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Dr. Pradeep Kumar
Executive Editor & Managing Director
Journal of Legal Studies

Reappraisal of Human Rights of Women in India Viz-a-Viz International Norms

Dr. Aniruddha Ram[1]

Abstract

The notion of human rights is not a novel one; personal freedoms are those fundamental and inborn rights that all humans have from birth. Since the dawn of time, every civilized community has extended protection to specific rights based on its social, political, and religious needs. The majority of these rights were founded on the notion of inherent human dignity and the equal and immutable rights of all individuals of the human family. The World Conference on Human Rights in Vienna in 1993 stated unequivocally that women's human rights, like men's, must be preserved and promoted at the regional, national, and international levels to assure their involvement in civic, cultural, political, and social life.

Keywords: Human rights, Women, Status of Women, UDHR.

Introduction

The concept of Human Rights is not a new one; human rights are those natural and inborn rights which go along with every human being since birth. Every civilized society, since ages, used to extend protection of certain rights according to their social, political and religious demands. Most of such rights were based on the recognition of inherent human dignity and of the equal and in alienable rights of all members of human family. any society founded on the basic principle of justice and fundamental freedoms stand to protect the rights of its subjects.[2] In the words of Mehmood Masaili 'the thought of protecting Human Rights has been of special attention for resisting any tyranny.

The aim of these attempts has been to provide the minimum set of rights for individuals. Hence, human rights are old as history. In other words, from the time when man's rights were ignored the struggle for human rights commenced. Therefore, history has constantly been an arena for two forces: the advocates of human rights and the inheritors of the claim to tyranny.[3] The significance of human rights speeds up only after the Second World War. Therefore, human rights are the manifestation of the new concept which modern man found for him. Today, many acts, conducts, decisions and plans; of political, economic, social or of religious nature: are governed and weighed with the touchstone of Human Rights. The Universal Declaration of Human Rights, 1994 states lucidly that "Human Rights are to be regarded as a

[1] ***Dean, College of Law, IIMT University Meerut.***
[2] Syed Maswood, Ms. Hashmeen Fatima and G A Solanki, "Muslim Minorities and Human Rights" 12 *JHRC* 45-64 (2001).
[3] Aliyah Artai, Human Rights in International Assemblies (Ministry of Foreign Affairs, Tehran, 1993).

common standard of achievement for all people and all nations, to the end that even individual and every organ of society, keeping this Declaration constantly in mind."[4]

Human Rights do not mean merely the right to live with humanity but name the right to live with dignity. Dignified life is one that is free from social handicaps, prejudice and biases on the basis of caste, creed or sex. It requires not only the recognition of person's civil and political rights but also the creation of social economic educational and cultural conditions which are essential for full development of one's personality.[5] Violation of human rights is a global phenomenon; the difference being only of degree. Violations are found to be more in society where the majority of population illiterate, uneducated and poor. India is a vast country with a greater part of it masses especially women being ignorant, poor and illiterate, so they are bound to suffer more atrocities and in human treatments.[6]

Human rights of women have been defined as "collective rights of a woman to be seen and accepted as a person with the capacity to decide for honor only and two as equal access to resources and equitable social, economic and political support to develop her full potential, Exercise right as a food human being and to support the development of others".[7]

Thus, when we speak of human rights, we talked about the rights available to the mankind in general. It is believed that these rights are available to human being, simply due to the fact that we are human beings. Does in other words people are equal into things in their inherent values and in their rights which are particular to them in the society. It is said that these rights arise from men's value and dignity, for the nature of all human being is one and the same and no one can transfer them, for those rights are not separate for him.[8]

Status of Women: International Perspective

The human rights of women and the girl child inalienable, integral and indivisible[9] part of the fundamental freedoms as elaborated in the protection of Human Rights Act 1993, the U.N. Covenants of 1966 on Human Rights and the Convention on the Elimination of Discrimination against Women 1978. But the realization that human capital formation is even more important than near accumulation of wealth for the sustainable development of any country gave it to the issue of women empowerment. The world conference on human rights, Vienna, 1993 reaffirmed clearly that the human rights of women along with men must be protected and promoted to ensure their participation in civil, cultural, political and social life

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[4]Available at http://www.claiminghumanrights.org/udhr_preamble.html Last visited January 8, 2021.

[5] Peter Schneider, *Social Rights and Concept of Human Rights*, DD Raphel (ed.) *Political Theory and the rights of man*, 116 (Macmillan London, 1967).

[6] 132nd report of Law Commission of India on need of amendment of the provision of IX of GPC, 197 in order to ameliorate the hardship and mitigate the distress of neglected women, children and parents: The Hindu Marriage Act, 1955: Maternity Benefit Act, 1961 Equal Remuneration Act, 1976: The Dowry Protection Act, 1986: The Protection of Women from Domestic Violence Act, 2005.

[7] C.R. Jilova, "Human Rights of Women- The Indian scenario" 40 CMLG 142-144 (2004).

[8] Manuchihr Tabatabai Mtamani, *Public Freedom and Human Rights* 98 (Tehran University Press, 1990.)

[9] Available at https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx Last visited on January 02, 2021.

at the regional, national and international levels. The platform of action reaffirmed that all human rights - civil, cultural, economic, political and social including the right to development- are universal, indivisible, interdependent, it and interrelated, as expressed in Vienna Declaration, 1993.

The United Nations has expressed faith in the equal rights of men and women by adopting The Universal Declaration of Human Rights on 10 December 1948. The declaration consists of 30 articles providing basic rights and fundamental freedoms to which all men and women are entitled without any discrimination these include the right to life, liberty, equality before the law and equal protection under law, right to social security and right to education.[10] The human rights of women also include their right to have control over decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.[11]

The International Bill of Human Rights encompassing the International Covenant on Economic, Social and Cultural Rights 1966, the International Covenant on Civil and Political Rights.[12] The Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment together with the Universal Declaration of Human Rights constitute, the four corners of the mighty edifice of international human rights.[13]

The two Covenants provide internal protection for specified rights and have therefore of law for the countries which ratified them. India has rectified the two covenants. The United Nations Convention on the Elimination of all forms of Discrimination against women adopted in 1979 was also ratified by India in 1993.[14] Significantly, most of the rights embodied in the Covenant are substantially protected by the Indian Constitution.

All the major International Human Rights instruments include sex as one of the grounds upon which State may not discriminate. The world conference reaffirmed that the human rights of women and girl-child are inalienable, integral and indivisible part of universal human rights. The full and equal enjoyment of all human rights and freedoms by women and girls is a priority for the United Nations and Governments of all the countries.[15] The International Conference on population and development held at Cairo (Egypt) in 1994 performed women's reproductive rights and the right to development.

The fourth world conference on women held at Beijing (China) in 1995 also emphasized the protection and promotion of human rights of women. Both the Declaration of the Rights of the Child and the Convention on the Rights of the Child guarantee child children's rights and uphold the principle of non-discrimination on the grounds of gender. The Convention on the

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[10] Dr. Neeta Tapan, " Indian Women and Human Rights" 8 (4) *PRPJHR* 77-82 (2004).
[11] Available at https://www.ohchr.org/Documents/Publications/NHRIHandbook.pdf. (Visited on January 12, 2021.)
[12] *Supra Note* 2 at 14.
[13] Available at https://www.un.org/en/universal-declaration-human-rights/ (Visited on January 12, 2021.)
[14] *Supra Note 7* at 143.
[15] *Supra Note* 9.

Elimination of All Forms of Discrimination against women was also a landmark in advocating women's rights.[16]

Declaration on Elimination of Discrimination against Women

Declaration on the elimination of discrimination against women is the first international Human Rights instrument exclusively and explicitly addresses the issue of violence against women. It affirms that the phenomenal violets, impairs or nullifies women's human rights and their exercise of fundamental freedoms. The need for this declaration was stated in the preamble, which expresses concern that despite the charter, The Universal Declaration on Human rights, The International Covenant on Human Rights, and other instruments, and despite the progress made, " there are continuous to exist considerable discrimination against women".

The declaration represents a general pronouncement of United Nations policy in regard for equality of rights of man and women and the elimination based on sex. It restates and consolidated a series of principles, many of which are embodied in earlier international instruments emanating from United Nations and specialized agencies. It also said spot series of important principles not contained in the earlier treatise and recommendations.

Article 4 deals with specific the rights of groups of rights that is political rights; Article 5 deals with the right to nationality; Article 6 with rights under civil law; Article 7 with discriminatory provisions under penal laws; Article 88 trafficking in women; Article 9 deals with educational rights; economic and social rights is dealt in Article 10.

By providing that all appropriate measures shall be taken to ensure to women, on equal terms with men and without any discrimination, the right to vote in elections and for eligible for election to all publicly elected bodies, and the right to hold public office and to exercise all public functions, the Declaration restates the principle provisions of the 1952 convention on the Political Rights of women; however, it also includes a specific reference to the right to vote in all public referendum, which is not mentioned in the convention.

In proclaiming the principles that women shall have the same right as to man to acquire, change or retain their nationality, and providing that marriage to an alien shall not automatically affect the nationality of the wife, the Declaration restates the provision of the Convention on the Nationality of Married Women of 1957, although in other provisions of the Declaration is less power reaching than the Convention.

In providing that "all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law", the Declaration lists a number of fields in which this equality shall apply. It thus consolidates a series of solemn statements by the General Assembly and the Economic and Social Council, adopted over the years on the initiative of the commission on the status of women.

[16] Available at https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx. (Visited on January 20, 2021.)

Article 6 of the Declaration also restates of earlier instruments such as the convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of 1962, and it's Recommendation of 1965. The Declaration also calls, in article 7, for the abolition of all provisions in penal codes which constitutes discrimination against women.[17]

In providing that "all appropriate measures should be taken to ensure the girls and women... equal rights with men in education at all levels", the Declaration incorporates the principle of which UNESCO convention against Discrimination in Education of 1960 is based. In proclaiming the "equal rights with men in the field of economic and social life", the Declaration incorporates principles set out in number of International Labour Conventions, such as The Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment And Occupation) Convention ,1958.(No. 111)

The declaration, it's categorical injunction that "all appropriate measures… shall be taken to combat all forms of traffic in women exploitation of prostitution of women", Reaffirms provision of several earlier international instruments, including the convention for the suppression of the traffic in person and of exploitation of the prostitution of others 1949.

Provisions of the Universal Declaration of Human Rights

Article 23 of the declaration makes provisions for right to work and other analogous rights. such as, (1) right to freedom of choice of employment, (2) The right to just and favorable condition of work, (3) right to protection against employment, (4) write two equal work without any discrimination, (5) everyone has the right to just and favorable remuneration insurance for himself and his family and existence worthy of human dignity and supplemented, if necessary by other means of social protection and (6) the right to form and join trade union for the protection of their interest.[18]

(i) Technical and vocational guidance and training program.
(ii) Policies and techniques to achieve study Economics, social and cultural development;
(iii) Full and productive employment under conditions safeguarding fundamental political and economic freedom of the individual.

Declaration on the Elimination of Discrimination against Women

This declaration was adopted by the General Assembly on 7th November, 1967 article 10 of the declaration provides that all appropriate measures shall be taken to ensure to women, married or unmarried, equal right with in the field of economic and social life in particular. The right without discrimination on ground of marital status or any other grounds to receive vocational training to work, to free choice of profession and employment and professional and vocational advancement. The right to equal remuneration with men and to equality of treatment in respect of work of equal value.

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[17] Jyotsna Mishra, *Women and Human Rights* 299 (Kalpaz Publications, Delhi 2000).
[18] Dr. M. V. Ranga Rao and M Sadarlal , " Human Rights of Women International Survey" 9 (2) *Nyaydeep* 73 - 80 2008.

The Commission on the Status of Women

It is a functional commission of the economic and social Council. Initially, it was established as a sub-commission on human right, but in June, 1946 the economic and social council conferred upon the status of full commission and since then is known as Commission on the status of women.

Convention on the Elimination of all forms of discrimination against women under article 11 is the appropriate measure to eliminate discrimination against women in the field of employment in order to ensure following right on the basis of equality of women and men:

a) right to work in alienable right of all the human beings;
b) the right to the same employment opportunities including the application of the same criteria for selection in matter of employment;
c) the right of free choice of profession and Employment the right to promotional job security and all benefits and condition of service and the right to receive vocational training and returning including apprenticeship advanced vocational training and recruitment training;
d) the right to equality in the remuneration including benefit and two equal treatments in respect of work of equal value as well as equality of treatment with evaluation of the equality of work;
e) the right to social security particularly in cases of retirement and Employment sickness in very dirty and old age and other incapacity to work as well as the right to paid leave; and
f) the right to protection of Health and to safety, in working condition including the safeguarding of the function of reproduction.

Furthermore in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work state parties shall take appropriate measures.

a) To prohibit subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.
b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment seniority or social allowances.
c) To encourage the provision of necessary supporting social services to enable parent to combined family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities.
d) To provide Special Protection to women during pregnancy in types of work proved to be harmful to them.

Conclusion

However, despite of these Declaration and safeguards constitutional, legal and international, complaints of violation of human rights have assumed wide dimension in the whole world. In India too, to the constitutional provisions for fundamental freedoms as well as the recent

rectification have not guaranteed the protection of human rights and the gender-based impairment for human rights is common here. Women, in India are denied of their fundamental right to survival, access to resources and control over there produce.[19] The violation of women's rights assumes complex dimensions in social, religious, economic, cultural, and political fields. Poor reproductive health on majority of Indian women exhibits the low level or power to exercise reproductive rights. Violence against women in India also manifests its alarmingly as rape, molestation, stripping, eve teasing, kidnapping and abduction, forced prostitution, trafficking in women and children, sexual abuse and harassment, religious and anti religious extremism and terrorism etc.[20] Domestic violence including wife battering, dowry harassment, dowry death, cruelty to women driving them to commit suicide etc. or other forms of murder like female foeticide, infanticide, sati etc.

While women are increasingly using the legal system to exercise their rights, in many countries lack of awareness of the existence of these rights is an obstacle that prevents women from fully enjoying their human rights and attaining equality.[21] Moreover, in countries like India, the constitutional provisions are not as simple as they may appear. Their meaning is decided by doubts and uncertainties. The reason is that the nature and scope of the most Basic concept or "law" itself is uncertain.

Apart from administrative process, law involved legislative and judicial process. Legislative process is a complex phenomenon. It involves not only the public opinion but consensus among the majority in the Legislature. Although dominant public opinion plays a major role in making of law but there are counter current and cross current of opinions which are not less important. The political parties and individual persons have their own role in the legislative process.[22] When the whole process over and given a final shape in the form of law, the judicial process begins. The judges adopt wearing attitudes towards the interpretation of laws made by the legislatures. This technique of interpretation can act both ways. If on one hand it frustrates a progressive legislation, why sometimes it can provide a dynamic mean otherwise anachronistic law. Sometimes a literal interpretation is adopted to avoid any controversy. Decision that are controversial to the social process are rare.

For example, violence against women is placed within the patriarchal dichotomy between the public and private spheres. This document specifically defines the relationship between the individual and registered within public Arena. Woman gives remained compass right with the private area of the family and are therefore considered outside the purview of state protection.[23] Violence within the home for instance got in old as the attempt of the state to educate them as criticized as violation of the rights to family and privacy of the individual. At what field to be accounted for that by not interfering, the state paid to protect the far more important rights of women, namely, that to life. To assume that the right of privacy within it

[19] *Supra* Note 10 at 79.
[20] Priyatosh Sharma and Aditi Sharma, " Human Rights and Women" 41 *CMLJ* 29-35 (2005).
[21] Report of the World Conference on Human Rights, Vienna, June 1993.
[22] A. De Souza, *Women in Contemporary India and South Asia* 50 (Manohar Press, New Delhi, 1980.)
[23] Sangeeta Nagaiah, " Changing the Status of Women in India" 40(34*) EPW* 3720 (1997).

is inviolable is a misconception as the same intercedes in the family matters when it formulates laws governing property and inheritance. Thus, since 1960's the issue of domestic violence against women has now been a public issue.

There is growing disillusionment with the existing legal structure to impose gender justice on the community. The law reflects society and has a tendency to reinforce the dominant values.[24] Compared to other ideological institutions, the law is relatively powerless to initiate social change.

To guarantee effective protection of women against discrimination and violence, gender sensitization of the whole society is essential to avoid impairment of Human Rights on the basis or se in the first place. In addressing the enjoyment of human rights, the governments and other actors should promote an active and visible policy or mainstreaming a gender perspective in all policies and programmes.[25]

Non-governmental organizations, women's organisation and feminist groups can play a catalytic role in the promotion of the human rights of women through grass-root activities, networking and advocacy. They should be encouraged and supported by the government and have an access to information to carry out these activities. They can also be motivated to implement the plan of action for the United Nations decade for human rights education 1995 - 2004.[26] For this purpose, the government should make special efforts at translation of Information, relating to the equal status and Human Rights of all women, into local and indigenous languages and into alternative formats appropriate for persons with disabilities and low literacy levels. These can even be included into the school and college education circular.

Simultaneously, gender-sensitive Human Rights education and training should be given to public officials, inter alia, police, military personnel, corrections officers, health and medical personnel, Judiciary and members of parliament, teachers and people dealing with migration and refugee issues in order to enable them to better exercise their public responsibilities.

[24] A K Gupta, "Women and Societies" (Criterion Publication, New Delhi,1986).
[25] *Supra Note* 10 at 81.
[26] N. V. Ranga Rao, "Human Rights of Human; International Perspective" 8 *SCJ* 13-16 (2007).

Right Holders under the Copyright Societies: A Comparative Analysis

Hemant Khosla[1]
&
Dr. Anurag Singh[2]

Introduction

In India, the copyright regime is governed by the Copyright Act, 1957 and is regulated by the Copyright Rules, 2013. The Ministry of Human Resources and Development on 14 March 2013 notified the Copyright Rules, 2013. Two years ago, in 2019 a draft for amendments was released for public comments. On 30 March 2021, the government of India has notified the Copyright (Amendment) Rules, 2021 vide gazette notification. Prior to this amendment, the Copyright Rules, 2013 was last amended in 2016. The primary objective of the amendment is to ensure accountability and transparency. It deals with the use of electronic and traceable payment methods, distribution of royalties, undistributed royalty, annual transparency report by copyright societies, among other.

Chronicle of Copyright Societies

There was no provision in the Copyright Act (hereinafter referred as "the Act") for the collective administration of copyright-by-copyright societies before 1994[3]. Recognizing the importance of collective management of copyright, the Indian parliament incorporated the provision of copyright societies under chapter VII of the Act by the amendment of 1994[4]. By this amendment performing rights societies were replaced by the copyright societies. The working of performing rights societies was limited to granting of the performance rights whereas copyright societies extends license for all classes of work[5].

A copyright society is a registered collective administration society under Section 33 of the Copyright Act, 1957[6]. Section 33(1) of the Act provides that after the Amendment Act of 1994 the business of issuing or granting license in respect of all the works in which copyright subsists shall be carried out only by a Society registered under the Act[7]. Such a society is formed by

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[1] ***Research Scholar, Department of Law, Meerut College, Meerut.***
[2] ***Associate Professor, Department of Law, Meerut College, Meerut.***
[3] Divya Subramanium, Legislative Comment Protection of Performers' Rights - Evolution and Administration in India, Ent. L.R. 139, 143(2009).
[4] V.K Ahuja, Law Relating to Intellectual Property Rights, (2nd ed.), 2015, p 25.
[5] Ibid, p 143.
[6] According to Section 2(ffd) "copyright society" means a society registered under sub-section (3) of section 33.
[7] The Copyright Act, 1957, Section 33(1) specifies that,"No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or

authors and other owners. The minimum membership required for registration of a society is seven[8]. Ordinarily, only one society is registered to do business in respect of the same class of work[9]. A copyright society can issue or grant licenses in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act. The business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act. This is a kind of compulsory collective licensing for managing of performing rights. The registration granted to a copyright society shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under Section 36[10].

The renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty. Every copyright society already registered before the Copyright (Amendment) Act, 2012 came into existence shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012[11]. The new provision lays emphasis on the use of electronic and traceable payment methods for the collection and distribution of royalties in order to ensure accountability and transparency. The amendments are harmonized with Finance Act, 2017.

Additionally, in the case of undistributed royalty at the end of three financial years in which the collection of the royalty occurred, the royalty is transferred to the welfare fund of the copyright society. These societies are required to take measures to locate authors/owners and publish information with regards to the title of the work, the name of the authors/owners, and other

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granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):
Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:
Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act:
Provided also that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

[8] The Copyright Rules, 2013, Rule 44(1) states Any association of persons, having an independent legal personality, comprising seven or more authors and other owners of rights (hereinafter referred to as "the applicant") formed for the purpose of carrying on the business of issuing or granting licences in respect of a right or set of rights in specific categories of works may file with the Registrar of Copyrights an application in Form VIII for submission to the Central Government for grant of permission to carry on such business and for its registration as a copyright society.

[9] The Copyright Act, 1957, proviso to Section 33(3). Under section 33 (3) of the copyright act, the central government may register an association as is a copyright society, in "the interest and convenience of the public and particular of the group of persons who are most likely to seek licence in respect of relevant rights."

[10] The Copyright Act, 1957, Sec 33(3A).

[11] The Copyright Act, 1957, Sec 36A.

relevant information for identifying the right holder on its website. They are also required to publish their tariff schemes[12].

Up and running of copyright societies

Copyright Societies as the name suggests are created with a view to collectively manage the rights of various copyright holders. These societies license the copyrighted works and collect royalties on behalf of the right owners. Royalty collection is the essential economic right of every copyright owner and it is not physically possible for him to discharge this function by himself. The problem is that there is generally only one such organization for each category of work, giving the society a near monopoly.

Where there is monopoly, there is bound to be abuse and in order to protect the interests of both right holders and users, various steps maybe taken. One such method maybe through the Governmental regulation and supervision. Compliances maybe imposed on these societies threatening them with disbandment if they do not adhere to them. For example, the Indian Copyright Act, 1957 provides that if a copyright society is being managed in a manner detrimental to the interests of the right holders, its license can be cancelled. Secondly, an appellate body can be created to hear appeals against any conduct of the copyright society. This will provide copyright owners with a redressal mechanism in case the societies start charging arbitrary rates.

A copyright owner may authorise a copyright society to be exclusively responsible to administer its rights through the issues of licences and/or the collection of licence fees[13]. Hence copyright societies act as the agent of copyright owners by licensing their works; in return for this, these societies may deduct a percentage of the fees paid by the licensees for meeting their expenses[14].

Postulation of Copyright Societies

Copyright society is a concept which involves collective administration of copyrighted work by a society of authors and other such owners of protected work through government regulation. If a given country is part of international conventions, they can have corresponding agreements with other such societies internationally to license and collect royalties for the use of the owner's work. Therefore, it is in the interest of copyright owners to join such societies for deriving added value to their work.

The notion of collective copyright administration by societies refers to the management and protection of copyright in works by a society of writers and other owners of such works. No author or other copyright owner can keep track of all the ways his work is used by others. When he joins a national copyright society, that society, due to its organizational capabilities and power, is able to keep a closer eye on how that work is used across the country and collect due

[12] Section 33A. Tariff Scheme by copyright societies.— (1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.
[13] The Copyright Act, 1957, Sec 34(3)(iii)
[14] A. Chawala, Copyright and related Rights: National and International Perspective (Delhi: Macmillan India Ltd., 2007), p 164.

fees from individuals who use it. The copyright societies are allowed to have reciprocal arrangements with similar societies in other countries for collecting royalties for the use of Indian works in such countries due to the country's membership in international accords. As a result, it is in the best interests of copyright owners to join a collective administration organization in order to ensure that the copyright in their works is better protected and that they get the most money out of their inventions. Through the collective administrative society, users of various sorts of works may easily get licenses for lawful exploitation of the works in issue.

In India, the registered copyright Societies are: Indian Reprographic Rights Organization (IRRO), Indian Performing Rights Society (IPRS), Indian Singers Rights Association (ISRA) and Recorded Music Performance Limited (RMPL) to negotiates license pertaining to copyright work in a wide variety of users in several media, such as broadcasting, television, internet, hotel, discotheques, restaurants, large scale events and public performances. The revenue received from broadcast and public performances are distributed by the societies to its members annually[15].

Administration and **Functions of Copyright Society**

Power of copyright societies relating to the administration of the rights of owners has been provided under section 34 of the Act. A copyright society may assume an exclusive power to administer any right by granting licenses and collecting fees from the owners and authors, subject to specific restrictions[16]. This provision also gives copyright societies the authority to enter into reciprocal agreements with collecting societies operating overseas[17]. For the purpose of carrying out the administration of copyright, a copyright society is allowed to perform following functions[18]:

- issue license
- collect fees
- distribution of collected fees
- obtain authorization from the author or owner
- enter into agreements with any foreign society
- any other functions as deemed in section 35

According to the Act, copyright societies in India are under the collective management of its members, who are writers and other owners of intellectual property[19]. Copyright societies must get the consent of their members before designing any process for collecting and distributing fees obtained from users[20]. Members of collecting societies are also required to get thorough knowledge about their functions in the management of copyright[21].

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[15] Supra Note 14, pp 172-173.
[16] The Copyright Act, 1957, Section 34(1)(a).
[17] The Copyright Act, 1957, Section 34(2)
[18] The Copyright Act, 1957, Section 34(3)
[19] The Copyright Act, 1957, Section 35
[20] The Copyright Act, 1957, Section 35(1)(a).
[21] The Copyright Act,1957, Section 35(1)(c).

When it comes to royalties, a copyright society is not authorized to discriminate among its members[22]. Apart from the payment of royalties, copyright societies are required to acquire author and other rights owners' consent for the process developed for the collecting and distribution of fees, as well as the use of the money received. The payments that the copyright society will provide to writers and owners will be proportional to the use of their work[23]. The Act also provides that all the members of the society will be having equal status; there can be no discrimination between the members[24].

Functionality of copyright societies in various countries

European Union

"Right holders shall have the right to authorize a CMO of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the territories of their choice, irrespective of the Member State of nationality, residence or establishment of either the CMO or the right holder. Unless the CMO has objectively justified reasons to refuse management, it shall be obliged to manage such rights, categories of rights or types of works and other subject matter, provided that their management falls within its scope of activity.[25]"

"Where a right holder authorizes a CMO to manage his rights, he shall give consent specifically for each right or category of rights or type of works and other subject matter which that rightholder authorizes the CMO to manage. Any such consent shall be evidenced in documentary form.[26]"

France

CMOs in France are predominantly created as not-for-profit organizations. Each organization or society can take up one specific category of rights to govern, and members must include authors, performers, or producers. Setting up a CMO in France does not require any approval from the government, although every collection society is obligated to send a draft of their regulations to the minister of culture. If there are serious concerns about the societies, the minister can refer the same to the high court (*Tribunal de grande*). Some examples of copyright societies are Society of Dramatic Authors and Composers (SACD), Society of Authors, Composers, and Music Publishers (SACEM), International Confederation of Societies of Authors and Composers (CISAC).

UK

The conduct of UK CMOs is governed by the Collective Management of Copyright (EU Directive) Regulations 2016. These Regulations implement a piece of EU legislation (the Collective Rights Management ("CRM") Directive, 2014/26/EU) into UK law. The CRM Directive requires each member state to nominate a National Competent Authority (NCA) which will be responsible for monitoring and enforcing compliance with the Directive's

[22] The Copyright Act,1957, Section 35(1)(b).
[23] The Copyright Act,1957, Section 35(2).
[24] The Copyright Act,1957, Section 35(4).
[25]Article 5, EU Directive 2014/26/EU.
[26]Article 5 (7), EU Directive 2014/26/EU.

provisions. The NCA functions in the UK will be undertaken through a unit in the Intellectual Property Office (IPO). Copyright works can come in a number of different forms, for example books, newspapers, pictures or music. There is usually one CMO per sector which may be able to offer a collective licence. Some of the examples of copyright societies are the Authors' Licensing and Collecting Society (ALCS) works with writers, whilst artists can subscribe to the Design and Artists Copyright Society (DACS) and the Artists' Collecting Society (ACS). Two of the primary societies for musicians are PRS for music and Phonographic Performers' Limited (PPL)[27].

USA

Copyright societies in the United States are dominated by three performance rights organizations (PROs) that act as the primary royalty-collecting bodies. These three bodies are ASCAP, Broadcast Music, Inc. (BMI), and SESAC. ASCAP came up with a royalty mechanism that is actively used by all copyright societies today. This is the system of 'blanket licensing' that gives the licensee the right to play songs belonging to the signatories of ASCAP for an annual fee.

Japan

Unlike most other countries, Japan has a specific statute enacted to regulate copyright collection societies. It is also important to note that in Japan, copyright societies are set up in the form of businesses, and function accordingly. Anyone planning to take up this business had to get prior permission from the commissioner of the Agency for Cultural Affairs. Applicants were obligated to mention the rules they intended to apply while deciding the royalty rates, and subsequently get the commissioner's approval.

Additionally, this statute has introduced a uniform registration process for associations that want to enter the copyright management field. To protect the fair and accountable operation of licensing businesses, it has become a prerequisite for these businesses to create a report, and issue a public notice stating the terms of the management consignment contract and the royalty rules. Some examples of copyright societies are JASRAC (Japanese Society for Rights of Authors, Composers, and Publishers) and MPA (Music Publishers Association of Japan).

Mexico

The Federal Copyright Law, 1996 (FCL), has laid down a very detailed procedure regarding the form and structure of copyright management societies in Mexico, and the rules to be followed for the proper functioning of such societies. *Ley Federal del Derecho de Autor*, also referred to as the Federal Copyright Law, lists the various rights every author (and his/her successor) has over his/her work—copyright, moral rights, performers' rights, the right to receive royalties, and so on. Royalties can be paid either directly to the author, or to the concerned collective management society representing the author.

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[27] Adolf Dietz, Legal Regulation of Collective Management of Copyright (Collecting Societies Law) in Western and Eastern Europe, Journal of the Copyright Society of the U.S.A., 2002, pp. 817-916

To legally operate, every society must be authorized by the NCI. As a result, the currently existing copyright societies are class-specific, with almost no overlap between the societies. SACM, EJECUTANTES (Association of Music Performers), SOMEXFON (Society of Producers of Phonograms, Video grams, and Multimedia), and AMPROFOM (Association of Phonogram Producers), are the key players in protecting the rights of musicians, composers, performers, and producers[28].

Ecuador

"The affiliation of copyright or related rights holders to a CMO shall be voluntary. The representation conferred to CMOs in accordance to this Chapter shall not affect the power of rightholders to directly exercise the rights granted to them under this Title." Article 241, COESCCI

Malaysia

Collective licensing bodies are regulated by the Act and the Copyright (Licensing Body) Regulations 2012. A society or an organization intending to operate as a licensing body for Copyright owners or for a specified class of Copyright owners shall apply to the Controller to be declared as a licensing body. The Section 27A to 27 G of the Copyright Act 1987 deals with the licensing of the society.

China

In December 7th 1992, the Chinese Musicians' Association and the NCAC initiated the establishment of China's first organization for collective administration – the Music Copyright Society of China (MCSC). NCAC also approved the preparation for the establishment of the Literary Works Copyright Society of China in 2000, and the Sound and Video Recording Copyright Society of China in 2001, the latter of which is established on May 28, 2008. Photographic Works Copyright Society and Literary Works Copyright Society of China have been ratified by the NCAC and they are now in the process of registration with the Ministry of Civil Affairs. The collecting society of performers is also in the preparatory process.

The Ministry of Culture, which is not the government branch responsible for copyright, is in the process of setting up a nationwide "unified karaoke music database" which will automatically record the number of orders of karaoke products incorporating musical works. The objective is to enable the calculation of royalties for the copyright holders on the basis of recorded orders. This project is however in conflict with the work of MCSC and the China Audio Visual Products Copyright Society that are in charge of collecting royalties from karaoke clubs for the use of musical and audiovisual works[29].

[28] Martin Kretschmer, The Failure of Property Rules in Collective Administration: Rethinking Copyright Societies as regulatory Instruments, European Intellectual Property Revue (issue 3), 2002, pp 79-94.
[29] Lauri Rechardt, Benoit Misonne (ed.), Collective Management of Authors' Rights and Related Rights in the EU and the PRC: Benefits & Challenges in the Digitial Era, May 2008, pp 7-9.

India

In India, a copyright society is registered under Section 33 (3) of the Copyright Act, 1957. Such a society is by authors and other copyright owners which may include licensing entities. This is by virtue of an assignment from the original author. The business of granting license in respect of literary, musical and artistic works incorporated in cinematograph films. Or sound recordings shall carry out only through a copyright society duly with registration under this Act. Ordinarily, only one society can register to do business in respect of the same class of work.

The Indian Copyright Act under Sec 33(3) states that there shall not ordinarily be more than one copyright society for a same class of work. The bare reading of this provision suggests that there should be a single copyright society for a single class of work. Under this system, only one copyright society is registered to deal with issue of license for each class of work. All the rights in respect of the works under one class are managed by the single society. For instance, if for the class of "sound recording works" a Society is registered, all the rights whether to communicate, to sell or give on commercial rental or to make any other sound recording embodying it will be controlled by the said Society.

Registered Copyright Societies in India

Performing rights societies [i.e., For Literary works associated with Musical Works: The Indian Performing Right Society Limited (IPRS)[30] re-registration application on 08.5.2013 received by the Copyright Office on 13.05.2013, the Certificate of Re-registration was issued on 28.11.2017. IPRS is registered as a copyright society to commence and carry on the Copyright business in "musical work as defined in section 2(p) of the Copyright Act, 1957 and literary work associated with musical work", For Reprographic (photo copying) works: Indian Reprographic Rights Organization (IRRO) to commence and carry on the Copyright business in "reprographic rights" in the field of literary works in India on 19.05.2000.

After the Copyright (Amendment) Act, 2012 as per Section 33 the IRRO applied for the Re-Registration and certificate is issued for the same and For Performers (Singers) Rights: The Indian Singers' Rights Association (ISRA)[31]] are forms of 'copyright societies' for collection, licensing, administration and enforcement of rights and Recorded Music Performance Limited

[30]IPRS is to legitimize use of copyrighted Music by Music users by issuing them Licences and collect Royalties from Music Users, for and on behalf of IPRS members i.e. Authors, Composers and Publishers of Music.

[31]The Copyright Act, 1957 which was amended last year came into effect from 21st June, 2012. The amendments were historic in a way that they amended the provision regarding "Performers" to protect their interests in line with India's international commitments. "Performer's Right" in India is now in harmony with Article 14 of the TRIPS Agreement as also is compatible with Articles 5 to 10 of the WPPT. The Performers are now entitled to receive Royalties in case of making of the performances for commercial use, where the performance is utilized in any form other than for the communication to the public of the performance along with the Film in a cinema hall.Thus, after the Amendments, the Performers got together and as required by the Act, started the process of forming a Copyright Society which could collect and distribute their Royalties to them. M/s. Lata Mangeshkar, Usha Mangeshkar, Suresh Wadkar, Gurdaas Mann, Pankaj Udhas, Alka Yagnik, Kumar Sanu, Abhijeet Bhattacharya, Sonu Nigam & Sanjay Tandon with support from M/s. Asha Bhosle, Shaan, Kunal Ganjawala, Sunidhi Chauhan, Mahalaxmi Iyer and others formed the ISRA (Indian Singers' Rights Association).Available at http://isracopyright.com/certificate_of_registration.php, assessed on October 10, 2021

(RMPL) application dated 26.03.2018 in respect of "Sound Recording". The application got registered on 18 June, 2021. Such copyright societies are required to be registered as such under section 33 in order to legally continue the business of granting licenses and collecting royalties. In the absence of valid registration, Courts have struck down the licenses granted by such societies.

The Indian Singers' Rights Association (ISRA) has been registered with the government of India as a copyright society for singers as a class of performers. The purpose of the copyright society is to administer the rights of the singers who are its members and collect royalty on their behalf for their exclusive rights as per the Copyright Act. The Delhi High Court has passed an injunction order dated 19 December 2014 restraining a club in Delhi from infringing the performers' rights of singers in a lawsuit prevented on behalf of the ISRA [CS(OS) No. 3958 of 2014]. The suit was decreed in favour of the ISRA on 30 September 2016.

Pursuit of Copyright Societies

Section 34 of the copyright act 1957 provides for the administration of the rights of the owner of copyright society. In Entertainment network India Limited vs. Super Cassette industries Ltd.[32], the Supreme Court held that the section 34 provides for administration of rights of owners by copyright society. The proviso appended there to prohibit any discrimination in regard to the terms of license or the distribution of fees collected between rights in Indian and other works.

The concept of copyright society appears to be that the interest of the copyright holder can be protected by the said society while granting license so as to enable all players to have the benefit of the single window: as such society is entitled to: (I) issue license under section 30 in respect of any right under this act; (ii) collect fees in pursuance of such license; (iii) distribute such fees among owners of rights after making deductions for its own expenses; (iv) perform any other functions consistent with the provisions of section 35.

The case of *Bennett Coleman and Company Limited versus phonographic performance Ltd* involved a dispute between a radio channel called Times FM and a copyright society, phonographic performance Ltd.[33] As per the agreement between the parties the radio channel would have to pay Rs.1500 per time slot per hour for broadcasting music to which the copyright society held copyright. Subsequently the radio channel was allotted a complete FM channel throughout the day in 40 cities, for which it wanted to continue the arrangement with the copyright society at the same date that is Rs.160 per needle hour.

However, the copyright society demanded Rs.1500 per needle hour. On a consideration of the balance of convenience, the Calcutta High Court granted an interim injunction to the radio channel for continuing to play music at the rate that was originally fixed. The judge also gave an order for expediting the hearing of the suit. It must be noted that in the United Kingdom, a

[32]2008 (9) SCALE 69.
[33][2004] 2 CHN 595.

report whether monopolies and merger commission has observed that the use of needle time restrictions for radio license is an anti-competitive practice which should be abandoned.

The provisions of Section 52(1) were challenged vide the case *The Chancellor, Masters and Scholars of the University of Oxford and Others v. Rameshwari Photocopy Services and Others*, popularly known as the DU Photocopy Case, by the academic publishers of Oxford University Press, Cambridge University Press and Taylor & Francis against Rameshwari Photocopy Services and the University of Delhi. The case considered the legality in the act of making numerous copies of a course material drawn from different books of the publishers by a photocopying store that was authorized by Delhi University. The case has been a matter of debate in ascertaining the efficacy of the Copyright Act, 1957 in ensuring balance between copyright protection of the publishers and public access to affordable educational study material. The publishers argued that the universities should have approached Indian Reprographic Rights Organization, a registered copyright society, to obtain license for photocopying the material prior to making numerous copies.

Through the years Copyright laws have evolved and post the amendment of the Act in 2012, the IPRS had also lost its registration under Section 33 of Copyright Act (Registration of Copyright Society). The Bombay High Court in the matter of *Leopold Café Stores v. Novex Communications Pvt. Ltd.*[34] held that "*in order to qualify an agent, it is necessary for the agent to disclose that it is acting for and on behalf of the copyright owner in all the relevant documents.*" Further, the licenses can then be issued by IPRS only in the name of the copyright holder, and not in their own name. In such a scenario, IPRS would also be prohibited from initiating any legal proceedings in case of unauthorized use of sound recordings etc. because the agents of copyright holders cannot institute legal suits under section 55 of the Copyright Act.

In *Novex Communications Private Limited v. Lemon Tree Hotels Ltd*.[35] the Delhi High Court held that the section 34 provides for the administration of the rights of the owners of copyright society and it is relevant to note in this regard that in section 34(1)(a) there is an expression "exclusive authorisation" and this expression shows that there need not be exclusive authorisation given by the owner of the copyright to give further licenses to the copyright society. The functioning of copyright societies is controlled by and accountable to the owner of the copyrights. There is also an overall supervision supervisory control by the Central Government.

One of the criticisms levied against the manner in which copyright societies carry out their activities is that the copyright owners ultimately become entitled to a very small proportion of the amount paid by the licensees. However, copyright owners continue to have the right to grant license in their individual capacity, consistent with their obligations as members of a registered copyright society.

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[34]2014(59) PTC505 (Bom).
[35]2019 II AD (Delhi) 644.

Conclusion

In India, the intent of legislation is to register single copyright society in respect of each class of work for the business of issuing or granting license. However, Section 33(3) of The Copyright Act, 1957 proviso states that "Provided that the Central Government shall not ordinarily register more than one Copyright Society to do business in respect of the same class of works" shows that the Central Government has power to register more than one society for each class of work and there are only Four (4) Copyright Societies are registered with the Copyright Office for different class of work.

Juvenile Justice in India: An Analytical Study

***Saurabh Rathore*[1]**

Abstract

A 'Juvenile' or 'Child' means a person under the age of eighteen years. International law defines, a 'Child' as anyone under the age of 18 years. This is a generally accepted definition of a child, derived from the United Nations Convention on the Rights of the Child (UNCRC). Under the Indian law, Section 2(k) of the Juvenile Justice Care and Protection of Children Act, 2000 defines 'juvenile' or 'child' as a person under the age of eighteen years. The future of the country depends on its children. Therefore, it is everyone's duty and responsibility to ensure that children have a safe environment to live in. But gradually juvenile delinquency in developing countries like India is decreasing drastically, like a disease in our society. This study attempts to describe the development of juvenile justice legislation from British India to the present Democratic India with a focus on the guidelines of the Juvenile Justice Act, 1986, 2000, 2014 and 2015. Despite the existence of provisions for the safety of these children, the increasing number of juvenile delinquencies across the country is a vital issue for the country. Whoever the person may be; whatever the situation may be; justice delayed means justice denied. India, a country of immense diversity, faces too many parameters of justice, from the societal level to the judiciary. With the truth of the matter, it finds too many juvenile justice problems in India. But the paper also tries to find out the causes and types of juvenile delinquency in our society. At last, some suggestions for preventive measures against juvenile delinquency are made, citing the history of juvenile justice in India.

Key Words: *Juvenile Justice, Delinquency in India, Legal framework, Claim of Juvenility.*

Introduction

A child is a part of the society in which he takes birth and grows life and dies. While growing up, he is being motivated by seeing the environment and social context around him. A 'Juvenile' or 'Child' means someone who doesn't have eighteen years of age. According to international law, a Child means anyone under the age of 18 years. Today this is a generally accepted definition of a child which derived from the United Nations Convention on the Rights of the Child (UNCRC). In accordance with Indian Law, Section 2(k) of the Juvenile Justice Care and Protection of Children Act, 2000 defines 'juvenile' or 'child' as a person who is not of eighteen years old. The legal framework which defines juvenile justice in the Indian Constitution supports and provides specific approaches towards prevention, deterrence, avoidance and treatment of juvenile delinquency is the juvenile justice.

Roots of Juvenile Delinquency

Juvenile Delinquency is behavioural aspects. Everyone has different behavioural patterns, as in children. The behavioural patterns develop in infancy and early adulthood phase and very difficult to identify any behaviour. But once the child grows up, he comes out into the real world, behavioural patterns change over time and a lot of circumstances or situations of criminal

[1] ***LL.M., Faculty of Law, University of Allahabad, Prayagraj, Uttar Pradesh, India, Email Id- rathoresaurabh67@gmail.com.***

behaviour may occur inside him. However, some of the causes of juvenile delinquency can be discussed as follows:-

Adolescence Instability
The biological, psychological and sociological is one of the most important factors in behaviour pattern of youngester. At this stage, adolescents become more aware of their appearance and fashion, pleasure, food, play, etc. And at this age they also want freedom and they want to be independent, but sometimes they are given opportunities from their parents, teachers and elders to development of anti-social behaviour in them.

Disintegration of Family System
Disintegration of family system and laxity in parental control is also the main cause of increasing rates of juvenile delinquency. In normal cases divorce of parents, lack of parental control, lack of love and affections are the major factors of juvenile delinquency.

Economic condition and Poverty
Poverty and poor economic situation is also seen as an important factor of increasing juvenile delinquency as result of poverty, parents or guardians do not meet the needs of the child and at the same time, children want their wishes to be fulfilled by the parents at any cost and if their wish meet, they start stealing money of household or other parents and it develops habitual tendency to steal which leads to large-scale theft.

Migration
Migration of deserted and destitute juveniles' boys to slums areas brings them in contact with some anti – social elements of society that carries some illegal activities like prostitution, smuggling of drugs or narcotics etc. These sorts of activities attract the juvenile a lot and they may involve themselves in such activities.

Modern Life Style
The rapidly changing society patterns and modern living style, makes it very difficult for children and adolescents to adjust themselves to the new ways of lifestyle. They are confronted with problems of culture conflicts and are unable to differentiate between right and wrong.

From the past to the present: A Theme
The word 'Juvenile' comes from the Latin term 'juvenis', which means something like young. The term 'delinquency' has also derived from the terms do (away from) and liqueur (to leave). The Latin term 'delinquere' means emit in its earliest original version. From the historical background, Pope Clement XI, who first introduced the idea of 'improvement and training of squandering youth' in 1704 in recognized management. As a result, Elizabeth Fry and her acquaintances militarized property to create separate institutions for juvenile offenders. Hence in Britain Reformatory Schools Act and the Industrial Schools Act were incorporated into the Code. It initiated to establish juvenile courts first in 1847 in the United States. However, the first 'juvenile courts' could be established in 1899, in Chicago under the Juveniles Offenders Act. In England the first juvenile court was established in 1905.

The first audition law was passed in 1878 in the state of Massachusetts, US and in England in 1887. The second and sixth Congress of the United Nations for crime prevention and treatment of Offenders in 1960 and 1980 discussed in detail the problem of juvenile delinquency. They decided that there should be the standard Minimum Rules for the Administration of justice for juveniles. Furthermore, it was agreed that special attention should be paid to prevent juvenile delinquency. The same area was discussed at Beijing in 1985 which examined the Standard Minimum Rules for International Administration of juvenile justice. In 1989, the United Nations Convention on the Rights of Child (UNCRC) focuses on four groups of Civil, Political, Social, Economic and Cultural rights of every child. The Convention provides a legal basis for initiating action to ensure the rights of children in society. The term 'Juvenile Justice' was used for the first time by the legislature of the State of Illinois, USA, in 1899 while passing Juvenile Court Act.

Caldwell prefers to leave the term secret and include within it all the actions of children tend to be pooled indiscriminately as wards of the state. 'Juvenile delinquency' when used as a technical term rather than merely as descriptive phrases is solely a product of legislation. But broadly speaking, the term refers to a large variety of disapproved behaviour by children and adolescents which the society disagrees and for every kind of warning, penalty or corrective action is justified in the public interest.

The first legislation on juvenile justice in India came in 1850 with the Apprentice Act which required that children between the ages of 10 and 18 convicted in courts to be provided vocational training as part of their rehabilitation process. This law was transplanted by the Reformatory Schools Act, 1897 and later came the Children Act 1960. The Juvenile Justice Act, 1986 was the main legal framework on juvenile justice in India. The law provided a special approach towards the prevention and treatment of juvenile delinquency and also provided a framework for the protection, care and rehabilitation of children in the purview of the juvenile justice system. The law replaced the Children Act, 1960. In India, which has a long history of juvenile legislation, most of the legal provisions are more or less complied with British models. The English idea to provide separate treatment for juvenile offenders was passed on to India in the last quarter of the nineteenth century.

Kinds of Juvenile Crimes

The three main types of juvenile crimes or delinquencies are:

a) **Violent crime**- It is related to cases of bodily injury such as assault, rape, murder;
b) **Property crime**- These crimes are committed when a juvenile uses force or threat of force to obtain the property of others, and
c) **Drug related crime**- It involves possession or sale of illegal drugs.

These three types of crimes are listed in the documents of the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Juvenile Justice Act, 2015

The most important subjects of the Act are as under: -

Prerogatives of Juvenility:

The first and most controversial point of contention between the legal and socialist fraternity is the 'claim of juvenility'. The claim of juvenility is to be decided by the Juvenile Justice Board. The Board has to decide the application of juvenility before the trial, but the claim of juvenility can be raised before the court at any stage of proceedings also after the problem is solved by the Board. The Board has to consider Rule 12 of Juvenile Justice Rules, 2007 to determine the claim of juvenility.

In the case of *Kulai Ibrahim v. State of Coimbatore*[2], it was determined by the court that the defendant has right to claim the question of juvenility at each stage of the process or even after the disposal of the case under Section 9 of the Juvenile Justice Act, 2015.

In the case of *Deoki Nandan Dayma v. State of Uttar Pradesh*[3], the Court held that entry in the school register mentioning the date of birth of student is acceptable proof in determining the age of juvenile or to show that whether the defendant is a juvenile or a child.

Again in the case of *Satbir Singh and others v. State of Haryana*[4], the Supreme Court again reiterated that for the purpose of determination whether accused is juvenile or not, the date of birth which is recorded in the shall be taken into consideration by the Juvenile Justice Board.

Juvenile Justice Board

There shall be a board for the purpose of investigation and hearing in the matters of juvenile in conflict with law. The Board consists of Principal Magistrate and two social workers among whom one must be a woman. The Act stipulates that under no circumstances the Board can regulate and operate from regular court premises. The decision taken by the Principal Magistrate shall be final. However, the special procedure of the Juvenile Justice Board is:

- The proceedings cannot be initiated on a complaint registered by the police or citizen.
- The hearing must be informal and strictly confidential.
- The offenders should be kept under Observation Home after detention.
- The trial of juvenile in conflict with law shall be done by a Lady Magistrate.

A child in conflict with law may be produced before an individual member of the Board, when he Board is not sitting.

Conclusion

From the above, it can be said that juvenile delinquency is a huge burden on society and considers the current situation, it can be said that the number of crimes being committed by the juveniles is increasing and is to be checked. Crimes are sometimes heinous, such as murder, rape, robbery. Age shouldn't be the only criterion for granting a lenient punishment to the offenders. Laws are being made day by day; After the Delhi gang rape in 2012, amendments are made to the existing laws. The government made several changes and added Section 376A

[2] AIR 2014 SC 2726.
[3] 1996 CriLJ 61.
[4] (2005) 12 SCC 72.

and Section 376E of the Indian Penal Code which provides imposition of death penalty for those who are convicted of rape. In contrast, Juvenile Justice (Care and Protection of Children) Act, 2000 only imposes a maximum sentence of 3 years without reference to the nature committed. It is not justified to let the convicted person to get off with such leniency.

The government needs to take very serious steps to grade the nature of the offense must be redeemed under this law for the community benefits. It seems rather unreasonable to impose the same punishment on juveniles in conflict with the law, regardless of its nature and severity of the crimes committed by them. A petty theft can't be compared with the crime of murdering someone. Heinous crimes of rare nature are a class of their own and shouldn't be considered akin to a petty crime.

Juvenile delinquency can be stopped at an early stage, provided that special care is taken both at home and in school. This is the duty and responsibility of parents at the family level of the society and the role of government at the national level. The more the steps taken, and the more the plans are put in place, the greater the opportunities to educate people from the darker juvenile delinquency to a brighter society. And then after a crime free, corruption free and a healthy society is possible and practicable.

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Clinical Establishment (Registration and Regulation) Act, 2010 A Uniform Legislation for Management of Healthcare Providers

Rananjay Singh[1]

"Health is the greatest gift, contentment the greatest wealth, faithfulness the best relationship."

– Buddha

Introduction

India is a developing country and we are focused and moving on the path to become a develop country. After the independence of India, in every decade, we have achieved a lot of goals towards it. For the basic development of any country there are some considerable points which cannot be overlooked, HEALTH is the one of these topics. After the independence of India, we are not so far for today. But, after consist efforts we have reached at some satisfactory place. If we observe the Indian Budget, in this context, we are now spending more in relation to previous decades, specially after globlization[2]. It has improved our health structure at some extent, but the epidemic like Corona, has also affected our health structure very badly. It also teaches us lots of lessons for tomorrow. Which suggested us to revise and improve our health structure.[3]

The Constitution of India also mandates Health as basic element in contry's framework. Health is a basic structure of every parental inscription of any country.[4] The Preamble[5], Rights guaranteed by the Part III[6], Directive Principles of State Policy under Part IV[7] and in the other segments of the constitutional arena health has been discussed. Right to Health is a fundamental right under Art 21 of Indian Constitution.[8] Article 47 of our Constitution, secures the liability of the state to protect the individual Health.[9] Although Health is the subject matter

1. ***Research Scholar, Faculty of Law, University of Lucknow, Lucknow, Uttar Pradesh.***
2. India Economic Survey 2010-2021.
3. WHO Manifesto for a Halthy Recovery from COVID-19, available at: *https://www.who.int/news-room/feature-stories/detail/who-manifesto-for-a-healthy-recovery-from-covid-19* (Accessed on 30/10/2020).
4. Right to Health, WHO and Human Rights, available at: *https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf* (Accessed on 30/10/2020).
5. Preamble of Constitution of Idia, 1950.
6. Article 12-35; Constitution of Idia, 1950.
7. Article 36-51; Constitution of Idia, 1950.
8. In the case of *Consumer Education and Research Centre V. Union of India (AIR 1995 SC 922)*, it was held by our apex court that right to health and medical aid to protect the health is a fundamental right under Article 21.
9. Article 47- Duty of the State to raise the level of nutrition and the standard of living and to improve public health "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring

of State List and State Legislature is empowered to make laws in this regard.[10] But due to drastic change in scientific and medical techonologies, the States are less compactable to adopt it in comparison to Centre. Under the constitution of India, to tackle with these problems, there are some modalities evolved by our constituent assembly. Article 252[11] is one of these, which empowers the Union to make laws for the state list with the consent of some states and such laws can be adopted by the states. While exercising the power under the constitution, some states have enacted health care laws in due course, but these laws was not adequate and uniform. For removing these problems, An Act was enacted by the Parliament exercising the powers under Art 252, on the request and consent of some of the states. This was futher adopted by the other states, which was named as, "The Clinical Establishments (Registration and Regulation) Act, 2010[12]."

Act in Nutshell

The Act No. 23 of 2010 is a central act passed by the Parliament of India in form of *The Clinical Establishments (Registration and Regulation) Act, 2010*. This Act was introduced on April 15, 2010, by Shri Ghulam Nabi Azad, contemporary Minister of Health and Family Welfare, in the Lok Sabha as *Clinical Establishments (Registration and Regulation) Bill[13], 2010*. This bill was introduced with the prior assent of the President under Article 117(3)[14] on the floor of Parliament for further discussions. This bill was approved by the Lok Sabha on May 3, 2010 and by the Rajya Sabha on Aug 03, 2010. Four states and all union territories must abide by the Act. By passing a resolution in the state legislatures, additional states may enact the law.[15]

This act consists seven Chapters and 56 sections which are dedicated to establish minimum standard and registration of clinical establishments. This act was passed to achieve the mandate of Article 47[16] of the constitution.

As per preamble[17] of this Act; the purpose of this Act to provide the unoform process of registration and for the regulation of the clinical establishments in this country, which are

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about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

10. Schedule VII, State List, Entry No. 6. '*Public health and sanitation; hospitals and dispensaries'*.

11. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

12. Act No. 23 of 2010.

13. Bill No 43 of 2010.

14. The Constitution of India, 1950.

15. The Clinical Establishments (Registration and Regulation) Bill, 2010; available at: *https://prsindia.org/billtrack/the-clinical-establishments-registration-and-regulation-bill-2010* (Accessed on 30/10/2020).

16. Art 47. *Duty of the State to raise the level of nutrition and the standard of living and to improve public health*
The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

either be in existance or establish after the commencement of this Act. This Act also provides the matters which are connected with and incidental to it. This Act also provide minimum standards of services and facilities, which have to provide by such clinical establishments. This Act has been codified to achieve the mandate of article 47 of the Indian Constitution, which secures the improvement of general public health. In pursuance of Article 252(1) of the Constitution, all the Houses of the Legislatures of the States of Arunachal Pradesh, Himachal Pradesh, Mizoram and Sikkim passed the resolutions to concretised the matters aforesaid, by empowering the Parliament to make this law.[18]

Clinical establishments are to be registered and regulated under this Act. Hospitals, clinics, and other similar establishments that provide medical care in accordance with any accepted system of medicines in form of allopathy, yoga, naturopathy, ayurveda, homoeopathy, siddha and unani, are referred to as *'Clinical Establishments'*. Any laboratory that provides pathological, chemical, or other diagnostic services is also included. The government, a trust, or a single doctor's practise can all own an establishment. Any therapeutic facility owned or operated by the military is exempt from the Act.[19]

This Act provides the three-tire council for the purposes of this Act, i.e. National Council of Clinical Establishments[20]; State Council of Clinical Establishments in every State[21], District Registering Authority[22] at each District level.

A National Council of Clinical Establishments will be created by the national government with to fulfill the responsibilities of establishing the minimum requirements for healthcare provided by a clinical establishment; categorising them; and maintaining a national registry of clinical establishments. The Director General of Health Services (DGHS) and 22 additional members will preside over the Council (includes consumer groups and Associations of Indian Systems of Medicine and others). Some of them will be elected and some of them to be nominated and the Chairperson will be ex-officio member. Every clinical facility must be registered in order to admit patients for treatment.

Prior to registration, certain standards must be met, including minimum requirements for facilities and minimal requirements for staff members.[23] For each type of clinical establishment, it might impose a different set of minimum requirements. Within two years of the implementation of this statute, the National Register shall be created, and within two years of the Council's establishment, the first set of clinical establishment standards shall be made and ensured to be followed further. And it is mandatory for every Clinical Establishment to be

17. An Act to provide for the registration and regulation of clinical establishments in the country and for matters connected therewith or incidental thereto.
18. Objective of the Act No. 23 of 2010.
19. Clinical Establishment is defined under Section 2(c) of this Act.
20. Section 3.
21. Section 8.
22. Section 10.
23. Chapter II, Sec 3-7, National Council for Clinical Establishment.

registered under this act for proper functioning and continuing the healthcare services by them.

A State/Union Territory Council must be established by each state government for clinical establishments. Members must be elected representatives from the state's medical, nursing, and pharmacy councils as well as consumer groups at the state level or reputable NGOs, among others.[24]

A district registering authority will be established by the state government to register clinical establishments at the district level. The District Collector, the District Health Officer, and three other members who meet the standards outlined by the federal government will make up the membership. However, for temporary registration, the District Health Officer and Chief Medical Officer will serve as the registering authorities.[25]

The Council's duties include assembling state registers and considering appeals against registration authority orders. The central government must announce the standards for each category of therapeutic facility. The Act establishes a system of temporary and ongoing registration. A year of provisional registration is possible. Provisional registration will only be given for the allotted amount of time for clinical establishments whose minimum standards have been informed. A permanent registration is good for five years, and a renewal application must be submitted six months before the registration expires.

A clinical establishment must provide proof that it has complied with the required minimum standard when applying for permanent registration. Any clinical facility may be the subject of an examination or investigation by the registering authority through a prescribed multi-member inspection team. If the authority believes that a clinical establishment is not abiding by the terms of its registration, a show cause notice may be issued. It could also revoke registration. If the authority suspects a facility is functioning illegally, it may enter and search in the designated manner after notifying the healthcare facility of its intentions.[26]

There Shall be a Register of clinical establishments, which shall be maintained by each state in accordance with the registration made by the District Authority in the supervison of National Council.[27]

The Act outlines financial penalties for anyone operating illegally or purposefully providing services to a clinical establishment that is not registered. The process for inquiries and appeals is also described, and it is stated that when determining the penalty, the category, size, and type of the establishment should be taken into account.[28] There are some miscellaneous

24. Chapter III, Sec 8-13, Registration and Standards for Clinical Establishment and State Council for Clinical Establishment.
25. Section 10, Authority of Registration.
26. Chapter IV, Sec 14-36, Procedure for Registration.
27. Chapter V, Sec 37-39, Register for Clinical Establishment.
28. Chapter VI, Sec 40-46, Penalties.

provisions, such as rule making power, furnishing of returns, Power to remove difficulties, etc. Which are made for the proper functioning of this Act.[29]

Nine states with laws governing clinical establishments are exempt from the provisions of this Act. All provisions of the 2010 Act shall apply to these states if they do so.

The Central Government has passed The Clinical Establishments (Registration and Regulation) Rules, 2012[30] for the effective implementation of this Act. Although Public health and sanitation; hospitals and dispensaries are the subject matters of the state lists and states are empowered to make laws, but most of the states has adopted this uniform code and rest of the states has enacted their own laws and few of the states are in process to adopt/enact the laws in this regard.

The State of Uttar Predesh has adopted this central legislation and framed a local rule for the state i.e. The Uttar Predesh Clinical Establishments (Registration and Regulation) Rules, 2016[31], to achieve the goles of the legislation. Other State Governments[32] has also been incorporated this uniform legislation and for the concerned rules for the effective implementation of this act. Some states has also enacted their own enactment for their concderned states. But, few of the states has not made any legislation in this regard. Many states have repealed their old legislation and replaced them by adoptation of this uniform legislation. The Contemporary position in various states and Union Territories can be understand with the following demography;

Clinical Establishment Act and Indian States and UTs: An Overview

States	Act	Rules
Andhra Pradesh	The Andhra Pradesh Allopathic Private Medical Care Establishments (Registration and Regulation) Act[33], 2002	The Andhra Pradesh Allopathic Private e Medical Care Establishments (Registration and Regulation) Rules, 2007.
Assam	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Assam after repealing the Assam Health Establishment Act.	The Assam Clinical Establishments (Registration & Regulation) Rules, 2016.

29. Chapter VII, Sec 47-56, Miscellaneous.
30. Central Government Notification G.S.R.387(E), Dated 23 May 2012, New Delhi, Ministry of Health and Family Walfare.
31. Uttar Pradesh Government Notification No. 191/2016/1625/5-6-2016-W-5/2002, Miscellaneous, Dated 11 July 2016, Lucknow.
32. Various State Governments Clinical Establishment Rules; available at: *http://www.clinicalestablishments.gov.in/En/1077-state-and-uts-rules-and-notification.aspx* (Accessed on 30/10/2020).
33. Andhra Pradesh Act No. 13 0f 2002.

Bihar	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Bihar.	The Bihar Clinical Establishments (Registration & Regulation) Rules, 2013.
Chhattisgarh	The Chhattisgarh Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Adhiniyam[34], 2010	The Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Niyam, 2013.
Goa	The Goa Clinical Establishment (Registration and Regulation) Act[35], 2019	The Goa Clinical Establishments (Registration and Regulation) Rules, 2021.
Gujarat	The Gujarat Clinical Establishments (Registration and Regulation) Act[36], 2021	Under Consideration.
Haryana	The Clinical Establishments (Registration and Regulation) Act, 2010 has been adopted by The Haryana Clinical Establishment (Registration and Regulation) Adoption Act[37], 2018	The Haryana Clinical Establishment (Registration and Regulation) Rules, 2018.
Himachal Pradesh	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Himanchal Pradesh.	The Himachal Pradesh Clinical Establishments (Registration and Regulation) Rules, 2012.
Jharkhand	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Jharkhand.	The Jharkhand Clinical Establishments (Registration & Regulation) Rules, 2013.
Kerala	The Kerala Clinical Establishments (Registration and Regulation) Act[38], 2018	The Kerala Clinical Establishments (Registration and Regulation) Rules, 2018.
Karnataka	The Karnataka Private Clinical Establishment Act[39], 2007	The Karnataka Private Clinical Establishment Rules, 2009.
Madhya Pradesh	The Madhya Pradesh Clinical Establishments (Registration and Regulation) Bill, 2019 is pending on the floor of the legislate.	Not made Yet.

34. Chhattisgarh Act No. 23 0f 2010.
35. Goa Act No. 19 of 2019.
36. Gujarat Act 18 of 2021.
37. Haryana Act No. 11 of 2018.
38. Kerela Act No. 2 of 2018.
39. Karnataka Act No. 21 0f 2007.

Maharashtra	The Maharashtra Clinical Establishments (Registration and Regulation) Bill, 2014 is pending on the floor of the legislate.	Not made Yet.
Manipur	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Manipur.	Under Consideration.
Meghalaya	The Meghalaya Nursing Homes (Licensing and Registration) Act[40], 1993	The Meghalaya Nursing Home (Licensing and Registration) Rules, 2010.
Mizoram	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Mizoram.	The Mizoram Clinical Establishments (Registration & Regulation) Rules, 2014.
Nagaland	The Nagaland Health Care Establishments Act[41], 1997	The Nagaland Health Care Establishments Rules, 2002
Odisha	The Odisha Clinical Establishments (Control and Regulation) Act[42], 1991	The Odisha Clinical Establishments (Control and Regulation) Rules, 2018.
Punjab	The Punjab Clinical Establishments (Registration and Regulation) Act[43], 2020	Not Made Yet
Rajasthan	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Rajasthan.	The Rajasthan Clinical Establishments (Registration & Regulation) Rules, 2013.
Sikkim	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Sikkim.	The Sikkim Clinical Establishments (Registration & Regulation) Rules, 2012.
Tamil Nadu	The Tamil Nadu Clinical Establishments (Regulation) Act[44], 1997	The Tamil Nadu Clinical Establishments (Regulation) Rules, 2018.
Telangana	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Telangana after repealing the Telangana Allopathic Private Medical	The Telangana State Clinical Establishments (Registration and Regulation) Rules, 2011

40. Meghalaya Act No. 1 of 1994.
41. Nagaland Act No. 3 of 1997.
42. Odisha Act No. 8 of 1992.
43. Punjab Act No. 17 of 2020.
44. Tamil Nadu Act No. 4 of 1997.

	Care Establishment Act.	
Tripura	The Tripura Clinical Establishment (Registration and Regulation) Act[45], 2018.	Under Consideration.
Uttar Pradesh	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Uttar Pradesh.	The Uttar Predesh Clinical Establishments (Registration and Regulation) Rules, 2016.
Uttarakhand	The Clinical Establishments (Registration & Regulation) Act, 2010 has been adopted by the State of Uttarakhand.	The Uttarakhand Clinical Establishments (Registration and Regulation) Rules, 2013.
West Bengal	West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act[46], 2017	the West Bengal Clinical Establishment (Registration, Regulation and Transparency), Rules, 2017.
Andaman and Nicobar Islands	The Clinical Establishments (Registration and Regulation) Act, 2010 is applicable in all Union Territories except the NCT of Delhi since 1st March, 2012 vide Gazette notification[47] dated 28th February, 2012.	Under Consideration.
Chandigarh	The Clinical Establishments (Registration and Regulation) Act, 2010 is applicable in all Union Territories except the NCT of Delhi since 1st March, 2012 vide Gazette notification[48] dated 28th February, 2012.	The Union Territory Chandigarh Clinical Establishments (Registration and Regulation) Rules, 2013.
Daman & Diu	The Clinical Establishments (Registration and Regulation) Act, 2010 is applicable in all Union Territories except the NCT of Delhi since 1st March, 2012 vide Gazette notification[49] dated 28th February, 2012.	The Daman & Diu Clinical Establishments (Registration and Regulation) Rules, 2014.
Delhi	The Delhi Health Bill, 2019 (A Revised Bill under Consideration)	Not Made Yet.

45. Tripura Act No. 16 of 2018.
46. West Bengal Act No. IV of 2017.
47. Notification No. S.O. 342(E) [F.No.Z.28015/92/2011-H], Ministry of Health and Family Welfare, New Delhi, 28th feb 2012.
48. Notification No. S.O. 342(E) [F.No.Z.28015/92/2011-H], Ministry of Health and Family Welfare, New Delhi, 28th feb 2012.
49. ibid.

Jammu and Kashmir	The Clinical Establishments (Registration and Regulation) Act, 2010 is applicable in all Union Territories except the NCT of Delhi since 1st March, 2012 vide Gazette notification[50] dated 28th February, 2012.	The Jammu and Kashmir Clinical Establishments (Registration and Regulation) Rules, 2020.
Lakshadweep	The Clinical Establishments (Registration and Regulation) Act, 2010 is applicable in all Union Territories except the NCT of Delhi since 1st March, 2012 vide Gazette notification[51] dated 28th February, 2012.	The Union Territory of Lakshadweep (Registration and Regulation) Rules, 2016.
Puducherry	The Clinical Establishments (Registration and Regulation) Act, 2010 is applicable in all Union Territories except the NCT of Delhi since 1st March, 2012 vide Gazette notification[52] dated 28th February, 2012.	The Puducherry Clinical Establishments (Registration and Regulation) Rules, 2014.
Ladakh	The Clinical Establishments (Registration and Regulation) Act, 2010 is applicable in all Union Territories except the NCT of Delhi since 1st March, 2012 vide Gazette notification[53] dated 28th February, 2012.	Under Consideration.
Dadra & Nagar Haveli	The Clinical Establishments (Registration and Regulation) Act, 2010 is applicable in all Union Territories except the NCT of Delhi since 1st March, 2012 vide Gazette notification[54] dated 28th February, 2012.	The Union Territory of Clinical Establishments (Registration and Regulation) Rules, 2014.

Conclusion

From the above discussion, it is very clear that The Clinical Establishments (Registration and Regulation) Act, 2010 is the uniform code which is enacted for the management and regulation of the healthcare providers in our country. As we know that, with the need of society, the laws are bound to be changed. In the recent days, as we have witnessed the epidemic like Covid-19, which has shaken our healthcare machinery. It also manifests to strengthen our healthcare delivery system and its mechanism.

50. ibid.
51. ibid.
52. Notification No. S.O. 342(E) [F.No.Z.28015/92/2011-H], Ministry of Health and Family Welfare, New Delhi, 28th Feb 2012.
53. *ibid.*
54. *ibid.*

This act provides the registration, regulation and other incidental provisions in this regard and making a uniform provision all over country. No establishments shall be allowed to run without making registration under this act or without maintaining the minimum norms provided by it. With the fulfilment of the provisions of this act, India will be on path of a developing country and it will boost of medical tourism also. Apart from it, India will be succeeded to achieve the goals of our makers of the constitution, in form of securing a better healthcare to all of its citizens.

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An Analysis of the Theory of Basic Structure and the Spirit of the Indian Constitution

Jasdeep Singh[1]
&
Deepanshu Kaushik[2]

Abstract

With the use of instances, the research paper will be able to provide a thorough and useful understanding of this judge-made theory. [2]Even the legislature's ability to modify the Constitution cannot change its fundamental design. Our Constitution protects the right to file the petition in the Supreme Court because the rights provided in Part III of the Constitution have been violated, as stated in clause (1) of Article 32. The Constitution's core framework includes this clause. The Court may issue "directions or orders or writs, including writs in the form of Habeas corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, as may be appropriate for the execution of any of the rights given by Section," according to Clause (2) of Article 32.

This is also a component of the Constitution's framework. All Basic Rights were declared non-amendable in the Golak Nath case. This formulation was far too strict. In this regard, the Keshavananda case introduces some flexibility. Just those Fundamental Rights that may be described as forming the "basic" aspects of the Constitution are henceforth to be seen as non-amendable, not all Fundamental Rights collectively. Modifying the sacred document that the founding fathers entrusted to care, since we know your generation's needs best. But, because the Constitution is a valuable treasure, its uniqueness cannot be destroyed.

Keywords: Basic Doctrine, Judge-made doctrine, Constitution, Habeas corpus, Mandamus, Prohibition, Quo Warranto and Certiorari.

Introduction

The Indian Constitution is a living document that may be modified to meet the demands of society as they arise. The Parliament has the authority to change the Constitution whenever necessary under Article 368. The article also specifies in detail the procedure for amendment.
The basic structure concept is only a legal invention designed to prevent Parliament from abusing its amendment authority. The concept is that the fundamental elements of the Indian Constitution should never be changed to the point where its distinctiveness is compromised. The idea of basic structure asserts that certain principles set forth in the Indian Constitution, which are the guiding principles for the Parliament, cannot be changed by any amendment.

The Indian Supreme Court's development of the basic structure doctrine through several significant rulings over the years adds that element of constitutionalism that is necessary to preserve, protect, and uphold the concept of the rule of law, without which the constitution is nothing more than a dead letter law. Because this doctrine alone gives the judiciary the power

[1] ***Sr. Assistant Professor, IIMT, GGSIPU, New Delhi***
[2] ***2nd Year, BALLB, IIMT, GGSIPU, New Delhi***

to keep the legislature in check and prevent it from abusing Article 368 to enter the perilous realm of arbitrariness, the evolution of this doctrine from the theory of implied limitations to its current form today has been nothing short of turbulent, with attempts to save it and even greater attempts to obliterate it.

Evolution of Basic Structure Doctrine in India

In 1951, the Indian Constitution underwent an amendment that added the contentious Articles 31A and 31B. A petition was filed to the Supreme Court of India opposing the same on the grounds that they violate the spirit of Article 13(2) and should thus be declared unconstitutional since they limit the rights protected by Part III of the Constitution. The Hon'ble Supreme Court of India ruled in *Shankari Prasad Singh Deo v. Union of India*[3] that the power to amend the Constitution, including the Fundamental Rights, is granted under Article 368 and that the term "Law" as used in Article 13(2) does not include an amendment to the Constitution. There is a difference between the legislative power of Parliament and the amendment power of Parliament. After this, the scope of the amendment was questioned again in *Sajjan Singh v. State of Rajasthan*,[4] when for the first time, doubts were raised about Parliament's unrestrained capacity to modify the Constitution and limit citizens' basic rights.

In the case, *Golak Nath v. the State of Punjab*,[5] the 11-judge bench decision, wherein the Hon'ble Supreme Court by a majority of 6:5 held that the fundamental rights were outside the purview of the amendment of the Constitution and the court also clarified that the word 'law' under Article 13(2) includes within its meaning an amendment to the Constitution. Therefore, any amendment against the Fundamental Rights was void. The contention that the power to amend the Constitution is a sovereign power which is above the legislative power and hence it is outside the scope of judicial review was rejected.

The Golak Nath case stripped the Parliament of its authority to modify the Constitution freely, therefore the 24th Constitutional Amendment[6] was proposed to restore the earlier position. The Amendment Act increased Parliament's authority while also restoring the previous situation. Article 13 (4) stated that nothing in Article 13 shall apply to any amendment of this Constitution made according to Article 368. Article 368 (1) stated that Parliament may alter any provision of this Constitution by way of addition, modification, or repeal while exercising its constitutive power.

After that, the 24th Amendment's constitutionality was challenged in the *Keshavananda Bharati case*[7]. The 24th Amendment was upheld by a constitutional bench comprising of 13 judges,[8]

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[3] *Shankari Prasad Singh v. Union of India*, AIR 1951SC 458.
[4] *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.
[5] *Golak Nath v. State of Punjab*, (1967) 2 SCR 762; AIR 1967 SC.
[6] Article 13(4) and Article 368(3) were inserted by the 24th Amendment.
[7] *Kesavananda Bharati Sripadgalvaru and Ors. Vs. State of Kerala*, AIR 1973 SC 1461
[8] The majority comprising of Chief Justice Sikri, J. Shelat, J. Hegde, J. Grover, J. Mukherjee, J. Reddy and J. Khanna. The minority consisting of J. Ray, J. Mathew, J. Beg, J. Dwivedi, J. Palekar and J. Chandrachud held that Parliament had unlimited power of constitutional amendment. See S.P.Sathe, "Judicial Review in India: Limits and Policy".

who voted 6:1:6 in favour of the amendment. It was decided that while Parliament has wide authority to change the Constitution and can do so at any time, it is not unlimited enough to change the Constitution's fundamental structure or elements. This is how the Supreme Court created the fundamental structure concept to restrain the Parliament's unchecked authority.

What makes up a Basic Structure

It is hard to list all the components that would make up the Constitution's fundamental framework. That will need to be explained in each situation individually. The Supreme Court has only interfered in five instances in the past few years with constitutional modifications based on the basic structure.

The majority of judges in the Keshavananda Bharati case who acknowledged the existence of the "basic structure of the Constitution" did not concur with the principles incorporated in this idea. A unique list was drawn for each judge. The basic structural notion might be defined by each judge to his or her own subjective comfort. This leads to the conclusion that each judge's personal choice determines whether the Constitution Amendment is legitimate or invalid. In this situation, judges will be granted the authority to change the Constitution, which is not directly granted to judges by the Constitution but is granted to the Parliament under Article 368 of the Constitution. Because of this, the fundamental structure doctrine may be demonstrated as a "vulgar exhibition of invasion of constitutional power by the Supreme Court of India," according to Anuranjan Sethi.[9] A democratic system in which the amending authority belongs to the people or its representatives not to judges would be problematic if a constitutional court attempted to assess the substance of the constitutional changes. This is demonstrated in the case law of the Indian Supreme Court.

The subject matter of Basic Structure Theory

Supreme Court in a number of cases held the following as the subject matters of basic structure which cannot be altered by the Parliament under Article 368 of the Indian Constitution.

- The Constitution's supremacy - a republican and democratic system of government, secular nature of the constitution, division of powers between the legislative, executive, and judicial branches, and federal nature of the constitution.[10]

H.M. Seervai, in his analysis of the case in his magnum opus, “Constitution of India” states that six out of the seven majority judges held that there were implied and inherent limitations on the amending power of the Parliament, which precluded Parliament from amending the Basic Structure of the Constitution. However, Khanna J. rejected this theory of implied limitations but held that the Basic Structure could not be amended away. All Seven judges gave illustrations of what they considered Basic Structure comprised of.

[9] Anuranjan Sethi, *Basic Structure Doctrine: Some Reflections*, http://ssrn.com/abstract=835165, p. 6-8, 26-27. Similarly, S. P. Sathe concluded that “the Court has clearly transcended the limits of the judicial function and has undertaken functions which really belong to… the legislature” (S. P. Sathe, J*udicial Activism: The Indian Experience*,6WASH. U. J. L. AND POL’Y 29-108, at 88 (2001) Available at http://law.wustl.edu/journal/6/p_29_Sathe.pdf. Likewise, T. R. Andhyarujina said that the “exercise of such power by the judiciary is not only anti-majoritarian but inconsistent with constitutional democracy” (T. R. Andhyarujina, ‘*Judicial Activism and Constitutional Democracy in India’*10 (1992), quoted in Sathe, at 70.

[10] Keshavananda Bharati Case Sikri, C.J. explained the concept of basic structure.

- The Directive Principles of State Policy—Unity and Integrity of the Nation—Sovereignty of the Country—contain the directive to establish a welfare state.[11]
- The nation's unity, its democratic nature, the fundamental guarantees of the people's personal liberties, and the mandate to create a welfare state.
- Justice is the freedom of opinion, speech, belief, faith, and worship on a social, economic, and political level. Democratic polity, national unity, fundamental protections for people's rights to personal liberties, and a mandate to create a welfare state.[12]
- Equal opportunity and status are guaranteed by democracy, and the Preamble of the Indian Constitution states that the Rule of Law forms the cornerstone of the Constitution.[13]
- The basic element of the Constitution is the equality theory that is entrenched in Article 14 and serves as the bedrock of the Rule of Law.[14]
- As it is essential to democracy, judicial independence is one of the Constitution's fundamental principles.[15]
- The fundamental elements of our Constitution's design are secularism, democracy, and federalism.[16]
- One of the fundamental elements of the fundamental Indian Constitutional Policy is judicial review, which is a component of the fundamental constitutional framework. A number of Constitutional Articles, including Articles 32, 136, 226 and 228, provide for judicial review of legislation and administrative decisions.[17]
- The unity and integrity of the nation and the parliamentary system.[18]

By adding several topics to the Basic structure box, the judiciary fully restricted the power of the legislature. The judiciary has added several elements to the fundamental framework and instructed legislators to keep the previously specified topics untouched.

Basic Structure Theory's Impact on Amendment Parliamentary Authority

According to the "Basic Structure" theory, which was established by judges, several aspects of the Indian Constitution are outside the scope of the Parliament's ability to modify it. The Court did not explicitly define or explain what the fundamental structure is, even though it concluded

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[11] Shelat, J. and Grover, J. added three more basic features to the list.
[12] Hegde, J. and Mukherjea, J. identified a separate and short list of basic structure.
[13] 19 Indira Gandhi v. Rajnarain AIR 1975 SC, 2299 (1975) 3 SCC 34; Kihoto Hollohon AIR, 1993, SC 412
[14] Nachane, Ashwini Shivram v. State of Maharashtra, AIR 1998 Bom 1; Raghunath Rao v. Union of India, AIR 1993 SC 1267.
[15] Bhagwati, J.-Union of India v. Sankal Chand, Himmatlal Sheth, AIR 1977 SC 2328 : (1977) 4 SCC 193. and The Gupta Case, AIR 1982 SC 149 at 197, 198, Kumar Padma Prasad v. Union of India, AIR 1992 SC 1213 : (2000) 4 SC 640, State of Bihar v. Bal Mukund Shah, AIR 2000 SC 1296, Supreme Court Advocates-recordsAssociation v. Union of India, (1993) 4 SCC 441; AIR 1994 SC 268.
[16] S.R. Bommai v. Union of India, AIR 1994 SC 1918, at 1976; Poudyal v. Union of India, (1994) Supp.1 SCC 324.
[17] L.Chandrakumar v. Union of India, AIR 1997 SC 1125; Waman Rao v. Union of India, AIR 1981 SC 271.
[18] Raghunath Rao v. Union of India, AIR 1993 SC 1267.

that the doctrine of basic structure impliedly limited Parliament's ability to change the Constitution.[19]

The effect of the *Keshavananda Bharati* decision on the amendment power of the Parliament as it has been rendered thus far shows the following limitations:

- Totally repealing of the Constitution would be violative of the basic structure,
- Any expansion of Art.368 to achieve the consequence of total repeal would be violative of the basic structure,
- Any attempt to deprive the Court of its power of judicial review of the Constitutional amendment would also be transgressive of basic structure,
- Freedoms guaranteed by Arts.14, 19 and 21 constitutes to limit the power of amendment,
- Any attempt to abrogate Part IV of the Constitution may violate basic structure, and
- The democratic nature of the Constitution may not be validly transformed using Art.368.

The 42nd Amendment Act

The Constitution (42nd Amendment) Act of 1976 was passed in response to the Supreme Court's rulings in the *Keshavananda Bharati*[20] and Indira Gandhi[21] cases, and it added two additional clauses 4 and 5 to Article 368[22] of the Constitution that specifically forbid the review of constitutional changes. The 42nd Amendment attempted to go beyond *Keshavananda Bharathi's case*.

The Supreme Court examined the 42nd Amendment-added provisions (4) and (5) of Article 368 in Minerva Mills Ltd. v. Union of India[23] and determined that both were invalid. It was a comprehensive judgement that clarified the basic structural theory.

Suggestions

It may be claimed that the final word on the question of the basic structure of the Constitution has not been declared by the Supreme Court- a circumstance that is unlikely to alter soon. Although the notion that the Constitution has a fundamental structure is well-established, its

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[19] Article on "Basic Structure Doctrine and its Widening Horizons" by V.R. Jayadevan, published in CULR, Vol. 27, March 2003 p.333.

[20] AIR 1973 SC 1461.

[21] AIR 1975 SC 2299.

[22] Clause (4) Artice 368 stipulated that no constitutional amendment (including the provision of Part III) or purporting to have been made under Art.368 whether before or after the commencement of the Constitution (42nd Amendment) Act, 1976 shall be called in any court on any ground. Therefore, in India, as of 1976, the Supreme Court was precluded from reviewing the constitutionality of Constitutional amendments. There is no doubt on this issue because clause (4) of Art.368 explicitly prohibits the judicial review of constitutional amendments. Moreover, clause 5 of the same Article states that "there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal of the provisions of the Constitution under this Article." This clause also provides that constitutional amendments cannot be judicially reviewed because Indian Constitution does not impose any limitations on the power of Indian Parliament to amend the Constitution.

[23] AIR 1980 SC 1789.

contents cannot be decided entirely and with any degree of certainty until a ruling by the Supreme Court explicitly states it. However, the apex court has repeatedly cited the rule of law, the independence of the judiciary, the fundamental rights of citizens, the sovereign, democratic, and secular nature of the polity, among other essential features of the Constitution.

To maintain constitutional supremacy, the author advises that the three branches of government cooperate within the boundaries of the Constitution. By changing Article 368 of the Constitution, it is necessary to specifically include a few key elements. In extraordinary circumstances, the recognition of subjects as a fundamental structure shall be considered by a constitutional bench made up of more than ten judges.

Conclusion

There would not have been a need to introduce this basic structure doctrine if the framers of the Constitution of India had included an express clause regarding the limitation of the Parliament's amending power under Art. 368 itself and provisions for agrarian reforms. In addition, there would not have been an attempt to introduce this basic structure doctrine if the Parliament had exercised its amending power without disturbing the supremacy of the Constitution.

All legislation and constitutional amendments are now subject to judicial examination, and measures that violate the foundation are likely to be overturned by the Supreme Court. This certainty evolved from the conflict between Parliament and the court. In essence, Parliament's ability to alter the Constitution is limited, and all constitutional modifications are ultimately decided upon and interpreted by the Supreme Court.

Constitution and Gender Justice with Special Reference to Labour Law

Dr. Vijay Kumar Saroj
&[1]
Mr. Vivek Kumar[2]

Abstract

The Preamble announces the rights and opportunities which the individuals of India planned to make sure about to all residents[3]. The Preamble starts with the words "We, the People of India[4]" which incorporates people all things considered, religions, and so on. It wishes to render "equality of status and of opportunity" to each woman and man. The Preamble again guarantees "dignity of one" which incorporates the dignity of women. Based on the Preamble, a few significant enactments have been brought into activity, relating to varying social statuses family, progression, guardianship and work which target giving and ensuring the status, rights and dignity of women.

Key Words: *Constitution, Labour, Gender Justice, ILO*

Introduction

Under the Industrial laws the women have been presented the exceptional situation in the perspective on their one-of-a-kind characteristics, physically, mentally and biologically. British era and post-independence Acts restricted the long periods of work as well as contained provisions of wellbeing, security and welfare of women laborers and ensures equality before law and equivalent treatment to women laborers. A large portion of these laws have been propelled by the Conventions and proposals received by the ILO. The primary destinations for passing these laws are to empower the women to expand their productivity, to build their interest in valuable administrations, to guarantee their newborn child welfare and to give equivalent compensation to rise to work. The significant work legislations covering the women are:

The Workmen Compensation Act, 1923

In any modern society the issue of employer-employee relations turns out to be essential to such an extent that a social insurance gets important to give sufficient assurance from misfortunes caused to the workers by mishaps. So as to improve the state of the laborers some social insurance legislations have been enacted. The Workmen's Compensation Act 1923 is perhaps the soonest bit of work legislation, received to benefit the workers. It covers all instances of

[1] Associate Professor, Faculty of Law, Banaras Hindu University, Varanasi 221005.
[2] Research Scholar, Faculty of Law, Banaras Hindu University, Varanasi 221005.

[3] Sir Alladi Krishnaswami, "Constituent Assembly Debates", Vol. 10, 41.

[4] We, The people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all 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 and integrity of the Nation; in our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution.

mishap arising out of and in the course of employment' and the pace of compensation to be paid in a singular amount, is dictated by a timetable proportionate to the degree of injury and the loss of acquiring limit. The more youthful the worker and the higher the pay, the more noteworthy is the compensation dependent upon a breaking point. The measure of compensation[5]payable depends if there should arise an occurrence of death on the average monthly wages of the perished laborer and in the event of an injured worker both on the average monthly wages and the idea of disablement. The Act expected to guarantee the recovery of the laborer himself or of his ward. The ward can guarantee compensation in the two cases for example passing or injury. This law applies to the sloppy divisions and to those in the composed parts who are not secured by the Employees State Insurance Act, 1948 which is theoretically viewed as better than the Workmen's Compensation Act[6].

Employer's Liability for Compensation

Section 3 provides for employer's liability for compensation if individual injury is caused to a worker coincidentally emerging out of and throughout his business. Provided that the employer shall not be so liable if such injury does not cause any aggregate or partial disablement of the laborer for a period exceeding four days[7] or if such injury is attributable because of alcohol or drug or because of his own willful disobedience or removal or disregard of any safety guard in his knowledge.

Methods of calculating wages

Section 5 provides for methods of calculating wages

In this Act and for the reasons there of the articulation "monthly wages" signifies the measure of wages considered to be payable for a month's administration (regardless of whether the wages are payable constantly or by whatever other period or at piece rates) and calculated[8] as follows, in particular.

a) Where the laborer has, during a regular period of at the very least a year promptly going before the accident, been in the administration of the business who is subject to pay compensation, the monthly wages of the worker will be one twelfth of the all-out wages which have fallen due for payment to him by the business over the most recent a year of that period.
b) Where the entire of the continuous time of administration promptly going before the accident during which the worker was in the administration of the business who is obligated to pay the compensation was short of what one month, the monthly wages of the laborer will be the normal month to month sum which, during the a year quickly going before the mishap, was being earned by a worker working on a similar work by a similar manager, or,

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[5] Section 4 of The Workmen's Compensation Act, 1923.
[6] S.N. Mishra, *Labour and Industrial Laws* 15 (Central Law Publications, Edition 25th, 2009, Reprint 2010).
[7] Substituted for the word "seven" by the Workmen's Compensation (Amendment) Act 1957 (XI of 1957) which had earlier been substituted for the word "ten" by the Workmen's Compensation (Amendment) Act 1933 (XV of 1933).
[8] Substituted for the words "For the purposes of this Act, the monthly wages of workman shall be calculated" by the Workmen's Compensation (Amendment) Act 1939 (XIII of 1939).

if there was no laborer so employed, by a laborer working on comparable work in the equivalent locality[9].

c) In different cases, the monthly wages will be multiple times the overall wages earned in regard of the last regular period of administration quickly going before the mishap from the business who is obliged to pay compensation, divided by the number of days containing such period[10].

Section 8 envisages for distribution of compensation. Such payment shall be made in the form of deposit with the commission by employer in favor of deceased or legally disabled workman. In case employer has made advance to the dependent of deceased workman that will be adjusted in the above said deposit. Any other sum not exceeding rupees 4000 may be deposited with commissioner whose receipt shall be a valid discharge for the same. Such deposited sum shall be distributed by the commissioner by serving a notice upon the dependents. In case no dependent appears before him the amount shall be at the disposal of the concerned government**.**

The Factories Act, 1948

During the latter half of 19th century, there has been ascent of large-scale factory/industry. Major Moore, Inspector-in-Chief of the Bombay Cotton Department, in his Report in 1872-73 as a matter of first importance brought up the issue for the provision of legislation to direct the working condition in factories; the principal Factories act was enacted in 1881.

From that point forward the Act has been corrected on numerous events. The Factories Act, 1934 was passed supplanting all the past legislation with respect to factories. This act was drafted in the light of the proposals of the Royal Commission on Labor. This Act has likewise been corrected appropriately every once in a while.

The experience of working of the Factories Act, 1934 had uncovered various imperfections and shortcomings which have hampered compelling organization of the Act, and the requirement for discount amendment of the act to stretch out its defensive provisions to the large number of formations of small-scale industries was felt.

The primary goals of the Indian Factories Act, 1948 are to manage the working conditions in factories, to direct wellbeing, security welfare, and yearly leave and enact special provision in regard of youthful people, women and child who work in the factories.

Employees State Insurance Act, 1948

The Employees State Insurance Act, one of the most significant social legislations which has been enacted to accommodate different benefits in various possibilities. Under this Act, protected women laborers get ailment benefit, disablement benefit, health benefit and memorial service costs alongside safeguarded men laborers. Nonetheless, notwithstanding these benefits,

[9] Inserted by the Workmen's Compensation (Amendment) Act 1933 (XV of 1933).
[10] Original clause (b) was realtered as clause (c) by the Workmen's Compensation (Amendment) Act 1933 (XV of 1933).

protected women laborers additionally get maternity benefit if there should be an occurrence of specific possibilities emerging out of pregnancy, control, miscarriage, ailment emerging out of pregnancy, untimely birth of child or miscarriage and passing. The 12 weeks term of maternity benefit will provide for restriction not over about a month and a half will go before the normal date. The maternity benefit is paid for relaxation of women. In case of the demise of the woman, this benefit can be claimed by legal delegate for the entire time frame if the child endures, and if the child additionally kicks the bucket, until the demise of the child.

The Employees State Insurance Act, 1948 gives a plan under which the business and the worker must contribute a specific portion of the monthly pay to the Insurance Corporation that runs dispensaries and medical clinics in common laborers territories. It encourages both outpatient and in-quiet consideration and unreservedly administers medications and spreads hospitalization needs and expenses. Leave authentications for safety reasons are sent to the business who is obliged to respect them.

Work injury, including word related sickness is remunerated by a defined rate proportionate to the degree of injury and loss of earning limit. Payment, not at all like in the Workmen's Compensation Act, is month to month. In spite of the presence of tripartite bodies to direct the running of the plan, the whole undertaking has fallen into offensiveness because of debasement and wastefulness. Laborers needing real clinical consideration seldom approach this office however they use it generously to acquire clinical leave. There are fascinating situations where laborers have gone to court looking for exception from the plan so as to benefit of better offices accessible through aggregate bargaining.

The Minimum Wages Act, 1948

The minimum wages Act was passed for the welfare of works. This Act has been enacted to make sure about the welfare of the laborers in a serious market by accommodating a base restriction of wages in specific livelihoods. The Act accommodates obsession by the focal legislature of least wages for occupations point by point in the calendar of the Act[11] and carried on by or under the authority of the focal government, by railroad authoritative or comparable to a mine, oilfield or significant port, or any partnership built up by a focal Act, and by the state government for different businesses secured by the timetable of the Act. The object of this Act

[11] Section 3: Fixing of minimum rates of wages. (1) The appropriate Government shall, in the manner hereinafter provided, -
(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27. Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof. (b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary: Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

is to avoid abuse of the laborers and for this reason it focuses on obsession of least wages which boss must compensation.

The Maternity Benefit Act, 1961

Financial dependency of women is the thing that offers ascend to their subjection in society today. Subsequently to remove such subjection and establish the framework of equality women too should be made economically and financially free and should play an active job in all divisions of business today. Issue looked by women in the financial circle of life are generally identifying with inconsistent wages and discrimination coming about because of their organic job in nature of childbearing. To control such issues and secure the monetary rights of women the legislature presented the Equal Remuneration Act, 1976 and Maternity Benefit Act, 1961.

A maternity benefit is one that each woman will be entitled for maternity benefit, which is the sum payable to her at the pace of normal every day wages. Maternity Benefit Act plans to manage of work when she labor and accommodates maternity and certain benefits. Women can guarantee benefits under the act wherever aside from in factories and the other enterprise where Employee's State Insurance Act is relevant. Women who are working, regardless of whether legitimately or through a contractor, have actually worked in the enterprise for a time of in any event 80 days during a year are qualified to guarantee the benefits under this act. Cash benefits to women who are missing from work during the maternity leave, are not be under 66% of her past income.

Release or excusal during maternity leave is viewed as void. At the point when pregnant women absent herself from work as per the provision of this act, it will be illegal for her manager to release or excuse her during, or by virtue of, such nonappearance, or pull out of release or excusal in such a day, that notice will terminate during such nonattendance or fluctuate to her detriment any of the states of her administrations. Excusal or release of a pregnant woman will not disentitle her to the maternity benefit or clinical reward permissible under the act with the exception of on the off chance that it was on some other ground. Inability to pay maternity benefits or release or joblessness of woman because of maternity will bring about detainment of the business for at least three months which may reach out to one year and a fine of rupees 200 which may stretch out to 5,000.

The continuous argument in certain circles is that the pay differential among women and men is brought about by the need to repay the higher work costs bosses acquire by employing women, as per special laws to safeguard maternity. Bosses want to employ a male rather than female, without the weight of these extra expenses. This is anyway insufficient the same number of bosses don't enlist wedded women or excuse them before pregnancy. The act gives some insurance to women financially particularly today during a time where single parents are turning out to be progressively predominant it gives them steadiness in their lives to have their wages and the security of coming back to a stable employment.

The Equal Remuneration Act, 1976

Equal pay for equal work for women and men is a fundamental subject of incredible worry to society when all is said in done and representatives specifically. There was a typical conviction that women are truly powerless and ought to be paid not exactly their male partners for a similar bit of work. Women everywhere throughout the world, had till as of late been particularly in articulate and were set up to acknowledge lower wages in any event, when they were working on indistinguishable employments from men. Indeed, even in the financially and socially propelled nations where noteworthy advancement has been made, discrimination despite everything exists.

In India, in the starting stages when legislation for the protection of employees was not really thought of, factory managers and owners exploiting the backwardness and neediness, enrolled women on a large scale at lower wages and made them work under inconvenient condition. Universal Labor Organization has advanced a few shows to give insurance to working women. Various ILO shows have been approved by India and a portion of these however not confirmed have been acknowledged on a fundamental level. The rule of ILO has been joined in the constitution of India as Article 39, which guides the states to make sure about Equal pay for equal work for the two people[12]. To offer impact to this constitutional provision the parliament enacted the Equal Remuneration Act, 1975.

Notwithstanding the Maternity Benefit Act, practically all the significant central labor laws are appropriate to women workers. The Equal Remuneration Act was passed in 1976, accommodating the payment of equivalent remuneration to people laborers for same or comparable nature of work. Under this law, no discrimination is admissible in enrollment and administration conditions with the exception of where work of women is disallowed or limited by the law[13].

National Rural Employment Guarantee Act, 2005

As of late, the Government of India enacted National Rural Employment Guarantee Act whereby any individual who is happy to give manual unskilled worker will be offered wage work for 100 days. This Act gives the improvement of the business security of the family units in provincial zones of the nation by giving in any event one hundred days of ensured wage work in each money related year to each family whose grown-up individuals volunteer to accomplish incompetent manual work.

Conclusion

Preference is given to women in the allotment of work. Gender equality is one of the center components of this poverty reduction plan which stipulates that at any rate 33% of the work power ought to be women with equivalent wages for the two people. Different gender related goals, for example, provision of clean workplaces, safe drinking water, and childcare offices at

[12] Section 4 of The Equal Remuneration Act, 1976.
[13] The Equal Remuneration Act, 1976.

the work-site, separation of work-place not surpassing two miles from home, social insurance and nourishment are stressed.

Women occupied with rural cultivating spends extended periods under the hot sun however are perpetually paid not exactly their male partners. Women's interest in the work power with no pay discrimination and direct control of assets and resources can considerably improve her health, childcare and socio-economic status. This work strategy if appropriately executed can positively acquire pivotal changes the lives of women. The business plot without a doubt positively affects sexual orientation value and force condition inside the family unit. An elective model of advancement must concentrate on the improvement of expectations for everyday comforts of country India where greater part of the populace lives.

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Beware 'Hate Speech' is not the part of Freedom of Speech and Expression

Dr. Ashutesh Anand[1]
&
Dr. Amitesh Anand[2]

Abstract

The issue of hate speech has become more important recently due to the rise in inter-communal conflicts brought on by inter-communal hate campaigns in both industrialised and developing nations with communally sensitive areas. There have always been people who wanted to make others in society look bad and label them as less than equal. Since the 1990s, racists and hate-mongers have had great success using the Internet for their aims. They have attempted to use all available communication channels, including media, newspapers, television, and the internet, to promote their messages. All of these communication channels are crucial in the context of hate speech. It is important to keep in mind that there is a thin line between exchanging ideals and values with other societies and inciting hatred through violent actions and disgraceful behaviours because create defamation which itself a tort and a crime. In one way, the problem of defamation is comparable to the problem of hate speech: it is a situation where the right to free speech may legally be restricted in order to defend the rights of others. People have always walked over and distorted this line within societies. Despite this subtle distinction, judicial institutions all over the world still assess the legitimacy of online hate speech using out-dated legal standards and jurisprudential ideas. Before focusing on the need to combat hate speech in general, it is important to comprehend what the term means. The Constitution's Article 19(2) does not mention hate speech. Numerous Indian regulations have clauses that help limit the spread of hate speech. These protections are actually far broader than those in the USA or the UK. Altogether such issues are in debates and discussions and the utility of existing rules are not appropriate and is decreasing as challenges multiply. Therefore, it is need of the time that efforts must be made to revive or reorganise the existing regulations and strategies for dealing with hate speech on the internet.

Keywords- Internet, Technology, Speech, Defamation, Judiciary, Constitution, I.P.C.

Introduction

The existence of hate speech is not a new phenomenon, by no means of the imagination but the creation of multiple platforms, especially social media has led to hate speech not only increasing but also becoming viler and more abhorrent. Hate speech dehumanises the people it is directed at and may also be done so in an effort to frighten, humiliate, or even start a fight. In this there is incitement of violence and hatred against a group or its members because of their race, nationality, ethnicity, or sexual orientation. No one can comprehend the extent to which the power of words can destroy humanity or an individual human being. By persuading the public to engage in hazardous behaviour or misleading them over a significant topic of public concern, it goes too far and undermines the security or stability of the neighbourhood.

[1] ***Assistant Professor, College of Law, IIMT University Meerut, Uttar Pradesh.***
[2] ***Assistant Professor, College of Law, IIMT University Meerut, Uttar Pradesh.***

A derogatory statement has the potential to incite religious unrest, racial unrest, or even a massacre. The concept of "fair use" of free speech depends on the context in which it is used. They fulfil varied functions at various times. A speech might be pure speech at times can turn into hate speech at other times. Without a doubt, context is crucial in judging if a comment is likely to incite hatred. Anyone who has experienced the tragedy of genocide understands how pervasive hatred is.

Before focusing on the need to combat hate speech in general on the Internet, it is important to comprehend what the term means when it refers to speech, print media, and other traditional forms of communication. Several provisions of the Indian penal code ban discussing hate speech because the country's rules against it are intended to avoid strife among its numerous communities and citizens. Other than expressing hatred for other individuals, the speech has no other significance. Because of carelessness and misunderstandings that freedom of expression does not necessarily mean that a person can say whatever they feel is appropriate. People will discriminate against one another and adhere to the caste system because India is a very populous nation with a variety of religions.

Both the Universal Declaration of Human Rights (UDHRs)&international human rights law re cognise the freedom of expression as a fundamental human right. People are encouraged by the concept of free speech to express their thoughts in public without worrying about opposition, criticism, or legal consequences. It acts as the foundation and requirement for other liberties and rights. Without it, we are unable to exercise our rights to freedom of the press, open political discourse, the expression of our religious beliefs, and the freedom to express ourselves creatively. Absolute freedom breeds anarchy, and total freedom of speech may have unfavourable consequences.

Therefore, it is reasonable to believe that hate speech restricts people's ability to express them freely. This is turning into a significant issue for the growth of hate speech in India. In India hate speech is on the rise on a daily basis. According to Constitution India declares itself as a democratic nation.[3] Freedom of expression is one of our fundamental rights. However, there are some restrictions on free speech, such as the possibility of punishment for those whose words are offensive, dangerous, or endanger others. Rights and freedoms must be established and exercised within a certain framework that is connected to both ethical and legal frameworks.

Many nations have free speech guarantees in their constitutions. Everyone has a fundamental right to self-actualization and fulfilment, and that right includes the freedom of speech. This right can be viewed as encouraging the development of more responsible, self-aware, and considerate individuals, which is advantageous to society as a whole. Thus, an explanation of hate speech as it is understood in the context of traditional forms of media will serve as the foundation for the research.

[3] Preamble of Indian Constitution 1950.

Besides it is clear from numerous examples in the world that false words can cause someone's reputation to suffer or even the reputation of an entire community, so it can be said that granting freedom of speech and expression without restrictions may have serious repercussions. For this reason, laws like those against criminal defamation and hate speech are extremely important in the modern era. As a result, this article will go into detail analysis of hate speech that how they wrapped each other, as well as their connections and differences. Further recently the amount of hate that is perpetuated through social media platforms like Facebook, Instagram etc. causing defamation on various grounds such as using words or acts to incite hatred or enmity towards people or groups based on their identities such as their religion, caste, race, gender, sexual orientation, or political affiliation which considered hate speech in India. The most prominent instance in this regard has been the persecution of Rohingya Muslims by Myanmar's military junta. India is susceptible to hate speech and incitement to violence, which have recently become more prevalent due to its diverse population of nearly 1.3 billion people and complicated social and political landscape.

The right to reputation is a part of a citizen's right to life under Article 21 of the Constitution. A person's right to enjoy their property, health, personal liberty, and a number of other benefits is equally as vital as their reputation, honour, integrity, and character. The constitution protects the right to a good reputation in the same manner that the rights to life, liberty, and the pursuit of happiness are protected. As the term suggests, defamation is damaging to someone's reputation and is both a civil and criminal offence. The Indian Penal Code's sections 499 to 502 deal with criminal defamation. The practise of defamation acts as a restraint on the freedom of expression and communication. Before dwelling on the need to counter hate speech on the Internet per se, there is a need to understand the meaning of the term in the conventional sense as applied to traditional media of communication such as speech, print media and visual media.

This paper effort to demonstrate the concept hate speech because it's practise has been restrained on the right of freedom of expression and communication to ensure that no one damages someone's reputation or makes an effort to misrepresent the victim of defamation in the eyes of the public. Hate speech as a sensitive issue create unease and havoc and defame others in the age of social media. Further how the nation's legislative and judicial machinery combating against it and how far it is successful while with recent up surging of internet services and use of social media increasing problems, existing laws are becoming less significant.

The Concept 'Hate Speech'

The concept of "fair use" of free speech depends on the context in which it is used. They fulfil varied functions at various times. A speech might be pure speech at times can turn into hate speech at other times. Without a doubt, context is crucial in judging if a comment is likely to incite hatred. Since context is often a factor in hate speech occurrences, both intent and cause may be affected. Oxford defines hate speech as expression that is likely to enrage or outrage others due to their membership in a particular group and/or provocation. The question of what should be the extent of freedom of speech and expression is a contentious one in India because

there is frequently a conflict between hate speech and free speech. As a result, over time, constitutional experts from various constitutional benches draw a line of demarcation to pinpoint the extent to which such freedom is prohibited by law and requires close scrutiny. The phrase "hate speech" has consistently been used to refer to language that is abusive, insulting, intimidating, harassing, or that calls for violence, hatred, or prejudice against individuals or groups that can be identified by traits like race, religion, place of birth, residence, region, language, caste, or community, sexual orientation, or personal beliefs.

The exercising the right to free expression comes with additional duties and responsibilities. Under Article 19(1) (a) of India's Constitution, which stipulates that "all people shall enjoy the right to freedom of speech and expression," freedom of speech and expression is guaranteed as a basic right. The Indian constitution, however, has imposed a reasonable restriction under Art 19(2), where the word reasonable should strike a balance between the use and misuse of this right. In this perspective, a speech must have an ideology that is universally accepted rather than being free of ideology. The behaviour that supports the ideology should be punished, not the idea itself. Within a social system, these unique obligations and liabilities are especially important. A speech depends on contextual factors; in different contexts, a speech may produce different results. A speech given during a sensitive time may affect public peace since it could cause disturbance at that time. However, the speech might not be damaging in a typical situation. The speech therefore depends on the context in which it will be delivered. Another thing to consider is what the speaker wants to say. The government may have restrictions on the use of hate speech in particular areas.

Hate Speech Means To

In general, any words that disparage or dehumanise a group of people based on their race, caste, gender, religion, or other characteristics are considered hate speech. Any words that disparage or dehumanise a group of people based on their race, caste, gender, religion, or other characteristics are considered hate speech or an expression that incites violence, hatred, and prejudice against a sect, caste, racial group, community, nationality, race, or gender is referred to as a hate speech. It may also be rude, insulting, frightening, or distressing. In common language, “hate speech” refers to offensive discourse targeting a group or an individual based on inherent characteristics (such as race, religion or gender) and that may threaten social peace. Anything that was humorous was labelled as hate speech, and a crackdown immediately followed. Blond humour, jokes about sexuality, jokes about ethnic groupings, and jokes about gender were among the first to go.

The phrase "hate speech" is frequently used in daily speech to refer broadly to unpleasant discourse that targets a group or an individual based on intrinsic traits, such as race, religion, or gender, harming societal harmony. Hate speech can be expressed through any medium, including images, cartoons, memes, objects, gestures, and symbols, and it can be disseminated both offline and online. Hate speech is defined as "discriminatory" bias, discriminatory, or intolerant, contemptuous, or demeaning of a person or group. Hate speech refers to "identity factors" of an individual or a group that are actual, alleged, or imputed, including "religion, ethnicity, nationality, race, colour, descent, gender," as well as any other characteristics that

convey identity, such as language, economic or social origin, disability, health status, or sexual orientation, among many others.

In terms of international human rights legislation, the definition of hate speech is still widely debated, particularly in light of how it pertains to equality, non-discrimination, and freedom of speech. International human rights legislation does not have a single definition of hate speech because the topic is still highly debatable, especially in light of how it pertains to free expression, non-discrimination, and equality. *As a result, there is no definition of hate speech under these laws.* Article 19 of the Universal Declaration of Human Rights guaranteed freedom of speech.[4] In order to provide a unified framework for the UN system to address hate speech, the UN Strategy and Plan of Action on Hate Speech seek to provide a comprehensive framework for the UN system to address the issue on a global scale. The UN Strategy and Plan of Action defines hate speech as "any form of communication, whether it is spoken, written, or behavioural, that disparages or uses obscene terms or racist language in relation to a person or a group in light of who they are, which is typically based on their sexuality, race, complexion, lineage, nationality, faith, or any other aspect of their identity." Hate speech refers to words whose intent is to create hatred towards a particular group, that group may be a community, religion or race. This speech may or may not have meaning, but is likely to result in violence.

There are three essential components of hate speech: intent, provocation, and the consequences that are forbidden. Therefore, international human rights law has established guidelines that states must follow in order to uphold strict prohibitions against hate speech in their own territories. Despite being a fundamental right, the fundamental right to free expression also comes with some logical limitations. According to the International Covenant on Civil and Political Rights' (ICCPR's) the freedom of expression may be restricted when doing so will improve public morals, health, or order in order to respect the rights of others.[5] Any incitement to prejudice, hostility, or violence driven by racial, ethnic, or religious hatred shall be prohibited by law.[6] Similar responsibilities and restrictions related to exercising one's fundamental right to free expression are outlined in Article 10(2) of the European Convention on Human Rights.

However, to date there is no universal definition of hate speech under international human rights law. The concept is still under discussion, especially in relation to freedom of opinion and expression, non-discrimination and equality.

In India, the definition of hate speech continues to be a topic of discussion in academic circles, so till date there is no established definition of hate speech. In India, however, hate speech is “discriminatory” (biased, bigoted or intolerant) or “pejorative” (prejudiced, contemptuous or demeaning) of an individual or group. Hate speech can be identified if it uses

[4] U.N.G.A. Res.217A (III), 1948.
[5] Article 19(3) of the ICCPR.
[6] Article 20(2) of the ICCPR.

combative or derogatory language or nonverbal cues with the intention to denigrate or stigmatise an individual or a small group of individuals because of their gender, ethnicity, colour, disability, religion, sexual orientation, or country of national or ethnic origin, addressed specifically to the offended individual or individuals. The criminalization of hate speech and how the current legal framework views it are in question. Since it is ingrained in the constitutional right to freedom of speech and expression, "hate speech" has been used by many in various ways to further their own interests under the guise of this right, and because the IPC lacks clear provisions, the law courts are unable to successfully prosecute charges of hate speech brought before them.

However, the issue with hate speech is that it has an uncertain message. Therefore, the definitions of hate speech are always evolving. In order to determine whether a particular instance of speech is a hate speech or not, the context of the speech plays an important role. Mostly the idea of hate speech is founded on an emotional reaction of hatred towards a specific group or community. The Court in the *State of Maharashtra v. Sangharaj Damodar Rupawat* observed that the effect of the words used in the offending material must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The underlying malice of the statement is what defines it as hate speech. Therefore, the foundation for defining the concept of hate speech is the instigation of various types of hatred such as racial, religious, regional, cast, and/or geographical hatred.

Hate Speech- Causes and Reasons

People all around the world are becoming more and more impacted by online hostility as a result of extremely inventive technologies like the smart phone. The Internet's anonymity and mobility have made cyber-bullying easy nowadays for people to harass and express hate in an abstract environment outside the purview of conventional law enforcement. It also contends that the best way to lessen the damage brought on by hate speech is probably through a broad coalition of the public sector, including the police, schools, and the general populace. The primary key factor for the propagation of hate speech is a sense of arrogance that give voice to hate speech because when a person begins to feel superior to others, they start to dominate other people, groups, or communities.

Another reason for the propagation of hate speech by individuals is that they believe in stereotypes that are ingrained in their minds and these stereotypes lead them to believe that a class or group of persons are inferior to them and as such cannot have the same rights as them. The primary reason for the propagation of hate speech by individuals is that they believe in stereotypes that are ingrained in their minds and these stereotypes lead them to believe that a class or group of persons are inferior to them and as such cannot have the same rights as them. Another key factor is the adherence to a particular philosophy regarding their existence. In this someone or a group or a community exhibits stubborn behaviour regarding their existence and try to control the other person it incites hatred and causes hate speech to proliferate. This all is because such people are not listening to the other person's opinion, thoughts, or

perception. The stubbornness to stick to a particular ideology without caring for the right to co-exist peacefully adds further fuel to the fire of hate speech.

Hate Speech- Indian Legislative Perspective

The foundation of individual autonomy is rights. In India, there are a number of laws that prohibit hate speech. They are ensured to serve as checks on state power. Individuals have the right to protection from excessive state intrusion in democratic democracies. The 'public order'exception outlined in Art.19(2) have been used by courts to routinely upold t he constitutional legitimacy of hate speech legislation, such as Ss. 153A and 295A IPC.[7]Acts that might incite animosity between diverse religious groups and offend religious convictions are forbidden by law.

According to the Constitution of India

Article 19(1) (a) of the Indian Constitution guarantees the right to freedom of speech and expression. Despite this, the constitution's Article 19(2) permits reasonable restrictions on free speech. when such restrictions are required to safeguard India's integrity, security, friendly relations with foreign nations, maintenance of the rule of law, morality, or in situations involving disrespect for the court, defamation, or solicitation to commit an offence. Similarly Article 21 of the Constitution guarantees the freedom is fundamentally about responsible speech. Making sure that this freedom isn't used against anyone or the most vulnerable members of society is one of the biggest issues facing the autonomy and free speech principles. This problem is more difficult to address in a nation like India where there are many different castes, creeds, religions, and languages. It has to be understood that the right to free speech ends where hate speech begins. It must be appreciated that liberty is there for all. If in the name of free speech, a ‘hate speech’ is delivered which marginalises certain people, then the liberty of those people is snatched away.

Under the pretext of exercising inherent rights, many commit the crime of hate speech, leading to an air of distrust and terror. In the 267th Report of the Law Commission of India, it was stated that “Liberty and equality are contemporary and not antithetical to each other. The intention of having the freedom of speech is not to disregard the weaker sections of society but to give them an equal voice. The intent of equality is not to restrain this liberty but to balance it with the necessities of a multicultural and plural world, provided such constraint does not unduly infringe on the freedom of expression. Thus, incitement to not only violence but also to discrimination has been recognized as a ground for interfering with freedom of expression.”

The penal provisions which relate to this aspect are as follows:

India has laws to deal with hate speech, such as the Indian Penal Code (IPC) and the Code of Criminal Procedure (Cr. P. C.), although these laws are criticised for their ambiguity and weak implementation. It is crucial to ensure that religious, racial, and ethnic tolerance prevails due

[7] AIR 1950, S.C. 129.

to the multiplicity of religions, ethnicities, and cultures in India. Sedition is illegal under Section 124A IPC.

The IPC's several sections that forbid and punish hate crimes.[8] Sections 153A and 153B of the Indian Penal Code (IPC) punish acts that cause enmity and hatred between two groups. According to Sections 153A and 153B of the Indian Penal Code, 1860, any act that fosters animosity or discord amongst various tribes or communities is a crime. Such a clause aims to prevent separatist inclinations in order to uphold or safeguard human dignity and national unity. *The key element of Section 153A IPC penalises 'promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony'*. This Section states that two parties or communities must be involved; if just one party or community is present, the Section is not relevant. Hate speech shouldn't be encouraged; instead, it should be protected, and anyone found guilty of inciting hatred within a group or in society must face consequences.

Promoting hostility between various groups on the basis of religion, ethnicity, and place of birth, place of residence, language, and other considerations, as well as engaging in actions that endanger the maintenance of peace. Anyone who violates the provisions of subsection in any place of worship or in any assembly engaged in the conduct of religious worship or religious ceremonies is punishable by imprisonment for up to five years and a fine.

Section 153B IPC penalises i*mputations and statements that are harmful to national integration*.

- Whoever, by spoken or written sentences, signs, visual representations, or other means: Makes or publishes any imputation that any class of persons cannot bear true faith and allegiance to the Constitution of India as defined by law, or uphold India's sovereignty and dignity, because they are members of any religious, racial, language, or regional group, caste, or community, or because they are members of any religious, racial, language, or regional group, caste, or community, or because they are members of any religious, racial, language, or regional group.
- Asserts, counsels, advises, propagates, or publishes that every class of persons shall be denied or deprived of their rights as citizens of India because they are members of any religious, ethnic, language, or regional group, caste, or community;
- In any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, anyone who commits an offence stated in sub-section is punishable by imprisonment for up to five years and a fine.

Section 295A IPC penalises 'deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs'.
Section 298 IPC penalises 'uttering, words, etc., with deliberate intent to wound the religious feelings of any person'.

[8] S. 153A, S. 153B, S. 295A, S. 505(2) and other significant sections of the IPC that are used in reaction to hate speech.

Sections 505(1) and 505(2) make the publication and circulation of content which may cause ill-will or hatred between different groups an offence and penalises publication or circulation of any statement, rumour or report causing public mischief and enmity, hatred or ill-will between classes.

The Code of Criminal Procedure, 1973

"Sections 95[9] and 96[10] of the Cr.P.C. allow the state government to make a lawful order forfeiting any 'book, journal, or document' that contains anything that is criminal under different sections of the I.P.C. 1860, based on the parameters provided by the judiciary following its liberal interpretation.[11] In order to carry out a forfeiture order, a magistrate must first issue a search and seizure order under section 100 of the Criminal Procedure Code. In instances when imminent danger is feared, a written order on the merits under Section 144 allows a quick remedy.[12] When the offence is committed across numerous jurisdictions by publishing hate speech in multiple locations, Section 178 kicks in. In this case, "Section 151 of the Cr.P.C. gives the state the authority to arrest someone without a warrant in order to suppress hate speech, which is a criminal offence. A magistrate has the authority under Section 107 of the Cr.P.C. to carry out the preservation of peace with the assistance of individuals who would be necessary to carry out such bonds. The state has preventative powers under Sections 151 and 107". Preventive arrests are more common than major criminal arrests in the actual world. In addition to the Indian Penal Code, Cr.P.C. the following legislation also has provisions regulating hate speech:

Representation of People's Act, 1951 (RPA)

A person who has been found guilty of infringing upon their right to free speech and expression is prohibited from running for office under the 1951 Representation of the People Act. Section 8 of the Representation of People's Act, 1951 (RPA) prevents a person convicted of the illegal use of the freedom of speech from contesting an election. Sections 123(3A) and 125 of the RPA bar the promotion of animosity on the grounds of race, religion, community, caste, or language in reference to elections and includes it under corrupt electoral practices.

Protection of Civil Rights Act of 1955

Under the Protection of Civil Rights Act of 1955, it is illegal to promote untouchability through words (spoken or written), signs, or other outward expressions.[13]

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[9] The state government has the authority to censor publications under Section 95.

[10] An appeal can be filed under Section 96 of the Cr.P.C. to overturn the forfeiture ruling. Orders made under this provision are also subject to judicial review under Section 96"

[11] Section 124A, Section 153A, Section 153B, Section 292, Section 293, and Section 295A of the Indian Penal Code 1860,

[12] "Section 144, allows for the issuing of interim orders in instances of imminent annoyance or harm, this clause has a long history of being utilised by state governments to stifle free expression through ordering internet shutdowns and film bans.

[13] Section 7.

Religious Institutions (Prevention of Misuse) Act of 1988

According to this, it is forbidden to incite hostility or other hostile attitudes between various religious, racial, or linguistic groups, classes, or tribes. This Act prohibits religious institution or its manager to allow the use of any premises belonging to, or under the control of, the institution for promoting or attempting to promote disharmony, feelings of enmity, hatred, ill-will between different religious, racial, language or regional groups or castes or communities.[14]

Cinematograph Act of 1952 and the Cable Television Network Regulation Act of 1995 prevent and control the internet dissemination of any data intended to incite hatred. Communal groups have frequently abused these laws to target artists, journalists, and activists under the guise of stoking unrest within the community.[15]

Hate Speech- Indian Legislative Perspective

Decisions against hate speech have been made in the Indian context. Interpreting sections 153A and 505(2) of IPC in Bilal Ahmed Kaloo v. State of AP,[16]the Court held that the common feature in both sections is that it makes promotion of feeling of enmity, hatred or ill-will between different religious or racial or language or regional groups or castes and communities and doing acts prejudicial to maintenance of harmony. It is necessary that at least two such groups or communities should be involved to attract this provision. Merely hurting the feelings of one community or group without any reference to another community or group cannot attract either of the two sections. The recent decisions show that the India follows a speech protective regime as in practice in the United States and the Courts are extremely cautious in restricting article 19 of the Constitution. The reason behind such a stance is the apprehension and fear of misuse of restrictive statutes by the State.[17]

Hate speech can be curtailed under article 19(2) on the grounds of public order, incitement to offence and security of the State. For instance, in Babu Rao Patel v. State of Delhi,[18] the Supreme Court considered the repercussions of hate speech on society as a whole. In this case the Court held that section 153A (1) IPC is not confined to the promotion of feelings of enmity etc. on grounds of religion only, but takes into account promotion of such feelings on other grounds as well, such as race, place of birth, residence, language, caste or community. Further the Supreme Court in Brij Bhushan v. State of Delhi opined that public order was allied to the public safety and considered equivalent to security of the State. This interpretation was validated by the First Constitution Amendment, when public order was inserted as a ground of restriction under 19(2).[19]Another recent Supreme Court decision from 2014 is Pravasi Bhalai Sangathan v. Union of India.[20] In all these cases, the Supreme Court

[14] Section 3(g).
[15] Sections 4, 5B and 7 empower the Board of Film Certification to prohibit and regulate the screening of a film.
[16] AIR 1997 SC 3483.
[17] Ibid.
[18] AIR 1950 SC 129.
[19] The Constitution (First Amendment) Act, 1951.
[20] AIR 2014 SC15.

did not consider hate speech to fall within Article 19(1) (a), because in India, there is no fundamental right to hate speech unless there is some type of incitement or the ability to inspire or provoke impending unlawful activity, in contrast to the situation in the United States, where hate speech is partially protected by the First Amendment.

Lastly *Tehseen S. Poonawalla v. Union of India* (2018), Kodungallur Film Society v. Union of India (2018), and Amish Devgan v. Union of India (2018) are three recent rulings regarding hate speech by the Indian Supreme Court. (2020). The Amish Devgan ruling draws a distinct distinction between hate speech and hate crimes. It has excellent doctrine and a strong legal foundation. In a nutshell, hate speech is dangerous to democracy, pluralism, and a society based on constitutional principles, especially when it transgresses values outlined in the Preamble of the Constitution, such equality, dignity, fraternity, and liberty.[21]In order to make hate speech illegal, the Law Commission of India suggested in 2017 adding specific provisions to the IPC.

However, several legal experts have expressed worry that these revisions could be abused to stifle free speech. Finally, it can be said that in India one of the biggest challenges of hate speech is that the judiciary has been reluctant to impose restrictions on free expression, and most hate speech lawsuits have gone unanswered. For their inability to look into and prosecute cases of hate speech and incitement to violence, the police and other law enforcement organisations have also come under fire. Politicians and public personalities have used social media and television platforms to spread hate speech and obtain media attention, which has led to the rise of hate speech in India. Twitter and Facebook's Indian subsidiary, Meta, as well as other social media sites have come under fire for their content filtering procedures there. etc.

Hate Speech On The Internet And The Internet Service Provider (ISP)

Under Indian democracy freedom of speech and expression is protected as a fundamental constitutional right. Among Indian law provisions, the only law that specifically refers to the regulation of Internet Service Provider (hereafter ISP) liability is the IT Act, 2000. The legal system has undergone a significant shift, and service providers now fall under a wider range of legal obligations with more limited and conditioned exclusions. The IT (Amendment) Act, 2008 (10 of 2009), sometimes referred to as the Amendment Act, features a slew of new sections related to the responsibility of the intermediaries and their legal accountability. The definition of intermediaries has been added to Chapter XII, which includes Section 79.[22] In addition to the IT Act of 2000, rules made by the Central government and guidelines released

[21] Available on https://theleaflet.in/hate-speech-and-hate-crimes-law-and-politics/

[22] The Amendment Act's Section 2(w) defines an intermediary as follows: "(w) 'Intermediary with respect to any particular electronic records, means any person who receives, stores, transmits that record on behalf of another person, or provides any service with respect to that record, and includes telecom service providers, Internet service providers, web-hosting service providers, search engines, online payment sites, online auction sites, online marketplaces, and cyber cafes." This definition of an intermediate is thorough and specifically mentions several types of service providers.

by the Telecom Department also limit such liability within the legal framework. For example, when the Telecom Department issues an ISP with a licence to provide service, the ISP is also required to abide by the security requirements of the licensor, the Government of India. The ISPs' liability restrictions are outlined in all of these clauses. It was a need of law to identify the various intermediates before determining culpability.

The fact that the names of the various types of intermediaries are specified and their existence is made clear makes it an improvement over the prior definition of the term provided under the un-amended Act of 2000. The phrase "cyber café," which is listed in the definition, has also been defined under the recently added Clause (na).[23]As a result, it will now be simpler for the judiciary and law enforcement to determine an intermediary's obligation. Section 79's purpose, The IT Act of 2000's Section 79 grants intermediaries limited immunity. The intermediary is so protected from legal liability under a number of circumstances. It goes without saying that the intermediary's exemption is void if it is established that he participated in the posting of inappropriate content. Reading through the following Sections of the Amendment Act reveals that the scope of the intermediaries' exemption has been constrained, and they must now exercise their freedom within clearly outlined legal bounds.

Libel and slander are the two types of legal action for defamation. Slander refers to spoken statements, whereas libel refers to written or printed words. In contrast to slander, which typically requires particular damages in order to be actionable, libel does not. This distinction is not only semantic. However, in most cases, courts have determined that online comments that injure someone's reputation constitute libel and do not call for the demonstration of additional damages. The Shreya Singhal aftermath in a judgment that sits squarely alongside judicial landmarks such as Bhagwati Charan Shukla, Romesh Thapar and Maneka Gandhi, the Supreme Court’s decision to scrap Section 66A of the Information Technology (IT) Act represents a crucial restatement of the citizen’s right to free Speech and expression in an era where both the technologies of communication and censorship have expanded manifold.

The Supreme Court's ruling that protection is identical with protection of informational privacy made the issue of data protection urgent. The right to privacy includes the right to informational privacy, as the Supreme Court stated in Puttaswamy. In the information era, non-state actors can also pose a threat to privacy, in addition to states. We applaud the Union Government for realising the importance of looking into and implementing a strong data protection regime. A delicate and cautious balance between private interests and legitimate public concerns is necessary to establish such a regime.[24]The Data Protection Bill, 2020 was prepared after the Puttaswamy case as part of the Indian government's goal to provide legislation governing data protection in India, however it is still pending before the Parliament as of this writing.

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[23] "Cyber café means any facility from which access to the internet is offered to members of the public by any person in the ordinary course of business."

[24] *J.K.S. Puttaswamy V. Union of India*, 2017 Writ Petition (Civil) No. 494 of 2012.

Although it creates the Data Protection Authority, no responsibility is put on the various digital and social media sites for ignoring hate speech and inciting violence. Many PILs and other cases demanding for control of content being broadcast by various mainstream media outlets as well as social media platforms are currently pending before various High Courts of the nation and before the Apex Court of India against various politicians. Suresh Chavhanke of Sudarshan TV was recently the target of a complaint for uttering hateful words in public.[25] These days, politicians frequently use open sectarian rallies like the "Dharam Sansad event" in Haridwar and Delhi to stir the people against minorities and women in general.

Kalicharan Maharaj was recently detained in Pune for using hate speech, but the Pune Court granted him bail and freed him. At the same time when Delhi High Court consented to accept a request to file police reports against politicians for allegedly making hateful statements and to take action against negligent police officers in the Delhi riots case, even Allahabad High Court adopted a strict stance in Kafeel Khan's hate speech case. Using civil remedies to combat hate speech From user to user, hate speech in online media takes different forms and has different goals. Users have posted hate speech to attack, insult, threaten, or harass specific people as well as to convey political opinions. Hate speech has been used to scare or intimidate people or groups into refraining from participating in specific activities, to inspire hatred and even acts of violence.

In addition to having a severe negative impact on the recipient, hate speech "can cause mental, emotional, or even physical harm to its target, especially if delivered in front of others or by a person in a position of authority."[26] In addition to the acute mental and emotional suffering that victim’s experience, hate speech's capacity to rekindle and magnify prior stigmatisation can have long-term negative psychological effects.[27] Victims of hate speech may reject their identities and cut links with other victims in the victim group. Attack victims may be compelled to stop using their internet accounts, which may compromise their freedom of expression and association as well as their capacity for communication. Social media communication exacerbates these negative impacts because of its widespread, instantaneous, and continuous effects. It may imply incompetence or disagreement, which can put off future employers or clients and harm reputations in the long run. In conclusion, hate speech on social media can gravely harm victims' physical, mental, and financial well-being.

Conclusion

People now have more access to information and news due to the widespread use of the Internet in daily life. The Internet has emerged and established itself as a medium that makes it simple and quick for people to communicate, conduct research, and transact commerce. There is no need to impose criteria of acceptable or unacceptable behaviour in order to manage the online behaviour of the great majority of internet users. There are still a small

[25] *Zafir Hussain v. Sudarshan TV Channel Ltd*, 2022.
[26] Richard Delgado, ‘Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling’, 17 Harv. C.R.-C.L. L. Rev. 133, 172-79 (1982), at 143.
[27] Id. at 146.

number of people, though, who require this kind of restriction to stop them from violating the rights of others.

The characteristics that make the Internet so distinctive are increasingly being used to serve the demands of those who disseminate propaganda laced with hatred. There have always been people who wanted to make others in society look bad and label them as less than equal. Since the 1990s, racists and hate speech propagandists have made an effort to promote their messages using all accessible media and have had great success doing so online. By definition, racism violates fundamental human rights and defies human dignity. Racists have a platform on the Internet where they can easily spread their messages to people all over the world.

The risks of using the Internet to spread hate speech are clear. There is a thin line between exchanging beliefs and principles and encouraging hate through degrading behaviour and violent acts. Despite this subtle distinction, judicial institutions all over the world still assess the legitimacy of hate speech and online hate speech using out dated legal standards and jurisprudential ideas. In addition to having a severe negative impact on the recipient, hate speech can cause mental, emotional, or even physical harm to its target, especially if delivered in front of others or by a person in a position of authority.

In addition to the acute mental and emotional suffering that victims experience, hate speech's capacity to rekindle and magnify prior stigmatisation can have long-term negative psychological effects. Hate speech that circulates on Facebook and Twitter has a particularly strong power to damage victims' jobs because of social media's capacity to incite resentment and take action against targets. Hate speech directed towards a people or organization's Facebook or Twitter account may cause the user to stop using the social media platform, reducing their access to a prospective clientele. It may imply incompetence or disagreement, which can put off future employers or clients and harm reputations in the long run. In conclusion, hate speech on social media can gravely harm victims' physical, mental, and financial well-being.

In conclusion, building a practical legal framework to restrict the negative collateral consequences of hate speech websites should focus more on civil liability instead of criminal penalties. It is suggested because the common people suffer so the key should be in the hands of regular people who are damaged by these websites. The law commission of India in its 267th report[28] also emphasised on it and recommended passing legislation to penalise inciting to hatred that could aggravate antagonism, sensitivity, violence, and discrimination. These legislations should be applied in a transparent, non-selective, and impartial manner and not be employed to silence dissent or the lawful exercise of freedom of expression. Moreover, new provisions should be inserted in Indian Criminal Law addressing hate and incited speech

[28] Law Commission of India Report, 267th https://lawcommissionofindia.nic.in/reports/Report267.pdf

provisions. Last not the least a new section that holds social media and digital media platforms accountable for promoting hate speech and inciting violence in the current digital era in The Data Protection Act should also be included.

The Legal and Emotional Consequences of Live-In Partners in India

Km. Chanchal Singh[1]
&
Prof. (Dr.) Reena Jaiswal[2]

Abstract

Since the social norms of society are always changing, it is impossible for the law to stay unchanged; rather, it adapts to reflect the shifting social patterns of the community. During the course of the last several years, the social structure of Indian society has undergone a discernible transformation, and the society is now gradually opening its doors. The notion of live-in partnerships is one example of an idea that is geared toward western beliefs and ways of living.

Live-in relationships, also known as cohabitating as a couple but not being married, are frowned upon in India due to the country's strong cultural emphasis on the integrity and sacredness of the marriage institution. The standards of society are shifting, and as a result, such partnerships are becoming more acceptable in many regions of the globe.

Keywords: *Live In, Marriage, Domestic Violence, Legal Status.*

Introduction

Love is an enticing feeling that may pull two individuals together regardless of their sex, race, caste, or social level. It's possible that they need to spend more time with one other or perhaps move in together before they can really investigate the possibility of love between them. In this scenario, the question of whether or not the couple is married or in a live-in relationship becomes relevant. Yet, it is still deemed inappropriate for two people who are not married to live together in the same household. On the other hand, due to the rapid pace at which society is advancing, the existence of these types of partnerships is gradually gaining legitimacy in many regions of the globe. In Indian culture, marriage has long been viewed as a holy institution with a strong emphasis on long-term devotion and accepting differences in one's partner.[3] 4 Yet, it is still considered inappropriate for two people who are not married to live together without first being married. In addition, the courts have devised a set of guidelines to be followed in the event of a link of this kind.

A live-in partnership is a voluntary choice in which two adults knowingly seem to want to live together in the attempt to undertake a long relationship that is similar in disposition to that of a marital relationship. This type of relationship is considered to be on par with a marriage in terms of its commitment level. This agreement was made with the intention of maintaining the

[1] ***Research- Scholar Department of Law, Invertis University, Bareilly.***
[2] ***Professor & Dean Department of Law, Invertis University Bareilly.***
[3] Mohit Chhibber & Aditya Singh, live-in relationship : An ethical and a moral dilemma? International journal of applied research 1 IJARPF ,74-77 (2015).

nature of the relationship in a way that is like to that of a married couple. "When you're in a relationship with someone who lives with you, you should anticipate having relationships of the walk-in, walk-out variety." As a result of the fact that the law does not impose any type of obligation or responsibility on any individual that is participating in these partnerships, there are no rules or restrictions that apply to them. If you want to be even more specific about it, what we're talking about here is cohabitation.

While India was impacted by western nations in the development of the notion of live-in partnerships, similar sorts of relationships were already prevalent in various sections of Gujarat, Rajasthan, and Madhya Pradesh. In Gujarat, there was a practice known as "Maitri karar," which was a kind of friendship contract. Under this system, individuals of different sexes would sign into a formal agreement to be friends, live together, and care after one other. In accordance with another another tradition known as "Nata paratha," which was common in some regions of Rajasthan and Madya Pradesh, a man is permitted to have a live-in relationship with a woman who is already married. A contract between the parties was supposed to give some kind of security to both parties, despite the fact that these sorts of partnerships are not legally binding.

The Supreme Court has offered guidelines for such partnerships in the absence of laws, rules, or customs. These rulings determine India's live-in relationship legislation. The Prevention of Domestic Violence Act 2005 defines a long-term live-in relationship as "in the nature of marriage" if the couple presents themselves as husband and wife. So, she may demand alimony. Children from such unions may inherit their parents' self-acquired property but not Hindu undivided family property. Live-in relationships help couples bond, but they have downsides. They face daily social and logistical problems. Living alone is worse for mental health than being connected. Since there is no specific law that governs such connections, the courts have, in many of the instances, established some guidelines for controlling such relationships. These guidelines are intended to serve as a substitute for such legislation. The purpose of this piece of research is to provide an analysis of the present legal framework governing live-in relationships in India.

Legal Status of Live-In Relationship In India

Although if the concept of having a partner who lives with you is looked upon by society as a whole, the government does not consider this sort of arrangement to be illegal in any way. The legal status of live-in relationships in India has been determined by the Courts in a number of occasions. In addition, the Supreme Court of India has ruled that cohabitating with another person is protected by the right to life and that this ruling precludes cohabitation from being classified as a criminal offense.

In *A. Dinohamy v. W.L.Blahamy*[4] According to a decision made by the Privy Council in 1927, "where a man and a woman are consistently proven to have resided around each other as man and wife, the legal system will assume, unless the reverse is clearly established that they were

[4] AIR 1927 P.C. 185

residing together in ramification of a valid marriage, and not in a state of concubinage." This presumption stands unless it can be shown that the couple was living together in a state of concubinage. Providing official acknowledgement of their partnership to a couple who had been cohabitating for half a century., the supreme court in the case of *Badri Prasad v. Director of Consolidation*,[5] has observed that "Law leans in favor of legitimacy and frowns upon bastardy".

The Allahabad high court in the case of *Payal Sharma v. Superintendent, Nari Niketan*,[6] opined that "A man and a woman, even without getting married can live together if they wish. This may be regarded immoral by society but it is not illegal. There is a difference between law and morality". In the case of *Lata Singh v. State of U.P. & Anr.*,[7] it was observed that a " live-in relationship between two consenting adults of heterogenic sex does not amount to any offense, even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes". In *S. Khushboo v. Kanniammal*,[8] it was held by the supreme court that live-in relationships are permissible and the act of two adults living together cannot be considered illegal or unlawful.

In *D.Velusamy v. D.Patchaiammal*,[9] the court while examining section 2(f) and section 2(s) of The Protection of Women from Domestic Violence Act, 2005, opined that a "relationship in the nature of marriage" is akin to a common-law marriage. And the common-law marriages require the following conditions;

1. The couple must hold themselves out to society as being akin to spouses.
2. They must be of legal age to marry.
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried.
4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

The court, in this case, observed that " in our opinion, a "relationship in the nature of marriage' under the 2005 Act must fulfill the above-mentioned requirements and in addition to this the parties must have lived together in the shared household, merely spending weekends together or a one night stand would not make it a domestic relationship" The supreme court in, *Shakthi Vahini v. Union of India and others*,[10] held that "Assertion of choice is an Insegregable facet of liberty and dignity". The court ruled that the choice of the person was a fundamental aspect of dignity and liberty and was constitutionally protected by articles 19 and 21 of the constitution. Further once a right was recognized, it was the duty of the state as well as courts to enforce and protect that right.[11] In *Nandakumar and another v. The State*

[5] 1978 AIR 1557
[6] AIR 2001 All 254.
[7] (2006) 5 SCC 475
[8] (2010) 5 SCC 600.
[9] AIR 2011 SC 479.
[10] (2018) 7 SCC 192
[11] Saurabh Kirpal sex and the supreme court, How the law upholding the dignity of the Indian citizen ,128

of Kerala,[12] the court emphasized that "live-in relationship is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005 ". Justice V. Chitambaresh and Justice KP. Jyothindranath ,in one of the case, wherein the writ petition was filed by the father of a 19-year-old girl to prevent her from living with an 18-yearold boy, observed that "The Constitutional Court is bound to respect the unfettered right of a major to have a live-in relationship even though the same may not be palatable to the orthodox section of the society". The court dismissing the writ petition declared that the girl is free to live with the boy, or she can marry him once he attains the marriageable age.[13]

Important Adjudicatory Rulings and Permutations

While hearing the protection plea the Allahabad high court in *Kaminidevi v. State of UP and others,*[14] observed that "where a boy and a girl are major and they are living with their free will, then, nobody including their parents, has authority to interfere with their living together. As the right to life is a fundamental right ensured under Article 21 of the Constitution of India in which it is provided that no person shall be deprived of his right to life and personal liberty". Whereas the Punjab and Haryana High court refused to give protection to a minor girl who was residing with an adult male in *Kajal and Another v. State Of Haryana and Others,*[15] the court observed that "A minor girl residing with an adult male in a live-in relationship is not morally and socially acceptable". And again in *Ujjwal and another v. State of Haryana and others,*[16] the Punjab and Haryana high court refused to give protection to a couple who were living together, the court observed that "If such protection as claimed is granted, the entire social fabric of the society would get disturbed.

Hence, no ground to grant the protection is made out". And the days after these judgments, the Punjab and Haryana high court by granting protection to a couple who were living together in *Soniya and another v. State of Haryana and others,*[17] observed that "The concept of live-in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offense". Further the court opined that, "It would be a travesty of justice in case protection is denied to persons who have opted to reside together without the sanctity of marriage".

In *Rashika Khandal v. the State of Rajasthan,*[18] the Rajasthan high court observed that a "live-in relationship between cannot be permitted between a married and an unmarried person. One of the essentials of such relationships is that the couple must be unmarried". The Punjab and Haryana high court while granting protection to a couple living in a live-in relationship in

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(Hachette book publishing India Pvt. Ltd, 2020)

[12] (2018) SCC OnLine SC 492.

[13] WP(Crl) No.178 of 2018.

[14] WP-C No. - 11108 of 2020.

[15] CRWP No. 2160 of 2021 (O&M).

[16] CRWP-4268 of 2021 (O&M).

[17] CRWP No.4533 of 2021 (O&M).

[18] S.B. Criminal Miscellaneous (petition) No.3023/2021

Sanjay *and another v. State of Haryana and others*,[19] observed that "The live-in-relationship nowadays is not a new phenomenon but the society has not evolved to the extent of accepting such relationship without raising the eyebrows to such relationship". A similar stance was taken by the court in the case of *Pushpa Devi and another v. State of Punjab*[20] and others, while granting protection to a 21 and 19-year-old couple the court observed that "the two are entitled to live together in a live-in relationship being major". In the case of *Ridhima and another v. UT of J&K,*[21]while hearing the protection plea by a couple living together, the court observed that the "Right to exercise assertion of choice is an inseparable part of liberty and ones dignity".

Grant of Alimony and Application Of The Prevention Of Domestic Violence Act, 2005

In US, the term "palimony" is used for granting relief in the live-in relationships. The term "palimony" was conceived during a famous celebrity divorce case of "Marvin vs Marvin" in California, US. In this case, the complainant was living with the man in a live-in relationship for a long period of time and thereafter she approached the Court to get financial compensation from her partner on break up.[22] The word "palimony" is a combined form of worlds "pal" and "alimony." Though the particular suit was unsuccessful, the courts found that "in the absence of an express agreement, courts may look to a variety of other remedies to divide property equitably." It was observed that if there is cohabitation agreement for the couple before moving in together, the Court may consider grant of palimony.

Section 125 of the Cr. P.C. provides for claiming maintenance by wives, children, and parents from a person on which they are dependent and are unable to maintain themselves. Though the amendment was not incorporated in the Cr. P.C., such relationships were brought into ambit of domestic relationship. Section 2(f) of Prevention of Domestic Violence Act, 2005 (PDV Act, 2005) defines domestic relationship as "a relationship between two persons who live or have lived together, at any point of time, in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family." According to this definition, live-in relationships which are in a nature of marriage, that is, the couples are living for a long period of time and presenting themselves as husband and wife come under the ambit of the PDV Act, 2005.

Therefore, the woman in live-in relationship can take protection under Protection of Women from Domestic Violence Act, 2005 and can claim for maintenance also (*D. Velusamy vs D. Patchaiammal*).[23] The question of application of the PDV Act, 2005 to the live-in relationships came into the consideration of the Supreme Court in the case of *Lalita Toppo vs State of Jharkhand*,[24] It was held that the victim, that is, the estranged wife or the live-in

[19] CRWP-5531-2021
[20] CRWP -6314-2021
[21] WP(C) No.1403/2021.
[22] *Marvin vs Marvin.* OneLBriefs website. 1976.
[23] 10 SCC 469
[24] (2019) 13 SCC 796.

partner would be entitled relief under the Act in a shared household. While referring to this report in *Ajay Bhardwaj vs Jyotsna*,[25] the court awarded alimony under the PDV Act, 2005 to a woman in a live-in relationship. But it is only the woman who can claim maintenance under the PDV Act, 2005. Relief under the PDV Act, 2005 is not available to men in live-in relationships. In this connection, it is pertinent to mention that in the case of *Khushboo vs Kanniamal* [26]the Court observed that "a live-in relationship is invariably initiated and perpetuated by men."

Status Of Children Born Out of Live-In Relationship

In *Tulsa vs Durghatiya*,[27] the Supreme Court, During the process of granting a kids the right to property, the court made the observation that children born to parents in a live-in relationship would not be considered to be illegitimate if their parents had shared a household and cohabited for a considerable amount of time prior to being recognized as husband and wife, and the relationship could not have been a sexual one. "walk in and walk out" relationship. Section 16 of the Hindu Marriage Act, 1955 and Section 26 of the Special Marriage Act, grant legitimacy to kids that were born to parents whose marriages were declared null and void or where a decree of nullity was issued in respect to a voidable marriage. Children who were born to parents whose marriages were declared null and void or where a decree of nullity was issued in respect to a voidable marriage should be legitimate or deemed to be legitimate, respectively. But according to Subsection (3) of the same sections of the Act, The right of inheritance of such children is restricted to the assets acquired solely by their parents.

Therefore, such children do not have the coparcenary rights in the property of the Hindu undivided family (HUF) if their parents were not legally wed to each other. Hence, the provisions of these portions of the Act have been applied in order to offer a right of inheritance to children born out of live-in relationships within the self-acquired property of the parents. This right of inheritance is limited to the self-acquired property of the parents. But, if their parents are not legally married to one another, then they are not qualified to make a claim to the coparcenary rights in the property of their father's HUF. This is because these rights are passed down from the father. Since Section 125 of the Criminal Process Code expressly mentions "both legitimate and illegitimate child," it is perfectly acceptable for a kid who was born as a result of an unmarried couple living together to file a claim for child support. When it comes to making choices on the guardianship of children in such a situation, it is common practice to identify the mother as the natural guardian of the kid.

Mental Consequences of Live-In Relationship

In the recent past, there has been a tremendous change throughout the whole of the United States in the dynamics of relationships that take place between persons of different sexes. People of this generation have a very different way of understanding these kinds of encounters

[25] SCC Online P&H 9707
[26] (2010) 5 SCC 600.
[27] AIR 2008 SC 1193.

compared to persons of earlier generations who did the same thing. It was against the conventions of both our culture and society at the time for men and females to live together in the same residence before to being married to one another. This was because living together prior to marriage was considered improper. This was considered to be a serious social gaffe. Along the same lines, the idea of participating in sexual activity before to being married was seen as a particularly wicked behavior pattern at the time. Nonetheless, these ideals and taboos are gradually vanishing, and society is becoming more tolerant of the concept of having sexual experiences prior to being married, as well as having live-in relationships with one another. This change in thinking is the consequence of a mix of a variety of factors, such as independence, privacy, professional opportunities, educational opportunities, and globalization. One of the reasons that are offered in favor of these sorts of relationships is the fact that they provide a means for better grasping one's spouse and for establishing whether or not the two individuals are compatible with one another.

In contrast to their parents and grandparents, members of the present generation hold the view that getting to know one another in a way that is at least somewhat sensible prior to entering into a formal marital partnership is one of the most important steps to take. If a couple determines after being married that they are not compatible with each other in any way, breaking out of the marriage may be a highly challenging, time-consuming, tough, and stressful process for everyone who is involved in the relationship. This includes the couple. Cohabiting for an extended period of time but not marrying under the law paves the way for an amicable breakup that does not require the parties to resort to time-consuming and complicated legal proceedings. Cohabiting for an extended period of time but not marrying under the law paves the way for an amicable breakup.

A relationship such as this one, in which there are no obligations or commitments connected with it, does, however, have certain disadvantages. In contrast to a traditional marriage, in which each partner is awarded certain rights and given responsibilities and duties that must be carried out jointly by both parties, the participants in these types of partnerships are not subject to any obligations in the eyes of the law. Rather, these types of partnerships do not impose any legal obligations on one another. When both people in a relationship share living quarters, it is not uncommon for the woman to be in a dangerous position. This is especially true with domestic relationships. In September 2019, a panel of the Rajasthan State Human Rights Commission even categorized such a connection as being against the dignity of women and published a suggestion to establish a Law against it. The proposal called for adopting a Legislation to prohibit such a connection. These kinds of partnerships will be against the law. On the other side, those who campaign for human rights were greeted with strong hostility and fury in response to the ruling.

In our day-to-day lives, we face a variety of social as well as logistical issues as a result of such pairings. Couples face a variety of legal obstacles, some of which include creating a joint bank account, obtaining visas, obtaining insurance, and going to the hospital, among other things. Children who are conceived outside of wedlock are placed in a precarious emotional position and face obstacles in the way of a smooth and amicable transfer of their parents'

assets. They do not have a coparcenary portion in the HUF property; nevertheless, as was said before, they do have the right of inheritance in the properties that their parents have. The purpose of this article is to illustrate the difficulties that might arise for unmarried couples who want to live together prior to being married by relating two true incidents.

The attitude of society was like a type of silent criticism of the world's best chess player, Anuradha Beniwal, who was living peacefully with her partner in a live-in relationship without any objection from the family members, despite the fact that she was in a live-in relationship. Soon after that, her boyfriend was offered a position in London, and she made the decision to accompany him there since she wanted to be with him. As they were not married to one another in a manner that was permitted by the law, visa complications were to be expected. They were forced to get married quickly in order to get out from under these obligations.[28] One couple in Kerala shared their home together for the better part of four decades. They held the belief that love did not need approval from the society and that marriage should be treated as a holy institution, but they opposed the concept of marriage as a social institution. They had taken advantage of the chance to be together for the rest of their lives and succeeded in doing so for the better part of four decades. Even after living together for such a significant amount of time, they made the decision to officially register their relationship. This was done not out of any sense of moral obligation, but rather so that their grandchildren would not have to deal with any legal or administrative issues.

Conclusion

The many decisions made by the courts make it abundantly evident that the legitimacy of a live-in relationship has been recognized by the legal system. In spite of this, our society has not yet advanced to the point where it is able to embrace the kinds of partnerships described above, which is why they are still looked down upon in certain parts of India. When an agreement is sanctioned by the touchstone of fundamental rights, moral policing is not an option since it would be inconsistent with the arrangement. Some people may see such relationships as morally objectionable.

This is due to the fact that engaging in moral surveillance would be incompatible with the defense of basic rights. In addition to having a better opportunity to get to know one another on a deeper level together, couples who are in live-in relationships have the choice to exit the relationship anytime they want to. Despite this, they are forced to deal with a considerable deal of resistance from both the social and legal communities. In situations like this, women are often put in a position where they are at a disadvantage compared to the other party. As was mentioned earlier, the Supreme Court has established guidelines for the regulation of of this kind collaborations as well as for the safeguarding of the liberties of women who engage in such partnerships and kids who are born as a consequence of such partnerships.

[28] Anand A. The complete guide to live-in relationship in India. Quartz India. https://qz.com/india/303608/the-complete-guideto-live-in-relationships-in-india/. 2023. Accessed January 31,2021.

These rules protect the rights of women who participate in such relationships and children who are born as a result of such relationships. The social norms and values that are upheld by the younger generation are distinct from those of previous generations. It is hard to minimize the value of marriage as an institution for the purpose of maintaining social order, even while there are certain circumstances in which cohabiting relationships are not only permissible but also desirable. It is more important, from the viewpoint of a psychiatrist, to become engaged in a relationship that is pleasant, loving, and meaningful than it is to remain alone or to remain locked in a relationship that is unpleasant, negative, and troublesome.

Misleading Advertisements and Protection of Consumer Law in India

Abhishek Kumar Singh[1]
&
Shashi Shekhar Singh Chauhan[2]

"A Consumer is the most important visitor on our premises. He is not dependent on us; we are on him. He is not an interruption to our work. He is the purpose of it. We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving us opportunity to serve him."

Mahatma Gandhi

Introduction

The basic objective of the consumer protection law is to promote welfare of the society enabling the consumer to participate in the market economy. It seeks to protect consumers against the exploitative tactics of producers, suppliers, manufacturers, retailers etc. who are far more powerful a resourceful than the hapless consumers. In early days, the economic commercial activities were governed by the principle of laissez faire which meant least interference of the State in the economic and commercial dealings of the people. Obviously, the doctrine men, which allowed complete freedom of contract to individuals during the period of Industrial Resolution in 18th century. Consequently, 'caveat emptor' was the rule that prevailed in market transactions in those days, which literally meant "let the buyer beware". It was based on the assumption that a buyer possesses the capacity and skill while making purchases or entering into commercial transactions therefore, he is supposed to make purchases or hire services with his eyes open so that there is nothing to grumble about the quality or quantity of goods purchased or services hired at the time when he consumes the goods.

The economic history of nineteenth century reveals that there was a direct conflict between the sellers of commodities and the buyers. The producers of goods and articles and their sellers believed that monopoly over the goods produced for sale was the only way to earn maximum profit and get richer overnight, leaving the consumers or buyers no choice for bargaining and thus compelling them to buy at seller's terms. In this way, the manufacturers, producers and retailers dictated their terms and exploited the consumers during the era of individualism.
However, as the societies advanced, there was about in production and the industrial development was at its full swing during the latter half of the 19th century. In consequence, the

[1] ***Research Scholar College of Law, IIMT University Meerut.***
[2] ***Research Scholar College of Law, IIMT University Meerut.***

market trends started showing a change for the better. It was realized that individualistic policy had led to rise of capitalism eventually resulting in concentration of wealth in the hands of few who dominated the economic field at the cost of poor and helpless workers who leached bargaining capacity to face the mighty capitalists. The malady lay in absolute freedom of individual in economic endeavors with least interference of the State in it. The result was that monopolists pictured the market leaving consumers little scope for freedom to choose and bargain.

Around the same time, the social thinkers and legal reformers like Jeremy Bentham, sir John Stuart Mill etc. campaigned for the cause of protection of people against the exploitative tendencies of unscrupulous traders and manufactures and stressed on the need for regulatory measures to be initiated by the State to curb the unbridled monopolistic practices of merchants and traders in the interest of public and consumers.

Bentham's utilitarianism and socio-legal reforms struck a blow to capitalism and the economic principle of laissez faire gradually withered away paving way for socialistic pattern of society which aimed at welfare of the people in general and poor, indigent and down-trodden in particular. With this change in trend, the protection of consumer's interest came to be recognized as the social and also the legal responsibility of the State.

False and Misleading Advertisements

Nowadays media is rife with advertisements which blatantly compare features of brands with those of their competitors. Citing opinion of the experts these advertisements claim their advertisements to be qualitatively and qualitatively better than those of their rivals. These types of false and misleading qualitatively are unethical.[3] To seek relief a complainant is required to approach appropriate forum/ commission with fair mind otherwise he is not entitled to receive relief.

In *Sushil Kumar v. Oriental Insurance Co. Ltd*.,[4] where partner of complainant firm lodged claim with insurance company and it was rejected. Subsequently other partners filed complaint in the consumer forum by increasing amount of claim to double. A partner who claimed at first attempt remained behind the curtain and during pleading intentionally reference of first claim not mentioned. No sufficient reasons could be submitted for any discrepancy. The court held that the complainant must necessarily come with clean hands before the redressal agencies otherwise entailing disentitlement of relief.

When does and advertisement become "Misleading"?

When an edible advertisement gives you the impression that you are free of heart problems so long as you are using that particular oil, then it is misrepresenting facts. When an advertisement of a water purifier that filters only bacteria (and not viruses) claims that it gives 100 per cent

[3] Sultana. Waheeda, "Regulatory Callenges and Ethical Issues in Public Relations and Advertising, Media Law Ethics: Reading in communication Regulations. Kuran Prasad (ed.) Ist Edition, Volume-2, p-396.
[4] 1993 CCJ 88 (Haryana)

water, then it is a false statement. When a mobile operator promises STD calls for 40 paise per minute, but omits to say that this rate is applicable only when calls are made to another mobile of the same compay, then it constitutes misrepresentation. Similarly, when an advertiser or a manufacturer makes a claim about a product, he should be able to prove it. Or else it becomes a false statement. If he says that his refrigerator is the best or that it keeps the substantiates the claim. Or else, it becomes a fals statement. Similarly, if an advertisement for a detergent says that it can remove grease in just one wash-it should be able to do just that and the manufacturer should be able to prove this. Or else, it is an incorrect statement or a false advertisement.

When a toothpast advertisement says that it prevents cavities, one expects the manufacture to have the data to prove this. If he fails to do that, then he is making an unsubstantiated claim or a fals statement. If an advertisement for a face cream claims that it removes dark spots on the face and even prevents them from coming back, the manufacturer should be able to prove this. Or else, it is a deceptive advertisement. Even reducing information about the product to minute letters at the bottom of the advertisement could be termed as an unfair trade practice, particularly if such information is not intelligible to the consumer. In fact, in the case of M.R. Ramesh V M/S Prakash Moped House and Others[5] the apex consumer court warned against advertisement that use fine print to hide crucial information pertaining to products and services, thereby misleading the consumer.

Two Categories of False and Misleading Advertisements

Broadly, one can categories false and misleading advertisement into two groups: in the first group would be those that basically violate the consumers' right to information and choice and thereby have the potential to cause the consumer, financial loss and even mental agony. The second category would include those that peddle health cures and drudge of questionable efficacy and health gadgets of unknown values. This class of advertisement is the most dangerus, as they can also have a severe repercussion on the health of the consumer.

The best example in the second category is that of Neeraj Clinic, Rishikesh. Despite the Drugs and Magic Remedies (Objectionable Advertisements) Act, which specifically prohibits advertisements pertaining to several diseases including epilepsy, R.K Gupta advertised with impunity, his clinic and claimed that he was offering a sure for epilepsy.

Unfortunately, despit several laws meant to protect consumes against such unfair trade practices, false and misleading advertisements continue to exploit the vulnerability of consumers, a because of their poor enforcement and b because of the lacunae in some of the laws. In fact, such advertisements show have a wider canvas: while earlier, one saw them only in the print media, today you can see them on television. Influencing a larger number of people and impacting even the illiterate. Proliferation of advertisements through television marketing networks promoting health cures, slimming and beauty gadgets of unproven value is a cause of great concern, because today the reach of television channels is phenomenal. And undoubtedly, the impact of the visuals on the television screen is far greater than the newspapers.

[5] RP NO 831 of 2001.

Brief History of Consumer Law

It has been universally accepted that consumer is the real deciding factor for all economic and commercial activities. Therefore, the extent of consumer protection is a true indicator of the level of economic progress in a nation. Recognizing the fact, consumers the world over have often to face imbalances in economic terms, educational level and bargaining power, there is dire to promoting just, equational and sustainable economic and commercial development. The United Nations Secretary-General submitted draft guidelines for consumer protection to the Economic and Social Council in 1983. It was followed by an extensive and meaningful discussion and an active participation on the part of member countries to negotiate on the scope and content of an appropriate legislation. In line with these international development on need for protection of consumers, the Indian Parliament enacted a law on Protection of consumer's rights enshrined in Articles 14 to 19 of the Constitution of India. The law envisages a three tier mechanism for redressal of consumer's disputes at District, State and National levels.

The Consumer Protection Act, 1986

The enactment of the Consumer Protection Act, 1986 was a milestone in the history of socio-economic legislation in India. It was one of the most progressive and comprehensive legislation enacted for the Protection and welfare consumer. It was enacted after a series of consultations and dialogues with the representatives of consumers, trade unions, industrialists and manufacturers of goods and commodities as also extensive deliberation within the Government. The Act was modelled on the U.N. General Assembly Guidelines for the Protection of Consumer issued on April 9, 1985 which were formulated after an extensive discussion and negotiation with different member countries. These guidelines were placed under four heads, namely,

(i) Objectives
(ii) General Principles,
(iii) Guidelines and
(iv) International Co-operation.

It was in this back-drop that the Consumer Protection Act, 1986 was enacted in India with a view to protecting the consumers as a whole. Its main objective was to ensure simple, speedy and inexpensive redressal of consumer's grievances. The Act was amended in 1991, and again in 2002 in order to extend its coverage and scope enhance the power of the redressal agencies. The Act recognised that consumer is the axle of the modern economic system. He is the back-bone of the market world. If he rejects any product or service, there is no furture for that product or service. Consumer is the only driven force behind the success of the market. If the quality of goods or services provided are not fulfilling the expectations of consumers, they stand rejected and ousted from the market. In is in this sense the consumer has been called a 'king-pin' of the market. In the present-day competitive market strategy, consumers have so many options and slightest deficiency in goods, product or services world entitle them to clain compensation.

The Basic Rights of Consumers Sought to Be Protected

The Basic Rights of Consumers as defined by the International Organisation of Consumers Unions (IOCU) and sought to be protected and promoted are as follows:

(i) The rights to be protected against marketing of goods and services which are hazardous to life and property;
(ii) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protects the consumer against unfair trade practices;
(iii) The right to be assured, wherever possible, access to variety of goods and services at competitive prices;
(iv) The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
(v) The right to be seek redressal against unfair trade practices or restrictive trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
(vi) The right to be consumer education.

The Act provides effective protection to consumers from different types of exploitation, such as defective goods, adulteration, under-weight, excessive price, unsatisfactory or deficient, service and unfair or restrictive trade parties.

The Consumer Protection Act, 2019

The Consumer Protection Act, 1986 came into force on 26th December, 1986. Thereafter large-scale changes were made in the Act for the betterment of the consumer functioning. Yet, it lacked vital provision which could infuse efficiency in the functioning of Consumer Forums. This lacuna has been supplemented to a large extent by the New Consumer Protection Act, 2019, which has repealed the earlier 1986 Act.

Consumer Protection Act being a beneficial legislation warranting liberal interpretation, it was realised that the genuine claims of consumers ought not to be rejected on merely technical grounds. The beneficial or remedial remedies available under the Act should be given "fair and liberal" interpretation, which extends the letter to include matters within the spirits and purpose. The Consumer Protection Act, 2019 aims at plugging the loopholes in the Consumer Protection Act, 1986 and making the consumer Redressal Forums more accessible. It has introduced a new authority, Consumer Protection Authority and also introduced many new terms and defined them.

The major thrust of the Consumer Protection Act, 2019 is to strengthen mediation in consumer sector by insertion of a separate chapter in the Act providing Consumer Mediation Cell attached to the District, State and National Commission. Yet another main feature of the New Act of 2019 is to provide for Product Liability action against product manufacturer or a product service provider or a product seller, as the case may be, for any harm/damage caused to him on amount of a defective product.

Regulation of Advertisements in India

There is no single regulatory body in India for regulation of advertisements. Depending of the nature of the case, the power to regulate advertisements may be exercised by a vast number of

authorities the court, Central and State Governments, tribunals, police authorities etc. in addition to these authorities the Press Council of India established under the Press Council of India Act 1978, is empowered to regulate advertisements. The Press Council of has power to hold an inquiry into a complaint against a newspaper and if it finds that the newspaper has violated the standards prescribed by the Council, it may warn, admonish or censure the newspaper, the editor or the journalist as the case may be.[6]

Self-Regulation-Advertising Standards Council of India

Indian Advertisement Industry has an effective self-regulatory mechanism Advertising Standards Council of India (ASCI) is the self-regulatory mechanism. ASCI is a non-statutory tribunal comprising an association of advertisers. It is an independent body under the aegis of Advertising Agencies Association of India (AAA). It started on 20th November 1985. ASCI entertain and dispose complaints based on the Code of Advertising Practice.[7] The Code ensures-

- Truthfulness and Honesty of representations made in the advertisements.
- The advertisements are not offensive to accepted standards of public decency.
- Safeguard against indiscriminate use of advertising for promotion of products which are hazardous to the society or individual.
- Advertisements. observe fairness in competitions.[8]

Need and Reasons of Consumerism in India

The need of strong consumerism in our country is on account of the following reasons:

1. In vast country like, it is very difficult ot organise the consumers. The people besides being the backward have linguistic, cultural and religious difference which makes the problems quiet intricate or complex;
2. Majority of our population is illiterate, uneducated, ignorant and ill-informed;
3. Poverty, lack of social awareness, accepting life as it and passive outlook are some of the factors which make consumers movement difficult to increase;
4. There may not be a positive common objective for the consumers except their desire for safe quality products, for reasonable price and a feeling of strong negative reactions against the products. In wake of large-scale production and thevariety and choice conferred on the consumers, a consumer needs guidance which can only be appropriately provided by a consumer's organisation;
5. The advertisement born barded on the consumers make them quite confused and hence again a need for consumer guidance.

Conclusion

It may, however, be stated that even after various stipulations incorporated by the 2019 Act for making consumer protection mechanism more affective still some more provisions are needed

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[6] Divan, Madhavi Goradia, Facets of Media Law,1st Edition, pp-196-197

[7] Ibid, pp-197-198.

[8] Sultana, Waheeda, "Regulatory Challenges and Ethical Issues in Public Relations and Advertising", Media Law and Ethics: Reading in Communication Regulations, Kiran Prasad (ed.), 1st Edition, Volume-2, p-398

to be inserted in the Act in an effort to expedite consumer proceeding and make them more effective. The insertion of certain new definitions raising their number from 18 to 47 in the New Act and enlarging the scope of the Act by making it more comprehensive and exhaustive is indeed a welcome step in strengthening the teeth of the Act to guard against malpractices and safeguarding the interests of consumers.

India has the biggest consumer movement today due to the efforts of consumer organizations and the establishment of consumer court etc. still, the present scenario is not very encouraging unfortunately the consumer court have become replica of legal courts, as the procedure is no longer simple and quick in practice. The consumer redressal process is relatively cumbersome and time consuming than intended by the legislature. The process involves engaging professional personnel, though optional but technicality encourages aggrieved person to appoint the same, submission of fees, if required, required time for filing the case and attending the court proceeding and certain other formalities like producing the bill, warranty cards etc. These proceeding and need to be made simpler and quicker for making the process more meaningful and realistic. Every consumer in own interest has to realise the role and important in the right perspective. In a competitive economic environment, the consumer has to exercise the choice either in favour of or against the goods and services. The choice is going to be vital and final. One would have to realise the importance and prepare to exercise their rights with responsibility. The consumers in society get a position in the market depending upon what they do or do not do.[9]

The ethical aspect of Indian advertisement is extremely important for restoration o our India culture and heritage. India culture is getting diluted by the western culture which influences our country to a great extent. Telecasting and publication of obscene, indecent advertisements clearly shows the percolation of western culture in India. So, to save our culture, norms and ethics regulations of such unethical advertisements are extremely essential. The researcher has shown a large number of statutory provisions which regulates advertisements. Moreover, a self-regulatory body, ASCI has been established by an association of advertisers to regulate and control unethical advertisements are escalating in numbers instead of decreasing. This clearly shows that implementation of the laws controlling advertisement is not properly done. The lacks of implementation of the laws is pouring in more and more unethical and obscene advertisements. So proper implementation of the law is highly called for.

[9] Consumer Protection Act- The Road Map Ahead, Rajender Chaudhary, Deputy Secretary, Department of Consumer Affairs.

Critical Assessment of Gender Justice in Society Pitched by the Hindu Succession Act, 2005

Mr. Amit Kumar[1]

Introduction

"Woman is the builder and moulder of nation's destiny. Though delicate and soft as a life she has a heart, for stronger and bolder than of man... She is the supreme inspiration for man's onward march... She is, no doubt, her commanding personality, nevertheless is grimly solemn."
- Rabindranath Tagore.

Women in every society are assets to it. However, they haven't been positioned at the same pedestal as men. In Hindu religion status of a women is often treated as 'Goddess' and worshipped as the same. But when it comes to their right not a single community but every existing community has failed her. Woman who should have every right and dignity with her since her birth is denied of that very basic element.

If we look at earlier practices they were treated as mere chattel. They were deprived of their basic human rights to live in society after death of her husband, she was forced to follow *Sati* rituals and give her life on the site of her husband's cremation. From the very beginning a misconception of women as a "weaker sex" was propagated and practiced. She has not only been denied of full justice, social, economic and political but as a "weaker sex" she has been used to be abused and exploited to maximum extent and subject to ignorance at all levels by male dominated society.[2]

This became the prime reason of keeping her away from following her choices and what belongs to her rightfully. Gradually she was forced to remain dependent on male for finances which only worsened the plight of women through ages. The patriarchal mindset and practices have always treated women as secondary living-being to run a society. This notion about of women has dented her character and ability from which freeing one has never been an easy task and even now women are in consistent effort to remove the social stigma that they are less than women.

Women play a crucial role in the socio economic development of a country. But both in the industrially developed and less developed countries, women are burdened with cumulative

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[1] ***LL.M (One Year) Course, Hidayatullah National Law University, Raipur, Chhattisgarh.***
[2] Ramesh, "Political Empowerment of Women in India" in C.A. Gurudath, (ed.), Women, Child Law and Society 119 (2006), see https://shodhganga.inflibnet.ac.in/bitstream/10603/57409/8/08_chapter%201.pdf ,

inequalities as a result of discriminatory socio-economic practices. The situation is much worse particularly in the case of rural women.[3]

There exists lot of inequalities between male and female which exists in our society be it economic like wages or minimum education. Women have been subjected to discrimination in each and every field; their existence has never been independent of males with whom they are associated. In their birth home their identity is associated with their father or brother not even mother and after marriage they are often recognized with the reference of her husband.

Laws in society are meant to regulate it and since independence of this nation or prior to it has played significant role in positioning women at their due place. British regime has brought various reforms like abolition of *Sati-Pratha* to elevate the status of women and giving them right to live even after the death of her husband. Similarly, our Constitution incorporated equality clause to treat every person same in the eye of law (Article 14 of the Constitution of India).

Further Article 15 of the Constitution of India provides for non-discrimination on the basis of sex and helps women to achieve the equal status to men. Earlier they were denied of their inherent rights as human being but slowly and steadily legislation and judicial pronouncements are rectifying the mistakes of society done towards females of society. In India under Hinduism, they were deprived of their property rights. In the ancient text of Manusmriti, Manu writes: *"Her father protects her in childhood, her husband protects her in youth and her sons protect her in old age; a woman is never fit for independence."*[4]

The Sanskrit saying *"Na stri swatantramarhati-'Swatrantam Na Kachit Striyah"*[5] meant that women were unfit for any independent existence and was the rule of ancient Hindu society. This stance saw the much-needed change when Hindu Code Bill was tabled; it recognized women's property right under Hindu religion, which was often ignored. After huge uproar, the above bill was put down and Hindu Succession Act, 1956 was passed curtailing many rights of women, which was designed in Hindu Code Bill. Women's property right was recognized lately but in present scenario although many provisions and judicial decisions are there but a study is required to look how things have changed on ground in reality. It is important to see and analyse the plight of women after so much work on paper.

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[3] Anju Beniwal, Gender Discrimination And Empowerment Of Women In India: A View, The Indian Journal of Political Science, Vol. 74, Also see http://www.jstor.org.elibraryhnlu.remotexs.in/stable/pdf/24701025.pdf?ab_seg_ments=0%2Fbasic_search_solr_cloud%2Fcontrol&refreqid=fastly-default%3A965ed488d1559a4bb41263f67e.

[4] Manu IX.3: Manusmriti: The Laws of Manu, in Sacred Books of the East 56 (G. Buhler trans. 1886) (Available at http://www.hinduwebsite.com/sacredscripts/laws_of_manu.htm). See also http://www.jstor.org.elibraryhnlu.remot_exs.in/stable/pdf/25654333.pdf?ab_segments=0%2Fbasic_search_solr_cloud%2Fcontrol&refreqid=fastly-default_% 3Ac7e5988edc54f88c85ba20c23cfe772e.

[5]Debarati Halder and K. Jaishankar, Property Rights of Hindu Women: A Feminist Review Of Succession Laws Of Ancient, Medieval, And Modern India, Journal of Law and Religion, 2008-2009, Vol. 24 pp. 663-687, {A.M. Bhattacharjee, Hindu Law and the Constitution 120 (2d ed., E.L. House 1994)}, for more see http://www.jstor.org.elibraryhnlu.remotexs.in/stable/pdf/25654333.pdf?ab_segments=0%2Fbasic_search_solr_cloud%2Fcontrol&refreqid=fastly-default%3Ac7e5988edc54f88c85ba20c23cfe772e.

In a study (Reena Patel, 2006)[6] submitted that concept of women's right to have property is flawed because both constitutional and other legislations which confers right to property to women is based on religion. She further observed that the issue of equality needs to be taken beyond generating neutral structures and towards creating structures for the empowerment of women to achieve equality in fact rather than only in principle, we need to continuously query the commitment of the state, its institutions, laws and personnel and land ownership women are governed by a combination of legal, social and cultural norms, values and institutions. She suggests that critical evaluation of constructing social and gender relation is important to find ways for the creation of coherence or disjuncture between rules of law and the overall normative context provided by society.

Kanakalatha Mukund, (1999)[7] have written about the property rights of women in South India, where writer has focused on customary practices and gender inequalities related to it. Here he has found that women's status in south had degenerated in last thousand years and value of women is limited to dowry.

In a report (Debarati Halder and K. Jaishankar, 2008-2009)[8], author observed that even after the amendment of 2005 in Hindu Succession Act condition of women has not improved much. He cited 'Hindu orthodox families' as it reason which discriminate between the genders and keep girls away from their basic right.

Prakash Chand Jain, (2003)[9] while talking about gender justice in his paper had observed that reforms in society should never be imposed in compulsive way not through legislation because it has its own confined area. The social change must begin from society as a part of evolutionary process which fits to demand and adjustments of society.

In one of article researcher (Anju Beniwal,2013) suggests that there is need to alter the mindset of society which flourishes the evil of gender inequality without doing this gaining of leveling field for women is hard.

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[6] Reena Patel, Hindu Women's Property Rights in India: A Critical Appraisal, Third World Quarterly , (2006,Vol. 27), for more see, http://www.jstor.org.elibraryhnlu.remotexs.in/stable/pdf/4017753.pdf?ab_segments=0%2Fbasic_search_solr_cloud%2Fcontrol&refreqid=fastly-default%3Ac7e5988edc54f88c85ba20c23cfe772e.

[7] Kanakalatha Mukund, Women's Property Rights in South India: A Review, : Economic and Political Weekly, (1999, Vol. 34 pp. 1352-1358), for more see, http://www.jstor.org.elibraryhnlu.remotexs.in/stable/pdf/4408023.pdf?ab_segments=0%2Fbasic_search_solr_cloud%2Fcontrol&refreqid=fastly-default%3Ac7e5988edc54f88c85ba20c23cfe772e, last visited 05/02/2021

[8] Debarati Halder and K. Jaishankar, Property Rights Of Hindu Women: A Feminist Review Of Succession Laws Of Ancient, Medieval, And Modern India, Journal of Law and Religion , (2008-2009, Vol. 24), pp. 663-687, for more see, http://www.jstor.org.elibraryhnlu.remotexs.in/stable/pdf/25654333.pdf?ab_segments=0%2Fbasicsearchsolrcloud%2Fcontrol&refreqid=fastly-default%3Ac7e5988edc54f88c85ba20c23cfe772e, last visited 05/02/2021.

[9] Prakash Chand Jain, Women's Property Rights Under Traditional Hindu Law And The Hindu Succession Act, 1956: Some Observations, Journal of the Indian Law Institute, (July-December 2003), pp. 509-536, for more see, http://www.jstor.org.elibraryhnlu.remotexs.in/stable/pdf/43951878.pdf?ab_segments=0%2Fbasic_search_solr_cloud%2Fcontrol&refreqid=fastly-default%3Ac7e5988edc54f88c85ba20c23cfe772e, last visited 05/02/2021.

Legislative and judiciary have also worked hard to ensure that women shouldn't be deprived of their rights to have property. In this regard an amendment to Hindu Succession Act, 1956 was done in 2005.

Prior to 1956 legislation there was another legislation Hindu Women's Right to Property Act, 1937 which has conferred succession rights to widows but it was her limited estate. Thereafter landmark legislation Hindu Succession Act, 1956 was enacted which has given more rights to women related to property, so that they can be brought on same page with men in terms of economic dependence but that wasn't enough. Through this legislation limited estate of women was abolished and full ownership was given. In endeavors to bring uniformity in matters related to property rights of women.

In 2005 this act was amended and efforts were made to give females equal right as to male to acquire the property prior to it only male descendants were qualified to acquire property left by deceased this rule is commonly known as survivorship rule. Amendment of 2005 revoked survivorship rule and brought testamentary succession and intestate succession.

This introduced four classes for intestate succession, which gives equal rights to son, daughter and widow of the deceased in case of devolution. Daughter got the coparcenary status from her birth as son had and her liability was same as son. Below are the amendments done to Hindu Succession Act, 2005:

- **Section 4(2)** of the Act was omitted; this Section stated that the Act shall not override the provisions of any other act. It created an inequality against women by obstructing them to capacitate the agricultural land.

- **Section 6** of the Act creates an equal position for women by providing the right of coparcener in which a daughter of the Hindu joint family is considered as a coparcener, and they are entitled to all the rights and liabilities as a son. Further, the daughter holds the position of coparcener even after her marriage as because they are provided with the right of coparcener by virtue of their birth. As of now, a woman has equal rights as men in the property of a Hindu joint family.

- **Section 23** of the Act was omitted as it divested the right of women to obtain a partition of the dwelling house. The provision stated that a female can dwell in the house only when she is unmarried, separated, or widowed, which creates inequality. So, this section was omitted by the amendment Act and gave women the right of the dwelling house.

- **Section 24** of the Act states that the widow of the predeceased son, the widow of the predeceased son and the widow of the brother are not entitled to the share in the husband property if she remarries. But she deserves a share in the husband property, so the said section was rescinded by the Amendment act 2005.

Conclusion

Finally, Section 30 of the Act of the was substituted by certain words such as "disposed by him or her" instead of him which creates a right for women to dispose of her property.[10] In *Prakash v. Phulwati*[11], case a question arises before court whether for the application of changes brought under section it is necessary that the daughter and the father are alive on September 9, 2005 (the date the amendment was passed). In this court held that if the father has died before the date on which amendment was passed, daughter will have no right of inheritance in coparcenary property.

Again, in the case of *Danamma v. Amar Singh*[12], same issue cropped up but this time answered it in favor of daughters and given them right of inheritance. But strength of judges in both the case where so finality to this issue was required and this finality was given in case of *Vineeta Sharma v. Rakesh Sharma*[13], where court struck down the rule laid down in *Phulwati's*[14] case and upheld the view adopted in *Danamma's*[15] case, held that daughters are coparcenary in the acquired property since her birth in the same manner as a son. The father need not necessarily be alive on the enactment of the Hindu Succession (Amendment) Act, 2005 for daughters to become a coparcener. Daughters could claim their coparcenary property even if the father were dead before the enactment of the Hindu Succession (Amendment) Act, 2005. Court also observed that daughter were subject various inequalities earlier and this judgement will be a positive step towards gender justice.

These are the three landmark cases in history of women's right to acquire property. There are numerous legislations, amendments to such legislations and articles talking about gender justice in society. So, in this regard it is necessary to assess the prevailing situation in society through empirical study. The paper will deal with effects of laws and judgements in society it will also discuss how much these efforts have succeeded pragmatically.

[10] Deb Jyoti Das, Gender Justice under Hindu Succession Act: Critical Analysis, For more see, https://www.latestlaws.com/articles/gender-justice-under-hindu-succession-act-critical-analysis/, last accessed on 05/02/2021.
[11] (2016) 2 SCC 36.
[12] (2018) 3 SCC 343.
[13] Diary No.32601 of 2018.
[14] Ibid.
[15] Ibid.

Right to Privacy is an Intrinsic Part of Right to Life and Personal Liberty

***Mrs. Sarbha Bhasker*[1]**
&
***Dr. Mithilesh Kumar Singh*[2]**

In digital, Privacy must be a priority. In it just me, or secret blanket surveillance obscenely outrageous?
Al Gore.

Introduction

Right to privacy refers to ensuring and respecting the privacy of an individual person. Notably, it is not explicitly mentioned in the constitution. Privacy is an innate human right, and is required for maintaining the human condition with respect and dignity. Article 12 of the Universal Declaration of Human Rights mentions: "No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everone has the right to the protection of the law against such interference or attacks."

In *R. Rajagopal v. State of T.N.*,[3] popularly known as right to be let alone is guaranteed by Art. 21 of constitution. A citizen has a right to safeguard the privacy of his own, his family, matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right of the person concerned and would be liable in an action for damages. However, position may be differed if he voluntarily puts into controversy or voluntarily invites or raises a controversy. This rule is subject to an exception that if any publication of such matters is based on public record including court record it will be unobjectionable. If a matter become a matter of public record the right or privacy no longer exists and it becomes a legitimate subject for comment by press and media among others. Again, an exception must be carved out female who is the victim of a sexual assault, kidnapping, addiction or a like offence should not further be subjected to the indignity of her name and the incident being published in press or media. The second exception is that the right to privacy the remedy of action for damage is simply not available to public officials as long as the criticism concerns the discharge of their public duties; not even when the publication is based on untrue facts and statements unless the official can esatablish that the statement had been made with reckless disregard of truth. All that the alleged contemner needs to do is to prove that he has written after reasonable verification of facts.

[1] ***Assistant Professor, College of Law, IIMT University Meerut.***
[2] ***Assistant Professor, College of Law, Vidhi Mahavidyalay Mudiyari, Jakhaniya Ghazipur.***
[3] (1994) 6 SCC 632.

Judgement of the Supreme Court on Privacy

- In August 2017, a nine-judge bench of the Supreme Court has ruled that Indians enjoy a fundamental right to privacy, that it is intrinsic to life and liberty and thus comes under Article of the Indian Constitution. In its judgment that declares privacy to be a fundamental right, the Supreme Court has overruled verdicts given in the M.P. Sharma case in 1958 and the Kharak Singh Case in 1961, both of which said that the right to privacy is not protected under the Indian Constitution.
- The apex Court ruled that right to privacy is an Intrinsic part of Right to Life and Personal Liberty under Article 21 and entire Part III of the Constitution.
- Supreme Court also had voiced concern over the possible misuse of personal information in the public domain.
- The Supreme Court of India's judgment gains international significance as privacy enjoys a robust legal framework internationally, though India and earlies remained circumspect.
- The judgment finally reconciled Indian laws with the spirit the spirit of Article 12 of the Universal Declaration of Human Right (1948) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966, which legally protects persons against the arbitrary interference with one's privacy, honour and reputation, family, home and correspondence.

Reasons Behind Privacy to Be Included In Fundamental Rights

1- Life and personal liberty are inalienable rights. These are rights which are inseparable form a dignified human existence. Life and personal libarety are not creation of the constitution. These right are recognised by the constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within.

2- Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the constitution.

3- Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level, privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.

4- Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. Privacy has both positive and negative content. The negative content restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.

The Constitution bench headed by Chief Justice J S Khehar in the case of Justice *K.S. Puttaswamy and Ors. v. Union of India & Ors.*[4] decided on (24.08.2017-SC) ruled that "right

[4]. *M.P. Sharma and Ors. v Satish Chandra, District Magistrate, Delhi and Ors.* MANU/SC/0018/1954

to privacy is an intrinsic part of right to life and personal liberty under Article 21 and entire Part III of the Constitution[5]. The nine judges unanimously overruled the two earlier Judgements of the apex court-the M P Sharma verdict of 1950 and that of Kharak Singh[6] of 1960-that right to privacy is not protected under the Constitution. Law which encroaches upon the right to privacy will have to "withstand the touchstone of permissible restrictions on fundamental rights." Any infringement of privacy, must be by a law which is "fair, just and reasonable". The three-fold requirement for such infringement would be: "(1) legality, which postulates the existence of law; (i) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them"

Justice Chelameshwar has held in paragraph 45 of his judgment that aside from meeting the 'fair, just and reasonable' requirement under Article 21, there should be a requirement for 'compelling state interest for those privacy claims which deserve the 'strictest scrutiny Justice Bobde, in paragraph 45 of his judgment held that any infringement of the fundamental right to privacy must pass the same standard required for the infringement of personal liberty, le. In terms of the judgement in the case of *Menka Gandhi v. Union of India*,[7] such law must be "fair, just and reasonable, not fanciful, oppressive or arbitrary".

Justice Nariman has held in paragraph 60 of his judgement that statutory restrictions on privacy would prevail if it is found that the 'social or public interest and the reasonableness of the restrictions outweighs the particular aspect of privacy claimed. Justice Sapre in paragraph 26 of his judgment says that the right to privacy is subject to reasonable restrictions "in view of the social, moral and compelling public Interest that the state is entitled to impose by law." Justice Kaul has held in paragraph 72 of his judgment that right to privacy, would be subject to reasonable restrictions on the grounds of national security public interest and the grounds enumerated in the provisos to Article 19 of the Constitution.

What is the constitutional provision dealing with privacy?

Article 21

- The Constitution of India does not specifically guarantee a “right to privacy”.
- However, Article 21 of the Constitution of India states that “No person shall be deprived of his life of personal liberty except according to procedure established by law”.
- Article 21 interprets that the term ‘life’ includes all those aspects of life which go to make a man’s life meaningful, complete and worth living.

When a claim of privacy seeks inclusion in Article 21 of the Constitution of India, the Court needs to apply the reasonable expectation of privacy test. It should see:

(i) What is the context in which a privacy law is set up.
(ii) Does the claim relate to private or family life, or a confidential relationship.
(iii) Is the claim serious one or is it trivial.

[5] The Constitution of India, 1950 (Part. III)
[6] *Kharak Singh v. The State of U.P. and Ora*. MANU/SC/0085/1962
[7] 1978 SCR (2) 621

(iv) Is the disclosure likely to result in any serious or significant injury and the nature and the extent of disclosure..
(v) Is disclosure for identification purpose or relates to personal and sensitive information of an identified person.
(vi) Does disclosure relate to information already disclosed publicly to third parties or several parties willingly and unconditionally. Is the disclosure in the course of e-commerce or social media?

Assuming, that in a case that it is found that a claim for privacy is protected by Article 21 of the Constitution, the test should be following:

(i) the infringement should be by legislation.
(ii) the legislation should be in public interest.
(iii) the legislation should be reasonable and have nexus with the public interest.
(iv) the State would be entitled to adopt that measure which would most efficiently achieve the objective without being excessive.
(v) if apart from Article 21, the legislation infringes any other specified fundamental right then it must stand the test in relation to that specified fundamental right.
(vi) (Presumption of validity would attach to the legislations.

In *Smt. Maneka Gandhi v. Union of India*[8], a seven- Judge Bench decision, P.N. Bhagwati, J. (as His Lordship then was) held that the expression "personal liberty in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. Any law interfering with personal liberty of a person must satisfy a triple test: 0) it must prescribe a procedure, (10) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (u) it must also be liable to be tested with reference to Article 14 As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorizing interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.[9]

State infringing the right to privacy can be met by the test suggested for limiting the discretion of the State:

1- The action must be sanctioned by law;
2- The proposed action must be necessary in a democratic society for a legitimate aim;
3- The extent of such interference must be proportionate to the need for such interference;
4- There must be procedural guarantees against abuse of such interference.

Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution. Life and personal

[8] (1978) 1 SCC 248
[9] The Constitution of India, 1950 (Part. III) Article-21

liberty are not creations of the Constitution. These rights are recognised by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within. Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution. Elements of privacy also arise in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III. Judicial recognition of the existence of a constitutional right of privacy is not an exercise in the nature of amending the Constitution nor is the court embarking on a constitutional function of that nature which is entrusted to Parliament.

In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the three- fold requirement of (1) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state alm; and (ii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them. Privacy has both positive and negative content. The negative content restrains the state from committing an Intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual. "Right to privacy" is a part of fundamental right of a citizen guaranteed under Part III of the Constitution. However, it is not an absolute right but is subject to certain reasonable restrictions, which the State is entitled to Impose on the basis of social, moral and compelling public interest in accordance with law.

Conclusion

By declaring right to privacy as a new freedom and clear fundamental right, the judgement of Apex Court has opened up plethora of hopes and aspirations of Indian citizens as a whole and protects them from arbitrary intrusions of their personal space. Recently, in May, 2021 the central government in response to WhatsApp moving the Delhi High Court against new rules that would require it to break end-to-end encryption, said that it respects the Right to Privacy and has no intention to violate it. At the same time, it said compliance requirement is necessary for public interest and identifying the first originator of messages leading to crimes.

By the stand of gov we can say that the privacy is essential but along with this National security is also essential. While it has negative fallouts, rationally demarcated restrictions on this freedom and a properly regulated robust data protection law to support the judgment is the need of the hour.

Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub-serve those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy

safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights.

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Maternity Benefits for Building and Construction Workers in India: Predicament towards Empowerment

Dr. Prasenjit Kundu[1]
&
Ms. Mansi Pandey[2]

Abstract

The informal sector employs a vast majority of India's workforce. The women employed in this sector are excluded from the purview of the Maternity Benefit Act, 1961. These women confront social and financial challenges, as well as the risk to their health and the health of their unborn children throughout pregnancy. They are only provided with limited financial aid and maternity leave is still a distant dream for them. Although judicial progress has been achieved in extending maternity benefits to contractual employees, it is necessary to extend it to all female workers in the unorganized sector. The significance of providing maternity benefits to women working in India's unorganized building and construction sector, in particular, has been explored by the authors of this article. It evaluates the various statutory provisions and schemes that provide maternity benefits to these women as well as the drawbacks and shortcomings of these schemes, including insufficient financial aid, registration restrictions, restricted benefits for multiple children, and implementation difficulties. It further highlights the issues that both employers and employees are facing along with the possible solutions to ensure that the schemes and provisions are carried out in an effective manner.

Keywords: *Maternity Benefits, Workers, Empowerment, unorganized sector*

Introduction

Women are biologically designed to give birth and ensure the continuation of future generations. The responsibility of bearing children is both a familial and societal duty for married women and being employed should not exempt them from this obligation. Therefore, maternity is viewed as an inevitable aspect of women's lives. Throughout history, maternity was viewed as some sort of ailment of women, restricting women from working for a few weeks prior to and following childbirth. There have been instances where when employers learned that women employees were pregnant, the effects were so severe that many decided to terminate their employment. Consequently, numerous women had to take unpaid leave to retain their jobs, while others had to endure significant strain in order to maintain their productivity during pregnancy.

Therefore, the concept of 'maternity benefit' was created to help women employees overcome their challenges. These benefits aim to support women in fulfilling their social role of bearing and raising children without experiencing excessive strain on their health or financial loss. It was only logical for the Central and State governments to implement protective laws to guarantee women's rights regarding maternity and childcare given the large presence of women

[1] ***Assistant Professor of Law, Dr. RML N.L.U Lucknow.***
[2] ***Student, BA, LL.B. Dr. RML N.L.U Lucknow.***

in various vocational domains. This obligation on State to provide for reasonable and humane working conditions and maternity benefits is enshrined in Article 42 of our Constitution.

In India, Maternity Benefit Act, 1961, (hereinafter "the Act") has brought about substantial changes in the overall maternity benefits structure of the country. Through the 2017 Amendment of the Act, maternity leave has been extended from 12 to 26 weeks. The Act includes various positive changes such as work-from-home possibilities, the requirement for creches in businesses with more than 50 employees, and more. [3]

It is significant to note that the workers in the unorganized sector do not have direct access to Maternity benefits as it only applies to women working in an 'establishment.' They are excluded from the purview of the Act and even from Chapter IV of the Code on Social Security, 2020. Considering that in India, a major percentage of the workforce is a part of the unorganized sector, this exclusion from maternity benefits is alarming and inhumane. Therefore, the substantial percentage of the workforce's lack of access to maternity benefits points to a disparity that must be addressed to provide better inclusivity and fairness. It is critical to look at the struggles encountered by particular groups, including female building and construction workers ("BOC workers"), in order to highlight the injustice resulting from the exclusion of unorganized workers from maternity benefits.

Judicial Developments

In light of the Constitutional principles enshrined in Article 14, 15 and 21,[4] the judiciary has been progressive in extending maternity benefits to contractual employees with a view to end the discrimination between the formal and informal sectors on the issue of maternity benefits. In *Anshu Rani* v. *State of U.P*.,[5] the Supreme Court established that contractual women workers are also entitled to a 26-week maternity leave. Moreover, the High Court of Madhya Pradesh in *Priyanka Gujarkar Shrivastava v. Registrar General and Ors*[6] ruled that all leave rules applied by the State Government for regular employees should also be applied to contract workers and temporary workers employed in the State of Madhya Pradesh.

Similarly, it is essential to extend maternity benefit provisions to women employed in the unorganized sector as a whole and they should be made universally accessible. This would ensure that the fundamental rights of the women employed in the building and construction industry are upheld with respect to equality and non-discrimination in availing and accessing maternity benefits.

Assessment of the Applicability of Maternity Benefits to Building and Construction Workers

[3] Maternity Benefit Amendment Act, 2017.
[4] Constitution of India 1950, art 14; art 15; art 21.
[5] *Anshu Rani* v. *State of U.P*, 2019 SCC OnLine All 5170.
[6] *Priyanka Gujarkar Shrivastava v. Registrar General and Ors,* W.P. No.17004/2015.

To qualify for maternity benefits in India, a woman must meet certain criteria. She should be employed by a company that has a workforce of more than 10 individuals, and she must have completed a minimum of 80 days of work with the same company.[7] Unfortunately, women who do not meet these requirements are deprived of maternity benefits.

Researchers Dipa Sinha, Shikha Nehra, Sonal Matharu, Jasmeet Khanuja, and Vanita Leah Falcao highlighted this issue in an article published in the Economic and Political Weekly.[8] They observed that a large portion of women's work is invisible and unrecognized because it falls outside the scope of the formal economy. This invisibility and lack of recognition contribute to the existing gap in maternity benefits between the two sectors. Even though they are engaged in time-consuming work that extends throughout most of the day, maternity benefits only reach a small number of women.

The majority of women employed in India's informal economy face the harsh reality of unrelenting labour and unwavering responsibilities while also carrying, giving birth to, and caring for their children. These women are mostly daily wage earners and they cannot afford to not work even a single day because then hunger and poverty will haunt them and their families. Even while pregnant, they continue to undertake physically taxing labour, both in the home, fields, and on the construction site, which poses a great risk to the mother's and the child's health.

Women that are employed in the unorganized sector, especially in the agricultural sector and the building and construction sector face significant risks of miscarriage. These women are often forced to make a tough choice between struggling financially and putting their health and their unborn children in danger by continuing to labour. For the welfare of these vulnerable women and their pregnancies, it is essential to address these risky situations and offer necessary support, protection, and decent working conditions.

Article 23 of the Universal Declaration of Human Rights, 1948[9] says, *"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."* Consequently, it might be argued that the absence of maternity benefits in the unorganized sector is a breach of human rights. The health, well-being, and dignity of women employees are protected by maternity benefits, which are not just a matter of convenience or luxury but rather fundamental rights. Recognizing and addressing this violation is essential to promoting gender equality, protecting human rights, and fostering a more inclusive and just society.

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[7] Maternity Benefit Act 1961, sec 5.
[8] Dipa Sinha, Shikha Nehra, Sonal Matharu, Jasmeet Khanuja and Vanita Leah Falcao 'Realising Universal Maternity Entitlements: Lessons from Indira Gandhi Matritva Sahyog Yojana,' *(2016) 51 (34) EPW https://www.epw.in/journal/2016/34* (last visited on December3, 2020).
[9] Universal Declaration of Human Rights 1948, art 23.

It is evident that many workplaces are influenced by patriarchal attitudes, where masculine norms prevail and shape the work culture. This often leads to biased expectations, key performance indicators, and task allocations that favour men, while disregarding the biological and social functions specific to women. Such practices perpetuate gender inequalities and hinder the full participation and advancement of women in the workforce. It takes a concerted effort to challenge and change these patriarchal norms, promote gender-sensitive policies and practices, and foster a culture that values and accommodates the diverse needs and contributions of all employees.

It is unfortunate that some employers hesitate to hire or invest in female employees due to the perceived costs associated with maternity leaves. This bias has significant consequences, resulting in skilled women being denied opportunities and advancement, particularly in sectors that involve physical labour, such as the unorganized sector.

In many countries, the cost of maternity benefits is shared between the state and the employer. However, in India, the entire burden of maternity benefits falls on the employer. Ideally, companies should allocate budgets to accommodate these costs. However, the prevailing pro-male work culture often undermines the significance of pregnancy, viewing it as solely a female issue. Consequently, the lack of state involvement in maternity benefits exacerbates the marginalization of women in the unorganized sector.

Another important factor of consideration is the employment status of building and other construction workers, who are frequently engaged on a contractual basis. Given that some benefits provided to employees with regular long-term employment could not be available to contract workers, it is crucial to look at how maternity benefits are applied in this situation.

Problems in Extending Maternity Benefits

Tracking and ensuring maternity leave for women employees is extremely difficult due to the informal economy's high fluidity and frequent transfers. In the unorganised sector, many women work for several different companies, change jobs frequently, and occasionally go unemployed. Due to these circumstances, it is challenging to keep track of whether these mothers have gotten any maternity benefits or relief.

In 2016, an RTI applicant named Dr. Vandana Prasad petitioned the Ministry of Labour and Employment for statistical data on how many construction workers in the country have received maternity benefits in the last five years among other issues related to access to maternity benefits. She received the response that the Central Government does not maintain any such data.[10] Furthermore, there exists a valid Employer's Liability concern. According to

[10] Available on https://dsscic.nic.in/files/upload_compliance/CIC_Interim_Reply.pdf (Last visited on December 1, 2020)

the Economic Survey 2020-21,[11] 89% of the workers are employed in the informal sector of which women make up a sizable portion of this group. They frequently work in low-wage and low-skill positions with minimal job security. One of the key problems is that in India, maternity benefits are viewed as an obligation and responsibility on the part of the employer only. Therefore, women in the unorganized sector hardly benefit from this act and face the risk of losing employment and their source of income when they conceive.

It is necessary to introduce provisions that assist small businesses, cooperatives, self-help groups (SHGs), and other economically weak enterprises in extending maternity benefits without financial hardship. These entities often operate on minimal profits, and the requirement for employers to bear all costs can be challenging. Employers, including factory owners, primarily prioritize productivity and view lactating mothers as liabilities due to potential impacts on work efficiency and the health risks they may face. However, considering the significant number of women employed in the unorganized sector in India, it is evident that the country still struggles to provide adequate health and financial security to many women during pregnancy. This highlights the need for further reforms and support to ensure that women in the unorganized sector can access appropriate benefits and safeguards during this crucial period.

Statutory Provisions and Existing Schemes

In India, the Unorganised Workers Social Security Act of 2008 extends maternity benefits to the unorganized sector.[12] Under this act, the *Janani Suraksha Yojana* has been implemented by the government, which provides financial assistance of only Rs.1,400, provided that the expecting women opt for institutional delivery. It is a safe motherhood intervention as a part of the National Health Mission.[13]

Moreover, section 4(b) of the National Food Security Act, 2013[14] provides that all expecting and nursing mothers must get an annual payment of Rs. 6,000 in order to assist their access to nourishing meals. In accordance with this provision, the *Pradhan Mantri Matru Vandana Yojana (PMVY)*[15] scheme has been notified that offers all pregnant women and lactating mothers Rs. 5,000 in three installments. But the benefit extends only to the first child. Another maternity benefit program, *the Indira Gandhi Matritva Sahyog Yojana* (*IGMSY*), was established under the National Food Security Act, 2013 to provide the Act's Rs. 6,000 cash maternity benefit.[16]

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[11] Economic Survey 2020-2021, Ministry of Finance https://www.indiabudget.gov.in/economicsurvey/ebook_es2020/files/basic-html/page398.html (Last visited on December 2, 2020).

[12] Dipa Sinha & Sudeshna Sengupta, 'How Maternity Benefits Can Be Extended to Informal Women Workers' (*The Wire*, 6 February 2019) https://thewire.in/women/how-maternity-benefits-can-be-extended-to-informal-women-workers&gt (Last visited December 20, 2020).

[13] https://nhm.gov.in/index1.php?lang=1&level=3&lid=309&sublinkid=841 (Last visited on November 14, 2020).

[14] National Food Security Act 2013, sec 4(b).

[15] https://pmmvy.nic.in/ (Last visited on December 21, 2020).

[16] https://www.india.gov.in/indira-gandhi-matritva-sahyog-yojana-ministry-women-and-child-development (Last visited on December 23, 2020).

The Employment and Conditions of Service of Workers Engaged in Building and Construction Work in India are governed by a separate Act, the Building and Construction Workers Act, of 1996. Section 18 of the Act[17] calls for the establishment of State Welfare Boards, and these Boards are mandated to offer maternity benefits to female workers. Section 35 of the act also provides for creches, where more than fifty female construction workers are typically employed, and the maintenance of appropriate space or rooms for the use of such female employees' children under the age of six years.[18]

States have formulated schemes extending different financial assistance levels as maternity benefits. Some States also provide it in case of miscarriages. The amount varies depending on the demography, budgetary allocation, population, and other circumstances. In most states, registration of the female worker is required before receiving this benefit; for example, in Tripura, Uttar Pradesh, and Maharashtra, the incentive is only available to registered female construction workers. Furthermore, the incentive is insufficient in a state like Uttar Pradesh, which hosts a large number of construction employees. They are only eligible for a one-time grant of Rs. 3,000 and must be registered at least one year before the delivery.[19]

Maternity benefits in Meghalaya are limited to Rs. 1000,[20] and in Manipur, they are limited to Rs. 6,000.[21] With the ever-rising prices of commodities, expecting these women to bear the entire expense from the delivery to the nutritional meals out of such limited financial aid would be impractical. The reality is that large-scale registrations have been successfully done only where the union has played a major role in it, otherwise, these BOC workers are at times not even aware of such schemes. This in turn excludes many women from availing of the benefits.

In certain states, the sum offered can still be deemed appropriate for dealing with maternity expenses. Karnataka grants support of Rs. 30,000 for female children and Rs. 20,000 for male children.[22] Similarly, in Assam and Andhra Pradesh, mothers receive Rs. 20,000 in cash aid during their maternity period.[23] In Haryana, Rs. 36,000 is provided including Rs. 30,000 for

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[17] Building and Construction Workers Act 1996, sec 18.
[18] Id, sec 35.
[19] The Building and Other Construction Workers, Labour Department, Government of Uttar Pradesh https://upbocw.in/english/staticpages/maternity_benefit.aspx (Last visited on December 4, 2020).
[20] Meghalaya Building and Other Construction Worker's Welfare Board, https://megbocwwb.gov.in/schemes_maternity.html (Last visited on December 23, 2020).
[21] Manipur Building and Other Construction Worker's Welfare Board, 'Maternity Benefit to the Female Beneficiary' http://manipurbcwb.in/SchemeDetails?title=maternity+benefit+to+the+female+beneficiary (Last visited on December 15, 2020).
[22] Karnataka Building and Other Construction Worker's Welfare Board, 'Maternity Benefit'2/Karnataka+Building+and+Other+Construction+Workers%E2%80%99+Welfare+Board+Benefits/en (Last visited on December11, 2020).
[23] Commissionerate of Labour, 'Various Welfare Benefits for Registered Construction Workers' https://labourcommissioner.assam.gov.in/portlet-innerpage/various-welfare-benefits-for-registered-construction-workers (Last visited on December 12, 2020).

maternity and Rs. 6,000 for child nutrition.[24] In Kerala, it is Rs. 15,000, which is granted only after serving on the board for one year.[25]

In most states, the benefit is limited to only two children. This might be done to prevent population growth, maintain a basic standard of living and deter the workers from falling into the vicious cycle of poverty. It is strongly recommended that the Judiciary maintains oversight to ensure the successful implementation of these provisions and plans, especially given the difficult ground realities. According to surveys and studies undertaken in several states, these schemes do not give large-scale benefits to beneficiaries. Due to the intricacies of the forms and data entry procedure, there are issues with application registration, resulting in considerable delays in effective implementation.

Suggestions

Addressing the complex nature of this issue requires thoughtful consideration and effective and practical solutions at various levels. One such solution is the establishment and maintenance of accurate data on the workers, which can help identify those in need and ensure that they receive the necessary support. It is crucial to have a clear understanding of the scale of the problem before implementing any measures.

The central government, in collaboration with institutions like the Indian Statistical Institute, can play a role in collecting and managing data related to women accessing maternity benefits. Furthermore, strict enforcement of laws is essential to guarantee that workers, particularly women, are provided with basic facilities such as toilets, creches, clean water, and suitable shelter in their workplaces. By implementing these measures, we can work towards addressing the problem and ensuring the well-being of women in the unorganised sector.

To address these challenges, it would be beneficial to amend the Code, considering its early stage of implementation and the absence of significant litigation. Additionally, the variations in maternity benefits provided by different states' schemes highlight the need for a standardized minimum threshold set by the central government, similar to the minimum social security legislation like the Employees State Insurance Act, 1948.

A key issue identified is the lack of awareness among workers and activists regarding available committees, schemes, and government facilities, as well as the complaint registration process. Therefore, it is crucial to sensitize government officials about the hardships faced by women in the unorganized sector. Increasing the registration of women workers can enhance their visibility and ensure their access to benefits. However, it must be ensured that efforts are made

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[24] Directorate of Information, Public Relations and Language, Government of Haryana https://www.prharyana.gov.in/en/haryana-building-and-other-construction-workers-welfare-board-is-running-a-special-registration (Last visited on November 15, 2020).

[25]'Kerala Building and Other Construction Worker's Welfare Board, Government of Kerala https://kannur.nic.in/en/the-kerala-building-and-other-construction-workers-welfare-board/ (Last visited on December 23, 2020).

by Unions and Boards to get them registered by making them aware and providing them assistance wherever necessary.

Furthermore, allocating adequate budgetary resources is essential to support government schemes and fulfil the social responsibility of extending maternity benefits to all sectors. According to the Code of Social Security, 2020, the central government will establish a fund for women working in the unorganised sector.[26] A separate social security fund for unorganized workers should also be established and run by state governments. To reduce the burden on employers, introducing a contribution system can maintain the employability and active participation of women in the workforce without compromising their rights and employability aspects.

Along with the above measures, consistent social awareness and attitudinal reorientation must also be promoted in society regarding gender parity in child care giving roles. Husbands or the other spouse should participate in child care to ease the burden of the women physically, financially and mentally and ensure team work at the workplace as well as households. The implementation of these measures can help us strive towards creating a more inclusive and supportive environment for women in the unorganised sector that acknowledges and empathises with their caregiver roles and provides access to maternity benefits and protect their well-being.

Conclusion

The plight of women in the unorganized sector is unfathomable with such limited access to maternity benefits. It is an absolute necessity that women are not forced to choose between working to survive and risking their health and of the foetus. Every woman deserves decent working conditions and maternity benefits. India is characterized by a variety of realities, and there is a sizable difference between formal and informal sectors. It is pertinent to bridge these gaps between people who are naturally equal. The plight of women employed in the building and construction industry is immense and extending maternity benefits to them is the need of the hour.

While it is easier to argue to extend maternity benefits to all women by amending the Code or bringing about new legislation, it is difficult to implement the same owing to the various practical problems and issues surrounding it. So, unless proper data is maintained and there is an accountability mechanism keeping track of the workers who have been able to avail of the benefits, extending the benefits might create more chaos. Therefore, these issues should be looked into at the earliest, and effective steps must be taken by the government so that the benefits can be extended to all women in a manner that upholds and protects their rights and well-being.

[26] The Code on Social Security 2020, sec 141(1).

Women's Participation in Panchayati Raj Institution

Harshit Singh[1]

Abstract

Participation of women in the Panchayati Raj Institutions brings about significant changes in their social status as well as their position within the family. Mere participation of women in these organizations indicates clear change in the traditional norms that restricted free movement of female for social and political activities. Participation of women in PRIs gives them a status in society and permits contribution of women in their individual and social development. Against this background, this paper attempts to analyze the participation of women in Panchayati Raj Institutions, both at directional and implementational level. Due to reservation, women's representation has increased drastically in the PRIs. Women have gained a sense of Political and Social empowerment by asserting control over resources, officials, and most of all, by challenging the values of patriarchy.

Keywords: Panchayati Raj, Women Representation, Women Participation, 73rd Constitutional Amendment

Introduction

'As long as women of India do not take part in public life there can be no salvation for the country; the dream of decentralization could never be fulfilled. I would have no use for the kindof Swaraj to which such women have not made their full contribution'

- Mahatma Gandhi

Panchayati Raj is a system of governance in which Gram Panchayats are the basic units of administration. Mahatma Gandhi advocated Panchayati Raj, a decentralised form of government.It is the oldest system of local self-government in the Indian sub-continent. This system was adopted by State governments during the 1950s and 60s as laws were passed to establish Panchayats in various States. It also found backing in the Indian Constitution with the 73rd Amendment in 1992 to accommodate the idea. Currently, the Panchayati Raj system exists in allthe States except Nagaland, Meghalaya and Mizoram and in all Union Territories except Delhi.[2]

The word Panchayat is derived from the word "Pancha Panchasvanusthitah", has references in to the existence of Gram Sanghas or rural communities. The institution of Panchayati Raj is as old as Indian civilisation itself. It was in existence since ancient periods, having an effective control over civil and judicial matters in the village community. The Rigveda, Manusamhita, Dharmashastras, Upnishads, Jatakas and others, refer extensively to local administration, i.e. the Panchayat system of administration. In the Manusmriti and Shanti-parva of Mahabharata, there are many references to the existence of Gram Sanghas or village councils.[3]

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[1] ***Student, 8th Semester, B.A. LL.B(Hons.), Faculty of Law, Banaras Hindu University, Varanasi.***

[2] Lakhimi Dutta, "The three tier system of governance in rural India": http://www.civilservicesias.com

[3] "Panchayati Raj in pre-British period"

The "Panchayati Raj Institutions" have played a significant role in socio-economic advancement of citizens at ground level. These "Panchayati Raj Institutions (PRI)" exists in India since ancient times indifferent forms as an entity of the local self-governance. Though, they have acquired constitutional status through the 73rd Constitutional Amendment Act.[4]

The Indian democracy being more than half a century old has entered the next century. But a huge number of women are still kept out of the political arena. There can neither be true democracy, nor people's fair participation in governance and development of the country without equal partaking of men and women at diverse levels of decision-making process. Women representation in political process of nation is vital to the advancement of women and development of nation.

Constitutional Background

In 1959, when the Panchayati Raj was introduced in our Country as a system of rural self-government, very few women contested or got elected to the different positions in these bodies at the three levels of governance. The pioneer of this system, The Balandra Mehta Committee (1957) recommended that at least be few women should be co-opted members in the Panchayati Samiti and Zilla Parishads for a better governance. The Committee recommended the reservation of two seats in each panchayat for women and also coopting of certain number of women in it, in case they are not elected by the electorates in the elections to maintain a balance of representation.[5] The Committee on Panchayati Raj Institutions headed by Asoka Mehta (1978) laid stress on the need for recognizing and strengthening women's role in the decision-making processes of panchayats. To quote ii, *"Greater representation of women in the Panchayati Raj bodies and participation in the elective process are in a way related"*. Though The Mehta Committee had acknowledged the need for associating women with the process of decision making, but could not give a clear direction.

The National Perspective Plan (1988) for women dwelt on the question of political participation of women at the grassroots democratic institutions. The core group set up by the Government of India pointed out that political power and access to position of decision-making and authority are critical prerequisites for women's equality in the process of nation building. Following the recommendations of the Plan, the 64th Constitution Amendment Bill sought to give the reservation of women in Panchayati Raj Institutions a constitutional sanction. This bill provided "as nearly as may be thirty percent (including number of seats reserved for women belonging to the scheduled castes and tribes) of the total number of seats to be filled by direct election in every panchayat shall be reserved for women and allotted by rotation to different constituencies in a Panchayat." It was further provided that as nearly as may be thirty percent of the total number of seats reserved for the scheduled castes and tribes in every Panchayat shall be reserved for women belonging to the Scheduled Castes or, as the case may be, scheduled tribes. In order to ensure ' participation of women from the scheduled

[4] Norman D. Palmer, Elections and Political Development: The South Asian Experience 50 (Vikas Pub. House, New Delhi 1976).

[5] Susheela Kaushik, Women in Politics 35 (Har Anand Publications, New Delhi, 1993).

castes or scheduled tribes it was further laid down in the bill that where only two seats were reserved for the scheduled castes or as the case may be, tribes, one of the two seats would remain reserved for women belonging to the scheduled castes, or as the case may be scheduled tribes. The Sixty Fourth Constitution Amendment Bill could not be enacted because of the countrywide protests and failure of the ruling party to gather required support in both the houses of Parliament. The principle of women's participation in the local bodies through reservation was however accepted.

The Seventy-Third Constitution Amendment Act which is a modified version of the earlier Sixty Fourth Constitution Amendment Bill has given the principle a formal shape. As per provisions contained in *Article 243 D of the Constitution*[6], 1/3rd of the Seats of Panchayati Raj Institutions and 1/3rd offices of the Chairperson at all level of Panchayati Raj Institutions covered by *Part IX of the Constitution*[7] are reserved for women. The following states have made legal provision for 50% reservation for women among members and Sarpanches: Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Kerala, Maharashtra, Orissa, Rajasthan, Tripura and Uttarakhand.[8]

Moreover, in 2011 the Central Government had approved the proposal for enhancing reservation of women in Panchayats from the present one-third to 50%. Accordingly, a bill for amendment of the Constitution of India had been introduced in the Parliament though it lapsed[9]

Women's participation in local governance

There were already some women in local government prior to the passing of the 73rd Amendment Act. But they were few and far between. In most cases the state laws prescribed at least one or two seats for women in the old-style Panchayati Raj. Very often these seats were filled though nomination. The nominees, invariably, were members of elite families belonging to higher castes and owning substantial land, thus enjoying high status in terms of family, cast, and class. These women were usually related to established political leaders. As symbols of tokenism, they rarely took active interest in the functioning of the PRIs. The new

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[6] 243D. Reservation of seats

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

[7] PART IX : The Constitution of India, 1950 - The Panchayats.

[8]Representation of Women in Panchayat System Press Release 2021, Ministry of Panchayati Raj pib.gov.in/PressReleaseIframePage.aspx?PRID=1776866

[9] Women Reservation in Panchayats 2011, Ministry of Panchayati Raj Women Reservation in Panchayats (pib.gov.in)

system of reservation and competitive elections based on adult franchise changed this situation radically.

When the provisions for reservations of seats for women were being debated in parliament, several members were doubtful that such large numbers of women would come forward to contest these seats. But these doubts proved to be wrong. In total, for over one million seats reserved for women in all the local bodies, more than five million women candidates contested. Thus, on an average, there were five women candidates contesting each seat. Moreover, some women condition won unreserved or general seats, defeating their male rivals. Of course, such cases were not many, but they were no less significant. It needs to be mentioned that the reservation of seats for women (and for SCs and STs) concerns not only members but also office-bearers. Thus, not only one-third of elected members but one- third of sarpanches or chairpersons have also to be women.

In the country as a whole, there are 2,55,320-gram panchayats (village councils). Over 77,210 of them now have women as sarpanches. At the intermediate level, there are 6,697 taluka (or block/mandal) panchayat samitis. More than 1,970 of them have women subhepatic or heads and of the 665 zilla parishads" (district councils) 200 have women presidents[10]. Thus, in the country as a whole, about one million women now occupy positions as members or heads in rural and urban local government bodies. This may be unique in the world. This statutory reservation for women has provided an opportunity for the formal involvement of women in the development through political process at the grass roots level thereby enabling them to influence the decisions in the local governments.

Duflo and Topalova, (2004)[11] utilized survey data from 'Millennial Survey' which covered 36542 households, 2304 villages in 24 states in the country including the random selection of reserved presidencies for women and they found that in comparison to unreserved Gram Panchayats (GPs), women leaders from reserved panchayats had provided more public goods (drinking water, roads etc.), and quality infrastructure. They observed that people were less likely to be corrupt in these reserved panchayats. A study by Chattopadhyay and Duflo (2004)[12] found the reservation system to be helpful for adequate representation of women and for providing adequate delivery of local public goods to disadvantaged groups at the panchayat level.

This transformation in the system had remarkable results bringing lakhs of women in Panchayats for leadership. The adoption of this Amendment has led the Panchayati Raj system to recognise women's rights, a significant step to bring the unseen potential of women to governance. It enables women's engagement in planning, decision-making, execution of the

[10] Government of India | Ministry of Panchayati Raj Local Government Directory

[11] Esther, Duflo and Petia Topalova (2004), "Unappreciated Service: Performance, Perceptions, and Women Leaders in India." Unpublished manuscript, Department of Economics, Massachusetts Institute of Technology.

[12] Chattopadhyay, Raghabendra, and Esther Duflo (2004), 'Women as policy makers: Evidence from a randomized policy experiment in India.' Econometrica 72(5), 1409–1443

necessity in the village Panchayats. Women representatives have exhibited their prowess and can adapt and learn managing funds, efficient community-based development, etc. Despite such positive outcomes, women are greatly excluded from the PRI and local governance structures.

Challenges and Suggestions

Though a lot has been done and is still under doing for the empowerment of women, it does not seem enough. The condition of women at the grass roots has not yet shown improvements as was expected. The majority of women are still uneducated in the rural areas. Moreover, even the members and Pradhans in some places are mere stamp holders without even knowing the meaning of it.

Participation as a Proxy Candidate

Women members at some places are not in actual members even but only a means of the ambitions of their husbands. While these members sit at home, their husbands go around the area working, work which is in most of the cases, illegal. Incidents of selling of government property through illegal means of course are the most often heard and experienced ones. On inquiry and questioning the pradhans dust off their hands contending to be ignorant of such a situation. Hence, while the husband of the women pradhan becomes a real estate businessman (dealing in government property) the pradhan remains ignorant of the situation[13]. What do we call it? Ignorance of one and wilful disobedience of the other? It is therewith suggested to have educational programs or awareness camps whatsoever for elected representatives of people at the grass roots. In places where such practices are already being availed their effective implementation should be guaranteed through legislative norms of preventive nature.

Lack of Decision-Making Power

Women who have already entered in political arena lacks decision making power specially at lower-level politics. Women members of rural and urban local bodies are example of it. Mostly important decisions are taken by male relatives of them. The general people also contact to the male relative of the women representatives for any issue. They do not consider in the women representatives being capable to take decisions. The Constitution has enabled their massive presence into the state of affairs of the country, but their valuable contribution into the system is yet to be established. The data on women sensitization about their political rights and its usage is still missing. Endeavors can be made to assess the performance of women in democratic process level so that women who only act as a proxy can be identified.

Discrimination towards women

Although, our Constitution has totally abolished all sorts of disparities, discrimination against women still exists as a widespread hurdle in their way of political participation. Generally, a discriminatory attitude is shown towards women as leaders by political parties. They do not

[13] Chattopadhayay Raghabendra & Ester, Duflo (2003), ´The impact of reservation in the panchayati raj: Evidence from a nationwide randomized experiment´, Nov 2003, IIM Calcutta and MIT.

offer half of their seats to women candidates.

Conclusion

Due to reservation, women's representation has increased drastically in the PRIs. Although there have been proxy women mukhiyas, yet that is not the whole or objective truth. Women presence is seen in various PRI bodies such as *Mahila Samkhya*, *Anganwadi*, etc. Women with leadership qualities and feminist consciousness have contributed immensely to redefine the power equations in the society in general and in PRIs in particular. Their involvement in PRIs has provided them common identity as these women shared similar experiences. Women have gained a sense of empowerment by asserting control over resources, officials, and most of all, by challenging the values of patriarchy. On the other hand, women also face similar disadvantages in the course of their participation in PRIs.

Further, women are less corrupt as against its high prevalence or failure to prevent it earlier and they try to provide basic services in the villages and attend to the needs of women. Their participation in the local government facilitated by affirmative action has led to inclusiveness and empowered them politically though only a minority of them have gained true political relevance in several forms and improved their self-confidence and social status. Due to such action the number of women in PRIs has also increased although their participation is still in flux. Education and social background of the members are found to be the factors motivating empowerment and participation while poverty and continuity of faithfulness to the dominance of patriarchy are obstacles.[14]

But despite all the efforts made by the legislature, executive and the judiciary there are certain impediments in the way to make the women's participation in political decision making a qualitative one. There is an urgent need to address such hurdles. The Expert Committee on Leveraging Panchayats for Efficient Delivery of Public Goods and Services in its report titled "Towards Holistic Panchayat Raj" has aptly observed that "Women's struggle is not over when they enter the political institutions, because they enter a male domain. The political structures are the products of male dominated or exclusively male political processes like most of the institutions of governance and hence their institutional masculinity continues to be their invisible characteristic. The main challenge of mainstreaming gender in rural local governance is, therefore, to address the continuing patriarchal resistance in various forums reducing the potential of the contribution of women in Panchayats to engender governance by eradicating discriminations, neglect and apathy.[15]

[14] Billava, Narayan & Nayak, Nayanatara. (2016). Empowerment of Women Representatives in Panchayat Raj Institutions: A Thematic Review. Journal of Politics and Governance.

[15] The report was released on 24th April, 2013 on the National Panchayat Raj Day.