarters, child labour remains a major challenge for India. The new legislation offers a positive hope to check this age old menace.

42. Section 66 of the Income Tax (IT) Act

Introduction

Information Technology Act 2000 consists of IV Schedules and 94 Sections segregated into 13 Chapters. The Information Technology Act 2000 addressed the following issues:

- Legal recognition of electronic documents.
- Legal Recognition of digital signatures.
- Offences and contraventions.
- Justice dispensation systems for various cyber crimes.
- Section 10A of information technology Act, 2000(amended in 2008) validates E-contracts.

Information Technology Act 2000 was amended in 2008 and unanimously passed in a Parliamentary session on 23 December 2008. The law received Presidential assent on February 5, 2009.

Section 66A of the IT Act-2000

Some of the amendments made in the cyber laws have been widely criticised by the civil society as these Sections lack the legal and procedural safeguards to prevent violation of civil liberties of the citizens.

Section 66A has been found to be impinging upon the freedom of speech and expression and violates Article 19(1)(a) of the Constitution of India. Based on this Section, Bombay High Court has held that creating a website and storing false information on it can entail cyber crime.

Section 66A has led to numerous abuses reported by the press. Some examples are as follows:

- On February 6, 2013, one citizen was arrested under section 66A of the Information Technology (IT) Act for posting 'objectionable comments and caricatures' of Prime Minister, a Union Minister and Samajwadi Party President on his Face book wall.
- Another Personl for having caused 'inconvenience' to relatives of Nationalist Congress Party Chief for allegations made on his website.

- Jadavpur University Professor for a political cartoon about West Bengal Chief Minister.
- Businessman in Puducherry for an allegedly defamatory tweet against the son of Union Finance Minister.
- Two Air India employees, who were jailed for 12 days for allegedly defamatory remarks on Facebook and Orkut against a trade union leader and a politician.
- One more Person, accused of violation of the IT Act for drawing cartoons lampooning Parliament and the Constitution to depict its ineffectiveness.
- However, the incident that rocked the nation was the arrest last November of two young women in November 2012, for a comment posted on Face book that questioned the shutdown of Mumbai following the demise of Shiv Sena Supremo. The girls were arrested under Section 66A (a) of the IT Act for allegedly sending a 'grossly offensive' and 'menacing' message through a communication device.

In order to address the numerous complaints of harassment and arrests made under this Section, the apex court on May 16, 2013, issued an advisory that a person, accused of posting objectionable comments on social networking sites, cannot be arrested without police getting permission from senior officers like IG or DCP.

Salient Aspects Covered Under Section 66A

"Any person who sends, by means of a computer resource or a communication device,

- (a) any information that is grossly offensive or has menacing character; or
- (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device.

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine."

These messages may be any information created, transmitted or received on a computer system, resource or device including attachments in the form of a text message, image, video, audio, or through any other electronic record which may be transmitted with the message.

The law targets the following types of messages:

- Grossly offensive or menacing.
- That propagates false information intending to cause annoyance, inconvenience, intimidation, insult, obstruction, etc.
- Those that are intended at deceiving the addressee about the origin of the message.

Supreme Court Judgement

Several PILs have been filed challenging the constitutionality of Section 66A of the IT Act. This widely criticised Section was challenged in Lucknow and Madras High Courts also for its constitutional validity.

It is pertinent to note, that for any such matter that concerns curbing of the Fundamental Rights of the citizens, a Public Interest Litigation (PIL) can be directly filled in the Supreme Court.

In a November 2012 PIL, Shreya Singhal submitted to the Supreme Court that Section 66A curbs freedom of speech and expression and violates Articles 14, 19 and 21 of the Constitution.

The petition further contends that the expressions used in the Section are "vague" and "ambiguous" and that 66A is subject to "wanton abuse" in view of the subjective powers conferred on the police to interpret the law.

Finally, a landmark judgement has been passed by the Supreme Court, On 24 March 2015, in which

Section 66A of the Information Technology Act has been struck down by the Supreme Court for being "unconstitutional and untenable".

Sec 66 A of Information Technology Act 2000 in the case of Shreya Singhal vs Union of India was struck down by the Supreme Court on 24 March 2015 in its entirety and ruled that it was violative of Article 19 (1) (a) & was thus unconstitutional. (People's Union for Civil Liberties vs Union of India, on 12 Oct 2022)

Conclusion

There has been widespread cheer amongst the users of cyberspace, which in today's time practically includes everyone.

Minister of State for Information and Technology called it a landmark judgement and said that, "it will help people to open up and will also serve as a lesson for the politicians that, "the times have changed."