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CONTENTS

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I, Dr. Pradeep Kumar, hereby declare that the particulars given above are true to the best of my knowledge and belief.

Sd/-

Date: December, 31, 2021 **Dr. Pradeep Kumar**

Appointment of Arbitrator: Contemporary Legal Pedagogy

Dr. Deepika Urmaliya[1]

Introduction

Arbitration is an alternative dispute resolution mechanism in which a third party is named to adjudicate the disputes between the parties involved. It is important to protect the dignity of the legal process when it involves adjudication of the interests of the parties and natural justice is necessary to prevent the possible chance of a travesty of justice.[2] Independence and impartiality of Judges and adjudicators, be it before courts of law or before tribunals or commissions, is the hallmark of the justice dispensation process. Equally fundamental is the principle of *nemo judex in causa sua*, ensuring that no person acts as a Judge in his own cause.[3]

The subject of appointment of the arbitral tribunal is a vexed issue that has in the past few years, since the 2015 amendment to the Arbitration Act in India, received considerable judicial scrutiny in the Supreme Court and the High Courts. The importance of appointing arbitrators in which both the parties have mutual confidence, and fairness and impartiality of the arbitrator, has been stressed in recent judgments of the Supreme Court in the context of whether a particular party to the dispute should have the power to act as an arbitrator or appoint a sole arbitrator. The Supreme Court has categorically laid down that where a party has an interest in the outcome of the decision, it is not entitled to appoint and/or to participate in any manner in the appointment of the arbitrator. In this regard, the importance of fairness of the arbitrator and absence of bias, as well as the concept of mutual confidence of the parties in the arbitrator, has been given primacy over the concept of party autonomy and the significance of the plain contractual text of the arbitration agreement, at least in the context of appointment of sole arbitrators. The genesis of this lies in the principle of equal treatment of parties, which is one of the core principles of justice deliverance.[4]

However, prior to the amendment of the Arbitration and Conciliation Act, 1996, parties were permitted to unilaterally appoint arbitrators to adjudicate disputes and often, such appointment was made either from a panel of arbitrators maintained by one of the parties to the dispute or the employees of one of the parties presided as or nominated the sole arbitrator. This often allowed parties to a contract with a higher bargaining power to have their disputes adjudicated by a person who had a vested interest in the outcome of the dispute. For the interest of justice,

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[1] ***Manager (Law) Hindustan Copper Limited.***
[2] Mehta Ankoosh Mehta, Maitryi Jain and Anushka Shah, SC Refused Unilateral Appointment Of Single Arbitrator, India Corporate Law (2020).
[3]Harshan Avesh, Saumya Sunidhi, "Examining the status of unilateral appointment of arbitrators in India: scope and challenges", Manupatra, 2021.
[4] Chandra Payal, Rythem Buaria, "Appointment of arbitrators under Sec. 11 by the Supreme Court: a time intensive phenomenon," SCC Online blog, 2020.

the 246th Law Commission Report come up with extensive suggestions to the Act, to inter alia stymie the practice of unilateral appointment of arbitrators.[5]

History of Arbitration in India

Regulation of the conduct of arbitration has a long history in India. The first direct law on the subject of arbitration was the Indian Arbitration Act, 1899; but its application was limited to the Presidency towns of Calcutta, Bombay and Madras. This was followed by the Code of Civil Procedure, 1908 where the Second Schedule was completely devoted to arbitration. The first major consolidated legislation to govern the conduct of arbitrations across the country was the Arbitration Act, 1940 which was based on the English Arbitration Act, 1934. The Act repealed the Arbitration Act, 1899 and the relevant provisions in the Code of Civil Procedure, 1908, including the Second Schedule thereof. The 1940 Act however, did not deal with enforcement of foreign awards, and for which purpose, the legislature had passed the Arbitration (Protocol and Convention) Act, 1937 to deal with Geneva Convention Awards and the Foreign Awards (Recognition and Enforcement) Act, 1961 to deal with New York Convention Awards. The working of the 1940 Act, which dealt with domestic arbitrations, was far from satisfactory.[6]

In order to make effective provisions regarding arbitration a bill was introduced in the parliament in 1995. Finally, Parliament passed the Bill in terms of the Arbitration and Conciliation Act, 1996 which received the assent of the President of India on 16th August 1996 and came into force on 22nd August 1996. However, it was made applicable to cases where the arbitral proceedings commenced as of 25th January 1996. The 1996 Act is based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 and the UNCITRAL Conciliation Rules, 1980. The 1996 Act repealed all three earlier laws namely the 1937 Act, the 1940 Act and the 1967 Act. It is applicable to domestic arbitrations, enforcement of foreign awards; and conciliations. Although the UNCITRAL Model Law was intended to provide a model law to deal with international commercial arbitrations; in the 1996 Act, the UNCITRAL Model Law provisions, with some minor modifications, are made applicable to both domestic and international commercial arbitrations.[7]

General Practice followed by PSU's in India

There can be reference to arbitration only if there is an arbitration agreement between the parties. The Act makes it clear that an arbitrator can be appointed under the Act at the instance of a party to an arbitration agreement only in respect of disputes with another party to the arbitration agreement. If there is a dispute between a party to an arbitration agreement, with other parties to the arbitration agreement as also non-parties to the arbitration agreement, reference to arbitration or appointment of arbitrator can be only with respect to the parties to the arbitration agreement and not the non-parties. The source of the jurisdiction of the arbitrator is the arbitration clause. The arbitration clause is generally a part of agreement.[8] Any of the

[5]Law Commission of India, Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996.
[6] *Ibid.*
[7] *Ibid.*
[8] Law of and procedure for appointment of arbitrator in India

party to the contract make a reference with regard to invocation of arbitration clause. General there are two types of arbitration one is Ad-hoc arbitration and second is institutional arbitration.

Ad hoc arbitration is an arbitration which is not administered by an institution providing arbitration facilities and it is left to the parties to determine all aspects of the arbitration like appointment of arbitrators, manner in which appointment is made, procedure for conducting the proceedings and for designation of rules, applicable law, procedures and administrative support. Ad hoc arbitration is mainly governed by the provisions of Arbitration and conciliation Act 1996 and parties are free to determine the procedure.

In institutional arbitration, a specialized institution with a permanent character intervenes and assumes the functions of aiding and administering the arbitral process, as provided by the rules of that institution. The institution only facilitates and administers the process and the tribunal is appointed either by the parties or the institution. Often, the contract between the parties will contain an arbitration clause which will designate an institution as administrator by stating that the arbitration would be conducted as per the party designated institutional rules. For administering and facilitating the arbitration and providing secretarial services and facilities for conducting the arbitration proceedings, the institution normally levies administrative charges on the parties. Both type of process has their own pros and cons.

Judicial Evolution of Section 11

Section 11 of the Arbitration and Conciliation Act, 1996 is the life support for the field of arbitration in India even though the same section is considered to be one of the most challenging and contentious sections in the entire statute. The said section 11 lists in detail the procedure for appointment of the arbitrators, and also empowers the court to examine the existence of an arbitration agreement while deciding the application for such appointment.[9]

This section has evolved over the years starting from judgments in Konkan Railways[10] to Central Railway[11] , latter being recently passed by Supreme Court of India. But before discussing about Section 11, let us understand why the Arbitration Act has become important. The reason for its rising importance is timely rendering of decisions, flexibility of procedure and predictable outcomes as compared to civil courts which are perceived to be slow, antediluvian in their approach to business parlance and rigidity in terms of procedural norms. This article will summarily discuss the recent judicial trends w.r.t Section 11.

TRF Ltd vs Energo Engineering Projects Ltd[12]In this case the question before the Hon'ble Supreme Court was, "whether the appointment of an arbitrator made by the Managing Director of the Respondent therein was a valid one and whether at that stage an application moved under Section 11(6) of the Act could be entertained by the Court?"

[9]Shrivastava Ayush, India A guide for appointment of arbitrator, Mondaq connecting knowledge & people, 2020
[10] *Konkan Railway Corporation Ltd Anr v. Rani Construction Pvt. Ltd,(*2002)
[11] SCC 388 2 *Central Organisation for Railway Electrification V. ECI-SPIC-SMO-MCML* (JV),2020(1) ARBLR 19 (SC).
[12] (2017)8 SCC 377

The Supreme Court ruled that a court can be approached to plead the statutory disqualification of an arbitrator under the provisions of the Arbitration and Conciliation Act, 1996, and that it is not necessary to approach the arbitrator for obtaining such a relief. Further, in Para 57 of the judgment, the court held that:

"By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another person as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated."

In *Perkins Eastman Architects DPC & Ors v. HRCC (India) Ltd* [13] The judgment in this case is an extension of the principle laid down in *TRF Limited vs. Energo Projects Ltd*[14]which states that the person who has become ineligible to be appointed as an arbitrator is also ineligible to nominate an arbitrator. This judgment adds weight to the principles laid down in the above-mentioned judgment by stating that "The person 'interested' in the outcome of an arbitration is also ineligible to be appointed an arbitrator and also to nominate someone as an arbitrator".

To briefly explain the case, the major issue before the court was, whether a case has been made out for the exercise of power by the court to appoint an arbitrator? The hon'ble court opined that after the Amendment Act of 2015, Schedule V and VII makes it evident that a person having direct interest in the dispute as such could not act as an arbitrator. Court further held that "the ineligibility referred was a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator"

Therefore, this judgment recapitulates the basic principles of any arbitration viz., rule against biasness, independence and impartiality of the arbitrator. The judgment further states that as per Section 11(2) of the Act, parties are free to agree on a procedure to appoint an arbitrator. Accordingly, liberty to act on the same shall be given if the parties have a written contract giving one of the parties the right to appoint a sole arbitrator.
This decision clarifies two crucial points of law:

a) First, that a person who is ineligible to act as an arbitrator also cannot appoint an arbitrator; and
b) Second, that the court has the power to intervene under Section 11 unless the appointment on the face of it is valid, and the court is satisfied with respect to the same.

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[13] 2019(6)ARBLR132(SC).
[14] (2017) 8 SCC 377.

Central Organization for Railway Electrification vs. M/S ECI-SPIC-SMO-MCML (JV)[15] The Hon'ble Supreme Court in this case held that the appointment of the arbitrators should be in terms of the agreement as agreed by the parties. The court while deciding the present matter opined that:

"After referring to para (50) of the decision in TRF Limited, in Perkins Eastman, the Supreme Court referred to a different situation where both parties have the advantage of nominating an arbitrator of their choice and observed that the advantage of one party in appointing an arbitrator would get counter-balanced by equal power with the other party."

"Since the respondent has been given the power to select two names from out of the four names of the panel, the power of the appellant nominating its arbitrator gets counter-balanced by the power of choice given to the respondent. Thus, the power of the General Manager to nominate the arbitrator is counter-balanced by the power of the respondent to select any of the two nominees from out of the four names suggested from the panel of the retired officers. In view of the modified Clauses 64(3)(a)(ii) and 64(3)(b) of GCC, it cannot therefore be said that the General Manager has become ineligible to act as the arbitrator. We do not find any merit in the contrary contention of the respondent."

The basic understanding after the rational given by the court in this case is that this judgment has given clarity to the judgment given by the Supreme Court and Bombay High Court in Perkins and Lite Food cases respectively, and re-applied the rational given in Voestalpine judgment by giving an explanation that power of a party to appoint an arbitrator would be at par when an option to choose an arbitrator was given to the other party. It has thereby, created a safe harbour for the parties intending to keep a sole arbitrator clause in the agreement by giving them an option to choose from the panel of the arbitrators.

Unilateral Appointment of Arbitration the Way Forward

As the cases of professional misconduct by arbitrators increased, questions against arbitral immunity have arisen. The blanket immunity granted to arbitrators shields them from perceived misconduct.[16] There must be penal and tortuous consequences against persons who attempt to violate the independence and impartiality of an arbitral process. The same can be done by taking away the absolute immunity granted to arbitrators and imposing sanctions on them in cases of misconduct. Moreover, wherein instances of partiality and bias arise, the prejudiced party should be provided with monetary damages from the offending arbitrator and the responsible party.[17] Moreover, there is a dire need to access new arbitration centres as the number of cases of commercial arbitration increases. There is a dire need to have access to new institutional arbitration centres, as the number of commercial arbitration cases increase. Such mechanisms will bring in more transparency in the appointment process which, in turn, will ensure the

[15] 2020(1)ARBLR19(SC).
[16] Prathima R. Appaji, Arbitral Immunity: Justification and Scope in Arbitration Institutions, 1(1) INDIAN J. ARB. L. 63-74 (July 2012).
[17] Subhash Projects, MANU/SC/1177/2005. See also Yashwith Constr. (P) Ltd. v. Simplex Concrete Piles India Ltd., MANU/SC/8227/2006.

independence and impartiality of the arbitral tribunal. In 2017, a ten-member High-Level Committee was constituted by the Government of India, to review and suggest the institutionalization mechanism of appointment of arbitrators.[18] The High-Level Committee observed that due to the delays in the arbitration process induced by the widespread participation of the courts, the 2015 Amendment Act created an unnecessary burden for its users, proposing institutional arbitration.[19] Furthermore, the suggestions included, inter alia, setting up of an autonomous body styled by the Arbitration Promotion Council of India, having representatives from all stakeholders for grading arbitral institutions in India.

The APCI, in turn, will recognize professional institutes providing for training and accreditation of arbitrators. Considering the recommendations of the High-Level Committee, the legislature through the Arbitration and Conciliation (Amendment) Act, 2019 inserted Part IA - Arbitration Council of India.[20] The Arbitration Council of India is required to grade the arbitral institutions and arbitrators and provide accreditation, amongst other things.[21] These steps are meant to bring about a paradigm shift from the current perception of partiality of arbitral tribunals and delay in resolution of commercial disputes in India to it being viewed as an investor-friendly destination, which will ensure independence and impartiality of arbitral tribunals without the involvement of courts. Encouraging and promoting the use of arbitral institutions will create a system of faceless tribunals by removing the option of selecting the arbitrator.

The term "faceless" tribunals envisage a process where arbitral institutions will have specialized persons on board, and through a system of randomized selection, the arbitral tribunal will be constituted by the institution without the involvement of the parties. The arbitrators selected will then be scrutinized on the basis of Section 12 and the Fifth and the Seventh Schedules of the 1996 Act, as amended and inserted by the 2015 Amendment Act respectively. The 2019 Amendment Act, inter alia, amended Section 11 of the 1996 Act, empowering the Supreme Court and the High Courts to designate arbitral institutions for the process of appointment of arbitrators.[22] Prior to this amendment also, the Supreme Court,[23] in a pro-arbitration move, had instructed the Mumbai Centre for International Arbitration to appoint an arbitrator in an international dispute, in the exercise of its powers under Section 11 of the 1996 Act.

Conclusion

The Arbitration and Conciliation Act, 1996 since its inception has witnessed a number of amendments to it but still there remains a question over the validity of the Unilateral Appointment of Arbitrators. Though the legislature has imposed a well-defined system of

[18] Government of India, Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India (July 30, 2017), available at http://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf.
[19] MridulGodhaKartikey M., The New-Found Emphasis on Institutional Arbitration in India, KLUWER ARBITRATION BLOG (Jan. 7, 2018).
[20] Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019 (India) [hereinafter ?2019 Amendment Act].
[21] Ibid.
[22] Ibid.
[23] Sun Pharma. Indus. Ltd., Mumbai v. M/s Falma Organics Ltd. Nigeria, MANU/SCOR/17763/2017.

checks and balances through subsequent amendments to the Arbitration and Conciliation Act, 1996, there have been many instances of unilateral appointments wherein the court had to intervene to resolve the issues that arose.

The core of arbitration lies in the autonomy of parties in the dispute and speedy recovery and hence, a neutral panel of arbitrators is of the essence.[24] While the use of Artificial Intelligence (A.I.) in international arbitration is somewhat non-negotiable, currently there is no such legislative provision in India. While AI solves the issue of unilateral arbitration, it is against the principles of impartiality and independence as the result of an arbitrator will be solely based on the algorithm, which destroys the purpose of providing distributive and equitable justice.[25] In the opinion of writer reliance on an independent arbitration mechanism as a way of ensuring impartiality in arbitration. One must appoint arbitrators through independent institutions rather than through a unilateral board of directors and institutional arbitration is a way of ensuring the same. While some institutions just provide the guidelines and the rules on which the procedure will be based, others provide a roster of arbitrators to the parties as well. Institutional arbitration provides a quality panel of arbitrators devoid of bias and is in rem with the UNCITRAL arbitration rules as well.

To sum up lastly the author feels that in respect of the appointment of the arbitrators/sole arbitrator, there can be three possible solutions one is appoint a sole arbitrator with mutual consent with an explicit clause in the agreement mentioning the name of the person to be appointed as the sole arbitrator. Secondly party should approach High Court/ Supreme Court to appoint a sole arbitrator, in case there is any dispute between the parties. Lastly provide an option to the other party to choose from the panel of arbitrators which tantamount to the power given to the other party to nominate the arbitrator. Irrespective of these solutions, the main universally accepted point is that the "person interested in the outcome of an arbitration is ineligible to nominate an arbitrator and to be appointed as an arbitrator".

[24] Subhash Projects, MANU/SC/1177/2005.
[25] Mishra A, Artificial Intelligence (AI) & Its Effects on Arbitration, Tax Guru.

Menace of Felonious Politicians in Indian Democracy

Dr. Siddharth Thapliyal[1]

Introduction

The entry of criminals in politics had been a major problem in the Indian polity. If it goes unchecked, it would wreck the entire electoral system. From time to time, the Parliament, the Election Commission of India, Judiciary and various Commissions and Committees had taken steps to curb this menace. In this chapter, an attempt has been made to discuss some of the measures adopted by various institutions to fill the gaps in the present system of electoral laws.

Parliament

Article 327 of the Constitution of India empowered the Parliament to make provisions with respect to all matters, relating to or in connection with election to parliament and state legislatures, the preparation of the electoral role, delimitation of constituencies and all other concerned matters. In exercise of the power conferred by the Constitution, Parliament had enacted the Representation of People Act, 1950 and 1951. To prevent the entry of criminals, following provisions had been added in this Act:

Any person convicted of any offence listed under Section 8 (1) of the Representation of People Act, 1951, should be disqualified for a period of six years from the date of such conviction. A person convicted for the contravention of any laws listed under Section 8 (2) of the Representation of People Act, 1951, and sentenced to imprisonment for not less than six months should be disqualified from the date of such conviction and should continue to be disqualified for a further period of six years after his release.

Under Section 8 (3) of the Representation of People Act, 1951, a person convicted of any other offence and sentenced to imprisonment for not less than two years should be disqualified for a further period of six years after his release.

Section 8 (4) of the Representation of People Act, 1951, stated that none of the above mentioned disqualification would take effect in case of a person who on the date of conviction was a Member of Parliament or the Legislature of a State, till three months had elapsed from the date or, if within that period an appeal or application for revision was brought in respect of the conviction or the sentence, until that appeal or application was disposed of the court. It was evident from the provision under the Representation of People Act, 1951, that effort had been

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made through it to control entry of criminals in politics. But due to the sub-section 4), the criminal could contest election and enter legislature and become a member of Council of Ministers. Through here, the intention of lawmakers was to prevent a needless vacancy and a by- election.

Vohra Committee

The next step taken in this direction by the Parliament was the appointment of Vohra Committee through which it tried to take all available information about the activities of crime syndicates, mafia organizations that had developed links with and were being protected by government functionaries and political personalities.

The Government of India established a Committee with Union Home Secretary N.N. Vohra as Chairman, and Secretary, RAW; Director IB; Director CBI; Special Secretary (Home) as member and Joint Secretary (Police) as the member secretary. On the recommendation of the Committee, the government would determine the need, if any, to establish a special organization or agency to collect information and pursue cases against such elements. The Committee was required to submit its report within three months. The Committee inter alia reported had found out was concluded in the following ways:

The report submitted by the Commission found such deep involvement of politicians with criminals in India that it was debarred from being published. The report observed "the various crime syndicate or mafia organizations had developed significant muscle and money power and established linkage with governmental functionaries, political leaders and other to be able to operate with impunity". The Committee also highlighted the use of black money in the elections, which was the root cause of the criminalization of politics in India. The Committee cited other agencies to say that the Mafia network is "virtually running a parallel government, pushing the State apparatus into irrelevance."

The report also stated, "in certain States like Bihar, Haryana and Uttar Pradesh, these gangs enjoyed the patronage of local politicians cutting across party lines and the protection of the functionaries. Some political leaders became the leaders of these gangs/armed senas and over the years got themselves elected to local bodies, State assemblies and national parliament."

The Representation of People (Amendment) Act, 2002

In this direction, efforts were made by the NDA Government on 24 August 2002 by promulgation of The Representation of People (Amendment) Ordinance, 2002. The objective of the Ordinance was to remove criminals, money power and corruption from politics. Keeping in view the public opinion, the President referred this Ordinance back to the Cabinet for reconsideration, but when the Union Cabinet sent the Ordinance back to the President without making any changes, the President did not have much of a choice. Subsequently, on 23 October 2002, the government replaced the Ordinance with The Representation of People (Amendment) Act, 2002. The Act came into force with retrospective effect.

Two sub-clauses, namely clause 33-A and 33-B were added to the Representation of People

Act, 1951, which dealt with the right to information. According to this Act:

A candidate should, apart from any information which he was required to furnish, under this Act or the rules made there-under, in his nomination paper delivered under sub- section (1) of section 33, also furnish the information as to whether- he was accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge had been framed by the court of competent jurisdiction;

He had been convicted of an offence (other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8) and sentenced to imprisonment for one year or more.

The candidate or his proposer, as the case may be, should, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn specified in sub-section (1) by the candidate in a prescribed form verifying the information.

The returning officer should, as soon as might be after the furnishing of information to him under sub-section (1), displayed the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper was delivered."

Insertion of new section 33B. After section 33A of the principal Act as so inserted, the following section should be inserted and should be deemed to had been inserted with effect from the 2 May, 2002, namely 33B. Candidate to furnish information only under the Act and the rules.- Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate should be liable to disclose or furnish any such information, in respect of his election, which was not required to be disclosed or furnished under this Act or the rules made there under."

A new chapter VIIA: Declaration of Assets and Liabilities was inserted. Accordingly: 75A. Declaration of assets and liabilities.
Every elected candidate for a House of Parliament should, within ninety days from the date on which he made and subscribed an oath or affirmation, according to the form set out for the purpose in the Third Schedule to the Constitution, for taking his seat in either House of Parliament, furnish the information, relating to-

(i) the movable and immovable property of which he, his spouse and his dependent children were jointly or severally owners or beneficiaries;
(ii) his liabilities to any public financial institution; and
(iii) his liabilities to the Central Government or the State Government, to the Chairman of the Council of States or the Speaker of the House of the People, as the case might be.

The information under sub- section (1) should be furnished in such form and in such manner

as might be prescribed in the rules made under sub- section (3).
The Chairman of the Council of States or the Speaker of the House of the People, as the case might be, might make rules for the purposes of sub- section (2).

The rules made by the Chairman of the Council of States or the Speaker of the House of the People, under sub- section (3) should be laid, as soon as might be after they are made, before the Council of States or the House of the People, as the case might be, for a total period of thirty days which might be comprised in one session or in two or more successive sessions and should take effect upon the expiry of the said period of thirty days unless they were sooner approved with or without modifications or disapproved by the Council of States or the House of the People and where they were so approved, they should take effect on such approval in the form in which they were laid or in such modified form, as the case might be, and where they were so disapproved, they should be of no effect.

The Chairman of the Council of States or the Speaker of the House of the People, as the case might be, might direct that any willful contravention of the rules made under sub- section (3) by an elected candidate for a House of Parliament referred to in sub- section (1) might be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People, as the case might be. Information about assets and liabilities was not to be disclosed to the voter, but only by successful candidates to the Speaker and Chairman of the House after the election.

Report of Law Commission
In May 1999, the Law Commission submitted its 170th Report on Electoral Reforms. It gave suggestions to check out the criminalized politics, for its prevention. The Law Commission recommended that the disqualification of even those candidates against whom charges had been framed under any section of the Indian Penal Code, Customs Act and Section 10 and 12 of the Unlawful Activities (Prevention) Act, Section 7 of 1998 Religious Institution (Prevention of Misuse) Act and the Prevention of Civil Right Act.

Directives of Election Commission of India
Election Commissioner, G.V.G. Krishnamurthy while addressing a press conference on 20 August 1997 said it was an internationally accepted norm that, “Law breakers cannot be allowed to be lawmakers”, which India must also follow. He also advised, “the nation must ensure that parliament would not be by criminals, of criminals and for criminals.”

The Election Commission of India had taken noticeable measures to prevent criminalization of Indian politics which were as follows:

In August, 1997, it mandated filing of affidavits disclosing conviction in cases covered under Section 8 of the RPA. The ECI declared on 28th August, 1997 that the disqualification for contesting elections to Parliament and State Legislatures on conviction for offences under the section 8 of the Representation of the People Act, 1951 would take effect from the date of conviction by the trial court, irrespective of whether the convicted person stood released on bail

during the pendency of his appeal for revision.

In September 1997, the Commission in a letter addressed to the Prime Minister recommended amendment to Section 8 of RPA, to disqualify any person who was convicted and sentenced to imprisonment for six months or more, from contesting elections for a period totaling the sentence imposed plus an additional six years.

A positive recommendation was made by the Election Commission in 1998 that if a person was proved guilty of a crime and convicted of imprisonment for five or more years his candidature should be cancelled. Commission was also of the opinion that such people against whose name charges had been framed in a court of law for being involved in serious criminal activity, should not be permitted to contest elections during the pendency of their trial.

The ECI had issued order requiring all candidates to give details of criminal cases in which they had either been convicted in the past or were facing trial where the courts had taken cognizance or framed charges. This information was to be furnished by each candidate in a prescribed format supported by an affidavit at the time of filing his nomination as a candidate. The commission also made it clear to all Returning Officers that they would be justified in rejecting the nomination papers of those candidates who failed to furnish such declaration and affidavit. The information so furnished by the candidates was widely disseminated through all media of mass communication and election watch groups and was even put on the Commission's website.

The candidate was supposed to inform about any alleged criminal activity within six months prior to his filing of nomination paper in connection with any old case and whether the court had accepted the case for hearing. The amount of property of the candidate and his dependents, outstanding public debt to the government or to any financial institution of the government and educational qualification of the candidate were the other information required from the candidate.

In 1998, the Commission admitted that in the eyes of law a person was presumed to be innocent unless proved guilty; nevertheless it submitted that the Parliament and State Legislatures were apex law- making bodies and must be composed of persons of integrity and probity who enjoyed high reputation in the eyes of general public, which a person who was accused of a serious offence did not. Further, on the question of disqualification on the ground of corrupt practice, the Commission supported the continuation of its power to decide the term of disqualification of every accused person as uniform criteria could not be applied to myriad cases of corruption- ranging from petty to grand corruption.

Further, taking note of the inordinate delays involved in deciding questions of disqualification on the ground of corrupt practice, the Commission recommended that the Election Commission should hold a judicial hearing in this regard immediately after the receipt of the judgment from the High Court and tender its opinion to the President instead of following the circuitous route

as prevalent then.

Recommendations to curb criminalization of politics were made again in the year 2004. It reiterated its earlier view of disqualifying persons from contesting elections on framing of charges with respect to offences punishable by imprisonment for five years or more. Such charges, however, must had been framed six months prior to the elections. It also suggested that persons found guilty by a Commission of Enquiry should also stand disqualified from contesting elections. Further, the Commission suggested streamlining of all the information to be furnished by way of affidavits in one form by amending Form 26 of the Conduct of Election Rules, 1961. It also recommended the addition of a column for furnishing the annual detailed income of the candidate for tax purpose and his profession in the said affidavit.

Continuing its efforts to keep the criminal elements out of electoral contests within the framework of the given law, the Commission had issued an order in the month of August, 2005 that the names of persons against whom non-bailable warrants issued by the courts had remained un-served on them for six months or more might be removed from the electoral rolls on the presumption that they had ceased to be ordinarily resident at the address given in the electoral rolls. As this would have meant that such persons could not contest elections and vote (registration as an elector in the electoral roll being one of the primary qualifications for candidate and voting), many such absconding accused surrendered before the courts.

Regarding criminalization of politics, the Commission quoted the findings of the Vohra Committee which said: „The nexus between criminal gangs, police, bureaucracy and politicians had come out clearly in various parts of the country.‟ It made three recommendations on tackling this nexus. First, like the Law Commission, it said any person charged with a serious offence would be liable for disqualification. It said any person charged with an offence punishable with imprisonment for a maximum of five years or more should be disqualified from being elected for a period of one year from the date the charges were framed. Unless cleared of the charge within that deadline, he should continue to be disqualified until the conclusion of the trial. This should apply to elected legislators too. A person convicted of an offence and sentenced to imprisonment for six months or more would remain disqualified until the sentence was served and for a further six years.

Second, a person convicted for a heinous‟ crime like murder, rape, smuggling, dacoity, etc should be permanently barred from contesting elections. Third, the Commission recommended the setting up of Special Courts for dealing with criminal cases against politicians. Even potential candidates with criminal charges against them would have recourse to the special courts. These courts, constituted at the level of High Courts, should decide the cases within six months with the right to appeal decisions only before the Supreme Court. Similarly, regarding cases related to corrupt practices under the RPA, the Commission recommended changing the procedure for hearing election petitions which were currently handled by the High Courts. It said special election benches should be constituted to dispose of election petitions quickly. Furthermore, it recommended that the President of India should decide the disqualification of guilty candidates on the advice of the Election Commission.

To curb the criminalization of politics the Supreme Court of India had issued a few directives which were as follows:

The Supreme Court (SC) issued a directive to the Election Commission in 2002 to the effect that rules must be framed to get candidates seeking election to parliament or a state legislature to file affidavits on any criminal activity, so that the little man might think over before making his choice of electing lawbreakers as law maker.

On May 2, 2002 the Supreme Court of India gave a historic ruling following a Public Interest litigation (PIL) by an NGO. It ruled that every candidate, contesting an election to Parliament, State legislature or Municipal Corporation had to furnish certain necessary information to the Election Commission before filing their nomination papers. Details of wealth and property, liabilities, amount of public debt, educational qualification apart a candidate was supposed to disclose whether any criminal records was pending against his name.

According to Supreme Court's judgment on 13 March 2013, the voters had the fundamental right to know in advance, all the details about the life of the candidates and that voters right to know antecedents including criminal past of his candidate contesting election for MP or MLA was much more fundamental and basic for survival of democracy. This was essential to bring transparency to the electoral process and to dissociate itself from the use of muscle and money power.

On July 10, 2013 the SC had held that charge-sheeted Members of Parliament and Legislative Assemblies, on conviction for the offence, would be immediately disqualified from holding membership of the House without being given three months time for appeal, as was the case before.

The SC judgement on July 11, 2013 which stated that persons in lawful custody – whether convicted in a criminal case or otherwise could not contest election. The SC on 13 September, 2013 came up with a new set up electoral reforms which would go a long way in curbing criminalization of politics. According to the SC judgement coming from a bench of Chief Justice P. Sathasivam and Justices Ranjana P. Desai and Ranjana Gogoi, no one could contest elections without making a full and honest disclosure about his / her assets and educational and criminal antecedents. It directly implied that columns in the affidavit filed with maintain papers demanding the information related to assets, educational and criminal antecedents could not be left blank. Following this, the court authorized Returning Officers (ROs) to demand relevant details and reject nomination papers if the details were not furnished despite reminders.

Conclusion

The Supreme Court judgments have injected lot of transparency into the electoral system. First, voters now knew much more about the candidates whom they were expected to vote into office. The affidavits, detailing financial assets and liabilities and criminal records if any, filed by candidates along with their nomination papers were uploaded onto the Election Commission

website and could be accessed easily. Though we could not be sure how many people actually accessed the EC website, the financial worth of candidates was widely reported in the India media.

Finally, Indian Parliament in 2003 enacted the Election and Other Related Laws (Amendment) Act. It could be safely concluded that the interventions by the Supreme Court in the electoral process had created an everlasting impact. But, it raised the issue of the legitimacy of judicial forays – even when they were beneficial – into governance and policy issues at the cost of representative institutions. India had a long history of judicial activism and a leading legal commentator had pointed to the extraordinary role of the Indian Supreme Court in „making law".

The activism of the judiciary, as well as the EC, also had a strong appeal to the masses since it was seen as cutting through the messy democratic process and delivering quick solutions. Scholars Lloyd and Susanne Rudolph had noted: As executives and legislature were perceived as increasingly ineffectual, unstable and corrupt, the Supreme and High Courts, the Presidency, and the Election Commission became the object of a middle class public's hope and aspirations, only partially fulfilled, that someone would defend a government of laws and enforce probity and procedural regularity."

But this did not come without its pitfalls. As academic Pratap Bhanu Mehta warned: Representative institutions were, after all, the essence of democracy, and judges did not stand in the same relation to us as legislators. It might be that we could not trust representative institutions, but it would be stretching logic to pretend that guardianship which the courts exercised over policy was synonymous with democracy.

If India's elected representatives and Indian Parliament were to regain their moral legitimacy and not cede ground to unelected constitutional bodies, they must seek to initiate electoral reform on their own volition rather than at the prodding of the courts. The reluctance of Parliament to accept the provisions of election candidates declaring assets and criminal records was a good example of the legislature's stonewalling tactics.

Again, the insertion of Explanation 1 in Section 77 (1) of the RPA was an obvious ploy to keep election campaign finances opaque. A rethink had become even more imperative in the context of the Anna Hazare-led agitation against corruption and its strong rhetoric against elected representatives. Hazare and his core team had already stated that next on their agenda was electoral reform which they believed would root out „corrupt" candidates. Some of the proposals that they wanted to take up was the right to cast a negative vote, something that already figured in the EC"s recommendations, and the right to recall elected representatives, which was rejected by the Supreme Court in 2007 on the ground that it was for Parliament to decide on the issue.

Some elected representatives had also begun talking of the loss of moral authority of politicians. But if the political class was to dispel such perceptions it must pro-actively embrace electoral

reform instead of being seen as impediments to it.

The Supreme Court has held that the right to information- the right to know antecedents, including the criminal history, or property of candidates - was a fundamental right provided by Article 19(1) (a) of the Constitution of India and that the information was primal for the sustenance of democracy. In the judgment of 2nd May 2002, the Apex Court directed the Election Commission to collect information from each candidate contesting elections on affidavit as a requisite of the nomination papers on: Whether the candidate had been convicted or acquitted or discharged of any criminal offence in the past, if any; whether the candidate was accused in any pending case of any offence punishable with imprisonment for two years or more, and in which charge was framed or cognizance taken by the court of law.

If so, required the details thereof; the assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of the dependents; liabilities, if any, particularly of any overdue of any public financial institution or Government dues and educational qualifications of the candidate.

According to Supreme Court of India, the right to get information in democracy was recognized all throughout and it was natural right flowing from the concept of democracy and that Voters right to know antecedents including criminal past of his candidate contesting election for MP or MLA‟. In this regard, the Right to Information Act 2005 was a historical Act that made Government officials, politicians, ministers liable for punishment if they failed to respond to people within a stipulated timeframe.

Today, many politicians were leading luxurious lifestyles, beyond the legal sources of their income. Many representatives and public servants were filling false affidavits about their annual income, wealth details to Election Commission of India and Vigilance Commission, as the case might be. These authorities are not properly verifying these affidavits. Therefore, many scams and scandals were coming to light day in and day out, politicians were accusing each other of involvement in scams.

Right to information as such will bring transparency of the politicians, representatives, ministers and government activities and allowed the people to find remedies for those things by which they suffered. Undoubtedly, the statutory RTI had been one of the most significant reforms in public administration. It provided a strong national framework within which public awareness programmes could take place.

Cyber Crime and Cyber Terrorism: Danger for Cyber Security

Saurabh Rathore[1]

Abstract

This paper has aim to give contribution in supporting efforts against cyber threats recognized as a cyber terrorism and cyber crime. Also, it has aim to show future challenges related to cyber security and their emerging threats – cyber war, cyber terrorism and cyber crime. Accelerate the development of a weapon called ICT (Information Communication Technology) which is growing faster and faster every day and the development of human consciousness at a higher-level consequence of the enormous proliferation of ICT, contributing to the emergence of new threats in cyberspace. Comparison between conventional weapons and cyber weapons proves that hardware presents assets used for bullet to be thrown out and the software presents bullet on itself which can cause damage or put down harmful effects. New threat known as cyber war, cyber terrorism and cyber crime causes significant disruption of cyber security in cyber space. We can firmly conclude that if ICT becomes more sophisticated subsequently methods and assets use in war against this type of asymmetric threats become more complex, focusing on cyber terrorism and cyber crime.

Key Words: Cyber terrorism, Cyber crime, Cyber security, Cyberspace, Information System.

Introduction

The world in this era of extraordinary technological development faces many challenges in fight against phenomenon of cyber threats, especially cyber crime and cyber terrorism as a new form of asymmetry Threats in the 21st Century. To protect security systems from new threats – especially cyber terrorism and cyber crime appropriate action needs to be taken at the national level rather than at the regional level. Protection against cybercrime and cyber-terrorism refers to protection in all areas closely related to that activity. The reason behind the emergence of this type of threat is the development of technology that brings certain changes in society and consequently the penetration of ICT in all areas of society. For all of the above reasons, cyber security must help it to be established mechanisms to combat this type of asymmetrical threat not only in the region but also worldwide.

Cyber Space

One of the many national strategic objectives that will be included in the defence strategy for countries in general term, it is cyber space protection in order to protect critical infrastructure and reduces the chance of intrusion and cyber attacks, but also reduces the damage caused by cyber attacks. In addition, it must be emphasized that government services depend on cyber space which means they 'fly' in that space because they provide services in banking, finance, health, Information and telecommunications services and other fields. The US Department of Defence (DoD) defines cyberspace as a "global domain within the information environment consisting of a network of interdependent information technology Infrastructure, including the

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Internet, telecommunications networks, computer systems and embedded processor and Controller." (JP 1-02) (Wills, David and Bunn, Sarah, 2006). Of the reasons above, cyber security is the most important because of constant use of government services and increased public confidence in information systems. To achieve the goal, it is necessary to establish new level of communication and cooperation not only between ministries, but also between government and the private sector (G2B).

The above shows that there is a need to protect national critical infrastructure from intrusion and cyber attacks because hackers and other intruders can firmly use critical infrastructure as a tool to carry out their attacks. Optimal communication in cyber space is important in order to exchange information between relevant governmental institutions. High quality connection between institutions allows for faster detection in addition to solve IT problems known as viruses or other types of cyber attacks.

IT infrastructure through a strong security control mechanism is the first step to share information in timely, efficient and reliable manner. Strong security policies and security mechanisms meet requirements for the exchange of sensitive data so that the authorities can react quickly, then make the right decisions and coordinate actions in critical situations.

Cyber Crime

Cyber-crime includes all criminal activities related to computers and networks. Aside from that, cyber-crime also includes traditional crimes committed via internet. As an example; hate crime, telemarketing and internet fraud, identity theft and credit card account theft are considered to be cyber-crimes when illegal activities are carried out using computers and the Internet (Forno, F.R., 1998).

Some cyber-attacks do not have a specific target, because attacks on computers or cluster computers are becoming more common. Home users of computers, governments and their IT networks can be attacked by attackers. Aside from that, Attackers using computers can cause damage to Critical National Infrastructure (CNI), including emergency services, electricity distribution, health care, finance and everything related to IT. Many IT systems which were isolated from the internet, now they are connected to the internet and level of their violability become bigger. There are two main ways in which computers can be involved in crime (Schudel, Gregg and Wood, Bradley, 2000)

- Old crimes committed using computers as a tool: for example, storing illegal images of a hard disk instead of in print; Cell phone harassment or illegal downloading of music and other forms of piracy. Another example is "phishing": confidence tricks including spoof emails and fraudulent websites to obtain sensitive information. (Freeh, J.L, 1998)
- New types of crime enabled by certain technologies. An example is rejection of service attacks or DoS that prevents computer resources being available to intended users, for example by flooding web servers with more data than they can handle and thereby forcing website offline. Other crimes involving attacking a computer (often

by hacking or gaining unauthorized access to computer systems) or writing viruses (a type of malicious software or malware) to delete stored data. (Freeh, J.L. 1998)

In (Computer Crime Definition, 2011) the possibility of terrorists using electronic attack against the CNI is currently small compared to other risks such as the use of explosive devices, although the National Infrastructure Security Coordination Centre (NISCC) states that threats can change rapidly.

Cyber Terrorism

There is no clear definition of the term terrorism. Definitions in order to define the term terrorism has different origin, so some of those definitions focus on actors involved in terrorism, but others on terrorism tactics and objectives of and used methods. In order to fight against this kind of terrorism act or other forms of violence and crime prevention required by national and international organizations. Currently, one of the most commonly used definitions of terrorism follows the US legacy documents and guidelines. Under the US law, the Secretary for State is required to submit a report to Congress annually. Terrorism is defined as follows:

"Intentional and politically motivated violence perpetrated by sub-nationals groups or secret agents against non-combat targets". "The term 'terrorist group' means any group that practices or has an important subgroup that practice, international terrorism" A new phenomenon is being recognized as a cyber terrorism, according to the Federal Bureau of Investigation (FBI). Terrorism is defined as follows:

"premeditated, politically motivated attack on information, computer systems, computer programs and data that lead to violence against non-military (civilian) targets by sub- national groups or secret agents".

Section 66F of the Information Technology Act, 2000 states as follows:
Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people by –

(i) Denying or cause the denial of access to any person authorised to access computer resource; or
(ii) Attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or
(iii) Introducing or causing to introduce any computer contaminant.

and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure specified under section 70, or
knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information,

data or computer database that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism. Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life.

Difference between cyber-crime and cyber terrorism

Today, there are many definitions of cybercrime and cyber terrorism. Recently there is confusion as to whether these two terms - cybercrime and cyber terrorism - are synonymous. However, some authors support the definition that the two terms are synonymous, while other authors do not support this definition and they formulated two different definitions. The most relevant definition in a global perspective is the definition used according to the US-defined terminology.

Conclusion

It is well known that cyber users and their networks are not secure from cyber attack. Also, it is not enough knowledge about cyber threats and risks and what kinds of implications for national, regional and global security are caused. However, the above allows to conclude that are needed to develop mechanisms against cyber threats as a new type of asymmetric threat.
Although some countries have technological advances and more experience in cyber warfare threats and critical infrastructure protection are important compared to others, but cybercrime is the biggest threat landscape versus cyber terrorism and cyber warfare. Moreover, threat is caused by lack of developed security mechanisms in terms of consequences that may affect individual users and opportunities for violations in cyberspace that can be exploited by criminal and terrorist groups.

The convergence of these challenges depends on technological developments and the desire to groups, individuals, and other actors to create significant asymmetric exceptions to governments or citizens in handling with cyber threats. It is generally accepted that international organizations should guide the development of standards used when selecting of activities in cyberspace, but there is no clear selected international organization that should be a leader. The United Nations (UN) has lost the opportunity to lead because it cannot create consensus and all efforts to develop standards is futile related to cyber security. So that in near future, it is needed to set bigger caution by the cyber community in order to discover comfortable solutions to address and combat cyber threats.

Finally, it is accepted that cyber security is an international (global) responsibility. Every user has responsibility in cyber security depends on his affiliation. Due to the internal connection and dependence is very large, every user in the network must contribute to strengthen the security mechanism and defence against cyber-attacks. As well it is needed to find solutions

and ideas to strengthen cyberspace protection and enhance cyber security as part of global strategy to eliminate exceptions and neutralizing threats as much as possible.

References:

1. Advocat, Jenny, (2005) "Internet clinical trials: examining new disciplinary experiments in health care", Monash University, Australia, Anthropology Matters Journal, Vol 7 (1),
2. Arquilla, John and Ronfeldt, David, (1993), "Cyberwar is Coming", Comparative Strategy, Taylor & Francis, Vol 12, (2), pp. 141-165.
3. Benefits of e-Government, Asia-Pacific e-Government Portal, Last modified 2004, http://egovaspac.apdip.net/topics/benefits/
4. E-Government Handbook, CDT/infoDev, http://www.cdt.org/egov/handbook/
5. Forno, F.R. (1998) "Hidden threats and vulnerabilities to information systems at the dawn of a new century", Emergency Net News, 11/22, http://www. emergency. com/techthrt.html
6. Freeh, J.L. (1998) "Threats to US national security: Congressional statement", FBI, January 28, http://www.fbi.gov/pressrm/congress/congress98/threats.htm
7. Guice, J., Duffy, R. (2000), "The future of the internet in science", USRA Research Institute for Advanced Computer Science, NASA Ames Research Center, USA.
8. The Information Technology Act, 2000.

WHO Regulations & Minimum Standard for Healthcare: An Indian Perspective

Rananjay Singh[1]

"We champion health and a better future for all"
-World Health Organisation.

Introduction

The WHO is identified as a premier institute dedicated for Health to Everyone[2], established in 1948, is an organisation of the United Nations that links countries, partners, and individuals to advance health, ensure global security, and assist to the most vulnerable people for achieving everyone the best possible level of health.[3] WHO is a group of 194 member States, which consists larger number of the countries of the world. The Countries which are the members elect the Director-General as a chairperson, who leads this organization in achieving the global health goals and securing a wellbeing to the individual. WHO is an institution which is in charge of advancing universal health care at international level.

WHO organise and lead the global response towards health emergencies. It also encourage leading healthier lives, from prenatal care through old age. With the help of science-based policies and programmes. The Triple Billon Action targets has been set forth bu it an ambitious strategy for the globe to achieve good health universally.[4] WHO is equipped with various professionals, who committed to integrity and excellence in health sector at global level. it is intended for collaboration and a steadfast commitment to science and trusted as care for the world's health.[5]

WHO and India

The World Health Organization (WHO) is the Uited Nations designated health organisation. It collaborates with its member nations through the Ministries of Health, which are an intergovernmental body. This Organization is in charge of providing leadership on issues pertaining to global health, establishing norms and standards, defining evidence-based policy

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2. Dedicated to the well-being of all people and guided by science, the World Health Organization leads and champions global efforts to give everyone, everywhere an equal chance to live a healthy life.
3. About World Health Organisation, Who We Are, available at: *https://www.who.int/about/who-we-are* (accessed on 30.10.2020).
4. Work of World Health Organisation, Triple Billion Targets, *https://www.who.int/our-work* (accessed on 30.10.2020).
5. Values of World Health Organisation, available at: *https://www.who.int/about/who-we-are* (accessed on 30.10.2020).

alternatives, setting norms and standards, offering technical assistance to nations, and monitoring and assessing health trends. On January 12, 1948, India signed on as a party to the WHO Constitution for becoming the member. The Indian Minister of Health's office hosted the first meeting of the WHO Regional Committee for South-East Asia on October 4-5, 1948.

The WHO Director-General, Dr. Brock Chisholm, gave a speech during its inauguration, which was presided over by Pandit Jawaharlal Nehru, the Prime Minister of India. India belongs to the South East Asia Region of the WHO. Delhi serves as the national headquarters for the WHO Country Office for India. The WHO Country Office for India's 2019–2023 Country Cooperation Strategy (CCS) outlines the areas of action for the office.[6]

WHO Country Cooperation Strategy 2019–2023 for India

WHO has formulated Country Cooperation Strategy for India, for a transitional phase i.e. 2019-2023. The WHO Country Office for India and the Ministry of Health and Family Welfare (MoH&FW) of the Government of India (GoI) have collaboratively created *"The WHO India Country Cooperation Strategy 2019-2023: A Time of Transition."* The Country Cooperation Strategy (CCS) offers a tactical road map for WHO to collaborate with the GoI to achieve its health sector goals, improve public health, and bring about seismic changes in the industry.

The India CCS is one of the first to fully align with the Sustainable Development Goals, the WHO South-East Asia Region's eight Flagship Priorities, the newly adopted WHO 13th General Programme of Work and its *'triple Action'* targets. The work of the United Nations Sustainable Development Framework for 2018–2020 is also captured by the CCS.

The CCS describes the ways in which WHO can assist the MoHFW and associated Ministries in achieving impact at the national level. The CCS builds upon other important strategic policy documents, such as India's National Health Policy 2017, and the several ground-breaking programmes India has implemented, such as Ayushman Bharat, its National Viral Hepatitis Control Program, and the promotion of digital health, among others.

Under the overall direction of the MoHFW, a government agency, WHO will further expand its collaboration with a wider range of government sectors and other stakeholders beyond health. This CCS not only builds upon the work that WHO has been supporting out in the last few years, but also expands to address complex challenges, such as the prevention of NCDs, the control of antimicrobial resistance (AMR), the reduction of air pollution, and the prevention and treatment of mental illnesses.[7]

6. India and World Health Organisation, *https://www.who.int/india/about-us* (accessed on 30.10.2020).
7. WHO India Country Cooperation Strategy 2019–2023; A Time of Transition, *https://www.who.int/about/what-we-do/thirteenth-general-programme-of-work-2019---2023* (accessed on 30.10.2020).

WHO Norms & Standards for India

WHO has devided the world in six regions[8] for effective implementaion of its regulations and for seving the purposes of the institution. India is delt with South-East Asian Region (SEAR). WHO has promolugated various guidelines for the countries in this region. WHO has framed various norms for India[9] which is relating to the followings;

- Guidelines for Adolescent health;
- Guidelines for Adolescent Health and Development;
- Guidelines for Ageing and Health;
- Guidelines for Air Pollution;
- Guidelines for Antimicrobial Resistance;
- Guidelines for Arsenic;
- Guidelines for Avian Influenza;
- Guidelines for Birth defects;
- Guidelines for Blood;
- Guidelines for Blood Products and Products of Human Origin;
- Guidelines for Cardiovascular diseases;
- Guidelines for Chemical safety;
- Guidelines for Chikungunya;
- Guidelines for Climate change;
- Guidelines for Dengue;
- Guidelines for Depression;
- Guidelines for Diabetes;
- Guidelines for Disability injury prevention and rehabilitation;
- Guidelines for e-Health;
- Guidelines for Electromagnetic fields;
- Guidelines for Environmental Health;
- Guidelines for Ethics;
- Guidelines for Guidelines for Food safety;
- Guidelines for Gender Equity and Human Rights;
- Guidelines for Health Data and Health Information Systems;
- Guidelines for Health Impact Assessment;
- Guidelines for Health Promotion;
- Guidelines for Health Services;
- Guidelines for Health Systems Governance;
- Guidelines for Health Workforce;
- Guidelines for Healthy Diet;
- Guidelines for Hepatitis;

8. African Region (AFR); Region of the Americas (AMR); South-East Asian Region (SEAR); European Region (EUR); Eastern Mediterranean Region (EMR) and Western Pacific Region (WPR).
9. Norms for various topics on Health for India, available at: *https://www.who.int/india/health-topics* (accessed on 30.10.2020).

- Guidelines for HIV/AIDS;
- Guidelines for Hospitals;
- Guidelines for Hypertension;
- Guidelines for Immunization;
- Guidelines for Infant and young child feeding;
- Guidelines for Intellectual property rights;
- Guidelines for Trade and health;
- Guidelines for International health regulations;
- Guidelines for Japanese encephalitis;
- Guidelines for Leishmaniasis;
- Guidelines for Lymphatic filariasis;
- Guidelines for Malaria;
- Guidelines for Maternal health;
- Guidelines for Measles and rubella;
- Guidelines for Medical Devices;
- Guidelines for Medical waste;
- Guidelines for Mental health;
- Guidelines for Newborn health;
- Guidelines for Noncommunicable Diseases;
- Guidelines for Nursing and Midwifery;
- Guidelines for Nutrition;
- Guidelines for Obesity and Overweight;
- Guidelines for Occupational Health;
- Guidelines for Patient Safety and Health Service Quality;
- Guidelines for Physical Activity;
- Guidelines for Primary Health Care;
- Guidelines for Quality of Care;
- Guidelines for Rabies in India;
- Guidelines for Road Safety;
- Guidelines for Routine Immunization;
- Guidelines for Sexual Health;
- Guidelines for Sexually Transmitted Infections;
- Guidelines for Snakebite in India;
- Guidelines for Social Determinants;
- Guidelines for Suicide;
- Guidelines for Tobacco;
- Guidelines for Traditional medicine;
- Guidelines for Tuberculosis;
- Guidelines for Violence against Women;
- Guidelines for Water, Sanitation and Hygiene (WASH).

India is moving towards to achieve the stipulated goal as pper World Health Organisation and to maintain the norms as directed/suggested by its regulations.

Clinical Establishment Act: A Legislation for Regulation

India, The Clinical Establishments (Registration and Regulation) Act, 2010[10] has been enacted to provide registration, regulation, minimum standards and other norms for healthcare providers which shall be complied by every clinical establishment. Apart from it, this Act also provides a three tire machinary[11] for effective functioning of this Act.

Types of Clinical Establishments in India

The clinical establishments has been categorised as per norms of World Health Organisation and the need of our country. These establishments is categorised on the basis of location, ownership, type, size, specialty, systems of medicine, services offered and others[12]. These are as follows;

- *On the Basis of Location*, these are catogrised as Rural; Urban; Metro; Notified/Inaccessible Areas which includes Hilly and Tribal Areas.
- *On the basis of Ownership*,
  - Government/Public Sectors, which includes Central Government; State Government; Local Government including Municipality, Zilla parishadand others; Public Sector Under taking; Other ministries and departments including Railways, Police and others; Employee State Insurance Corporation; Autonomous Organization under government
  - Non-Government/Private Sectors, which includes Individual Proprietorship; Partnership; Registered companies which are registered under central/provincial/state Act; Registered Society/Trust under central/provincial/state Act.
- *On the basis of systems of Medicine in the clinical establishment, in form of* Allopathy which is also known as modern medicine; Any one or multiple disciplines of AYUSH, as per definition of Ministry of AYUSH, Government of India.
- *On the basis of Type/size*
  - Outdoor Patience Clinics, which includes, Single practitioner providing consultation services only, with diagnostic services or with short stay; Poly clinic providing consultation services only, with diagnostic services or with short stay; Dispensing; Health Checkup Centre
  - Day Care Facilities Clinics, which includes, Medical/Surgical; Medical SPA; Wellness centers, where qualified medical professionals supervise these services.

10. Act No. 23 of 2010.
11. In form of National Council for Clinical Establishment; State Council for Clinical Establishment; District Registering Authority.
12. Catogeries of Clinical Establishments, avail at; *http://clinicalestablishments.gov.in/WriteReadData/650.pdf*, (accessed on 30.10.20).

- *Hospitals including Nursing Home, Whether Outpatient or Inpatient,* which includes, General Practice; Single specialty; Multi specialty which includes Palliative care Centre, Trauma Centre, Maternity Home; Super specialty;
    - Medical Specialties- The doctors should possess recognized post graduate degree of M.D. or Diploma or such equivalent recognized degree/diploma in Anesthesiology; Aviation; Medicine; Community Medicine; Dermatology, Venerology and Leprosy; Family Medicine; General Medicine; Geriatrics; Immuno Haematology and Blood Transfusion; Nuclear Medicine; Paediatrics; Physical Medicine Rehabilitation; Psychiatry; Radio-diagnosis; Radio-therapy; Rheumatology; Sports Medicine; Tropical Medicine; Tuberculosis & Respiratory Medicine or Pulmonary Medicine.
    - Surgical specialties - The doctors should possess recognized post graduate degree of M.S. or Diploma or such equivalent recognized degree/diploma in Otorhinolaryngology; General Surgery; Ophthalmology; Orthopedics; Obstetrics & Gynecology including MTP & Artificial Reproductive Techniques (ART) Centers.
    - Medical Super specialties – In the cases of Cardiology; Clinical Hematology including Stem Cell Therapy; Clinical Pharmacology; Endocrinology; Immunology; Medical Gastroenterology; Medical Genetics; Medical Oncology; Neonatology; Nephrology; Neurology; Neuro-radiology.
    - Surgical Super specialties- In the cases of Cardiovascular thoracic Surgery; Urology; Neuro-Surgery; Paediatrics Surgery; Plastic & Reconstructive Surgery; Surgical Gastroenterology; Surgical Oncology; Endocrine Surgery; Gynecological Oncology; Vascular Surgery.
- As per definition of services provided in specialty/super specialty/multi specialty allopathic hospitals, all these can be *categorized on the basis of level on care into,* Hospital Level 1 a; Hospital Level 1 b; Hospital Level 2; Hospital Level 3 (Non teaching); Hospital Level 4 (Teaching).
- *Dental Clinics and Dental Hospital,*
    - Dental clinics which includes Single practitioner or Dental Polyclinics.
    - Dental Hospitals having specialties as pe in IDC Act, which includes, Oral and maxillofacial surgery; Oral medicine and radiology; Orthodontics; Conservative dentistry and Endodontics; Periodontics; Pedodontics and preventive dentistry; Oral pathology and Microbiology; Prosthodontics and crown bridge; Public health dentistry.
- Diagnostic Centers
    - Medical Diagnostic Laboratories which includes Hospital laboratories which are attached to that hospital and Private/Community laboratories, which receive samples from outsides. These laboratories provides services such as, Pathology; Bio-chemistry; Microbiology; Molecular Biology and Genetic Labs; Virology.

- General and Advanced Diagnostic Imaging centers providing the facilities of Radiology (General/Interventional); Electromagnetic imaging including Magnetic Resonance Imaging (MRI) and Positron Emission Tomography (PET) Scan; Ultrasound.
- Collection centers; diagnostic centres and clinical labs for registered clinical establishment.

- Allied Health professions in from of medicine, dentistry, pharmacy and nursing services. Which includes the disciplines of Audiology; Behavioral health including counseling, marriage and family therapy and others; Exercise physiology; Nuclear medicine technology; Medical Laboratory Scientist; Dietetics; Occupational therapy; Optometry; Orthoptics; Orthotics and prosthetics; Osteopathy; Paramedic; Podiatry; Health Psychology/Clinical Psychology; Physiotherapy; Radiation therapy; Radiography/Medical imaging; Respiratory Therapy; Sonography; Speech pathology.
- AYUSH which includes the followings;
  - *Ayurveda* which includes Ausadh Chikitsa, Shodhan Chikitsa, Shalya Chikitsa, Pathya Vyavastha, Rasayana.
  - *Yoga* which includes Ashtang Yoga.
  - *Unani* which includes Matab, Ilaj-bit-Tadbeer, Jarahat, Hifzan-e-Sehat.
  - *Siddha* which includes Maruthuvam, Varmam Thokknam, Sirappu Maruthuvam & Yoga.
  - *Homeopathy* including General Homeopathy.
  - *Naturopathy* External Therapies with natural modalities Internal Therapies.

Indian Norms & Minimum Standard for Healthcare

In India, for the systemetic development of healthcare services, many strategies has been made. National Health Policies[13] are one of these. India has formulated the three basic health policies in form of National Health Policy, 1983; 2002; 2017. It consists a series of guidelines and regulatins for the betterment of the health services. This Act also provides certain norms for standards for healthcare. Under Sec 2(h)[14] of this Act 'Recognised System of Medicine' has been defined; according to which Allopathy; Ayurveda; Homoeopathy; Naturopathy; Siddha; Sowa-Rigpa; Unani and YOGA procedures has been recognised by the central

13. National Policy for Rare Diseases, 2021; National Health Policy, 2017; National Mental Health Policy, 2014; National Policy for Access to Plasma Derived Medicinal Products from Human Plasma for Clinical/Therapeutic Use National Programme on AMR Containment, 2011; India Newborn Action Plan, 2014; (INAP) Kangaroo Mother Care & Optimal Feeding of Low Birth Weight Infants, 2014; Home Based New Born Care Operational Guidelines, 2014 (revised); National Health Profile, 2019; National Health Research Policy, 2011; National Vaccine Policy, April 2011; National Policy for Persons with Disabilities, 2006; National Health Policy, 2002; National Health Policy, 1983; National Population Policy, 2000; The National Youth Policy, 2003; National Charter for Children, 2013; National Blood Policy, 2007; National AIDS Prevention and Control Policy National Patient Safety Implementation Framework.

14. (h) *"Recognised System of Medicine"* means Allopathy, Yoga, Naturopathy, Ayurveda, Homoeopathy, Siddha and Unani System of medicines or any other system of medicine as may be recognised by the Central Government;

government. The Central Government may also recognise other procedures as for need of the time. Under Sec this Act Under Section 13[15] of this Act, different clinical establishments must be categorised into the various subgroups that the Central Government may from time to time specify. Different standards might be established for classifying the various categories mentioned in the sub-section. The Central Government must consider local situations while establishing the standards for clinical establishments. These are as follows;

- Indian Public Health Standards
- Minimum Standards for Allopathy
  - Standard for Speciality/Super-Speciality Specific
  - Standard for other than Speciality/Super-Speciality
- Minimum Standards for AYUSH

Indian Public Health Standards

The National Rural Health Mission (NHM), which was established in 2005 to improve the rural public health system, has now exceeded several goals and objectives. The Mission aims to deliver high-quality healthcare to rural residents across the nation, with a special emphasis on the States and Union Territories (UTs), which have subpar infrastructure and/or subpar public health indices. The Indian Public Health Standards (IPHS) for Sub-centres, Primary Health Centers (PHCs), Community Health Centers (CHCs), Sub-District and District Hospitals were published in January/February 2007 with this goal in mind and have since been used as the benchmark for planning and upgrading public health care infrastructure in the States and UTs. IPHS are a set of universal criteria designed to raise the level of the nation's health care system[16].

The IPHS papers have been updated to reflect the launch of new non-communicable disease programmes and the evolving protocols of the existing programmes. To accommodate the various needs of the States and regions, flexibility is permitted. These IPHS recommendations will serve as the main impetus for quality improvement and as the standard for evaluating the operational state of healthcare facilities. States and UTs should adopt these IPHS recommendations in order to strengthen public health care institutions and make every effort to provide high-quality healthcare nationwide. These standards can be discussed in following heads;

- Sub Centers
- Primay Health Centre
- Community Health Centre
- Sub-district & Sub-divisional Hospital

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15. Section 13. Classification of clinical establishments.—(1) Clinical establishment of different systems shall be classified into such categories, as may be prescribed by the Central Government, from time to time. (2) Different standards may be prescribed for classification of different categories referred to in sub-section (1): Provided that in prescribing the standards for clinical establishments, the Central Government shall have regard to the local conditions.

16. Indian Public Health Standards, available at; *http://www.clinicalestablishments.gov.in/En/1072-indian-public-health-standards.aspx,* (accessed on 30.10.2020).

- District Hospital

Minimum Standards for Allopathy

In the modern world, the most adaptable mode of healthcare is Allopathy. Most of the persons seek medical care through this method of Healthcare. In recent decade, Allopathy has made revolutionary scientific changes in healthcare and after recent outbreak of corona epidemic, need of restructuring our healthcare system is necessitized. Keeping this into mind and suggesting norms of World Health Organisation, we have formulated certain for of standards for Allopathy[17], which can be discussed in following heads;

- Minimum Standards of Clinical Establishments for Speciality/Super-Speciality Specific[18]
  - Minimum Standards of Clinical Establishments for Health Check up Centre
  - Minimum Standards of Clinical Establishments for Integrated Counselling Centre
  - Minimum Standards of Clinical Establishments for Dietetics
  - Minimum Standards of Clinical Establishments for Hospital (Level 1)
  - Minimum Standards of Clinical Establishments for Hospital (Level 2)
  - Minimum Standards of Clinical Establishments for Hospital(Level 3)
  - Minimum Standards of Clinical Establishments for Mobile Clinic Only Consultation
  - Minimum Standards of Clinical Establishments for Mobile Clinic With Procedure
  - Minimum Standards of Clinical Establishments for Mobile Dental Van
  - Minimum Standards of Clinical Establishments for Dental Lab
  - Minimum Standards of Clinical Establishments for Physiotherapy Centre
  - Minimum Standards of Clinical Establishments for Clinic/Polyclinic Only Consultation
  - Minimum Standards of Clinical Establishments for Clinic/Polyclinic With Diagnostic Support
  - Minimum Standards of Clinical Establishments for Clinic/Polyclinic With Dispensary
  - Minimum Standards of Clinical Establishments for Clinic/Polyclinic With Observation
  - Minimum Standards of Clinical Establishments for Collection Centres and point of care testing etc.

17. Minimum Standards for Allopathy, available at; *http://www.clinicalestablishments.gov.in/En/1070-draft-minimum-standards.aspx* , (accessed on 30.10.2020).
18. Minimum Standards for Allopathy Speciality/Super-Speciality Specific, available at; *http://www.clinicalestablishments.gov.in/En/1076.aspx,* (accessed on 30.10.2020).

- Minimum Standards of Clinical Establishments for National Standards for Blood Centres and Blood Transfusion Services (2nd Edition)

- Minimum Standards of Clinical Establishments for other than Speciality/Super-Speciality[19]
  - Minimum Standards of Clinical Establishments for Anaesthesiology
  - Minimum Standards of Clinical Establishments for Paediatrics (Hospital)
  - Minimum Standards of Clinical Establishments for Paediatric (Clinic)
  - Minimum Standards of Clinical Establishments for Burn Care Facility (Hospital)
  - Minimum Standards of Clinical Establishments for Plastic Surgery (Hospital)
  - Minimum Standards of Clinical Establishments for Plastic Surgery (Clinic)
  - Minimum Standards of Clinical Establishments for Cardiology (Hospital)
  - Minimum Standards of Clinical Establishments for Cardiology Services (Clinic)
  - Minimum Standards of Clinical Establishments for Dental Set Up -Stand Alone/Hospital Set Up
  - Minimum Standards of Clinical Establishments for Dermatology (Hospital)
  - Minimum Standards of Clinical Establishments for Dermatology (Clinic)
  - Minimum Standards of Clinical Establishments for STD Clinic
  - Minimum Standards of Clinical Establishments for Gastroenterology (Hospital)
  - Minimum Standards of Clinical Establishments for Gastroenterology Services (Clinic)
  - Minimum Standards of Clinical Establishments for GI Surgery (Hospital)
  - Minimum Standards of Clinical Establishments for GI Surgery (Clinic)
  - Minimum Standards of Clinical Establishments for General Surgery (Hospital)
  - Minimum Standards of Clinical Establishments for General Surgery (Clinic)
  - Minimum Standards of Clinical Establishments for Medicine And Geriatric (Hospital)
  - Minimum Standards of Clinical Establishments for Medicine And Geriatric (Clinic)
  - Minimum Standards of Clinical Establishments for Endocrinology (Hospital)
  - Minimum Standards of Clinical Establishments for Endocrinology (Clinic)
  - Minimum Standards of Clinical Establishments for Neurology (Hospital)
  - Minimum Standards of Clinical Establishments for Neurology (Clinic)

19. Minimum Standards for Allopathy Other than Speciality/Super-Speciality, available at; *http://www.clinicalestablishments.gov.in/En/1070-draft-minimum-standards.aspx*, (accessed on 30.10.2020).

- Minimum Standards of Clinical Establishments for Neurosurgery (Hospital)
- Minimum Standards of Clinical Establishments for Neurosurgery Services (Clinic)
- Minimum Standards of Clinical Establishments for Gynae And Obstetrics Indoor Services (Hospital)
- Minimum Standards of Clinical Establishments for Gynae And Obstetrics (Clinic)
- Minimum Standards of Clinical Establishments for IVF Clinic (ICMR Norm)
- Minimum Standards of Clinical Establishments for Orthopaedic (Hospital)
- Minimum Standards of Clinical Establishments for Orthopaedic Services (Clinic)
- Minimum Standards of Clinical Establishments for Otorhinolaryngology (Hospital)
- Minimum Standards of Clinical Establishments for Otorhinolaryngology Services (Clinic)
- Minimum Standards of Clinical Establishments for Deaf And Dumb Clinic
- Minimum Standards of Clinical Establishments for Psychiatry Services (Hospital)
- Minimum Standards of Clinical Establishments for Psychiatry Services (Clinic)
- Minimum Standards of Clinical Establishments for Deaddiction Centre
- Minimum Standards of Clinical Establishments for Ophthalmology (Hospital)
- Minimum Standards of Clinical Establishments for Ophthalmology Services (Clinic)
- Minimum Standards of Clinical Establishments for Optometrist Services
- Minimum Standards of Clinical Establishments for Urology (Hospital)
- Minimum Standards of Clinical Establishments for Urology Services (Clinic)
- Minimum Standards of Clinical Establishments for Nephrology (Hospital)
- Minimum Standards of Clinical Establishments for Nephrology (Clinic)
- Minimum Standards of Clinical Establishments for Dialysis Centre Guidelines
- Minimum Standards of Clinical Establishments for Dialysis Centre Checklist
- Minimum Standards of Clinical Establishments for CTVS (Hospital)
- Minimum Standards of Clinical Establishments for CTVS (Clinic)
- Minimum Standards of Clinical Establishments for Radiotherapy
- Minimum Standards of Clinical Establishments for Medical Diagnostic Laboratories
- Minimum Standards of Clinical Establishments for Draft Minimum Standards of Collection Centres

- Minimum Standards of Clinical Establishments for Imaging Centers-X-Ray Clinic/ Cathlab / DSA / OPG And Dental / DEXA Scan
- Minimum Standards of Clinical Establishments for Imaging Centers-Sonography (Color Doppler) Clinic
- Minimum Standards of Clinical Establishments for Imaging Centers - CT Scan Center/ PET CT Scan
- Minimum Standards of Clinical Establishments for Imaging Centers – MRI
- Minimum Standards of Clinical Establishments for Rheumatology
- Minimum Standards of Clinical Establishments for Rheumatology Clinic Polyclinic
- Minimum Standards of Clinical Establishments for Pulmonology
- Minimum Standards of Clinical Establishments for Pulmonology Clinic
- Minimum Standards of Clinical Establishments for Medical Oncology
- Minimum Standards of Clinical Establishments for Clinical Haematology
- Minimum Standards of Clinical Establishments for Gynaecological Oncology
- Minimum Standards of Clinical Establishments for Clinic Polyclinic
- Minimum Standards of Clinical Establishments for Surgical Oncology
- Minimum Standards of Clinical Establishments for Surgical Oncology Clinic
- Minimum Standards of Clinical Establishments for Surgical Oncology Polyclinic
- Minimum Standards of Clinical Establishments for Neonatology
- Minimum Standards of Clinical Establishments for Neonatology Clinic
- Minimum Standards of Clinical Establishments for Paediatric Surgery
- Minimum Standards of Clinical Establishments for Paediatric Surgery Clinic Polyclinic
- Minimum Standards of Clinical Establishments for PMR Clinic
- Minimum Standards of Clinical Establishments for Palliative Care

Minimum Standards for AYUSH

In the classical Indian society various other procedures/systems of medicines has been recognized apart form Allopathy and these has also been used from very ancient time. These are named as AYUSH; i.e. Ayurveda; Homoeopathy; Naturopathy; Siddha; Sowa-Rigpa; Unani and YOGA. India has been pioneer of these procedures and there are many manscript written and available in this country. This Act also provides the minimum standards for AYUSH[20], which can be discussed as follows;

- Minimum Standards of Clinical Establishments for Ayurveda;

20. Minimum Standards for AYUSH, available at; *http://www.clinicalestablishments.gov.in/En/1075-ayush.aspx*, (accessed on 30.10.2020).

- Minimum Standards of Clinical Establishments for Homoeopathy;
- Minimum Standards of Clinical Establishments for Naturopathy;
- Minimum Standards of Clinical Establishments for Siddha;
- Minimum Standards of Clinical Establishments for Sowa-Rigpa;
- Minimum Standards of Clinical Establishments for Unani;
- Minimum Standards of Clinical Establishments for YOGA

Conclusion

With the enactment of this Act[21], the legislature has made a systematic tool for management of clinical establishments which are providing healthcare services. By this Act, the procedures for registration, minimum standards, operational guidelines and other regulatory methods have been evolved. Before enactment of this Act, no such criteria were prevailed for management of healthcare providers.

The first time in India, the minimum standards was established for the clinical establishments by this Act, which shall be uniformly complied. No establishments shall be allowed to run without it. By establishing such norms India has made endeavour to comply the aforesaid norms of World Health Organisation and to secure its citizen the better health at lowest cost. It will be revolutionary stride in the healthcare mechanism.

21. The Clinical Establishment (Registration and Regulation) Act, 2010.

RTI Act, 2005: An Effective Tool for Good Governance

Dr. Anil Kumar Patel[1]

Introduction

The concept of Right to know and right to information and right to make a demand for certain documents with the public authorities had been dealt with, and have been appraised. Right to Information is more or less a Universal concept. Right to Information is the bulwark of democratic government. This right is essential for the proper functioning of the democratic process. Right to Information is an integral part of the freedom of speech and expression enshrined in Article 19(1)(A) of the constitution, which is regarded as the first condition of liberty.

Historical Background

The first and most well known right to information movement in India was by Mozdoor Kisan Shakti Sangathan (MKSS's) in Rajasthan during the early 1990's. MKSS's struggle for the access to village accounts and transparency in administration is widely credited and sparked off the right to information movement in India.

Before RTI Act in India, the official Secrets Act, 1923 was enacted to protect the official secrets. The new information law intends to disclose information, replacing the 'culture of secrecy' in administration. It will promote public accountability which is a part of governance. Where the accountability is exposed the malpractice, mismanagement, abuse of discretion, bribery etc. are trimmed down.

Object

The main object of the Act is to provide information and the Act provides the ways in which the information can be accessed. The Sec. 3 states that, subject to the provisions of this Act, all citizens shall have the right to information. The Act enforces a duty upon the public authorities to disclose all information starting from the particulars of its organization, function and duties, to budget allocated to each of its agency. It shall also publish relevant facts while formatting important policies which affect public and the give reasons for its administrative or quasi-judicial decisions of affected person. Thus, the Act imposes an obligation upon the public authorities to disclose information. Also, it is stated under Sec. 4(2) that every public authority shall take steps to provide information *suo moto* to the public. Thus, the authorities have to give information voluntarily so that the public have minimum resort to use this Act. The public authorities also have to disseminate information widely in any form which is easily accessible to the public.

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The word 'dissemination' has been defined in the Act. Disseminated means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet of any other means, including inspection of offices of any public authority. Thus, the dissemination of information by public authorities has been made mandatory by the Act.

Information is power and the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Ultimately the most effective systemic check on corruption would be where the citizen herself or himself has the right to take the initiative to seek information from the state and thereby to enforce transparency and accountability. It enhances the quality of citizen participation in governance from mere vote-casting, to involvement in the decision-making that affect her or his life. A statutory right to information would secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decision, to ensure the these are consistent with the principles of public interest, probity and justice. Alternatively, the greater the restrictions that are placed on access, the greater the feelings of 'Powerlessness' and 'Alienation'. Without information people cannot adequately exercise their right and responsibilities as citizens or make informed choices. Government information is a national resource.

Impact of RTI in Good Governance

Good governance has four elements – transparency, accountability, predictability and participation.[2] Transparency refers to availability of information to the general public and clarity about functioning of governmental institutions. Right to information open up government's record to public scrutiny.

The right to information is a grandly tool for good governance. Transparency and accountability cannot be fixed. There should be maximum disclosure and minimum confidentiality.[3] The main trust of RTI law is to change the culture of secrecy and aloofness that has long plagued India's monolithic and opaque bureaucracy. The RTI Act requires public authorities to disclose all information about their activities proactively and maintain all information they keep in a manner that facilitates the people's right to information.

Indeed, by breaking down this culture of secrecy, the law also opens channels of communication between citizens and government. Currently, communication between the government and people is one way, where citizen is susceptible to government manipulation of information which is often used to suit government interest by for example, gaining the required mandate during an election. Without access to reliable information on government activities rather than propaganda it is difficult for citizens to make, political informed choices in the ballot box. However, the RTI Act provides citizens with a grandly tool to inform themselves about a

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[2] First Report, second administrative Reform Commission, Right to Information, June 2006, Master key of Good Governance.

[3] Former CJI J.S. Verma at CIC Convention.

government's record in office. In this way, it empowers ordinary people to make more informed electoral decisions, giving them an opportunity to participate more effectively in governance and policy formulation.[4]

It may be found that in practice the situation of bureaucracy in India remains the same as was prevalent during the rule of British Bureaucracy, even now, can be found as one of secrecy, distance and mystification. In fact, this preponderance of bureaucratic secrecy is usually legitimatized by a colonial law, the Official Secrets Act, 1923, which makes the disclosure of official information by public servants an offence. It is expected that the quality of decision making by public officers will improve by the might to information in all sorts of matters, when the unnecessary secrecy around the decision-making process will be removed. The citizen would be able to assess the performance of the government and public officers, and to have a role in participating and influencing the decision-making process of the government after having an access to pertinent information. It would be important to sees and increasing impact on eradication of corruption and the control on arbitrary exercise of power with the availability of such information to the citizens.

RTI Act is one of the strongest weapons that can be systematically used by the citizens to check the activities of the government either from time to time or continuously as they wish to. It is not only a strong tool against government but also against judicial corruption. The Delhi High Court ruling that information about judges' assets cannot be kept concealed and it must be disclosed to any citizen seeking the information under the right to information Act is remarkable. The historic verdict further held that the office the Chief Justice of India is a public authority and it cannot enjoy special exemption from the RTI Act. Despite opposition from a section of judges, the High Court went ahead with the ruling describing the transparency law as powerful beacon. This bold decision by the court will undoubtedly go a long way in uplifting the sagging image of the India Judiciary. It was hard to fathom any rationale behind the specious view expressed by certain Supreme Court Judges that the RTI should never be applicable to them as unveiling information regarding the personal wealth of judges could undermine the independence of the judiciary.[5]

Conclusion & Suggestion

The RTI Act, 2005 is a powerful tool which it used effectively can help in bringing transparency and accountability in the functioning of government to a great extent. We all know that a law is only as good as its implementation. The RTI Act has ensured the public access to the dark room of administration by putting a torch in its hand, by the way of right to ever citizen to seek copies of any document, samples of any material or inspection of any document of work. Of course, there is scope for improvement but we all must try to utilize the Act as much as possible for the benefit of the people of whom. The Act has been formulated and implemented.

[4] Goel, S.I., Good Governance – An Approach, New Delhi, Deep & Deep Publications Pvt. Ltd.
[5] RTI – A Tool against Judiciary Corruption.

RTI recognizes the importance of the national enabling environment in providing a legal and institutional framework for actions that are taken by stakeholders at the local level. It also recognizes that important features of the contract between government and citizen become operationalized at the local level citizens and local governments interact. Thus, a highly supportive national enabling environment promotes a rich and productive interaction at the local level.

RTI Act is effectively implemented, could change the nature of governance in India. It could start a process of transparent and inclusive governance that could gradually shift the India democracy from being almost totally a representative one to a vigorously participatory one.

One of the important after effect of the Act is changing the mindset of the bureaucracy. The RTI Act can be called a success only if the bureaucracy accepts that they have constitutional obligation to serve information, at the instance of request. There is always a wide disparity between the legislation in theory and legislation in practice. Several of the legislations have met failure in practical implementation. And this adds to the 'Social Cause' of right to information, which shall maintain transparency in administration, to restrain corruption to greater extent. And it has to be noted several legislations have been enacted after the independence, but very few have been successfully implemented and having such a massive social impact.

Concept of Social Justice and It's Functional Applicability in India

Mr. Ankit Yadav[1]

Abstract

The idea of a Welfare State postulates the unceasing pursuit of the Doctrine of Social Justice. The Concept of Social Justice is replete with multifarious connotations. It is equated with a Welfare State. It is considered to be analogous to an egalitarian society. It is treated to be an incident of the Rule of Law. It is also considered to be co-extensive with social welfare. Indian democracy being the largest one in the world that embraces a very important goal to achieve social equality and justice in a very clear way. Justice is always associated with a presumption of fair treatment, equal rights and access to the legal system. The Constitution of India adopts this concept in various provisions including the Preamble in the form of "Socialist", "Social, Economic and Political Justice", and "Equality", etc. which clearly indicates that the State is involved in the social welfare of people and endeavour to establish an equal society.

Keywords: Justice, Social Justice, Functional Applicability, Courts, etc.

The Concept of Justice

"What is justice?" asked Socrates in Plato's *Republic*, and ever since, this has been one of the leading questions of philosophy and all social thinking.[2] After criticizing the conventional theories of justice presented differently by Cephalus, Polymarchus, Thrasymachus and Glaucon, Plato gives us his own theory of justice according to which, individually, justice is a 'human virtue' that makes a person self-consistent and good. *"Justice is a social consciousness that makes a society internally harmonious and good, and justice is a specialization of duties."* Plato used the Greek word *'dikaiosune'* for justice, which is primarily used for "law-abiding behaviour or institutions, especially when law-abiding also implies regularity, morality or righteousness; of relations among people it properly includes within it the whole duty of man." It also covers the whole field of the individual's conduct in so far as it affects others. Plato contended that *"justice is the quality of soul, in virtue of which men set aside the irrational desire to taste every pleasure and to get a selfish satisfaction out of every object, and accommodate themselves to the discharge of a single function for the general benefit."*

Aristotle, though influenced by Plato, differed from him in many ways. According to him, "Justice is a social virtue which is concerned with relationships between persons." Justice alone is the good of others because it does what is for the advantage of another. Thus Aristotle introduced equity in the administration of justice. Moreover, he classified justice into two categories, namely, distributive and corrective justice. According to the principles of

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[2]Robert C. Solomon and Mark C. Murphy (eds.), *"What Is Justice? Classic and Contemporary Readings"*, (New York: Oxford University Press, 2000, Second Edn.) p. 3.

proportionate equality, when justice deals with the distribution of rights, honours, goods etc. to the citizen it is called distributive justice. The scope of distributive justice is as wide as the women's right to franchise or labour's right to better pay and amenities and their right to vote irrespective of any other qualifications or their right to form unions comes within the scope of distributive justice. Rights like the right to safety and security of citizens fall under distributive justice.[3]

Another kind of justice, according to Aristotle, is corrective justice which implies making good the loss of a person to whom some wrong has been done. Corrective justice stands against injustice. The term "unjust" according to Aristotle, applies both to the man who breaks the law and the man who takes more than his due, the unfair man. Hence, it is clear that the law-making man and the fair man will both be just. In a democracy, distributive justice is dispensed by a legislative body. But in a non-democratic state, distributive justice is dispensed by the autocratic ruler or body.

Prof. John Rawls, one of the influential political philosophers of the twentieth century, has beautifully highlighted the importance of the concept of justice. He writes:

"Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise, laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason, justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are out weighted by the larger sum of advantages enjoyed by many. Therefore in a just society, the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising".[4]

Broadly speaking, justice means the fulfilment of the legitimate expectation of the individual under laws and to assure him of the benefit promised therein. Justice tries to reconcile individual rights with the social good. The concept of justice is related to dealings among human beings. It emphasises on the concept of equality. It requires that no discrimination should be made among the various members of society. The concept of justice is not static. With the changes in society, the concept of justice has also changed from time to time. Justice is an evolutionary concept.

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[3]Transt H. Rackham, *"Aristotle: Nichomachean Ethiest"*, ed. 195, BKV. p. 117.
[4]John Rawls, *"A Theory of Justice"*, (Oxford: Oxford University Press, 1972) pp. 3-4.

The etymology of the Word 'Justice'

The word justice comes from its Latin root 'Jus' meaning 'right'. It has its literal meaning as 'binding' or fitting or tying together of things and qualities harmoniously in human life. Thus, Justice becomes a means of adjustment and measurement. The idol of Justice blindfolded with balance in hand gives the expression of balancing, weighing and impartial judging which applies to disputes and conflicts. For this purpose justice becomes the referee to give a decision of victory or defeat to the parties. It seems that Justice has more utility in a conflict situation. It balances principles like liberty, equality etc also. Speculation about justice grew early in western materialistic society which from the very beginning had a political orientation of western society in Greece which had to deal with conflicts. In contrast to this in Indian culture, there had been no loss of faith between religious authority and political authority. Indian cultural drive from the very beginning is more towards integration and less towards deciding the conflicts between individual, state and society *interse*. Law as *Dharma* was both a verdict and a faith, political trust, the commandment of Law as well as justice.

Since the dawn of human civilization, in the whole range of our legal, political and moral theory, the notion of justice has always occupied a central place. Although any attempt to define the term precisely, scientifically and exhaustively has presented a baffling problem to scholars of all hues. Consequently, on account of its multidimensionality, its nature and meaning have always been a dynamic affair. Besides, the problem of the definition of justice is beset with the problem of its normative as well as empirical connotations. While in the normative sense it implies the idea of joining or fitting the idea of a bond or tie,[5] in an empirical context, it has its relation with the concept of positive law with the result that law and justice become sister concepts. It is owing to this affirmation that the fundamental purpose of the law is said to be the quest for justice which is to be administered without passion as when it (passion) comes at the door, justice flies out of the window.[6]

However, notwithstanding the problem of defining the term Justice, precisely, scientifically and exhaustively, it is submitted that "Jurisprudence cannot escape considering justice since justice is ideally - the matter of law. But what if Justice cannot be known? Justice appears to be an overburdened idea. Sometimes it is reduced to a question of technique: it is thereby posed as the problem of what will guide the techniques of constructing social order. At other times it appears as a problem of legitimacy or put another way as an answer to the question of what will provide a rational framework for judging the adequacy of the regulation of human relations."[7] Justice is not merely the right determination and adjudication of disputes and enforcement of Law but is so comprehensive in its meaning and import that it takes within its ambit the whole of political, social, juristic and moral idealism. It is so because Justice has reference to the whole of human existence which we want to realize through our thought, will and action. The mystery of Justice cannot be unravelled by human reason, logic or language completely. It has a greater

[5]Earnest Barker. Principles of Social and Political Theory, London: Oxford University Press, 1967 at p. 102.
[6]C.K. Allen, *"Aspects of Justice"*, London, Stevens & Sons, 1955 at p. 34.
[7]Wayne Morrison, *"Jurisprudence - From the Greeks to Post Modernism"*, Lawman (India) Pvt. Ltd., New Delhi at p. 383.

appeal to the human soul. Justice as reality is only fully reflected in our conscience and felt through our intuition.

Jurists and Philosophers have seen in the concept of justice their own ideal. To Plato Justice is a realization of 'Good' which can be achieved in society by doing one's own duty according to one's station in life otherwise, Justice achieves 'Good' by retribution. To Aristotle Justice in its general meaning is 'righteousness'. In its particular meaning, it means proper or equitable distribution of the goods of existence, correction of wrongs and exchange of goods. It has thus distributive, corrective and commutative functions.
The Concept of Justice is based upon and is equated with moral rightness (ethics), rationality, law, natural law, fairness, righteousness, equality, goodness, and equity. What constitutes justice varies from society to society, person to person, from time to time and from place to place. It has thus been subject to various philosophical, legal, and theological reflections and debates.

The Concept of Social Justice
The Concept of Social Justice is replete with multifarious connotations. It is equated with a welfare state. It is considered to be analogous to an egalitarian society. It is treated to be an incident of the Rule of Law. It is co-extensive with Social welfare. Because Social Justice is supposed to dwell mainly in the abolition of all sorts of inequalities which are the concomitants of all sorts of inequalities of wealth and opportunity, race, caste, religion, distinction and title.[8]
The meanings of social justice are far-reaching and ambiguous; translation into concrete practice is fraught with challenges. Social Justice is a contextually bound and historically driven concept. Political theorists, philosophers, and social workers alike have explored what it means to be in the *"right relationship"* between and among persons, communities, states, and nations.

The Concept of Social Justice under the Constitution of India:
Social Justice is an expression, which has found its way in the vocabulary of the Constitution and has become a part of the Constitutional terminology. The Constituent Assembly even before it set out to fulfill its task of framing a Constitution for India declared in the Objectives, resolution passed by it that social justice is one of the goals to be achieved. The Constituent Assembly declared its firm and solemn resolve to proclaim India as an Independent, Sovereign, Republic and to draw up for her future governance a Constitution wherein shall be guaranteed and secured to all the people of India, justice - social, economic and political; liberty of thought expression, belief, faith and worship; equality of status and of opportunity; and to promote among the all fraternity assuring the dignity of the individual and the unity of the nation. It became the vision of the people of India and a promise of the Constitution speaking through its preamble and some of the enacting provisions that there shall be secured to all the citizens, a *'Social Justice'*.

The Constitutional vision of establishing social justice in India involves three aspects:

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[8]Dr. R.G. Chaturvadi, *"Natural and Social Justice"*, Law Book Company, Allahabad, 2nd ed., 1975; p. 469.

i. Provision of political and socio-economic rights in the form of Fundamental Rights and Directive Principles of State Policy respectively, which seek to foster the principle of equal liberty,
ii. The adoption of such a model of socio economic development which goes on to attain the goal of socialism by reducing the disparities between the rich and the poor and provides for equalization of opportunities for all, which seeks to establish the principle of fair equality of opportunity.
iii. Provision of special safeguards and affirmation action for the disadvantaged sections of Indian society, thus incorporating the *Rawlsian* conception of Justice.

Constitution Provisions

I. Fundamental Rights

The Part III of the Constitution of India guarantees certain political and civil rights to all its citizens, even then certain rights have been clearly and explicitly mentioned in it so as to secure and protect the interests of the weaker and the disadvantaged and so that they have an equal forting in society. Such rights are as follows:

a. Under Art. 14, *'equality before law and equal protection of law'* is provided to all citizens within the territory of India, Art. 15(1) provides that *'the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them'*. Under Art. 15(2), it is mentioned that *'no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to - (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public'*.
b. Similarly under Art. 16, while guaranteeing *equality of opportunity* for all citizens in matters relating to *employment or appointment to any office under the State*, it is mentioned that there shall be no discrimination against any citizen on grounds only of *religion, race, caste, sex, descent, place of birth, residence of any of them.*
c. Under Art. 17, *untouchability is abolished and its practice in any form is forbidden.* Parliament is authorized to make law prescribing the punishment for this offence (Art. 35) and in exercise of this power, it has enacted the *Untouchability (Offences) Act, 1955*, which has been amended and renamed in 1976 as *the Protection of Civil Rights Act, 1955.*
d. Under Art. 18, the State shall not confer any title, not being a military or academic distinction.
e. Art. 19 enshrine the fundamental rights to freedom of the citizens of the country. The seven sub-clauses of Art. 19(1) guarantees the citizens six different kinds of freedom and recognize them as their fundamental rights. Art. 19 considered as a whole furnishes a very satisfactory and rational basis for adjusting the claims of individual rights of freedom and the claims of public good.
f. Art. 21 is the most important and basic right guaranteed to the any individual. *'No person shall be deprived of his life and personal liberty except according to the procedure established by law'*. This particular article has become the reservoir of the basic rights of an individual and was subjected to the most varied interpretation by the judiciary. Art. 21

has been used to address very basic human necessities, like food, water and shelter and also to what may be called as the present days luxuries, like *right to internet*.

g. Art. 21A which was inserted by the 86th Constitutional Amendment Act, 2002 puts an obligation on the State to provide free and compulsory education for all children until they complete the age of fourteen years.
h. Arts. 23 and 24 provide for fundamental rights against exploitation. While, Art. 23 provide that the traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Art. 24, in particular, prohibits an employer from employing a child below the age of 14 years in any factory or mine or in any other hazardous employment.
i. Art. 29(2), prohibits the discrimination in the form of denial of admission into the educational institution maintained by the state or receiving aid out of State funds on grounds of religion, race, caste, language or any of them.
j. Art. 31 make a specific provision in regard to the fundamental right to property and deals with the vexed problem of compulsory acquisition of property.

II. Directive Principles of State Policy

Part IV of the Constitution relates to the Directive Principles of State Policy, which are to secure *the social and economic rights* of the citizens, in general, by the State. By virtue of Art. 37, these principles have been declared to be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Through these principles, the state tries *economic and social justice* over a period of time as the economy develops and social change takes place.

The following Directive Principles of State Policy under the Constitution are particularly important from the point of social justice:

a. Under Art. 38(1), the State shall, in particular, *strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political,* shall inform all the institutions of the national life.
b. Under Arts. 39 (b) and (c), *the State shall direct its policy towards securing that the ownership and control of the material resources of the community material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment*.
c. Under Art. 39A, *it is mentioned that the State shall secure such operation of the legal system that promotes justice on a basis of equal opportunity*.
d. Under Art. 46, there is a provision that *the State shall promote with special care the educational and economic interests of the weaker sections of the people,* and, in particular, of the Scheduled castes and the Scheduled Tribes, and shall protect them from social in justice and all forms of exploitation.

However, herein it has to be mentioned that the implementation of these Directive Principles of State Policy was not an easy task. In the initial years, not only did it conflict with the Fundamental Rights, particularly the Right to Property, but the Supreme Court of India till 1967

took the view point that the Directive Principles have to conform and run subsidiary to the Fundamental Rights. The First Constitution Amendment Act and the Fourth Constitutional Amendment did lead the Supreme Court to give some importance to the Directive Principles of State Policy. However, while developing the doctrine of harmonious construction, it reiterated that the Directive Principles of State Policy were subordinate to the Fundamental Rights.[9] However, the 24th and 25th Constitutional Amendments in 1971 reversed the position. They not only established the supremacy of the Directive Principles *vis-a-vis* the Fundamental Rights, it also made laws giving effect to Arts. 39(b) and (c) shall be called in question in any court. Though the Supreme Court upheld the validity of the 24th and 25th Constitutional amendments in the case of *Keshvanand Bharti* v. *State of Kerala*[10], but it struck down the clause giving judicial immunity to the implementation of Arts. 39 (b) and (c) on the ground that judicial review is a basic feature of Indian Constitution which could not be altered.

The Indira Gandhi Government tried to arrest the implications of the *Keshvanand Bharti case*[11] by the 42nd Amendment Act, whereby it was declared that there shall be no limitation on the constituent power to amend the Constitution and that the validity of any Constitutional Amendment Act shall be questioned in any court on any ground. But in the case of *Minerva Mills* v. *Union of India*[12], again Hon'ble Supreme Court struck down these provisions of the 42nd Amendment Act. In this case, the Supreme Court held that both the Fundamental Rights and Directive Principles are equally important and one cannot be sacrificed for the other.

III. Special Safeguards and Affirmative Action

The Indian democracy, in search of both formal and substantive equality, had to address on an urgent basis the cause of the historically disadvantaged groups. Whereas the requirements of formal equality meant the equal protection of law against discrimination on morally invidious grounds, the requirements of substantive equality meant recognizing the needs of the more disadvantaged.[13] Both of these commitments run parallel in the Constitution. In order to fulfill these requirements, the following provisions have been made in the Indian Constitution:

a. Though Art. 15 provides for prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Art. 15(4), added by the First Constitution Amendment Act in 1951, provides for that nothing in the Art. 15 or in Art. 29(2) shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Similarly, under Art. 15(5), inserted by the 93rd Amendment Act, 2005, it is mentioned that nothing in Art. 15 or in Art. 19(1)(g) shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special

[9]Subhash Shukla, *"Issues in Indian Polity"*, Anatnika Publishers, New Delhi, 2008, p. 19.
[10]AIR 1973 SC 1461.
[11]Ibid.
[12]AIR 1980 SC 1789.
[13]Ashok Acharya, *"Affirmative Action For Disadvantaged Groups : A Cross Constitutional Study of India and the U.S."*, in Rajiv Bhargave, Politics and Ethics of the Indian Constitution, Oxford University Press, New Delhi, 2008, p. 269.

provisions relate to their admission to educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Art. 30(1). Also, under Art. 15(6), which was inserted by the 103rd Amendment Act, 2019, the special provisions for the protection of economically weaker section of the society has been incorporated.

b. Under Art. 330, there is a provision for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of People. The number of seats reserved in any State or Union Territory for the Scheduled Castes and Scheduled Tribes shall be in same proportion to the total number of seats allotted to the State or Union Territory in the House of the People, as the population of the Scheduled Castes in that state or union territory or the Scheduled Tribes in the State or Union Territory as the case may be, in respect of which seats are so re served, bears to the total population of the State, or the Union Territory.
c. Under Art. 332, there is the provision for reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States, in the same proportion, as in the constitution, as their population is to the total population of the State.
d. Art. 335, provides for the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of the efficiency of the administration, in the making or appointments to services and posts in connection with the affairs of the Union or of a State. After the 82nd Amendment of the Constitution in 2000, it has been provided that nothing in this article shall prevent in making of any provision in favour of the SC/ST for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.
e. Under Art. 338, there shall be a National Commission for the Scheduled Castes and Scheduled Tribes to be appointed by the President. It shall investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and to report to the President upon the working of those safeguards and the President shall cause all such reports to be tabled before each House of the Parliament.
f. Under Art. 339, the President may appoint at any time, after ten years of the commencement of the Constitution, a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States. The Union can also give directions to the State as to drawing up and execution of schemes specified in the direction to be essential for the welfare of Scheduled Tribes in the State.
g. Though Art. 16 guarantees equality of opportunity in matters of public employment and prohibits discrimination on grounds only of religion, race, caste, sex, descent or place of birth in respect of any employment or office under the State; however, special provisions have been for the socially and educationally backward classes and Scheduled Castes and Scheduled Tribes. While the Constitution of India has abolished representation on communal lines, it has included safeguards for the advancement of the backward classes among the residents of India (irrespective of their religious affiliations), so that the country may be ensured of an all-round development and they fulfill the assurance of social justice held out by the Preamble of the Constitution.12 Under Art. 16(4), it has been provided that nothing in this article shall prevent the State from making any provision for the reservation of appointments in favour of any backward classes of citizens, which in the opinion of the

State, is not adequately represented in the services under the State. Through, the Art. 16(6) the same protection has also been extended to the economically weaker section of the society.

h. The Constitution does not define backward classes in India. However, in Art. 340 of the Constitution, it is mentioned that a Commission can be appointed to investigate the conditions of backward classes, which could propose measures to be taken by Central or State Governments in order to improve their condition.

Judicial approach towards the Concept of Social Justice

Indian democracy is a progressive, active and positive democracy as opposed to a static, passive or negative democracy. Owing to its dynamic, vibrant and resilient nature, it is committed to a creation of a social order which is based on the principles of equality and justice. As a welfare state India is under an obligation to create a legal order to address the issue of multitude of unsatisfied desires. In this context it becomes imperative to build rather than merely reconstructing the already existing the social order and systematizing them so that the logically and rationally reconcilable interest are reconciled.

Social Justice is a relative concept which changes with time and circumstances, with people's culture and aspiration and economic and political standards. The Indian Constitution has been termed by Granville Austin in his magisterial work, Working a Democratic Constitution; The Indian Experience, as *the first and foremost social document*.[14] He further states that probably no constitution in the world, *"has provided so much impetus towards changing and rebuilding the society for a common good"*. Majority of the provision of the Indian Constitution aims as furthering the aims of social justice either directly or indirectly. The core of its commitment to social justice lies in Part IV under the head of Directive Principles of State Policy. Dr. B.R. Ambedkar regarded Part IV of Constitution of India as a '*socialist chapter'*. He stated that these directive principles as listed under chapter IV will give substance for the creation of a socialistic state.

Social Justice is a balancing plank between political, economic, social and cultural freedom that provides stability and facilitates the free and unhindered working of the democracy. The Indian Constitution opens with a preamble contains in it a solemn resolution that the people of India have resolved to secure to all its citizen three types of justice - social, economic and political. Social justice is the intelligent co-operation of people in producing organically united community so that every member has an equal and real opportunity to live to the best of his native abilities.

The concept of social justice is founded on basic ideal of socio-economic quality and its aim is to removal of socio-economic disparities and inequalities. Social justice and equality work as two sides of the same coin to provide for a test of correct action in order to maintain their vitality. Social justice refers to the idea of creating a society based on the principles of equality and solidarity, a society that understands the value of human rights and values them, and a society

[14]Austin Granville, *"The Indian Constitution: Cornerstone of a Nation"*, (1972) p. 7.

that recognises and mix provision for ensuring dignity of every human. Under the Indian Constitution the term *'social justice'* has nowhere been defined but has been accepted in its widest sense to include within its ambit social and economic justice. Social justice is a constitutional goal and is the foundation stone of our Constitution.

The makers of our Constitution were well aware of the glaring social inequalities that existed in Indian society. They understood the need to provide a form of justice which could fulfill the expectations of the freedom movement. As our first Prime Minister, Pt. Jawaharlal Nehru put it before the Constituent Assembly,
"First work of this assembly is to make India independent by a new constitution through which starving people will get complete meal and cloths, and each Indian will get best option that he can progress himself."

The concept of social justice adopted in the constitution consists of diverse principles that are essential for the growth, development and maintenance of a dignified existence. Justice is the *'genus'* of which social justice is the species. Social Justice aims to provide for a system where substantial degree of social, economic and political equality exists. The Preamble to the Indian Constitution says: *"We, the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic and to secure to all its citizens: justice - social, economic and political; equality of status and of opportunity..."*.

Thus, it is evident that social justice has been guaranteed to the citizens in pursuance of the pledge taken by the people of India for the people of India in the Preamble itself. Chief Justice Gajendragadkar stated, *"In this sense social justice holds the aims of equal opportunity to all citizens in matter of economical activity and to prevent inequalities*.[15]

According to Granville Austin, *'the Indian Constitution is, first and foremost, a social document'*. The commitments to social change are contained in Part III as the Fundamental Rights and in Part IV as the Directive Principles of State Policy or what he calls *"the conscience of the constitution."* In Part III, the Constitution, in no unmistakable terms, declares the great rights and freedom, which the people of India intended to secure to all citizens, and in certain instances to both citizens and non-citizens, casting an onerous duty upon '*the State*' not to violate these Rights. Part IV of the Constitution furthers the guarantee of '*Justice - Social, Economic and Political'*, by providing judicially non-enforceable obligations, on 'the State' in the form of Directive Principles of State Policy.

The juridical implications of this were spelt out by the Supreme Court in *Minerva Mills* v. *Union of India*, where it held that:
"*There is no doubt that though the courts have always attached very great importance to the preservation of human liberties, no less importance has been attached to some of the Directive Principles of State Policy enunciated in Part IV...The core of the commitment to the social revolution lies in parts III and IV."*

[15]P.B. Gajendragadkar, *"Law, Liberty and Social Justice"*, (1963) pp. 77-79

The Court added that Rights in Part III are not an end in themselves but are '*the means to an end'*, and the end is specified in Part IV together, the two realize the idea of justice, which the Indian State seeks to secure to all its citizens.

Social Justice is the harmonisation of the contesting claims of the interests of different groups and different section in social structure by means of which it is possible to build up a welfare state. In *Muir Mills* v. *Suti Mills Union*[16], Justice Bhagwati has described *"social justice as a very vague and indeterminate expression and added that whatever it meant the concept of social justice does not emanate from fanciful notions of any adjudicator, but must have a more solid foundation."* In *Prakash Cotton Mills* v. *State of Bombay*[17], Hon'ble Chief Justice M.C. Chagla rejected the observation of Justice Bhagwati in the Muir Mill case and rejected the submission that the court should not import its own ideas of social justice in interpreting statutory provisions, by saying that social justice was an objective of the Constitution and though difficult to define, it was in the words of Justice Homles, *"an inarticulate major premise"* which was personal and individual to every court and every judge, depending upon the judges outlook on life and society.

Laws cannot be interpreted *'without social justice'* to the achievement of which our country has pledged. Thus, it is clear from the observations of both the above judges that social justice is very difficult to define. Justice Krishna Iyer in his work *'Justice and beyond'* has pointed out the difficulty in giving a precise definition of Social justice, and stated: *"Social Justice is not an exact, static or absolute concept, measurable with precision or getting into fixed world. It is flexible, dynamic and relative"*.[18]

In *D.S. Nakara* v. *Union of India*[19], The Supreme Court while defining the aims of a socialist state observed: *"the principle aim of a socialist state is to eliminate inequality in income, status and standards of life. The basic framework of socialism is to provide a proper standard of life to the people, especially in terms of security from cradle to grave. Amongst there it envisaged economic equality and equitable distribution of income"*.

The Concept of Social Justice, which the Constitution of India engrafted, consists of diverse principles essential for the growth and development of personality of every citizen. Social justice is a fundamental right.[20] There is no ritualistic formula or any magical charm in the concept of social justice. All that it means is that as between two parties if a deal is made with one party with serious detriment to the other and then the court would lean in favour of weaker section of the society. Social justice is the recognition of greater good to a larger number without deprecation of accrual of legal rights of anyone. If such a thing can be done then indeed social justice must prevail over any technical rule. It is in response to the felt necessities of time and

[16]AIR 1955 SC 170.
[17](1957) 59 Bom.LR 836.
[18]V.R. Krishna Iyer, *"Justice and Beyond"* (1982) p. 63.
[19](1983) 1 SCC 305.
[20]*Life Insurance Corporation of India* v. *Consumer Education and Research Centre*, AIR 1995 SC 1811.

situation in order to do greater good to a large number even though it might detract from some technical rule in favour of a party.[21]

The end of social justice may be defined in the context of liberty. Liberty is represented by the complete system of liberties of equal citizenship while the worth of liberty to persons and groups is proportional to their capacities to advance their ends within the framework the system defines. According to Prof. A.M. Honore, the principle of justice consists in two propositions. The first among them being, all men considered merely as men and apart from their conduct or choice have a claim to an equal share in all those things or advantages which are generally desired and are conducive to their well being. The second proposition states that there are limited set of factors which can justify departures from the principle embodied in the first proposition. The first proposition refers to things a life, food, health, shelter, clothing, opportunities to gain knowledge and skill etc. And the second principles states that with respect to the above things only a limited, restricted and modified departures, as being discriminatory towards the choice of claimants or the citizen as opposed to his conduct may be permitted.[22]

The principle of social justice consists in the idea that all men shall have equal claims to all advantages which are generally desired and which are essential to achieve human perfection and happiness. This involves two major main aspects: firstly, the equalization of human conditions as far as capital assets, human and inanimate, that is, the prerequisites of a good life concerned. This involves equal claims to the necessities of life, to health, food, shelter etc. and also equality of opportunity for both work and enjoyment. The second aspect of the principle lays in the principles of non discrimination and conformity to the established rule. The second principle, thus, makes provision to facilitate the right provided under first principle. However, the second principle is not an absolute principle; it is subject to certain limitations.

Justice V.R. Krishna Iyer in his book, *"The Constitution Corruption Pathological Casualties and Radical Remedies Reformatories"* gave the meaning of social justice in its semantic sweep and humanistic heave. social justice, conceptually meant for him special concern for the backward human sector of the lowliest and the lost, and activist, affirmative state action for their advancement as a democratic, imperative, plus the organisation of a sensitive and creative milieu which offers as of right, social, economic and cultural opportunity, dignity of personhood and individuality of every human regardless of seeming or real disparities, to unfold his full mental, moral and physical potential, and likewise to human collectives to mobilise and manifest their native resources regardless of their numerical, racial, gender based, political, religious, rationalist, linguistic and other handicaps and differences subject to public order, broad morality, basic integrity, health of the community, development of humanism, and the spirit of enquiry and reform and a fair deal to other individual and groups to claim and exercise the right to rise to higher endeavour and excellence...that system which provides for the full and free development of every person and that human order which gives *'to every man according*

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[21]*Sadhuram Bansal* v. *Pulin Behari Sarkar*, AIR 1984 SC 1471.
[22]A.M. Honore, "Social Justice", *Essays in Legal Philosophy*, (1968) pp. 62-63.

to his need' may be truly called just. *'To wipe every tear from every eye's is a social tryst of the legal process with mans justice destiny.'*[23]

Social Justice precisely is the process of harmonising the competing claims of the different section of the society which is the only effective and acceptable means to provide for a *'welfare state'*. It forms the basis of stability in the society which is essential for a progressive human development. The concept of social justice is a condition precedent for any welfare state. It provides way for the establishment of an egalitarian society.

Social Justice has been accepted under the Indian Constitution in the wider sense to include both social as well as economic justice. Social justice under the Indian Constitution had been accepted as a matter of convenience according to the Indian conditions, to include both distributive as well as corrective justice in order to establish a egalitarian society. Despite the difficulty in defining Social justice, courts have done a great deal in making social justice successful. Whereon on hand the Legislature and Judiciary are doing tremendous job in the field of distributive justice, judiciary is also playing a role of a guardian in the field of corrective or compensatory justice.

Social Justice has been accepted as an essential and an organ of the legal system.[24] In case of *S.P. Gupta* v. *Union of India*[25], Chief Justice P.N. Bhagwati. inter alia observed:
"Today a vast social revolution is taking place in the judicial process, the law is fast changing and the problems of the poor are coming to the forefront. The court has to innovate new methods and device new strategies for providing access to justice to large masses of the people who are denied their basic human right and to whom freedom and liberty has no meaning."

In *Calcutta Electrical Construction Company Ltd.* v. *S.C. Bose*[26], the Supreme Court held that the right to social and economic justice is *'a fundamental right'*. Further, in *Consumer Education Research Centre* v. *Union of India*[27], Justice K. Ramaswamy, while expounding the meaning of social justice observed:

"The Preamble and Art. 38 of the Constitution of India, the supreme law, envision social justice as its arch to ensure life to be meaningful and livable with human dignity. Social justice, equality and dignity of person are cornerstones of social democracy. The concept 'social justice' which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other

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[23]V.R. Krishna Iyer, *"The Constitution Corruption Pathological Casualties and Radical Remedies Reformatories"*, (2014) pp. 26-27.
[24]*Mysore Mills Co. Ltd.* v. *Sooti Mazdoor Union*, AIR 1955 SC 170.
[25]AIR 1982 SC 49.
[26]AIR 1992 SC 573.
[27]AIR 1995 SC 929.

words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectations."

The Supreme Court has expanded the envelope of Social Justice by adjudicating on diverse social matters concerning education, livelihood, gender and environment. In *Mohini Jain* v. *State of Karnataka*[28] as well as *Unnikrishnan* v. *State of A.P.*[29], the Supreme Court observed that a '*man without education was no better than an animal'*, and held that the right to education was an essential ingredient for a dignified and meaningful life.

In *M.C. Mehta* v. *Union of India*[30] the Court held that, right to life includes right to live in a clean and healthy environment. In *Bandhua Mukti Morcha* v. *Union of India*[31], the Court, while decrying the practice of bonded labour, held that Right to life, under Art. 21, means right to live with dignity.

In the case of *Olga Tellis* v. *Bombay Municipal Corporation*[32], popularly known as the *"Pavement Dwellers Case"* a five judge bench of the Hon'ble Supreme Court has ruled that the word *"life"* in Art. 21 includes the '*right to livelihood'* also. The court said: *"It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect if the right to life. An equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood."*

In *Vishakha* v. *State of Rajasthan*[33], it held that sexual harassment of a woman at workplace, is a denial of both her right to life and personal liberty under Art. 21, as well as amounted to discrimination on the basis of sex, and violated the right to equality guaranteed under Arts. 14 and 15. In *Paschim Banga Khet Mazdoor Samiti* v. *State of West Bengal*[34], the Court deemed the failure on the part of the Government hospital to provide timely medical treatment to a person in need of such treatment a violation of his right under Art. 21.

One of the more illustrative sectors where the judiciary has given practical shape to social justice is in the progressive interpretation of the Constitutional provisions in allowing affirmative governmental actions. In *Sadhuram Bansal* v. *Pulin Behari Sarkar*, the Supreme Court ruled that as between two parties, if a deal is made with one party without serious detriment to the other, the Court would lean in favour of weaker section of the society. In *Indra Sawhney* v. *Union of India*[35], Hon'ble SC declared 27 percent reservation legal for socially and economically backward classes of the society under central services. At the same time, the Court

[28]AIR 1992 SC 1858.
[29]AIR1993 SC 2178.
[30]AIR 1987 SC 1086.
[31]AIR 1984 SC 802.
[32]AIR 1986 SC 180.
[33]1997 (6) SCC 241.
[34]1996 (4) SCC 37.
[35]AIR 1993 SC 477.

also tried to achieve a reasonable balance between distribution of benefits and distributive justice. In *M.R. Balaji* v. *State of Mysore*[36] it held that for the object of compensatory justice, limit of reservation should not be more than 50%.

The Supreme Court has expanded the concept of justice in the economic domain, making it an instrument of removal of socio-economic disparities and inequalities. In *J.K. Cotton Spinning & Weaving Mills* v. *The State of Uttar Pradesh & Ors.*[37], it pointed out that in industrial matters, doctrinaire and abstract notions of social justice are to be avoided and realistic and pragmatic notions applied so as to find a solution between the employer and the employees which is just and fair.

In *M. Nagraj* v. *Union of India*[38], the Supreme Court explained the Concept of Social Justice as flowing out of the Fundamental Rights in the following words:
"…Social Justice is one of the sub-divisions of the concept of justice. It is concerned with the distribution of benefits and burdens throughout a society as it results from social institutions - property systems, public organizations etc. The problem is - what should be the basis of distribution? Writers like Raphael, Mill and Hume define "social justice" in terms of rights. Other writers like Hayek and Spencer define "social justice" in terms of deserts. Socialist writers define "social justice" in terms of need. Therefore, there are three criteria to judge the basis of distribution, namely, rights, deserts or need. These three criteria can be put under two concepts of equality - "formal equality" and "proportional equality". "Formal equality" means that law treats everyone equal and does not favour anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of "proportional equality" expects the States to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy. Under the Indian Constitution, while basic liberties are guaranteed and individual initiative is encouraged, the State has got the role of ensuring that no class prospers at the cost of other class and no person suffers because of drawbacks which is not his but social… Therefore, axioms like secularism, democracy, reasonableness, social justice etc. are overarching principle which provide linking factor for principle of fundamental rights like Arts. 14, 19 and 21."

The Supreme Court has firmly ruled in *Balbir Kaur* v. *Steel Authority of India*[39], that *"the concept of social justice is the yardstick to the justice administration system or the legal justice and it would be an obligation for the law Courts to apply the law depending upon the situation in a manner whichever is beneficial for the society"* as the respondent Steel Authority of India was directed to provide compassionate employment to the appellant.

[36]AIR 1963 SC 649.
[37]AIR 1964 SC 737.
[38](2006) 8 SCC 212.
[39](2000) 6 SCC 493.

In *Chaturbhuj* v. *Sita Bai*[40], it has been ruled that, *"Sec. 125 of the CrPC is a measure of social justice and is specially enacted to protect women and children which falls within constitutional sweep of Art. 15(3) reinforced by Art. 39 of the Constitution. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves."*

In December 2014, the then Chief Justice of India, Hon'ble Mr. Justice H.L. Dattu constituted a special, two-judge *'social justice bench'* to hear cases concerning issues of socially marginalized groups such as, the availability of night shelters for the homeless, efficacy of public distribution system, and free mid-days meals to the children in the government schools, etc. However, diverse views were expressed about its functioning and after approximately a year the experiment was shelved off.

The present pandemic-era also in highlighted the some sense of equality and justice in real sense. Everyone had to face the lockdown restrictions. But then, many inequalities were also highlighted. Some people had enough money to hoard the food items, whereas others had to rely on the free food banks for their meals. If we analyse the whole scenario from the Indian context, primarily, Rawls's theory of justice find its relevance. For instance, the vaccination policy mandated the frontline workers and the aged people to be vaccinated first. Mask was necessary to control the spread of the virus, and so, policies were formulated wherein everyone had to wear masks irrespective of their status or position. This was for the benefit of all.

The pandemic showed us a scenario that came to be known as the *'new normal'*. From the Rawlsian point of view, the original position is the one from where we would like to recreate the societal rules. The pandemic gave us an opportunity to ponder and make the society that we wish to live in - a society that would be nurturing the victims. The lesson that this pandemic taught us was not limited to food or avoiding the virus spread, but it was much more than that if a thought at a deeper level. This was the time when we realised the sanctity of human life. However strong and influential a person was, the pandemic made everyone realise that we all are on the same boat, weak and fragile, but we have to grow together and support and comfort each other to get out of the miseries. The veil of ignorance plays an important role here. The government cannot ignore any person just because the person is unwilling or resenting. It is the duty of the government to protect the strongest and the weakest equally.

As far as significance and importance of the concept of social justice concern, it is not a blind concept. It seeks to do justice to all the citizen of the state. A democratic system has to ensure that the social development is in tune with democratic values and norms reflecting equality of social status and opportunities for development, social security and social welfare. In the name of social justice even such activities are performed which have nothing to do with social justice. The need of hour is to ensure the proper and balanced implementation of policies so as to make

[40]AIR 2008 SC 530.

social justice an effective vehicle of social progress. The aim of social justice is to attain a substantial degree of social, economic and political equality and to remove all kinds of inequalities and affording equal opportunities to all citizens social as well as economic affairs. It is a device to mitigate the suffering of the poor, weak, tribals and the deprived sections of the society and to elevate them so that they can live with dignity. In course of time the Courts have raised social and economic justice to the high level of a Fundamental Rights.

Conclusion

Conceptions of Justice are abstract ideals that overlap with beliefs about what is right, good, desirable, and moral. Notions of social justice generally embrace values such as the equal worth of all citizens, their equal right to meet their basic needs, the need to spread opportunity and life chances as widely as possible, and finally, the requirement that we reduce and, where possible, eliminate unjustified inequalities. As Caputo remarks, *the concept of social justice invoked by social work has largely been one steeped in liberalism, which may serve to maintain the status quo. However, Caputo also contends that social justice remains relevant as a value and goal of social work.*

The perception of the social justice which is experienced by the India, today, is largely due to the efforts of the founding fathers of our Constitution and after them due to the consistent efforts of Hon'ble Supreme Court and various High Courts, for upholding the Constitutional aims enshrined in the Indian Constitution. The Courts through its judgments, acting as an instrument to achieve the objective of the Directive Principles of the State Policy. The Court aided the poor, weaker section and needy people to live the life with dignity. Sometimes the concept of social justice was also considered in terms of the tensions between individual liberty and common social good, arguing that social justice is promoted to the degree that we can promote collective good without infringing upon basic individual freedoms. But in response to that it was argued that social justice reflects a concept of fairness in the assignment of fundamental rights and duties, economic opportunities, and social conditions.

To conclude, it can be said that the pursuit of social justice in the twenty-first century requires social workers to acknowledge the political dimensions of all practices and to engage in multifaceted struggles to regain influence within the public arena. Ultimately, I hope that characterizing diverse strands in the social justice and recognizing is various dimensions can help us to better build bridges across various positions and create openings for more sustained dialogue among educators who share similar, and often overlapping, goals. Better understanding what I mean is when it is called upon for social justice in education can hopefully contribute to opening up new angles for seeing and new possibilities for engaging each other across differing passions, commitments and agendas.

Growth of Feminist Jurisprudence in India

Apoorva Bhardwaj[1]

Abstract

In a patriarchal society like India, Women have been facing discrimination from time immemorial. Equality and dignity are the core values of human life. Feminist jurisprudence came into the picture when this balance of equality strikes down. Feminist Jurisprudence is a philosophical development and a movement to bring gender equality and ensure the participation of women in every field. It reads about the reasons for women's subordination in History and ideas which helps in overcoming this subordination. This approach helps in the reconstruction of existing laws, in realizing the needs of a new society and give voice to women's opinions. International covenants and conventions play an important role in improving the status of women in society. Judiciary has also been proactive in protecting women's rights and ensuring equal status for them in every sphere. Even it has gone to the extent of positive discrimination to counter the disadvantage women faces in the stereotypical society.

Keywords: Feminism, Feminist Jurisprudence, Equality, Women, etc.

Introduction

"There is no chance of the welfare of the world unless the condition of women is improved. It is not possible for a bird to fly on one wing."

- Swamy Vivekanand Ji.

After being a country where women are considered Goddess, women in India face several atrocities from gender inequality, harassment, eve-teasing cruelty, and domestic violence to the most heinous crime like rape, acid attacks, etc. Our constitution makers intended to strike a balance between both genders to make women come on the same level as men in this deep-rooted patriarchal society. The Constitution does not have the word 'Gender.' It uses the word 'sex' in articles 15(1), 16 (2), and 325, which prohibit discrimination on the grounds of sex. Article 14 of the Constitution guarantees quality before the law. Articles 15 and 16 remove prohibition or discrimination based on religion, race, caste, sex or place of birth, etc., and also give direction to the state to make provisions for women and children.

Interestingly, our Constitution authorizes the state to make special provisions for the protection and development of women and children. Many laws have also been enacted to empower them and raise their status from time to time. The apex court of India has passed several progressive judgments favouring women. Various welfare and development schemes

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have been introduced to improve women's living conditions and increase their access to material and social resources.[2]

Yet there are many outdated social customs and traditions which are still being followed; they wieldmore power and authority than the statutory enactments and undo most of the gains of these pragmatic programs resulting in an inequitable distribution of the fruits of progress and development.[3] Although the status of women is improving, Along with these atrocities, some new forms of cyber crimes against women are spreading their roots in which the accused, without being physically present, can harass women. Making relevant legislationis of no use if its implementation is not adequate. Gender equality is still an unachievable goal.

Feminist Jurisprudence

The term "Feminism" comes from French and has its origin in the Latin word 'Femina' meaning woman. Thereby, it refers to the advocacy of woman's rights seeking to remove restrictions that discriminate against women. It relates to the belief that women should have the same social, economic, and political rights as men. Feminism has often focused on what is absent rather than what is present. The word Feminist refers to the person who advocates or practices feminism and it assumes a political position. The female is a matter of biology, and the feminine is a set of culturally defined characteristics. Feminist asserts that since the male was in power in politics, then History was written in their ink, from their perspective that glorified men and mentioned women as inferior or secondary. This created an inbuilt bias among future generations regarding human nature, gender potential, etc.

How to Define?

Chimamanda Ngozi Asichie, a Nigerian author defined a feminist “as a person who believes in the social, political, and economic equality of the sexes. “in her TED talk on feminism.[4] Jasbir Jain, in the book Indigenous Roots of Feminism, analyses the feminist movement in India and said “Feminism is more than just a voice of protest or questioning.” It is moral self-reflation, the realisation of self-worth. It does not abandon values or relationships but goes on to create new ones.[5]

Gender or Sex

Nibedita Mukharjee in her paper named “Gender Discourse and Indian English Fiction: An Introduction” explained the difference between gender and sex. She said Feminist believes that there is a biological difference between male and female but gender is a man-made concept, on the other hand, sex is a God-made biological composition of the human body.

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[2] Rajasthan Judicial Academy, “Gender Justice” 1 (December 12, 2020).
[3] *Ibid.*
[4] Krishna Sripada, “Feminism: Not just a woman’s battle” The Hindu, March 7, 2018, Available at: <https://www.thehindu.c _om/life-and-style/with-social-equality-coming-into-focus-feminism-has-now-become-agender-neutral-concern/undefined>.
[5] Jasbir Jain, Indigenous Roots of Feminism, Culture, Subjectivity and Agency (Saga Publications India Pvt. Ltd. 1st edn. 2011).

This was explained by Kate Millet in her book "Sexual Politics".[6] She argued that a Female is born, and a woman is created. This is a creation of society, its values and its fixed role allotted to women. Sex is a biologically determined factor, on the other hand, gender is a socially constructed factor. So this is the basic difference between these two.[7]

Women as Second Sex

"One is not born, but rather becomes, a woman." This is rightly said by female existential philosopher Simone De Beauvoir in her book Second Sex.[8] She argued that men fundamentally oppress women and consider them as others and men have the personality of self or they are subjects, and women are objects. He is complete and essential whereas she is incomplete and inessential. This difference is the basis of all further arguments given by her.[9] No biological, psychological or economic destiny defines the figure that the human female acquires in society. It is the socialization of women that creates womanhood; it is something attained by them not something innate.

Ms Jyothsna Lavanya said in the article "Feminist Consciousness in India- A Perspective", that how hierarchical society has been even in the family. She said Indian Feminism is different. Women have a long struggle, suffering, and chains of pain. For describing the reaction to the Indian feminist movement in India, Suma Chitnis writes, "The most distinctive feature of this movement was that it was initiated by a man." It was only towards the end of the century that women joined the fray. The list of those who, championed the cause of women is long – Raja Ram Mohan Roy, Ishwar Chandra Vidya Sagar, Keshav Chandra Sen, Matahari, Phule, Agarkar, Ranade, Karve to mention a few. The record of the reform they undertook to achieve is impressive. It reveals that their efforts spanned actions to abolish the practice of Sati, the custom of child marriage, the custom of distinguishing widows, the ban on remarriage of the upper caste Hindu widows and many other civil practices that affected women." [10]

Strands of Feminist Jurisprudence

Dr. Seema Singh, Professor at Ramanujan College, the University of Delhi in her lecture "Feminist Jurisprudence in International Perspective" on YouTube explains the different phases of feminist jurisprudence. She said, it mainly evolved from 1970 onwards in kind of different feminist theories. Few subcategories are:[11]

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[6] Kate Millet, Sexual Politics, (Indiana Publication: Rome, 1998).
[7] Nibedita Mukharjee, "Gender Discourse and Indian English Fiction: An Introduction" Academia.
[8] Simone de Beauvoir, *The Second Sex (*Vantage books Newyork 1st edn. 2011).
[9] *Ibid.*
[10] Ms Jyothsna Lavanya, "Feminist Consciousness in India - A Perspective" 5 International Research Journal of Human Resources and Social Sciences 17(2018).
[11]Ramanujan College, "Feminist Jurisprudence in International Perspective" Aug 2, 2021, Available at: <https://www.youtu _be.com/watch?v=mywTFOKr1G4&t=643s>.

Marxist Feminism

Feminist of this theory believes that Women's liberation can be primarily achieved through economic equality. They believe that financial independence to women can provide them with more liberation and an equal place in society. Working women will be more powerful derived by financial independence.

Radical Feminism

Women in this theory totally deny the idea of patriarchy and consider themselves complete without the need of any other gender. The movement was kind of that women do not need men. This also faced high criticism in different segments of society. They assert that men, as a class, have dominated women as a class, creating gender inequality.

Liberal Feminism

They support legislative efforts for bringing equality for giving appropriate place to women in society. They believe that men and women are equal and they have equal opportunities to make their own choice. They do not believe that biological factors make any difference in the status of women in society.

Cultural Feminism

Women believe in their uniqueness and superiority. This theory recognises and understands the difference between man and woman and accepts the born difference between them.

Evolution and Growth in India

"Everything that has been written by men about women should be viewed with suspicion because they are both judge and party."

- Poulain De La Barre

In her article, Ms. Pallavi Gupta writes that Feminist jurisprudence is a philosophy of law based on the political, economic, and social equality of the sexes. Feminist jurisprudence, a term coined as recently as 1978, has completely disrupted the conventional model of jurisprudence (McClain, LC. 1992). Feminist jurisprudence's History started with the Declaration of the Senaca Fall Convention. (1848).[12] Senaca Fall Convention (1848) declared that:

"All men and women are created equal…, Creator endowed them with certain inalienable rights…these are life, liberty and pursuit of happiness and to secure these rights governments are instituted."

The Invisible Gender in History

Jasbir Jain addresses in his book that women have not been visible in our History, and they

[12] Pallavi Gupta, "Feminist Jurisprudence in India with Reference to Individual Freedom of Women vis-à-vis State's Duty to Protect them", International Journal of Civic Engagement and Social Change, 54 2014.

have been treated as objects of men's desire. He quotes examples of how women's role has been ignored in Dalit History. If we talk about our famous epic Mahabharata, Draupadi, who was the princess before marriage, a daughter-in-law of the most powerful empire, and the future queen, had five husbands. All five were the most powerful and best in their strengths. Her husband lost her in Chaucer, and in front of everyone, Dushashan tried to pull her sari. Although it is mythological literature, this incident shows that a woman was under the control of her husband; he could even lose or win a woman.

Even in this modern world, it took more than 80 years after independence to announce expressly that women are not the commodity of their husbands.[13] Pranav Rana and Shreya Solanky in their research paper focused on the history of women in India. And explain it as:

- **Pre-Independence**

Early opposition to the subordination of women, expressed famously in Mary Wollstonecraft's A Vindication of the right of women of 1792, was founded on the notion that women were rational and thus able to perform civic duties. It was maintained that this entitled women to exercise full political rights. Indeed early feminism did not pursue the right of political equality that dominated both the philosophy and demands of modern feminism in the 1960s.

In India, there were three phases of feminism. Unlike the western world, the feminist movement in India was initiated by men. The efforts of the men lead to the abolishment of the Sati practice in India. It was meant for the upliftment of women so that they could join forces with others in the freedom struggle. Post-Independence the Constitution of India guaranteed equality between sexes, and there was not much of an uproar about equality as the roles, functions, aims, and desires of women were different. With the increase of globalization and the concept of personal rights, feminism has taken a new shape in India. It is further explained as:[14]

1850-1915: The colonial venture into modernity brought democracy, equality, and individual rights concepts. The rise of the idea of nationalism and introspection of discriminatory practices brought about social reform movements related to caste and gender relations. The first phase was able to uproot practices such as Sati and remarriage of widows, forbid child marriage, reduce illiteracy, etc. However, efforts to improve the status of women in Indian society were somewhat thwarted by the late nineteenth century, as nationalist movements emerged in India. These movements resisted 'colonial interventions in gender relations', particularly in family relations. In the mid to late nineteenth century, there was a national form of resistance to any colonial efforts to 'modernize' the Hindu family.

1915-1947: The second stage of nationalism became the pre-eminent cause. Gandhi legitimized and expanded Indian women's public activities by initiating them into the

[13] *Joseph Shine v. Union of India*, 2018 SCC OnLine SC 1676.
[14] Pranav Rana and Shreya Solanky, "Feminist Jurisprudence: An Evolution from Fixed Mindset to A Growing Mindset" 5 Amity International Journal of Juridical Sciences, 33 (2019).

nonviolent civil disobedience movement against the British Raj. He exalted their feminine roles of caring, self-abnegation, sacrifice, and tolerance; and carved a niche for those in the public arena. Also, national-level organizations such as the All India Women Conference (AIWC) and the National Federation of Indian Women (NFIW) came up in the second phase. These organizations aimed at women's political rights, leadership, roles in parties, etc.

- **Post-Independence**

Before independence, the women in India did not question the societal status of women. They did not examine the various roles that were specially made for women. This change was seen after independence with the increase of westernization. Both genders demanded opportunities. The State of Kerala, in this regard, is much more advanced as compared to other states. This state has the highest literacy rates. Traditionally, before the amendment in the Hindu Law, it was common to give daughters and wives a portion of the property.

In 1972, *Ms. Kiran Bedi* joined as the first woman IPS in India. In 1989, we got our first female judge in the Supreme Court of India, *M. Fathima Beevi*. Though the struggle was hard and painful, women realized many people that they are complete and not secondary, and the rest is History. Now there is no field left untouched by women's presence, not only at lower but also at higher levels of position.

Role of the Judiciary in Shaping a Gender-Neutral Regime

Judiciary has played a crucial role in women's upliftment and promotion of equality. Women have faced the violation of the basic principle of equality of status and equality of opportunity many times. Constitution framers consider women victims of the rigid societal norm that hinders their freedom and growth. So they are inclined toward women's equality and gender justice. Some cases show how Supreme Court's decisions are shaping the Indian feminist jurisprudence:

The infamous *Mathura Rape Case, Nandan Kanan Rape Case, Raju's Case, Soumitri Vishnu Case*, and *M. Kishwar v. State of Bihar* are profound examples of the conservative and patriarchal approach taken by the Apex Court. The judgments of the Court in the case of *Soumitri Vishnu v. Union of India,* which was subsequently followed by *Revathi v. Union of India,* were anti-gender justice decisions. The pseudo name of protection further widened the inequalities women face in wedlock. With the increase in judicial activism, Judiciary has continuously moulded itself into the champion for women’s rights. If the Judiciary noted any adverse discrimination against women in any existing laws and State actions, the Judiciary was quick to strike it down. At the same time, the Judiciary has been prompt to uphold the validity of the legislation enacted to protect women "s rights.

In *C.B.Muthamma v. Union of India,*[15] Supreme Court went against the rules of Indian Civil Services, as they were violative of the very basic fundamental right of equal treatment in public affairs and struck down them. In this case, Justice Krishna Iyer has stated, *“Freedom is*

[15] *C.B.Muthamma v. Union of India,* (1979) 4 SCC 260.

indivisible, so is justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-à-vis half of India's humanity, viz., our women is a sad reflection on the distance between Constitution in the book and law in action."[16]

Dr. Shivani Verma's paper[17] analyzes some of the judgments that show the judicial will to improve women's status in society and their rights. They are, *Air India International v. Nargesh Meerza*,[18] The Supreme Court struck down the discriminatory Rules of Indian Airlines. An Air Hostess in Indian Airline challenged specific provisions of their service rule wherein an Air Hostess could have the job up to 35 years of age but can be terminated if she gets married within four years of her recruitment or her first pregnancy unreasonable and invalid. The Supreme Court held that this provision compelled the Air Hostess not to have children, which is against human nature. The Supreme Court upheld the right of the Air Hostess to work up to the age of 45 years instead of 35 years of age if they are otherwise found fit. Still, the rule's validity for not allowing to get married for four years immediately after joining was upheld due to the necessities of services.

In the historic judgment on gender equality in the case of *Githa Hariharan v. Reserve Bank of India*,[19] the Supreme Court held that the mother is also a natural guardian. She can take care of her child if the father neglects the child.

The Supreme Court in *Budhadev Karmaskar v. State of West Bengal*[20] had issued notice to all States while noting down the concern on the pathetic conditions of sex workers:
"…we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Art. 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

In *Joshep Shine v. Union of India*,[21] In this famous case, Hon'ble Supreme Court assailed Section 497 of the Indian Penal Code, which gives the husband the right to prosecute his wife's lover, but the same rights are not available to the wife of that person; she has no say in the matter. This clause was declared unconstitutional and said, "Women are not a commodity of men. In *Vineeta Sharma v. Rakesh Sharma*,[22] the feeling behind this judgment was recognizing women's equal status in the family and their financial independence. The Court concluded women's equal coparcenary rights. Hindu Undivided families earlier considered only Male members as a Coparcener. But now, the Court said that women have the right to

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[16] *Ibid.*
[17] Dr. Shivani Verma, "Feminist Jurisprudence in India: Manifestation of Judicial Will to Create A Gender Neutral Legal Regime in India"1 Law Colloquy Journal of Legal Studies (LCJLS) 4(2021).
[18] *Air India International v. Nargesh Meerza*, (1981) 4 SCC 335.
[19] *Githa Hariharan v. Reserve Bank of India*, (1992) 2 SCC 228.
[20] *Budhadev Karmaskar v. State of W.B.*, (2011) 11 SCC 538
[21] *Joshep Shine v. Union of India*, 2018 SCC OnLine SC 1676.
[22] *Vineeta Sharma v. Rakesh Sharma*, 2020 SCC Online SC 641.

Hindu Undivided Family property by birth irrespective of whether they were born before the 2005 amendment to the Hindu Succession Act, 1956.

Another historic case in Feminist history is *Vishakha v. State of Rajasthan*,[23] the Supreme Court made some guidelines about sexual harassment in the workplace and measures to control it. Also, treating both genders as equal in the workplace is a difficult task. And this is a goal which further hindered by things like sexual harassment and lack of safety at the workplace. The Court directed employers to provide protection and redressal mechanism in case of sexual harassment at the workplace, framed in legislation named *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.*

New feminist jurisprudence shows the presence of women in every field. Defence is not an exception. In *Secretary, Ministry of Defence v. Babita Puniya & Ors.*,[24] a permanent commission was granted by the Court where women would be on equal par with men and could have the position of commanding officers the same way as men have. This judgment is an eye-opening one and gives power to the feminist movement.

Feminist Jurisprudence has crossed old peripheries. Another very pivotal judgement in the history of feminist jurisprudence is *Shayara Bano v. Union of India*.[25] Judiciary declared instant Talaq as against essential feature of the Quran. Triple Talaq or Talaq-ul-Biddat is a practice of Muslims in which a male member can immediately divorce his wife very quickly by uttering Talaq three times. This left Muslim women in deplorable conditions. To abolish it systematically, the Court passed directions centre to pass legislation passed in 2019 as *the Muslim Women (Protection of Rights of Marriage) Act, 2019*. Provisions of punishment with imprisonment have been provided in the Act.

In another landmark judgment in the way of development of progressive feminist jurisprudence, the Court decided to intervene in the matter of belief and opined that devotion and belief should not be a matter of advantage confined to any one specific gender while passing its judgment on the subject of *Indian Young Lawyers Association v. State of Kerala*,[26] *(Sabarimala Case)* the Court permitted entry to women of all ages and conditions into the Sabarimala Temple despite a centuries-old custom banning the entry of menstruating women. In a secular country like India, legal issues are very complicated as the problems play tangled implications in articles 14, 25, and 26. But the Court was well determined and upheld the constitutional trinity of liberty, equality, and dignity over patriarchy, dominance, and belief.

International Perspective

"International Women's Day will truly be successful when we don't need it anymore" A News Article written by *Vignesh Radhakrishnan*, published in The Hindu Newspaper, reports

[23] *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.
[24] *Secretary, Ministry of Defence v. Babita Puniya & Ors*, 2020 SCC OnLine 200.
[25] Shayara Bano *v.* Union of India, (2017) 9 SCC 1.
[26] Indian Young Lawyers Association *v.* State of Kerala, 2018 SCC OnLine SC 169.

that In 2020, it was seen that domestic violence cases were rising globally. The complaints filed in March-May 2020 were 311447, the highest in the last ten years. About 86% of women never sought the help of others.[27] It is not surprising as society is patriarchal in most countries. It is also a human rights concern discussed many times at the international level.

In an Article Rajasthan Judicial Academy concept of gender justice and its international perspective has been discussed which said Gender Justice, simply put refers to equality between the sexes. Gender justice is a correlation of social, economic, political, environmental, cultural and educational factors; these preconditions need to be satisfied for achieving gender justice. Globally, it has gained in strength over the years, as it has been realized that no state can truly progress if half of its population is held back.

Universal Declaration of Human Rights

It was adopted in 1948. It reaffirmed the principle of the inadmissibility of discrimination and proclaimed that all human beings have equal rights as they are born free and they shall never be discriminated against on the grounds of sex.[28]

Convention on Political Rights of Women:

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.[29] It is also stated that they are even allowed to hold any public position and also are permitted to exercise any public function and power.[30]

Convention on Elimination of all Forms of Discrimination

Feminist Movement got a different direction when it was recognized by countries collectively in CEDAW (Convention on Elimination of all Forms of Discrimination), 1979. It was adopted in order to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women. Its concern is to achieve equal status for men and women. It provides that there shall be no discrimination between women and men. Article 10 even provides education which mentions that women shall be provided with careers and vocational guidance as to men. Article 11 provides that there shall no discrepancy in the field of employment. It also provides for health care, economic and social life and women in rural areas.[31]

World Conference on Women, 1995

United Nations organized four world conferences on women. It first took place in 1975 in Mexico. Second, in 1980 in Copenhagen, and the third was held in Nairobi in 1985. The last

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[27] Vignesh Radhakrishnan, "Domestic violence complaints at a 10-year high during COVID-19 lockdown" The Hindu, June 24, 2020, Available at: <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-duringcovid-19-lockdown/undefined>.

[28] The Universal Declaration on Human Rights, 1948.

[29] Convention on Political Rights of Women, 1952, Art.1.

[30] Convention on Political Rights of Women, 1952, Art.3.

[31] Law Times Journal, "International Conventions on Women" Oct 8, 2020, Available at <https://lawtimesjourna _l.in/international -conventions-on-women/#_ftn2>.

and most famous world conference was held in Beijing in 1995, which is considered significant for gender equality. One hundred eighty-nine countries adopted it. It adopted a plan to bring equality and empowerment to women. It got 12 areas of concern: women poverty, education and training of women, women's health and violence against women, women and economy, women, women in power and decision making, Institutional mechanism for the advancement of women, human rights of women, women, and media, women and the environment, the girl child.[32]

Conclusion

Females are the equally important gender having equal potential. They should be treated equally. Like a coin has two sides, a river has two banks, and a thread has two ends. This world cannot survive with a single gender. Males and females constitute human beings. This society cannot exist without them, just like a bird cannot fly on one wing. It is the time to realize women's potential, who constitute half of the population having equal efficiency and power. And, the task of feminist jurisprudence is to evade women from living a life of disadvantage for just being a woman. In the current time, the kind of recognition and support we are witnessing in this contemporary society has never been seen before. We feel it is the right time to create a gender-bias-free society.

[32] Beijing Declaration and the Platform for Action, 1995.

New Dimensions of Judicial Activism in India

Manisha Batwal[1]

Abstract

The Supreme Court of India has wide powers to protect the constitutional rights of citizens and for that purpose, it adopts an activist approach which is similar to the courts in America. This role has been assigned by the Constitution itself to the judiciary. As Judges are not allowed to sit silently by closing their eyes uncaring for the problems which are faced by society. Courts in India exercise judicial powers to protect the fundamental rights and liberties of the citizens of a country. Therefore, in order to achieve this mission, the judiciary has to exercise and evolve its jurisdiction with courage, creativity, vision, vigilance and practical wisdom. Judicial activism and self-restraint are facets of that courageous creativity and pragmatic wisdom.The exercise of the power of judicial activism is not for vain glory but it is in the discharge of its constitutional obligation. When the executive and legislature fail to discharge their constitutional obligation, the judiciary plays a major role in that case. Judiciary should always maintain checks & balances and also direct the authorities to effectively implement the welfare legislation. The Supreme Court's role is prominent because judicial guidelines precede the legislative enactments and binding rules of conduct. Authorities are under statutory duties to implement the law.

Keywords: Judicial Activism, Judicial Review, Courts, Justice, etc.

Introduction

As per Black Law Dictionary, *"Judicial Activism is a judicial philosophy which motivates judges to depart from traditional precedents in favour of progressive and new social policies."* In general, judicial activism is articulation by the Court to enforce the rule of law. Sometimes it is the judicial philosophy and background of judges, delivering the judgment and a judicial precedent at the other.

Justice Frank Furter has rightly said, *"Doctrine of staire-decisis is not an imprisonment of reason"*. In reference to this, Lord Coke has rightly said: *"Those things which have been so often adjudged ought to rest in peace"*. Hence, judicial activism is a motivation for judges to opt for progressive and new social policies like social engineering.[2]

Arthur Schlesinger introduced the term 'Judicial activism' in January 1947 in a Fortune magazine article titled, "The Supreme Court:1947". The expression, "Judicial activism" is often used in contrast to another expression "Judicial restraint". Judicial activism is a dynamic process of judicial outlook in a changing society. Judicial activism refers to the process in which the judiciary steps into the shoes of the legislature and comes up with new rules and regulations, which the legislature ought to have done earlier. Stringent, neutral, un-biased observation of the

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[2] D.D. Basu, Comparative Constitutional Law, P.H.I., 1984

laws made by the legislature and suggesting amendments so as to make them more constitutionally compatible and egalitarian can also be termed as *'judicial activism'*.[3]

Judicial activism is a form of judicial review in which judges participates in law-making policies i.e. they not only uphold or invalidate the laws but also exercise their policy preferences in doing so. When the judiciary does not limit itself to the task of judicial review and starts suggesting what should be the law and takes responsibility for the implementation of the law, this amounts to a case of judicial activism.

We can trace it back to the celebrated decision in *Marbury v. Madison*[4] through which the concept of 'judicial review' was introduced in the American constitution. Article 13 of the Indian Constitution allowed enough space for 'judicial activism' through the doctrine of 'judicial review'. Justice J.S. Verma (1996) has said, "Judicial activism is a sharp-edge tool which has to be used as a scalpel by a skilful surgeon to cure the malady. Not a rampuri knife which can kill".

Judicial Activism in Indian Constitution

Judicial activism means that instead of judicial restraint, the Supreme Court and other lower courts become activists and compel the authority to act and sometimes also direct the government & their policies and administration. It is the way through which justice is provided to disadvantaged and aggrieved citizens. In recent years law-making has assumed new dimensions through judicial activism of the Courts.[5] Article142 of the Indian Constitution extends a unique, extra-ordinary power to our Supreme Court to do 'complete justice' in any matter before it.

Judicial Activism Involves

- Departing from normally practised strict adherence to judicial precedent in favour of progressive and new social policies.
- Protecting or expanding individual rights through decisions that depart from established precedent.
- Active interpretation of existing legislation by a judge made to enhance the utility of that legislation for social betterment.
- Judges allow their personal views about public policy, among other factors, to guide their decisions.
- Evolving new principles, concepts, maxims, formulae, and relief to do justice or to expand the standing of the litigant and open the door of courts for the needy or to entertain litigation affecting the entire society or a section of it.
- Expansion of judicial control over discretionary powers.
- Promotion of open government.

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[3] A.V. Dicey, An Introduction to the study of law of the constitution, 10th edn. 1959, V.L.P. Co. Pvt. Ltd.
[4] 1803, 5 U.S. 137.
[5] Dr. J.N. Pandey, Constitution of India, C.L.A., 2004.

First Case on Judicial Activism

In *Queen Empress v. Phopi*,[6] Justice Mahmood gave the dissenting opinion and he recognized *'fair trial as an essential part of the criminal justice system'*, in defiance of the then colonial law, to protect the rights of the accused in situations where they were neither present in person before the court nor represented by the lawyer. He supported his views by relying on two maxims:

- *Audi alteram partem*
- *Ubi just ibi remedium*

Our Hon'ble Supreme Court exercises the power of judicial activism under its 'Epistolary Jurisdiction' which means acting on the letter written by or on behalf of the oppressed people. This strategy is adopted by the Supreme court for facilitating access to justice. Cases like- S.P. Gupta v. Union of India (1981), People's Union for Democratic Rights & Ors v. Union of India (1982), and Bandhua Mukti Morcha v. Union of India (1983) are some examples relating to epistolary jurisdiction of the Court where Court took the activist approach.

'Procedure' is a hand-made of justice. For the sake of poor and disadvantaged victims of exploited society, the court will not insist on regular writ petition and even a letter addressed by a public-spirited individual or social action group acting pro bono public would suffice to ignite the jurisdiction of the court. Articles 13, 21, 32, 136, 142, 226, and 227 of the Indian Constitution are the source of the power of judicial activism in India.

We need the power of Judicial activism due to following reasons:[7]

- Failure on the part of other organs of government.
- Growing challenges in front of the judiciary in the backdrops of new issues.
- Failure on the part of the executive i.e. corruption, delay in the process, non-responsive attitude, in-efficiency of administration.
- Failure on the part of legislature i.e. improper addressing of issues through legislation.
- In-effectiveness and in-activeness of the entire system.
- Misuse and abuse of some of the provisions of the constitution.
- To avoid erosion of confidence in the constitution and democracy amongst the citizens.
- Judicial activism will act as a safety valve when parliament is in decline, the executive is not fulfilling its duty. If the judiciary closed its door, the only option left will be the revolution.
- Judicial Enthusiasm, that is, the judges like to participate in the social reforms that take place in the changing times. It encourages PIL and Liberalizes and meets the changing social needs.
- It protects the sanctity of the Indian constitution.
- Judicial activism strengthened Human rights.
- It tried to bring electoral reforms.

[6] Feb.06.1891, Allahabad High Court.
[7] Article- Judicial Activism, Constitutional obligation of the courts, A.I.R. 2005, May.

- It filled the gap when there was policy paralysis.

Evolutionary timeline for the genesis of Judicial Activism in India

1. 1950-1970:[8]

This is the phase of traditional judiciary where the judiciary mainly focused on seeing the constitutional validity of laws and is associated with the limited functional domain.

2. 1970-2000:

This is the phase of judicial activism and it continued beyond 2000. In this phase, the judiciary comes out with several landmark judgments. They are as follows:

In A.K. Gopalan v. State of Madras,[9] the Supreme Court has taken a narrow interpretation of Article 21 of the constitution. It has been held that protection under article 21 is available only against arbitrary executive action and not from arbitrary legislative action. Secondly, 'personal liberty' means only liberty relating to the 'person or body' of the individual.

But in Maneka Gandhi v. Union of India,[10] the Supreme court over-ruled its earlier judgment in the A.K. Gopalan case by taking a wider interpretation of article 21 under its power of 'judicial activism' provided in the Indian constitution and held that the protection of Article 21 is available against 'arbitrary legislative action' also and personal liberty means " right to live with human dignity".

Further in Keshwananda Bharti v. State of Kerala,[11] the Supreme court declared that "Judicial review is the basic feature of the Indian constitution and hence, it can't be taken away". In Minerva Mills v. Union of India & Ors [12], the Supreme Court held that "The Indian constitution is founded on a bedrock of the balance between the fundamental rights and the Directive principles of state policy. This harmony between them is an essential feature of the basic structure of the constitution."

3. 2000 onwards:

This is the phase of judicial activism along with instances of judicial over-reach because of a number of situations -

- Globalization and complexities of laws in the backdrop of globalization.
- Growing consciousness of people.
- The role played by the media and civil society organizations.
- Growing concerns about the environment.
- Growing numbers of Public Interest Litigation.

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[8] A.M. Ahmadi, "Judicial Process, Social Legitimacy and Institutional viability (1996) 4 SCC, Journ. (PP 1-10).
[9] AIR 1950 SC.
[10] AIR 1978 SC.
[11] AIR 1973 SC.
[12] AIR 1980 SC.

Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.,[13] Court held that- Religion is a way of life inherently associated with the self-respect of an individual and gender-biased exercises based on the exclusion of one gender in favour of another could not be permitted to encroach upon the constitutional guarantee to practice and profess one's religion. The practice of disbarring women between the age group of 10-50 years implemented by the Sabarimala Temple stripped women of their freedom of worship, ensured under Article 25(1).

Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice,[14] was one of the major landmark judgements of the Supreme Court given in regard to the right of equality of the LGBTQ community & also they deserve equal rights and respect as an individual and discrimination against them on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual.

Other examples

- The Supreme court set up the Mudgal Committee to conduct an independent inquiry into allegations of corruption against betting and spot-fixing charges and also suggested reforms.
- The Supreme court ordered the UPA Government to set up an SIT to probe black money.
- The Supreme court ruled that the National Eligibility cum Entrance Test (NEET) would be the only test for admissions to medical courses in India.
- The Supreme Court created a new policy to handle drought, abandon the current and existing system & form a transparent policy with a set time frame for declaring drought and a standard methodology.
- The Supreme court also directed the Union Government to set up a National Disaster Mitigation Fund within three months.
- The setting up of a National Task Force on **oxygen supply** during the time of Covid is a case of judicial activism.
- Policy reforms cases.
- The sealing of unauthorised commercial operations in Delhi.
- Demolition of unauthorised constructions in the city of Chennai and the creation of a Monitoring Committee to oversee the same.
- The Supreme Court's directions to videography the proceedings of the Jharkhand Assembly.
- The creation of a high-powered committee to monitor parking charges, the wearing of helmets, parking space, one-way traffic, black film or vehicle windows, and removal of billboards.
- The usurping of the functions of the Tamil Nadu Public Service Commission by the High Court in the matter of recruitment of District Judges.
- Interference of the educational policies of the government in examples such as the TMA Pai Foundation case and the Islamic Academy case.

[13] AIR 2018 SC.
[14] AIR 2018 SC 4321.

Most recent examples of Judicial Activism in the Indian Context

In the case of *The Secretary, Ministry of Defense v. Babita Puniya & Ors.,*[15] the Supreme Court held that women who are in short service commission are entitled to permanent commission in Army.

In Re, Problems and Miseries of Migrant Labourers,[16] the Supreme Court held that:

- The fundamental right to life under Article 21 includes the right to food and other basic necessities.
- The state must implement one nation, one ration card.
- Supreme court directed to provide dry ration open community kitchen for migrant workers stranded in NCR.

Again in Re: Distribution of Essential Supplies and Services During Pandemic,[17] dealing with the issues relating to the Vaccine Policy of the Central government, **a**mongst other things, the Court noted that paying for vaccination when it is by the State/UT Governments and private hospitals for persons between 18-44 years is arbitrary and irrational.

In the case of *Satbir Singh & Another v. The State of Haryana*,[18] the Court held that Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand. The Bench, therefore, laid down guidelines for Dowry Death trials in the lower courts.

In *Laxmibai Chandaragi B & Anr v. The State of Karnataka & Ors.,*[19] the Court observed that educated younger boys and girls are choosing their life partners which is a departure from traditional norms of society. The consent of the family or the community or the clan is not necessary once two adult individuals agree to enter a wedlock and their consent has to be piously given primacy.

The Supreme Court in the case of *Mohammad Salimullah and Anr. v Union of India & Ors*.,[20] while hearing a case challenging the decision to deport Rohingya refugees, held while fundamental rights under Articles 14 and 21 are available to all persons whether citizens or not, the 'right not to be deported' is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1)(e) and is available only to citizens.

In the case of *Dr. Jaishri Laxmanrao Patil v. The Chief Minister*,[21] a Constitution Bench of the Supreme Court struck down the Maratha reservation quota and held there were no exceptional

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[15] AIR 2020 SC.
[16] Writ Petition- 916 of 2020.
[17] Suo Motu Writ Petition (Civil) No.3 of 2021.
[18] AIR 2021 SC.
[19] Writ Petition Criminal No. 359/2020.
[20] Interlocutory Application No. 38048 of 2021.
[21] CIVIL APPEAL NO.3123 of 2020.

circumstances justifying the grant of reservation to Maratha community in excess of 50 percent ceiling limit as laid down in the *Indra Sawhney* judgment.

In one of the most welcoming steps, Hon'ble Supreme Court in the case of *Anuradha Bhasin v. Union of India*,[22] ruled that *The Right to access the Internet is a Fundamental Right* and it undoubtedly forms a part of the freedom of speech and expression through the internet, and the freedom to practice any profession, occupation, trade and commerce through the internet under Article 19(1)(a) and Article 19(1) (g) of the Indian Constitution. The Court also added that indefinite suspension of the internet is not permissible, and banning the internet repeatedly by orders under Section 144 CrPC, is an abuse of power. The ruling came in a plea challenging internet shutdowns in Kashmir.

In the case of *Lt. Col. Nitisha & Ors. v. Union of India & Ors*.,[23] Supreme Court held that the requirements for the decision of the Permanent Commission to women short service commission officers are 'Indirect discrimination' and 'structural discrimination' as tools of Indian equality law.

Again in the case of *Gaurav Kumar Bansal v. Union of India*,[24] the Supreme Court held that-

- The state should not deny ex-gratia for covid deaths on the ground that the death certificate does not mention covid as a cause of death.
- Court ordered Rs. 50,000 as compensation for death victims of covid.
- Reach out to children orphaned due to covid to pay compensation.

In *Action Committee Un-aided recognized Pvt. Schools v. Justice for* all[25], Apex court held that, under Article 21, underprivileged children to receive online education can't be denied. In Re, Distribution of essential supplies and services during pandemic**,**[26] Apex Court held that digital devices will have serious implications on right to equality and health.

In *Re, Contagion of covid virus in Children Protection Houses***,**[27] Supreme Court held that Public advertisements for the adoption of children are unlawful. The court directed to stop the illegal adoption of children orphaned by Covid-19.

Again in *Narinder Singh v. Divesh Bhutani*,[28] Apex Court directed to refine the proceeds of identification and rehabilitation of children on the streets as per NCPCR recommendations. Further in *Kush Kalra v. Union of India*,[29] Apex Court has passed an interim order permitting women to sit for the National Defense Academy (NDA) entrance test.

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[22] Writ Petition (CIVIL) NO. 1031 OF 2019.
[23] AIR 2021 SC.
[24] AIR 2021 SC.
[25] AIR 2021 SC.
[26] Writ Petition no.3 of 2021.
[27] AIR 2020 SC.
[28] AIR 2021 SC.
[29] AIR 2021 SC.

Conclusion

Former Prime Minister of India, Dr. Manmohan Singh once said a few lines while addressing a conference of Chief Ministers and Chief Justices of the High court in April 2007 at New Delhi *"Courts have played a salutary and corrective role in innumerable instances. They are highly respected by our people for that. At the same time, the dividing line between judicial activism and judicial over-reach is a thin one"*.

Courts these days are not remaining passive, with the negative attitude of merely striking down a law or preventing something from being done. The new attitude is towards positive affirmations and actions and issuing orders and decrees directing remedial actions. Judicial activism has flourished in India and acquired enormous legitimacy with the Indian public. However, this activist approach by the judiciary is bound to create friction and tension with the other organs of the state. Such tension is natural and to some extent desirable.

The adoption of such a powerful attitude by the judiciary sometimes does not go well for a healthy democracy. This is underscored by the fact that the judiciary as an institution is not accountable to the people in the same way as the legislature and the executive. The actions of the judiciary are to do a judicial review when there causes any economic or political injustice through the actions of the executive.

When the legislature makes laws beyond constitutional bounds or acts arbitrarily contrary to its basic structure, the highest court examines and corrects it. When the judiciary is guilty, only a larger bench or a constitutional amendment can intervene. Even today the only mode of removal of judges is impeachment. Although judicial review is a legitimate domain of the judiciary then a limit or boundary has to be drawn. The quality and speed of the mainstream judicial system can be improved by a comprehensive and integrative approach, focused on improving judicial infrastructure and reducing indiscipline.

Hence, we can't have a situation where the country is run by judicial decrees, where other organs of the democracy are unable to take decisions with confidence and gradually go redundant. There should be harmony between both the concepts of judicial activism and judicial review so that the situation of judicial overreach does not arise. There should be harmony also in all three organs of the government i.e. legislature, executive & judiciary.

Insurable Interest in the Live-In- Relationships

Yamini Rana[1]

Abstract

In India, it is very evident that in a conventional society like ours, where the institution of marriage is considered to be "sacred" an increasing number of couples choose to have a live-in relationship but only those relations between a man and a woman were considered to be legitimate where marriage has taken place between the two based on existing marriage laws otherwise all other sorts of relationships are deemed to be illegitimate. An increasing number of couples choose a live-in relationship, over marriage. In such situations, various economic, social and legal issues have arisen and continue to do so. One such pertinent issue regarding the position of the 'Live-in-Partners' in regards to the Contract of Insurance. Whether one partner in such a relationship may take the Insurance Policy in the name of the other partner? Well, presently the answer is no. But it becomes extremely significant for us to ponder upon the question and hence it becomes extremely necessary to understand the legal position of such a relationship in India with respect to the prevailing law of insurance in the country.

Keywords: *Insurable Interest, Live-In- Relationships, Wager, Insurance Contract,*

Introduction

It is being truly said that the only thing which is constant in this world is change. India being a country of culture, religions and traditions and at the same time a country which is developing fast and embracing global changes faster. A country which is still enveloped in its century-old beliefs, but at the same time the country it is ever-evolving and ever-accepting towards new trends and cultures.

Indian society has observed a drastic change in its living pattern in the past few years. One of the most conflicted and argued topics has been *"Live-in-Relationships"*.

The concept of *'Live-in-Relationships'* to be understood in simple terms is an arrangement between an unmarried couple to live together without the duties and obligations of a marital relationship. This change has been continuously under criticism and highly discussed as such concepts lack firm legality and acceptance by society. Unlike marriage, in Live-in-Relationships couples are not married to each other but live together under the same roof which resembles a relationship like marriage. In other words, we can say it is cohabitation.

Every risk involves the loss of one or another kind. In older times, the contribution by the person was made at the time of loss. Today, only one business, which offers all walks of life, is the insurance business. Owing to the growing complexity of life, trade and commerce, individual and business firms and turning to insurance to manage various risks. Every individual in this world is subject to unforeseen uncertainties which may make him and his family vulnerable. At

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this place, only insurance helps him not only to survive but also to recover from his loss and continue his life in a normal manner.

Insurance is an important aid to commerce and industry. Every business enterprise involves a large number of risks and uncertainties. It may involve risk to premises, plant and machinery, raw material and other things. Goods may be damaged or may be destroyed due to fire or flood. Some risks can be avoided by timely precautions and some are unavoidable and beyond the control of a business. These unavoidable risks can be protected by insurance.

The law relating to insurance has gradually developed, undergoing several phases from the nationalization of the insurance industry to the recent reforms permitting the entry of private players and foreign investment in the insurance industry.

The Constitution of India is federal in nature in as much there is a division of powers between the Centre and the States. Insurance is included in the Union List, wherein the subjects included in this list are of the exclusive legislative competence of the Centre. The Central Legislature is empowered to regulate the insurance industry in India and hence the law in this regard is uniform throughout the territories of India. The development and growth of the insurance industry in India have gone through three distinct stages.

What is Insurance?

In D.S. Hamsell's words, insurance is defined *"as a social device providing financial compensation for the effects of misfortune, the payment being made from the accumulated contributions of all parties participating in the scheme"*.

In simple terms *"Insurance is a cooperative device to spread the loss caused by a particular risk over a number of persons, who are exposed to it and who agree to insure themselves against the risk"*.

Thus, the contract of insurance is -

a) A cooperative device to spread the risk;
b) The system to spread the risk over a number of persons who are insured against the risk;
c) The principle is to share the loss of each member of the society on the basis of the probability of loss to their risk; and
d) The method to provide security against losses to the insured.

Insurance may be defined as a form of contract between two parties (namely insurer and insured or assured) whereby one party (insurer) undertakes in exchange for a fixed amount of money (premium) to pay the other party (Insured), a fixed amount of money on the happening of a certain event (death or attaining a certain age in case of life) or to pay the amount of actual loss when it takes place through the risk insured (in case of property).

For a contract of insurance to be valid, it is not only necessary that the parties to the contract are competent to contract, but the contract is also made with free consent and the consideration

is lawful. Besides all these, it is mandatory that the insured has an insurable interest in the subject matter of the insurance. If there is no insurance, then the contract will amount to a wager. Insurable Interest in the broad term means that the party to the insurance contract who is insured or policyholder must have a particular relationship with the subject matter of the insurance, whether that be a life or property. Broadly it could be said that a person has an insurable interest in something when any loss or damage to the subject matter will cause the person to suffer a financial loss or some other loss. The governing principle is that the interest must be an enforceable one. The mere hope of acquiring is not enough.

Principle of Insurable Interest

Insurable Interest means an interest which can be or is protected by a contract of insurance. This interest is considered a form of property in the contemplation of law. It is only the presence of Insurable Interest that distinguishes a contract of insurance from a wagering contract and hence it is the *sine qua non* for the validity of the contract of insurance. All the statutes say that an insurance contract will become a wagering contract and hence void if it is taken place without an insurable interest. It is also defined as, "When the assured is so stipulate that the happening of the event on which the insurance money is to be payable would as an approximate result involve in the loss or determination of any right recognized by law or in any legal liability there is an insurable interest to the extent of the possible loss or liability."

According to E. W. Patterson, *"Insurable Interest is a relation between insured and the event insured against such as the occurrence of events will cause substantial loss or injury of some kind to the insured."*

According to R. N. Ray, *"When the assured is so stipulated that the happening of the event on which the insurance money is to be payable would as an approximate result involved in the loss or diminution of any right recognized by law or any legal liability, there is an insurable interest to the extent of possible loss or liability."*

In *Lucena vs. Craufurd*[2], Lawrence J defined insurable interest. In his words *'Insurable interest' means 'if the event happens, the party will gain an advantage, if it is frustrated, he will suffer a loss'*.

Concept of Insurable Interest

The existence of insurable interest is an essential ingredient of any insurance contract. It is a legal right to insure arising out of a financial relationship recognized under law, between the insured and the subject matter of insurance. The interest should not be a mere sentimental right or interest, for example, love and affection alone cannot constitute an insurable interest. It should be a right in a property or a right arising out of a contract in relation to the property. The interest must be pecuniary i.e., capable of estimation in terms of money. In other words, the peril must be such that its happening may bring upon the insured an actual or deemed pecuniary loss. Mere disadvantage or inconvenience or mental distress cannot be regarded as an insurable

[2] *Lucena vs. Craufurd* (1806) 2 Bos & PNR 269.

interest but this rule is not strictly followed in life insurance cases. The interest must be lawful, that is, it should not be illegal, unlawful, immoral or opposed to public policy and does not harm any other legally justified claim.

Insurable interest means an interest which can be or is protected by a contract of insurance. In the case of Brahma Dutt *vs.* Life Insurance Corporation of India[3], Mukhtar Singh a petty school teacher on a salary of Rs. 20 took a policy for Rs. 35,000 on his life making false statements in the proposal and nominated a stranger Brahma Dutt for the policy. The nominee paid the first two quarterly premiums by which time the life insured died. The nominee intimated the insured's death and claimed the sum assured. It was found on the evidence that Brahma Dutt had taken the policy without any insurable interest in the life of the deceased for his own benefit and that therefore it was void being a wagering agreement.

Hon'ble Supreme Court in the case of *Suraj Mal Ram Niwas Oil Mills (Private) Limited v. United India Insurance Company Limited & Another*[4], held that the objection of the insurer about the non-disclosure of dispatch of each and every consignment, as pointed out by the second surveyor, learned counsel submitted that the said condition has to be understood in the context of the fundamental condition that the insurance cover was intended to secure only the 'insurable interest' of the appellant in the dispatches.

It was urged that the appellant had declared only those consignments in which they had an "insurable interest" as in relation to dispatches which had not been declared, the consignees had desired that their consignments should be dispatched without an insurance cover. In all such cases, the purchasers took the risk of loss to their goods, and hence the appellant had no *"insurable interest"* in them, unlike in the consignment in question for which due declaration was made. Reference was made to the decisions of this Court in *New India Assurance Co. Ltd. v. G.N. Sainani*[5] and New India Assurance Company Ltd. *vs.* Hira Lal Ramesh Chand & Ors.[6], wherein it was held that *"insurable interest"* over a property is "such interest as shall make the loss of the property to cause pecuniary damage to the assured and under this case, it will make a damage to the interest of the insured".

History of Insurable Interest

Essentially, the insurable interest requirement typically functions as a safeguard to an insurer allowing the insurer to justify nonpayment after a covered occurrence has taken place. If the insurer can successfully prove the insured lacked an insurable interest in the property, a court will hold the insurance contract is void on grounds of public policy. Prior to 1745, a pecuniary or emotional interest in the subject of an insurance policy was not a requirement for the receipt of a payout from that policy and Roche J observed that there is nothing in the common law of England which prohibits insurance even if no interest exists. Thus, insurance contracts were

[3] *Brahma Dutt vs. Life Insurance Corporation of India* AIR 1966 All 474.
[4] *Suraj Mal Ram Niwas Oil Mills (P) Ltd. vs. United India Insurance Co. Ltd*., (2010) 10. SCC 567.
[5] *New India Assurance Co. Ltd. vs. G.N. Sainani*, 1997 (6) SCC 383.
[6] *New India Assurance Co. Ltd. vs. Hira Lal Ramesh Chand* 2008 10 SCC 626.

held valid, notwithstanding that the absence of an insurable interest gave the transaction the characteristics of a wager. In 1746, the English Parliament outlawed gambling contracts on marine insurance. And subsequently, in 1774, Parliament extended this gambling prohibition to life insurance contracts as well. Accordingly, the original purpose of the doctrine was Parliament's attempt to remit the use of insurance contracts as a vehicle to gamble. The insurable interest doctrine was developed in response to the common law's validation of such contracts in an effort to both prevent wagers on the lives of individuals and to quell attempts to destroy the subject of an insurance policy.

Wager and Insurance Contract

In a contract of wager, all the parties do not have any interest in happening of the event other than the sum of stake he will win or lose. This is what marks the difference between a wagering agreement and a contract of insurance because every contract of insurance requires for its validity the insurable interest. Insurance effected without insurable interest is no more than a wagering agreement and therefore void.

'Insurable Interest' means the risk of loss to which the assured is likely to be exposed by the happening of the event assured against. In a wager on the other hand neither party is running any risk of loss except that which is created by the agreement between two or more than two parties. We all also know that wagering is illegal in India and against the norms of society or in short wagering is against public policy and the distinction between insurance and a wager is that insurance is properly speaking a contract to indemnify the insured in respect of some interest which he has against perils which he contemplates it will be liable to. In the case of *Alamani vs. Positive Govt. Security Life Insurance Co.*,[7] the plaintiff's husband took a policy of insurance on the life of Mehbub Bi, the wife of a clerk working under him and about a week later got the policy assigned in the favor of the plaintiff, Mehbub Bi died a month later and the plaintiff as assignee claimed the sum assured and in this case court find that there was no insurable interest present in this case and hence this insurance contract held to be a contract of wager and held to be void.

Nature of Insurable Interest

The court in Castellain *vs.* Preston[8] stated that an insured's insurable interest is the object of the insurance and that only those who have an insurable interest can recover. To this, the court added that an insured could recover only to the extent to which his insurable interest had been impaired by the insured peril. In Lucena *vs.* Craufurd[9], it has been pointed out that the interest must be enforceable by law. Mere hope, however strong it may be, is not sufficient. There is a requirement that an insurable interest must be in the nature of a legal right or liability. The insured must have a legal or equitable relation to the object insured. In Macaura *vs.* Northern Assurance Co. Ltd.,[10] Macaura insured a quantity of timber in his own name. The timber was

[7] *Alamani vs. Positive Govt. Security Life Assurance Co. Ltd.,* (1899) ILR 23 Bom 191.
[8] *Castellain vs. Preston* (1883) 11 QBD 380.
[9] *Lucena vs. Craufurd (*1806) 2 B&P (NR) 269, HL.
[10] *Macaura vs. Northern Assurance Co. Ltd*. [1925] AC 619.

owned by a company in which Macaura was the sole shareholder. It was held that the shareholder had no insurable interest in the assets of a company because he stood in no legal or equitable relation to the timber insured in his name which was the sole asset of the company. Here it is the company that possesses the insurable interest and Macaura's claim failed for a lack of insurable interest even though he was financially prejudiced when the property was destroyed.

Types Of Insurable Interest

There are basically two types of insurable interest:

1. ***Contractual:*** If the insurable interest is absent, the insurance contract is illegal or void and no agreement between the parties dispensing with this requirement can be effective. Contractual insurable interest is an interest which is required by the contract of insurance by itself. In an action upon such a contract if the insurer does not raise the plea of want of interest nevertheless the court of its own motion may refuse to enforce the contract.
2. ***Statutory:*** As we have seen in some cases that interest in the subject matter of insurance is required by law itself for the validity of the policy, whether by express statutory law as in the Marine Insurance Act 1906 or as by section 30 of the Indian Contract Act which merely declares that all contracts by way of wager are void. This is the interest required by the statute.

When Insurable Interest Must Exist

The time when the insurable interest must be present varies with the nature of the insurance contracts. The question is whether insurable interest should exist at the time when the contract is formed or should also continue to exist until it is discharged but as we have seen in life insurance the presence of insurable interest is necessary at the commencement of the policy although it is not necessary afterwards, not even at the time of occurrence of a risk. So it should be there in life insurance policies at the time of taking the policy it need not exist at the time when the loss takes place or even when the claim is made under the policy. Life insurance contracts are not strictly speaking contracts of indemnity.

In the case of *Dalby vs. India and London Life Insurance Co.*,[11] the Court held that the insurable interest should be present at the time of the contract though not at the time of the loss in life insurance policies. Fire insurance is required both at the commencement of the policy and at the time when the risk occurs. In a sense, therefore it may be said that insurable interest is doubly insisted upon in fire insurance. The insurance interest is necessary at both times because it is treated as a personal contract and also a contract of indemnity. And even the onus that the fire was intentional is on the insurer not on the insured. The insurance interest is required both at the commencement of the policy and at the time when the risk occurs in motor insurance also. In a marine insurance contract, the presence of insurable interest is necessary only at the time of the loss. It is immaterial whether he has or does not have any insurable interest at the time when the marine insurance policy was taken.

[11] *Dalby vs. India and London life Assurance Co.* (1854) 15 CB 365.

Insurable Interest in Life Insurance

The general rule is that every person has an insurable interest in his own life. Accordingly, a person may purchase a life insurance policy on his own life, making the proceeds payable to anyone he wishes. The life insurance contract is not a contract of indemnity and a person affecting a policy must have an insurable interest in the life to be assured. But when a person seeks insurance on his own life, the question of insurable interest is immaterial. Every person is presumed to have an insurable interest in his own life without any limitation. Every person is entitled to recover the sum insured whether it is for full life or for any time short of it. If he dies, his nominee or dependents are entitled to receive the amounts.

In the case of *Liberty National Life Insurance vs. Weldon*[12], the aunt of a two-year-old child who was a nurse by profession managed 3 life insurance policies by different 3 companies on the life of the child. One day she mixed some poisonous things into the milk and with that milk, a child died. And the lady claimed a huge amount from three companies. The father filed a case against all the insurance companies that without knowing the fact that whether she had any insurable interest in the life of a child, the companies issued the life insurance policies. In this case, Court held that the aunt has no insurable interest in the life of the child therefore the companies were not liable but the companies are liable to pay compensation to the father of the child. In the life insurance policy persons having a relationship by marriage, blood or adoption have been recognized as having insurable interest. Few examples of relationship which has an insurable interest in the life of another: -

1. ***Husband and Wife:*** Husband and wife have an insurable interest in the life of each other. In the case of *Griffith vs. Flemming,*[13] Griffith and his wife each signed a proposal for a joint life policy on their life and both contributed towards the premium. After the policy was taken, the wife committed suicide and the husband claimed the sum assured. The insurer alleged that at the time of taking the policy the husband had no insurable interest in his wife's life as required by the Life Assurance Act, 1774. In this case, Vaughan Williams L.J. held that 'the husband has an interest in his wife's life which ought to be presumed'.
2. ***Child and Parents:*** In England, only children have an insurable interest in the life of their parents, but parents do not have any insurable interest in the life of the child. But in India children and parents both have an insurable interest in the life of each other. In the case of *Halford vs. Kymer*,[14] it was held that a father has no insurable interest in the life of his son unless he is getting some pecuniary benefit from him.
3. ***Debtor and Creditor:*** The creditor has the insurable interest on the life of the debtor to the extent on which amount he has the position to recover from the debtor. It was held in the case of *Godsall vs. Boldero,*[15] that if a creditor affects a policy of insurance upon the life of his debtor for a greater amount than due, then he will not be able to recover any greater sum than the amount or value of his interest.

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[12] *Liberty National Life Insurance Co. vs. Weldon*, 1957 Alabama 100 So 2D 696.
[13] *Griffith vs. Flemming* [1909] 1 KB 805.
[14] *Halford vs. Kymer.* [1830] 10 B & C 724.
[15] *Godsall vs. Boldero*, 9 East 72.

4. ***Bailor and Bailee:*** A bailor has an insurable interest in the property bailed to the extent of possible loss. The bailor has a potential loss from two sources. Compensation, as provided for in the contract of bailment, might be lost. Second, the bailee may be held legally liable to the owner if the bailee's negligence causes the loss.
5. ***Mortgagee and Mortgagor:*** The mortgagee has an insurable interest in the life of the mortgagor to the extent of the property mortgaged.
6. ***Employer and Employee:*** An employee has an insurable interest in his employer's life to the extent of his salary as held in the case of *Hebdon vs. West.*[16]

Live-In Relationship and Law in India

There is no particular law regarding the matter of live-in relationships in India. There is no enactment to lay down the rights and commitments of the parties in a live-in relationship, and the status of children born to such couples. There is no legal definition of a live-in relationship and in this way, the lawful status of such sort of connections is likewise unverified. Indian law does not give any rights or obligations to the parties of live-in relationships. However, the court has clarified the concept of a live-in relationship through various judgments. Though the law is still unclear about the status of such relationships yet few rights have been granted by interpreting and amending the existing legislation so that misuse of such relationships can be prevented by the partners.

Judicial Response to Live-In Relationships

"*With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today*."

-Hon'ble Justice A.K. Ganguly in *Revanasiddappa vs. Mallikarjun*[17]

Indian judiciary has taken a lead to fill the gap that was created in absence of any specific statute relating to live-in relationships. It may be considered immoral in the eyes of society but it is not at all *"illegal"* in the eye of the law. The intention of the Indian judiciary is to render justice to the partners of live-in relationships who were earlier not protected by any statute when subjected to any abuse arising out of such relationships. Judiciary is neither expressly promoting such a concept nor prohibiting such sort of relationships. It is, however, just concerned that there should not be any miscarriage of justice. Therefore, while deciding various cases, the judiciary has kept in mind various factors including both societal norms and constitutional values.

Since the time of the Privy Council, a presumption for couples living together without getting legally married had begun. This fact can be seen in *Andrahennedige Dinohamy vs. Wijetunge Liyanapatabendige Blahamy*[18] here the Privy Council took a stand that, *"where a man and a lady are proved to have lived respectively as a spouse, the law will presume, unless the opposite*

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[16] *Hebdon vs. West* [1863] 3 B& S 579.
[17] *Revanasiddappa vs. Mallikarjun* (2011) 11 SCC 1 : (2011) 2 UJ 1342.
[18] *Andrahennedige Dinohamy vs. Wijetunge Liyanapatabendige Blahamy* 1927 SCC OnLine PC 51: AIR 1927 PC 185.

is obviously demonstrated that they were living respectively in the result of a legitimate marriage, and not in a condition of concubinage". This same view was also taken in *Mohabbat Ali Khan vs. Md. Ibrahim Khan*[19] wherein the court held the marriage to be legitimate as both the partners have lived together as a spouse.

Later the Supreme Court in its judgment in *Badri Prasad vs. Director of Consolidation*[20] gave legal validity to a 50-year live-in relationship. But in the same case, the Supreme Court observed that *"The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon a bastard."* Even though it may tempt to presume the relationship in the nature of marriage, certain peculiar circumstances do occur which may force the Supreme Court to rebut such a presumption.[21]

The Allahabad High Court again recognised the concept of a live-in relationship in *Payal Sharma vs. Nari Niketan*[22], wherein the Bench consisting of Justice M. Katju and Justice R.B. Misra observed that *"In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but it is not illegal. There is a difference between law and morality."* Thereafter, in *Ramdev Food Products (P) Ltd. vs. Arvindbhai Rambhai Patel*[23], the Court observed that two people who are in a live-in relationship without a formal marriage are not criminal offenders. This judgment then was made applicable to various other cases.

In *Madan Mohan Singh vs. Rajni Kant*[24], the Court held that, the live-in relationship if continued for a long time, cannot be termed as a *"walk-in and walk-out"* relationship and that there is a presumption of marriage between the parties. By this approach of the Court, it can be clearly inferred that the Court is in favour of treating long-term living relationships as a marriage rather than giving making it a new concept like a live-in relationship.

In the landmark case of *S. Khushboo vs. Kanniammal*[25], the Supreme Court held that a living relationship comes within the ambit of the right to life under Article 21 of the Constitution of India. The Court further held that live-in relationships are permissible and the act of two major living together cannot be considered illegal or unlawful.

In another leading case of *Koppisetti Subbharao vs. State of A.P.*[26], the Supreme Court held that the classification "dowry" has no magical charm. It alludes to a request for cash in connection to a conjugal relationship. The court has not accepted the contention of the defendant that since

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[19] *Mohabbat Ali Khan vs. Md. Ibrahim Khan* 1929 SCC OnLine PC 21 : AIR 1929 PC 135.
[20] *Badri Prasad vs. Director of Consolidation* (1978) 3 SCC 527: AIR 1978 SC 1557.
[21] *Gokal Chand vs. Parvin Kumari*, AIR 1952 SC 231, 333.
[22] *Payal Sharma vs. Nari Niketan* 2001 SCC OnLine All 332.
[23] *Ramdev Food Products (P) Ltd. vs. Arvindbhai Rambhai Patel* (2006) 8 SCC 726.
[24] *Madan Mohan Singh vs. Rajni Kant* (2010) 9 SCC 209.
[25] *S. Khushboo vs. Kanniammal* (2010) 5 SCC 600.
[26] *Koppisetti Subbharao vs. State of A.*P. (2009) 12 SCC 331.

he was not legally married to the complainant, Sec. 498A did not make a difference to him in a stage ahead in shielding the lady from badgering for dowry in a live-in relationship.

In *Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha*[27] where High Court declared that the appellant's wife is not entitled to maintenance on the ground that only a legally married woman can claim maintenance under Sec. 125 Cr.P.C. But the Supreme Court turned down the judgment delivered by the High Court and awarded maintenance to the wife (appellant) saying that provisions of Sec. 125 Cr.P.C. must be considered in the light of Sec. 26 of the PWDVA, 2005.[28] The Supreme Court held that women in live-in relationships are equally entitled to all the claims and reliefs which are available to a legally wedded wife.[29]

A relationship like marriage under the 2005 Act must consent to some basic criteria. It provides that the couple must be of legal age to marry or should be qualified to enter into a legal marriage. It was also stated that the couple must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. Every kind of live-in relationship should not be covered under the Act of 2005. Simply spending a week together or a one-night stand would not make it a household relationship. It additionally held that if a man has a *"keep"* whom he maintains financially and uses principally for sexual reasons or potentially as a slave then it would not be considered, as a relationship in the nature of marriage.[30]

Lately, in a landmark case, Supreme Court dealt with the issue of live-in relationships in detail and also laid down the conditions for a live-in relationship that can be given the status of marriage. On 26-11-2013 a two-Judge Bench of the Supreme Court constituting K.S.P. Radhakrishnan and Pinaki Chandra Ghose, JJ. in *Indra Sarma vs. V.K.V. Sarma*[31] held that *"when the woman is aware of the fact that the man with whom she is in a live-in relationship and who already has a legally wedded wife and two children, is not entitled to various reliefs available to a legally wedded wife and also to those who enter into a relationship in the nature of marriage"* as per provisions of PWDVA, 2005.

But in this case, the Supreme Court felt that denial of any protection would amount to a great injustice to victims of illegal relationships. Therefore, the Supreme Court emphasised that there is a great need to extend Section 2(*f*) which defines *"domestic relationships"* in PWDVA, 2005 so as to include victims of illegal relationships who are poor, illiterate along with their children who are born out of such relationships and who do not have any source of income. Further, Supreme Court requested Parliament to enact new legislation based on certain guidelines given by it so that the victims can be given protection from any societal wrong caused by such relationships.

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[27] *Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha* (2011) 1 SCC 141.
[28] *Ibid*, para 39.
[29] *Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha* (2011) 1 SCC 38, para 38.
[30] D. Velusamy *vs.* D. Patchaiammal, (2010) 10 SCC 469 : AIR 2011 SC 479.
[31] *Indra Sarma vs. V.K.V. Sarma* (2013) 15 SCC 755.

Lately, a landmark judgment on 8-4-2015[32] by the seat comprising of Justice M.Y. Eqbal and Justice Amitava Roy, the Supreme Court decided that couples living in a live-in relationship will be presumed legally married. The Bench also added that the woman in the relationship would be eligible to inherit the property after the death of her partner.

Conclusion

As in life insurance, it would depend upon the sum assured by the insured. And in other insurance contracts other than life insurance it would depend on the loss that occurred. In a life insurance contract, the person taking the policy has the insurable interest in his own life. But some other blood and contractual relation also create insurable interest.

Here it is to be noted that this emerging concept of *Live-in-Relationships* somewhere down the line has got some legitimacy in the eyes of law though still it has not got societal legitimacy to the fullest. The legislature in India has already acknowledged the right of partners living in a live-in relationship to get protection under the Protection of Women from Domestic Violence Act, 2005.

Also, the courts in the country have recognised live-in relationships through various judgments so that individuals in the relationships can be protected from abuse. At the same time, courts frequently declined to make any kind of positive steps towards legalizing such practice by allowing any compulsory agreements between unmarried couples as this could conflict with the general society strategy.

It ends up plainly obvious that the Indian judiciary is not prepared to treat all kinds of living relations as akin to marriage. Only stable and reasonably long periods of relations between couples are given the advantage of the 2005 Act.

Now it is the duty of the judiciary and the legislature to ensure that the law has to accommodate with the changing scenario of society. Though courts through various judgments and case laws attempted to get a clear picture regarding the status of live-in relationships, yet remains unclear on aspects like the status of live-in-partners in regards to the Contract of Insurance, where there is an urgent need for having different sets of rules and regulation and codification with regards to such kind of relationship.

[32] *Dhannulal vs. Ganeshram*, (2015) 12 SCC 301.

National Education Policy 2020 of India: A Theoretical Analysis

Dhananjay Kumar Sharma[1]

Introduction

Change is the eternal and unwavering rule of the universe. Here, it varies from moment to moment. No society is untouched by the process of change. Social change is the nature of society. Indian society is also no exception to this. It is known from the historical study of Indian society that many social, economic, political, and other changes have also taken place from the primitive era to the present era. There are mainly two types of change. One is the changes which are made by nature and the other types of changes are done by human beings themselves. Natural changes are not within our control. But through human change, one tries to innovate by bringing changes in life and society. Presently, if there is to be some change in terms of development in a society, then the education policy should be changed first. The picture of education in any country shows that the place of education is the priority of the government there and how much it deals with it.

The first education policy was introduced in 1968 by the government of former Prime Minister Mrs. Indira Gandhi. The second education policy was formulated by the Rajiv Gandhi government in 1986, with some amendments by the Narasimha Rao government in 1992. The National Education Policy 2020 is the third education policy of independent India. Thus, a 34-year-old education policy is currently underway, which is becoming ineffective with the changing scenario. This is the reason that in the year 2019, the Ministry of Human Resource Development had drafted the new education policy and sought advice from the public.

Why the need for change in National Education Policy1986 ?

1) To cater to the needs of a knowledge-based economy in the changing global scenario changes were needed in the current education system.
2) New education to enhance the quality of education, promote innovation and research.
3) In education policy to ensure global access to Indian educational system.

New Education Policy in India

Under the new education policy of 2020, the educational system has been fixed by 2030. The curriculum will be divided on the basis of the educational system of 5 + 3 + 3 + 4 in place of the currently running 10 + 2 model. The target of investment of Central and State Government has also been set for the new Education Policy 2020 in which Central and State Governments

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will invest in education sector equal to 6 per cent GDP of the country for cooperation in the education sector.

"We have tried to create a policy that will change the educational landscape in our understanding so that we can prepare the youth to face the current and future challenges. It has been a journey in which every member has taken a personal and collectively, we have tried to cover different dimensions of the broader educational landscape of our country. This policy is all based on the guiding objectives like access, capacity, quality, affordability, and accountability. From pre-primary to higher education, we have taken this field Seen in an uninterrupted continuity as well as encompassing other areas connected to the broader landscape."[2]

School Education

Universalization of education from pre-school to secondary level with 100per cent Gross Enrolment Ratio (GER) in school education by 2030. This policy will bring 2 crore out of school children back into the mainstream through an open schooling system. The current 10+2 system to be replaced by a new 5+3+3+4 curricular structure corresponding to ages 3-8, 8-11, 11-14, and 14-18 years respectively.

1) **Foundational Stage-** the foundation stage includes the study of three years of school or Anganwadi and classes 1 and 2 in primary schools. The children and that this stage is up to the age of 3 to 8 years. The preference will be given to activity-based learning.
2) **Preparatory Stage–** the preparatory stage includes a study of classes 3 to 5 with the students of age 18 to 11 years. This stage includes subjects like Speaking, Reading, Writing, Physical Education, Languages, Art Science and Mathematics.
3) **Middle Stage**- this stage includes a student of 11 and 14 years which covers classes 6 to 8. The subjects under this stage are Mathematics, Science, Social Sciences, Arts and Humanities.
4) **Secondary Stage-** the second stage includes a study of classes 9 to 12 which the student of age 14 to 19 years. Class 9th and 10th cover the first phase and class 11th and 12th cover the second phase. Also, Class 10 and 12 board examinations to be made easier, to test core competencies rather than memorised facts, with all students allowed to take the exam twice. School governance is set to change, with a new accreditation framework and an independent authority to regulate both public and private schools. Emphasis on Foundational Literacy and Numeracy, no rigid separation between academic streams, extracurricular, vocational streams in schools. No language will be imposed on any student. Assessment reforms with 360-degree Holistic Progress Card, tracking Student Progress for achieving Learning Outcomes.

[2] Kasturirangan, K. Draft National Education Policy 2019. Committee for Draft National Education Policy, Ministry of Human Resource Development, Government of India. Available on https://www.education.gov.in/sites/upload_files/mhrd/files/Draft_NEP_2019.Visitedon 15th, Nov. 2021.

Higher Education

Gross Enrolment Ratio in higher education to be raised to 50% by 2035. Also, 3.5 crore seats to be added in higher education. The current Gross Enrolment Ratio (GER) in higher education is 26.3%. Holistic Undergraduate education with a flexible curriculum can be of 3 or 4 years with multiple exit options and appropriate certification within this period. M.Phil courses will be discontinued and all the courses at undergraduate, postgraduate and PhD level will now be interdisciplinary. Multidisciplinary Education and Research Universities (MERUs), at par with IITs, IIMs, to be set up as models of best multidisciplinary education of global standards in the country. Also, the National Research Foundation will be created as an apex body for fostering a strong research culture and building research capacity across higher education.

Higher Education Commission of India (HECI) will be set up as a single umbrella body for the entire higher education, excluding medical and legal education. Public and private higher education institutions will be governed by the same set of norms for regulation, accreditation and academic standards. Also, HECI will be having four independent verticals namely,

An autonomous body, the National Educational Technology Forum (NETF), will be created to provide a platform for the free exchange of ideas on the use of technology to enhance learning, assessment, planning, administration. National Assessment Centre- 'PARAKH' has been created to assess the students. It also paves the way for foreign universities to set up campuses in India. It emphasizes setting up of Gender Inclusion Fund, Special Education Zones for disadvantaged regions and groups. National Institute for Pali, Persian and Prakrit, Indian Institute of Translation and Interpretation to be set up. It also aims to increase the public investment in the Education sector to reach 6% of GDP at the earliest. Currently, India spends around 4.6 % of its total GDP on education.

Four bodies of Higher Education of Commission (HEC)

(i) National Higher Education Regulatory Council (NHERC): It will act as a regulator for the higher education sector including teacher education.
(ii) General Education Council (GEC): This will create the framework of expected learning outcomes for higher education programs, that is, their standardization work.
(iii) National Accreditation Council (NAC): These institutions are accredited, Will function primarily based on basic criteria; public self-disclosure, good governance, and results.
(iv) Higher Education Grants Council (HEGC): This body financing work for colleges and universities. Currently, higher education bodies are regulated through bodies like University Grants Commission (UGC), All India Council for Technical Education (AICTE) and National Council for Teacher Education (NCTE).

Multiple entries and exit in the undergraduate curriculum in the National Education Policy 2020. The system has been adopted under this, in a three- or four-year undergraduate program, students will be able to leave the course at different levels and they will be awarded degrees or certificates accordingly. Like, Certificate after one-year, Advanced Diploma after

two years, and Bachelor's degree after three years after four years, Graduate Certificate with research. Students doing four years degree will be able to do Ph.D. with MA in one year. MPhil program has been abolished in the new education policy. The Academic Bank of Credit will be formed through this policy. In this, the digit or credit received by the students will be preserved digitally.

Provisions related to online and digital education

National Educational Technological Farm will be formed to promote digital education. It will carry out the work of coordination for digital infrastructure, materials, and capacity building. With this, study and assessment technology along with teaching training is an important part will form.

1. To ensure the preparation of alternative means of quality education, the Ministry of Education will become a dedicated entity for digital infrastructure, digital content, and capacity building to cater to the e-education needs of both school and higher education.
2. E-content will be made available for study in regional languages.

Related to Advanced Education Target to achieve 100 per cent youth and adult literacy by 2030 has been done.

Protection of linguistic diversity

In the new education policy, many options have been kept regarding languages. Class 5 and class 8 Priority has been suggested to study mother tongue or regional language as a study. Students will be able to take foreign language from secondary level i.e. 9th grade.

It will be mandatory to have at least two Indian languages in the tri language formula. In this, preference will be given to the choice of state, region, and student. For example, students studying Marathi and English languages in Mumbai will have to study a third language. No student will be affected by the choice of language, in the educational curriculum; there is an option to read Sanskrit and other traditional and ancient languages.

Physical Education

Under the new education policy 2020, along with the education of students, skills will also be developed. In which all students from the minimum class will be given training in subjects like Horticulture, Yoga, Music, Dance, Sports, and Sculpture, etc. So baby Proficient in physical activities as well as other types of skills.

Challenges Related to New Education Policy

Cooperation - Education of states is a concurrent subject. This is why most states have their school boards. Therefore, the State Governments have to come forward for the actual implementation of this decision. Also, the idea of bringing a National Higher Education Regulatory Campus as the top controlling organization can be opposed by the states.

Expensive Education - The new education policy paves the way for admission to foreign universities. Various academics believe that admission to foreign universities is likely to be

expensive for Indian educational system. As a result, it can be challenging for lower class students to pursue higher education.

Sanskritisation of education - South Indian states charge that the government is trying to Sanskritise education with the tri-language formula. Many problems can arise in front of states even if the medium of education for children is in mother tongue or regional language. For example, people from different states live in a union territory like Delhi. In such a school there will be children who know different mother tongues. In which medium all these children will be educated, Whether or not English medium schools are in agreement with the vernacular concept. In primary school, in which medium the children will be able to get an education if the state changes.

Fee-related inadequate investigation - Fees still exist in some states Regulation exists but these regulatory processes are unable to curb profiteering as unlimited donations.

Financing - Ensuring funding will depend on how strong the will power to spend the proposed 6 per cent of GDP as public expenditure on education.

Lack of human resources - Currently skilled teachers in elementary education lacks. In such a situation, the implementation of the system made for elementary education under the National Education Policy 2020.

Merits of New Education Policy 2020

(i) **Comprehensive**: NEP seeks to address the entire gamut of education from preschool to doctoral studies, and from professional degrees to vocational training.
(ii) **Early Childhood Education**: In adopting a 5+3+3+4 model for school education starting at age 3, the New Education Policy recognizes the primacy of the formative years from ages 3 to 8 in shaping the child's future.
(iii) **Easy on Regulations**: NEP 2020 makes a bold prescription to free our schools, colleges and universities from periodic "inspections" and place them on the path of self-assessment and voluntary declaration.
(iv) **Holistic**: The policy, inter alia, aims to eliminate problems of pedagogy, structural inequities, access asymmetries and rampant commercialization.
(v) **Promote Inclusion**: The Policy proposes the creation of 'inclusion funds' to help socially and educationally disadvantaged children pursue education

Demerits of New Education Policy 2020

The new policy has tried to please all, and the layers are clearly visible in the document. It says all the right things and tries to cover all bases, often slipping off keel.

(i) **Lack of integration:** In both the thinking, and in the document, there are lags, such as the integration of technology and pedagogy. There are big gaps such as lifelong learning, which should have been a key element of upgrading to emerging sciences.
(ii) **Language barrier:** There is much in the document ripe for debate – such as language. The NEP seeks to enable home language learning up to class five, in order to improve learning outcomes. Sure, early comprehension of concepts is better in the home language and is critical for future progress. If the foundations are not sound, learning suffers, even

with the best of teaching and infrastructure. But it is also true that a core goal of education is social and economic mobility, and the language of mobility in India is English.

(iii) **Multilingualism debate:** Home language succeeds in places where the ecosystem extends all the way through higher education and into employment. Without such an ecosystem in place, this may not be good enough. The NEP speaks of multilingualism and that must be emphasised. Most classes in India are de facto bilingual. Some states are blissfully considering this policy as a futile attempt to impose Hindi.

(iv) **Lack of funds:** According to Economic Survey 2019-2020, the public spending (by the Centre and the State) on education was 3.1% of the GDP. A shift in the cost structure of education is inevitable. While funding at 6% of GDP remains doubtful, it is possible that parts of the transformation are achievable at a lower cost for greater scale.

(v) **Pedagogical limitations:** The document talks about flexibility, choice, experimentation. In higher education, the document recognizes that there is a diversity of pedagogical needs. If it is a mandated option within single institutions, this will be a disaster, since structuring a curriculum for a classroom that has both one-year diploma students and four-year degree students' takes away from the identity of the institution.

(vi) **Institutional limitations:** A healthy education system will comprise of a diversity of institutions, not a forced multi-disciplinarily one. Students should have a choice for different kinds of institutions. The policy risks creating a new kind of institutional isomorphism mandated from the Centre.

(vii) **Issues with examinations:** Exams are neurotic experiences because of competition; the consequences of a slight slip in performance are huge in terms of opportunities. So the answer to the exam conundrum lies in the structure of opportunity. India is far from that condition. This will require a less unequal society both in terms of access to quality institutions, and income differentials consequent upon access to those institutions.

Conclusion

The New National Education Policy, 2020, which has been approved by the central government to change the Indian education system to meet the needs of 21st century India, if it is implemented successfully, this new system will make India one of the world's leading countries. Equivalent Under the new education policy, 2020, children from 3 years to 18 years have been placed under the Right to Education Act, 2009. The aim of this new education policy, which came after 34 years, is to provide higher education to all students, which aims to universalize pre-primary education (age range of 3-6years) by 2025.

Women Rights Under Labour Law

Dr. Babita Baeraiya[1]

Introduction

Employment law is a body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers and employees. In other words, Employment law defines the rights and obligations as workers, union members and employers in the workplace. Employment laws also cover, Industrial Relations, Certification of Unions, Labour-management Relations, Collective Bargaining and Unfair Labour Practices, Health and Safety Measures, Employment Standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay.

Indian legislature has been active on this front. Its main focus is on reducing inequality of any sort, and thereby promoting a fair, non-discriminatory and safe work environment. Indian political and administrative structure is multi-layered. At the Apex is the Central Government, under which there are states and local self-bodies. Responsibilities for legislation are also divided accordingly, so that autonomy of states is protected. In labour legislation, both centre and states have powers to enact suitable legislations. Keeping in view the constitutional guarantee to prohibit gender discrimination and protect the interest of women, the Labour and Industrial laws in our country have given special rights to the women due to their unique physical and biological characteristics. Following are some important legislations covering the women involved in industrial activities,

The Maternity Benefit (Amendment) Act, 2017

Motherhood is a very special experience in a woman's life. A woman ne1s to be able to give quality time to her child without having to worry about I job and her source of income. That is where the concept of maternity leave and the benefits it entails, come in handy. International attention, on maternity protection, of the world community was attracted when the first Maternity Protection Conference was convened in 1919 by the International Labour Organization (I.L.O.). In this, matters relating to maternity leave, economic benefits during absence of work, leave for bringing up children and non- termination of service during pregnancy and immediately after delivery were deliberated upon and a resolution passed. The resolution of this convention was amended in 1952 which increased maternity leave, economic benefits and added some more benefits to the mothers of new-born children. The fact that motherhood requires special care and attention is reflected in the Universal Declaration of

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Human Rights, 1948 which says "*Motherhood and childhood are a titled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection*".[2]

In the sixtieth session of the International Labour Organization (ILO) held in 1975, emphasis was laid down on the need to make maternity protections more adequate in the following spheres:

a) Extension of maternity protection to new categories of women workers,
b) Extension of the period of statutory or prescribed maternity leave,
c) More liberal provision for extended or extra leave during the child's infancy,
d) Higher rates of maternity benefits,
e) More effective protection against dismissal during pregnancy and after confinement,
f) Greater encouragement of breast feeding and wider provision of nursing breaks for mothers,
g) More adequate attention to the safety and health of women during pregnancy and lactation, and
h) Establishment by social security schemes or public bodies of day nurseries to care for infants and children of working parents.

In pursuance of these discussions, declarations and resolutions, Article 42 of the Constitution of India, 1950, has been made to contain a directive that the State shall make provision for securing just and humane conditions of work and maternity benefits. Additionally in order to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits the Indian Parliament enacted the Maternity Benefits Act, 1961. History is showing the importance on this subject has been felt by the Congress in the Karachi Resolution, 1931. The congress under the head 'labour' recognised the need for providing maternity benefits to women workers and provided- "Protection of women workers and especially adequate provisions for leave during maternity period."

The Supreme Court in, *B. Shah* v. *Presiding Officer, Labour Court, Coimbatore*,[3] held that, "Performance of the biological role of childbearing necessarily involves withdrawal of a woman from the workforce for some period. During this period, she not only cannot work for her living but needs extra income for her medical expenses. In order to enable the woman worker to subsist during this period and to preserve her health, the law makes a provision for maternity benefit so that the woman can play both her productive and reproductive roles efficiently."

The National Maternity Benefit scheme was modified and new scheme called Janani Suraksha Yojna was introduced. The center provided for 100% funds however some States did not utilise such funds to fullest. This was highlighted in the case of *People's Union for Civil Liberties* v. *Union of India*.[4] The Supreme Court directed the Central Government to ensure that benefit of

[2] Section 25(2), The Universal Declaration of Human Rights, 1948.
[3] (1977) 4 SCC 334.
[4] AIR 2008 SC 495.

scheme is not given against the concept of family planning and to mothers who have married despite being below the prohibited age.

Article 42 of the Constitution of India imposes an obligation upon the State to makes provision for securing just and humane conditions of work and for maternity relief. In view of this constitutional obligation the Parliament h passed the Maternity Benefit (Amendment) Act, 2017 to regulate the employment of women in specified organization/institution/establishment for certain period before and after the child birth and to provide for maternity and other benefits.

Important Definitions Under the Act

Under the Act "Child"[5] includes a still-born child.

"Delivery"[6] means the birth of a child.

"Employer"[7] means —

(i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority;

(iii) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person.

"Establishment"[8] means—

(i) a factory;

(ii) a mine;

(iii) a plantation;

(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(iva) a shop or establishment; or

(v) an establishment to which the provisions of this Act have been declared under subsection (1) of section 2 to be applicable.

"Miscarriage"[9] means the expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the cause of which is punishable under the Indian Penal Code, 1860.

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[5] Section 3(b), The Maternity Benefit (Amendment) Act, 2017.
[6] Section 3(c), *Ibid.*
[7] Section 3(d), *Ibid*.
[8] Section 3(e), *Ibid.*
[9] Section 3(j), *Ibid*.

"Wages"[10] means remuneration paid or payable in cash to a woman and includes dearness and house rent allowance, incentive bonus and the money value of the concessional supply of food grains and other articles. It does include any other kind of bonus, overtime earnings, any contribution towards the pension fund or provident fund and any gratuity payable on the termination of service.

In *K. Chandrika* v. *Indian Red Cross Society*,[11] services of the petitioner were terminated while she was on maternity leave. There was no evidence to show that the petitioner had received the communication. The Industrial adjudicator concluded that the workman had no intention of joining duty with the management and the relief of reinstatement and consequential benefits was denied to her. The court held that the petitioner's services were terminated illegally and unjustifiably. The court ordered that the Petitioner be reinstated in service with continuity of service for the purposes of computation of service benefits. Back wages at the rate equivalent to fifty per cent of the basic pay was also granted.

In *Mrs. Bharti Gupta* v. *Rail India Technical and Economical Services Ltd. (RITES)*,[12] the Court held that the nature of maternity benefits and the entitlement of employees had been clearly spelt out by provisions of the Maternity Benefit Act, and since the said Act was a social welfare and benevolent legislation, the term 'establishment' had to be construed liberally to include RITES. RITES, is an instrumentality of State (under Article 12 of the Constitution of India) and therefore bound by Part III of the Constitution. In view of the admitted facts regarding petitioners continued employment and the circumstances that the petitioner went on leave with effect from 11.11.2000 after which she delivered the baby on 5.12.2000, the RITES could not have escaped its obligations to pay benefits under the Maternity Benefit (Amendment) Act, 2017.

The Factories Act, 1948

In India the first Factories Act, 1881 was passed to protect children and to provide for a few measures for the health and safety of workers. The subsequent Acts and finally the Act of 1948 aim to consolidate and amend the law and regulate labour in factories. This Act is complete from all points of view and implements several provisions of international conventions like the ILO's Code of Industrial Hygiene and periodical examination of young persons. The Act applies to all industries in India - including those in Jammu and Kashmir. The major objectives of the Act are:

a) Protect laborer's from long hours of work.
b) Maintain healthy and sanitary conditions at the workplace.
c) Maintain safety of workers.
d) Maintain industrial machines operated by people so as to avoid unnecessary accidents.
e) Have industrial inspectors regularly visit industrial sites to oversee health and safety regulations.

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[10] Section 3(n), *Ibid*.
[11] 131 (2006) DLT 585.
[12] 123 (2005) DLT 138.

f) Exclusive provisions have been made for employment of women in factories.

The Factories Act is a labor welfare enactment codified with a view to regulate working conditions in factories and to provide health, safety and welfare measures. It specifically deals with welfare measures that are to be provided to women workers. The relevant provisions of the Act are as follows:

The term "Factory" has been defined under Section 2(m) of the Factories Act, 1948, as any premises including the precincts thereof,

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon twenty or more workers are working, or were working any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, is ordinarily so carried on.

The Act provides for health,[13] safety[14] and welfare[15] measures for all it workmen including women. These provisions provide that the factory should be kept clean; there should be arrangement to dispose-off wastes and effluent. Ventilation should be adequate. Adequate lighting, drinking water, latrine, urinals and spittoons should be provided. Adequate spittoons should be provided. All machinery should be properly fenced to protect workers machinery is in motion.[16] Hoists and lifts should be in good condition and tested periodically.[17] Pressure plants should be checked as per rules.[18] Worker is also under obligation to use the safety appliances. Adequate firefighting equipment should be available.[19] Safety Officer should be appointed if number of workers in factory is 1,000 or more.[20]

Under Welfare measures adequate facilities for washing, sitting, storing clothes when not worn during working hours. If a worker has to work in standing position, sitting arrangement to take short rests should be provided.[21] Adequate First aid boxes should be provided and maintained.[22]

Facilities in case of large factories there are Ambulance room if 500 or more workers are employed; Canteen if 250 or more workers are employed. It should be sufficiently lighted and ventilated and suitably located.[23] Rest rooms/shelters with drinking water when 150 or more

[13] Section 11 to 20, The Factories Act, 1948.
[14] Section 21 to 41, *Ibid*.
[15] Section 42 to 50, *Ibid*.
[16] Section 21 to 27, *Ibid*.
[17] Section 28 to 29, *Ibid*.
[18] Section 31, *Ibid*.
[19] Section 38, *Ibid*.
[20] Section 40B, *Ibid*.
[21] Section 44, *Ibid*.
[22] Section 45, *Ibid*.
[23] Section 46, *Ibid*.

workmen are employed;[24] Crèches are to be provided if 30 or more women workers are employed.[25]

A worker cannot be employed for more than 48 hours in a week.[26] Weekly holiday is compulsory. If he is asked to work on weekly holiday, he should have full holiday on one of three days immediately or after the normal day of holiday.[27] At least half an hour rest should be provided after 5 hours.[28] A worker should be given a weekly holiday. Overlapping of shifts is not permitted.[29] Notice of period of work should be displayed.[30]

The Equal Remuneration Act, 1976

Equal pay for equal work for women and men is a vital subject of great concern to society in general and employees in particular. There was a common belief that women are physically weak and should be paid less than their male counterparts for the same piece of work. Women all over the world, had till recently been very much in articulate and were prepared to accept lower wages even when they were employed on the same jobs as men. Even in the economically and socially advanced countries where remarkable progress has been made, discrimination still exists.

In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and poverty, recruited women on a large scale at lower wages and made them work under inhuman condition. The International Labour Organization has evolved several conventions to provide protection to employed women. A number of ILO conventions have been ratified by India and some of these though not ratified have been accepted in principle. The principle of ILO has been incorporated in the Constitution of India in the form of Article 39.[31] Article 39 of Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women.

To give effect to this constitutional provision, the President promulgated on the 26th September, 1975, the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39 of the Constitution may be implemented in the year 1975 which is being celebrated as the International Women's Year. The Ordinance provides for payment of equal remuneration to men and women workers for the same work or work of similar nature and for the prevention of discrimination on grounds of sex. The Ordinance also ensures that there will be no discrimination against

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[24] Section 47, *Ibid*.
[25] Section 48, *Ibid*.
[26] Section 51, *Ibid*.
[27] Section 52(1), *Ibid*.
[28] Section 55, *Ibid*.
[29] Section 58, *Ibid*.
[30] Section 61, *Ibid*.
[31] Available on http://www.legalserviceindia.com/article/article/gender-justice-and-indian-labour-763-1.hrml as accessed on 25.10.2021.

recruitment of women and provides for the setting up of Advisory Committees to promote employment opportunities for women.

In *People's Union for Democratic Rights* v. *Union of India*,[32] the court held "*it is the principle of equality embodied in Article 14 of the constitution which finds expression in the provisions of the Equal Remuneration Act. 1971*." In *Randhir Singh* v. *Union of India*,[33] the Supreme Court held that the principles of equal pay for equal work, is not expressly declared by our constitution to be a fundamental right but it certainly is a constitutional goal which must colour the interpretation of Article 14 and 16 so as to be elevated to the rank of fundamental rights, denial of which must result in an 'irrational classification.' In *Bhagawandas* v. *State of Haryana*,[34] the view of the Supreme Court was that (i) persons doing similar work cannot be denied equal pay on the ground that mode of recruitment was different; and (ii) a temporary of casual employee performing the same and similar duties and functions is entitled to the same pay as that of a regular or permanent employee.

The Employees' State Insurance Act, 1948

The Employee State Insurance Act, 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain others matters incidental thereto. The Act in fact tries to attain the goal of socio-economic justice enshrined in the Directive Principles of State Policy under Part IV of our Constitution, in particular, Articles 41, 42 and 43 which enjoin the state to make effective provision for securing, the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The Act strives to materialize these avowed objects through only to a limited extent. This act becomes a wider spectrum than Factory Act, in the sense that the Factory Act is concerned with the health, safety, welfare, leave etc of the workers employed in the factory premises only. But the benefits of this Act extend to employees whether working inside the factory or establishment or elsewhere or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment.

The Mines Act, 1952

The Mines Act, 1952 contains provisions for measures relating to the health, safety and welfare of workers in the coal, mattifiers and oil mines. According to the Act, the term 'mine' means "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes all borings, bore holes, oil wells and accessory crude conditioning plants, shafts, opencast workings, conveyors or aerial ropeways, planes, machinery works, railways, tramways, sliding, workshops, power stations, etc., or any premises connected with mining operations and near or in the mining area". The Act prescribes the duties of the owner to manage mines and mining operation and the health and safety in mines. It also

[32] AIR 1982 SC 1473.
[33] AIR 1982 SC 879: (1982) 3 SCR 298: 1982 Lab IC 806.
[34] AIR 1987 SC 2049.

prescribes the number of working hours in mines, the minimum wage rates, and other related matters.

Section 46 deals with Employment of women. (1) No woman shall, notwithstanding anything contained in any other law, be employed—

(a) in any part of a mine which is below ground; (b) in any mine above ground except between the hours of 6 A.M. and 7 P.M.

(2) Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

(3) Notwithstanding anything contained in sub- section (1), the Central Government may, by notification 2 in the Official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of mine, so however that no employment of any woman between the hours of 10 p.m. and 5 A.M. is permitted thereby.

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

Beedi and Cigar making is an area where a large number of women and children are employed. They are then subjected to exploitation in terms of wages and working hours. Long hours of work and fewer wage compelled the Government to enact the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 which provided benefits to women workers. Section 14 deals with Creches-

(1) In every industrial premises wherein more than fifty female employees are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female employees.

(2) Such rooms shall—

a) provide adequate accommodation;
b) be adequately lighted and ventilated;
c) be maintained in a clean and sanitary condition;
d) be under the charge of women trained in the care of children and infants,

(3) The State Government may make rules, —

a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section.
b) requiring the provision in any industrial premises to which this section applies, of additional facilities for the care of children belonging to female employers, including suitable provision of facilities for washing and changing their clothing;
c) requiring the provision in any industrial premises of free milk or refreshment or both for such children;
d) requiring that facilities shall be given in any industrial premises for the mothers of such children to feed them at necessary intervals.[35]

[35] Available on http://indiankanoon.org/doc/1220092/

Section 25 deals with Prohibition of employment of women or young persons during certain hours. - No woman or young person shall be required or allowed to work in any industrial premises except between 6 a.m. and 7 p.m.

The Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 is an Act which require employers in industrial establishment formally to define conditions of employment under them. The Industrial Employment (Standing Orders) Act, 1946 came into force on April 23, 1946. The main objectives of the Act, besides maintaining harmonious relationship between the employers and the employees, are to regulate the conditions of recruitment, discharge, disciplinary action, leave, holidays, etc., of the workers employed in industrial establishments.

The Act amended in 1982 also provides for payment of subsistence allowance to the workmen who are kept under suspension pending domestic enquiry. The rules regarding payment of subsistence allowance to the suspended workmen were further amended by a notification in 1984 facilitating payment during the suspension period, the subsistence allowance at the rate of 50 per cent of the wages, which he was entitled to, immediately preceding the date of suspension, for the first 90 days and 75 per cent of such wages for the remaining period of suspension, if the delay in completion of the disciplinary proceedings is not directly attributable to his conduct. The employer shall normally complete the enquiry within 10 days and the payment of subsistence allowance shall also be subject to the workman not taking any employment elsewhere during the period of suspension.[36]

Conclusion

The above study brings the conclusion that the dignity of women in society provides an exact measure of the development of society. Now a days women engage themselves in agriculture, plantation, mine beedi, crafts, home based work etc., but unfortunately there are various factors that have caused women lagging behind men like social attitude, traditions, custom, marriage, gender-based division labour, lack of confidence, sexual harassment fear. Women workers at work place face the problem of low and discriminatory wage, exploitative working conditions etc. It can be concluded that women workers conditions cannot be improved unless they are giving special protection and the governments have paid due attention towards miserable working and living conditions of women. The Constitution of India has given special attention towards the needs of women to enable them to exercise their rights on an equal footing with men and participate in national development. It also aims to creation of an entirely new social order where all citizens are given opportunities for growth and development and where no discrimination takes place on the basis of race, religion, sex, caste, colour, etc.,

It can be seen from the multiple special provisions made for the welfare of the women that both at the national and international levels, there has been a movement towards the empowerment of women in labour laws. There has been a clear move towards making equal pay, equal access

[36] Available on http://labourbureau.nic.in/Rep_WorkingiESO_2008.pdf - accessed on 25-10-2021

to opportunity, prevention and redressal of sexual harassment and provision of maternity benefits a reality in India.

Women represent half the world's population and gender inequality exists in every nation on the planet. Until women are given the same opportunities that men are, entire societies will be destined to perform below their true potentials. The greatest need of the hour is change of social attitude. Women are generally unable to give proper and quality time to households, kids and family. Working women generally face workplace sexual harassment, mental pressure and safety issues. Women face problems leaving kids at home and going to office early in the morning. People making particular perception or draw conclusion about characters of working women.