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ABOUT THE JOURNAL

Vidhi Insight is a biannual journal on law and public policy reviewed by budding lawyers with proven expertise and skills having served in the genre for a long time. The journal is a solemn effort to promote erudite discernment and academic scholarship over the contradictions of the vexed questions that revolve around the debate of relationship of law and public policy.

It seeks to create a platform where there is an exchange and dissemination of ideas and thoughts regarding issues mutually related to law and public policy.

We believe in advocating the importance of freedom of speech and expression and understand the need for transmission of ideas across platforms and disciplines.

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MESSAGE

NANCY GARG
FOUNDER

With the joyous heart, I take pride in releasing the 1st issue of Vidhi Insight Journal. This issue gives insights to law related articles along with key news updates and recent developments in the legal field.

It is designed and complied in such a way that readers from any spectra would find it informative and engaging. It also captures the readers with the intriguing real world reflections of law, explained in simple words. I hope this initiative will give the readers an overall glance at the interesting world of Law.
Happy reading!!

ANUBHAV YADAV
CONTENT HEAD &
EDITOR-IN-CHIEF

I am delighted to present a wonderfully eclectic first issue of the Vidhi Insight Journal taking you to all corners of law. Surely the best way to start this otherwise uneventful year!

At Vidhi Insight Journal, we pride ourselves in our ability to bring you highly diversified issues around various topics. We pride ourselves with issues that showcase the diversity of legal questions that our authors engage with. This latest issue is an exemplary of the many fascinating topics that our journal covers. I hope you will enjoy reading it thoroughly.

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AN ANALYSIS OF THE JUVENILE JUSTICE ACT 2015 IN INDIA AND THE LACUNA IN IT

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ABSTRACT

The Juvenile Justice (Care and Protection of Children) Act, 2015 has heralded a new era of juvenile justice in India by introducing the provision of transfer of 16-18 years old children alleged to have committed a heinous offence to an adult criminal court. The reason behind it being the Nirbhaya rape case which is one of the most horrific crimes committed, back in 2012. The juvenile justice boards have been given the responsibility of assessing the child in conflict with law and accordingly decide whether the child needs to be transferred to a children's court or whether the child should be tried as an adult in the adult's court. This paper will be focussing on the inaccuracies when it comes to determining certain factors while assessing the child. The number of cases where the child is transferred to the Adult courts is constantly increasing. The focus will be on the psychological assessment test. The author of this paper would additionally like to highlight the difficulties the child going to jail would have to face and the importance of adopting a psychological approach when it comes to reformation of the juvenile. Lastly the author would like to suggest some reforms and the researcher's opinions regarding children in conflict with law.

Keywords: Child assessment inaccuracies, Child in conflict with law, Psychological Assessment test, Issues the child faces, Reforms suggested.

INTRODUCTION

The Juvenile Justice Act, 2015, as passed by the Parliament, received the assent of the President of India on December 13th, 2015 and came in to force on January 15th, 2016. The JJA, 2015 has taken a step backward in the modern history of juvenile justice in India which began in 1850.[1] The Apprentices Act, 1850 initiated differential treatment of children by providing for binding over of vagrant children and children committing petty offences below

[1] Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 83

the age of 15 years as apprentices instead of sending them to jail. Post that in 1898, saw enactment of Reformatory Schools Act, 1897 providing for sending of children below 15 years of age to reformatory schools instead of prison if found suitable. Pursuant to the recommendations of the All-India Jail Committee 1919-1920, the era of children Acts began in 1920 which extended the segregation of children accused of committing offences at the adjudication stage by establishing separate children courts.[2]

All these children Acts provided for sending the children to remand homes but permitted sending of children to jail in exceptional circumstances. Since Independence in 1947, Parliament passed the first legislation on the subject, namely, the Children Act, 1960. The Children Act, 1960 introduced a sex-based definition of child bringing girls till the age of 18 years and boys till the age of 16 years within its protective umbrella. It also made the remarkable departure from all the earlier children Acts passed by the states by completely prohibiting use of police stations or jail under any circumstances for children covered within its purview. All children Acts passed after 1960 followed this pattern.

In 1983, Sheela Barse, a journalist filled the writ of habeas corpus in the Supreme Court seeking release of 1400 children lodged in various jails in India despite the prohibition against use of police station or jails under various children Acts.[3] During the pendency of this petition, the Supreme Court recognised that differential cut-off age, defining child in different children Acts in force in different parts of India, were violating the fundamental right to equality before law and equal protection of law to all children as guaranteed by the Constitution.[4] Hence, it pointed in one of its orders that it would be better to have a uniform legislation for the whole country. Pursuant to this direction, Parliament passed the first uniform legislation for the children applicable to the whole of India, namely, the Juvenile Justice Act, 1986.[5] It substantially followed the scheme of the Children Act, 1960 but substituted the word 'child' by 'juvenile' perhaps influenced by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 adopted by the General Assembly. Use of police station or jail at any stage and under any circumstances for keeping

[2] Id.at.pg. 83
[3] Id.at pg. 84
[4] Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 84
[5] Id.at.pg. 84

girls below the age of 18 years and boys below the age of 16 years became illegal with the enforcement of the JJA, 1986 in the whole of India.

When India signed and ratified the United Nations Convention on the Rights of the Child in December, 1992, it was considered essential to adopt the uniform cut off age of 18 years for both girls and boys in conformity with the definition of child in the Convention on the Rights of Child, 1992[6]. The Juvenile Justice (Care and Protection of Children) Act, 2000 extended the ban on use of prisons or police station at any stage of proceedings and under any circumstance for children below the age of 18 years found to have committed any offence under any law in force in India. All these enactments since 1850 were moving in one direction to bring an increasing number of children within the protective umbrella of juvenile justice.[7]

However, the gang rape of a Delhi girl, Jyoti Pande (named Nirbhaya by media) on December 16, 2012 resulted in use of social media to organise spontaneous protests against the gruesome rape.[8] It resonated in different parts of India. Soon media coverage shifted the focus from women's safety to the involvement of a 17-year-old child in this gang rape. [9]The newspapers and multi-media screamed with flashing headlines that the child was 'the most brutal' of all accused in this rape. The media created and promoted the frenzy around this lie.[10]

With the passing of the Criminal Law Amendment Act, 2013, all women were presumed to have become safe except from 'juveniles' who were continuing to pose the biggest threat to safety of women in India.[11] Newspapers and multi-media flashed more lies of 50% increase in juvenile crime, 60% increase in sexual offences by children and so on even though the National Crimes Records Bureau (NCRB) data continued to show that there was no substantive change in either the rate of crime or share of juvenile delinquency to total crime.[12]

[6] Id.at. pg.84
[7] id.at. pg.84
[8] Id.at, pg.85
[9] Id.at pg.85
[10] Id.at.pg.85
[11] Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 86
[12] id pg. 86

Gallery didn't perform any debate on the provisions of the bill or the objections to the bill rose by the Parliamentary Standing Committee.

However, now that the JJA, 2015 has been enforced, it is essential to clearly understand the scheme of the new Act and the challenges presented by its various provisions in its implementation.

CHANGES BROUGHT ABOUT IN THE 2015 AMENDMENT

In the Amendment there has been no change to the meaning of "child". Someone who has not completed the age of 18 years is still considered to be a child under law.[13] The change was for those who are between the age of 16-18 years and who has committed a heinous offence. Such persons can be tried under the adult's criminal court as adults, under certain circumstances if the Juvenile Justice Board thinks fit.

The JJA, 2015 continues to apply to 2 broad categories of children. First children in conflict with law, these children will be be assessed the Juvenile Justice Board. The second category being children in need of care and protection, these children will be taken cared by the child welfare committee (CWC). The JJB continues to be constituted by one judicial magistrate and two social workers; it is no more required that the magistrate must have special knowledge of child psychology and child welfare.[14] "A practicing professional with a degree in child psychology, psychiatry, sociology or law" are among the categories of persons who may be appointed as members of the JJB and the child welfare committee (CWC).[15]

Section 6 clearly laid down that if a person who has crossed the age of 18 years is apprehended for an offence committed prior to the age of 18 years, is to be treated as a child and their cases are to be disposed under the provisions of this Act.[16]

When a CCL is produced before the JJB, if it is obvious from the appearance of the child that it is so, it may note the age and proceed with inquiry. In other cases, the age is to be determined by adducing evidence. In order of preference, age is to be determined by reference to, the date of birth certificate from the school, or matriculation certificate from the

[13] Id.at. pg. 86
[14] Id.at.pg. 86
[15] Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 87
[16] Id.at.pg. 88

concerned examination Board, the birth certificate given by a corporation or a municipal authority or a panchayat; and only in the absence of the above 2 options, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

For the purposes of disposal of cases of CCL, the JJA, 2015 has categorised the offences in three categories, namely, petty offences, serious offences, and heinous offences. The JJB has to dispose of all cases of children below the age of 16 years committing any offence, and cases of children between the ages of 16-18 years if they have committed a petty or serious offence. In these instances, the JJB is free to choose any of the following orders for any offence on the basis of the social investigation report and suitability of the order in the best interest of the child.[17]

In case of a 16-18-year-old child alleged to have committed a heinous offence, the JJB has to "conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand. The consequences of the offence and the circumstances in which he allegedly committed the offence taking the help of experienced psychologists or psycho-social workers or other experts.[18] After this assessment, the JJB may choose to dispose of the case itself or may decide to transfer the case to the children's court.

On receipt of preliminary assessment from the JJB, the children's court has the discretion to decide whether to try the child as an adult or to deal with her/him as child and pass appropriate orders accordingly. Progress of children sent for stay for terms beyond the age of 21 years need to be reviewed annually. On their attaining the age of 21 years, another assessment is to be done to see if the child has reformed and is ready to be released in society; the children's court may direct their release under the supervision of the monitoring committee for the remainder of the period of stay initially ordered.[19] Any aggrieved person may file an appeal against any orders by the JJB or the children's court.

[17] id at.pg.88
[18] Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 90
[19] Id.at.pg.90

OBJECTIVE OF RESEARCH

The objective of this research is to critically analyse the 2015 amendment brought about under the juvenile justice Act. The researcher intends to analyse the negative impact on the juveniles and the loopholes this amendment did not look at. Apart from highlighting the issues with the amendment, the paper will also focus on the changes that can be made to the present juvenile law.

RESEARCH QUESTIONS

1) **Lacuna in the law**

- How can the preliminary assessment test determine whether a child has a childlike or an adult like mind? Is it accurate?

- Problem with the vague definition of heinous crimes

2) **The importance of Adopting a psychological point of view when it comes to punishments and focussing on a reformative model**

METHODOLOGY OF RESEARCH

The methodology used in this paper is doctrinal. The researcher has used primary resources like existing data and a few case laws to substantiate the points of arguments made in this paper. Critical analysis of the legislation is also done, the focus being on the 2015 amendment.

LACUNAE IN THE LAW

How can the preliminary assessment test determine whether a child has a child like or an adult like mind? Is it accurate?

The preliminary test is conducted to understand the mental maturity of the child who has committed the crime. But the test is clearly not conducted by experienced psychologists. The Act itself doesn't make it compulsory to use qualified professionals to conduct the test Often a simple IQ test is conducted, which clearly is no proper factor to determine whether that

child has the mental capacity to understand the repercussions of his actions. The researcher would now explain the inaccuracy with the help of case laws.

In the case of ***Bholu vs Central Bureau of Investigation*** [20]

Briefly, the facts of the case are that a child aged about seven years, who was a student of 2nd Class, was found lying in an injured condition in the washroom of the school. He was immediately shifted to the hospital, where, he was declared dead. Initially, the investigation of the case was conducted by the local police but thereafter, the investigation of the case was handed over to the Central Bureau of Investigation. During investigation, it was found that the student of the same school i.e., the petitioner was found to be involved in the commission of offence, who was more than 16 years of age but less than 18 years.[21] The imaginary name was given to the juvenile, who was in conflict with law as Bholu.[22] By considering his age as well as physical and mental fitness, he was to be assessed by the Board as to whether he could be tried as an adult by the trial Court or not. A preliminary assessment was done by the Board as per provisions of section 15 of the Act.

It was found out that the inquiry conducted by the Board before passing the impugned order as required under sub-Section 3 of Section 18 of the Act was not as per spirit of Section 15(1) of the Act. Only the general questions were put to the juvenile and no question regarding the offence committed and consequences thereof were put to him. During apprehension Bholu and his father were called for normal conversation to the Office of Central Bureau of Investigation but he was intimidated, coerced, manhandled and also got separated from his father during questioning by putting undue influence. The statutory provisions contained under Section 15 of the Act for conducting preliminary assessment to assess the mental and physical capacity of the juvenile, in conflict with law, to commit a heinous offence and ability to understand the consequences of said offence and also the circumstances, under which, he allegedly committed the offence, were not followed.

Neither the documents relied upon by the Board were supplied to neither the juvenile nor his parents and even the application submitted by him was dismissed. [23]

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[20] Bholu vs. Central Bureau of Investigation, 'MANU/PH/1039/2018
[21] Bholu vs. Central Bureau Of Investigation on 11 October, 2018, https://indiankanoon.org/doc/88300452/
[22] Bholu vs Central Bureau of Investigation on 11 October, 2018, https://indiankanoon.org/doc/88300452/
[23] Id.at.43

The purpose of preliminary assessment of the juvenile is to find out the physical and mental capacity of the juvenile, ability to understand and consequences of the offence committed by the juvenile and also the circumstances, under which, he had committed the alleged offence.[24] As per Section 15 of the Act, 2015, the Board can have the assistance of any psychologist or any other expert. Dr. Joginder Kairo, Clinical Psychologist, P.G.I.M.S. Rohtak, who conducted two tests upon the juvenile, suggested that for further assessment, the juvenile may be sent to the Institute of Mental Health, University of Health Sciences, Rohtak but no such assistance has been taken in spite of giving suggestions by the aforesaid doctor. [25]The Board has completely ignored not only the provisions of the Act but Rules as well.[26] The report was based on inappropriate tests, namely, Coloured Progressive Matrices (CPM) and Malin's Intelligence Scale for Indian Children (MISIC) meant for children between the age group of 5-11 and 5-15, which were taken as the basis for the determination of the mental capacity of a child of 16 years.

It was also found out that this fact was brought to the notice of the Board as well as the Appellate Authority but still it was not considered. A specific request was made to cross-examine the psychologist but such request made by the petitioner was also rejected. The copies of the reports were not supplied to the petitioner to cross examine the psychologist and the request was rejected.

Every child is presumed to be innocent up to the age of 18 years and he has a right to be heard and required to participate in all the proceedings and decisions affecting his interest by giving due regard to his age and maturity. The juvenile has a right of privacy and confidentiality which is mandatory to be maintained but the right of confidentiality and privacy has been mis-interpreted by the Board as well as by the lower Appellate Court.[27] The CBI itself had admitted in the proceedings before the Board as well as before the Appellate Authority that no such trained officers were available for investigation so as to reach to the logical conclusion in view of special provisions of the Act.[28] The three parameters for making preliminary assessment i.e. the mental and physical capacity, ability to understand the consequences of the offence and the circumstances under which the alleged offence has been

[24] Id.at.43
[25] Bholu vs central Bureau of Investigation, 'MANU/PH/1039/2018
[26] Bholu vs Central Bureau Of Investigation on 11 October, 2018, https://indiankanoon.org/doc/88300452/
[27] id at.53
[28] id at.53

committed are necessary to be followed but said parameters have not been followed as no such finding has been given by the Board so as to reach to the conclusion that the juvenile was well aware about the consequences of the offence committed by him and his mental and physical capacity was such that he was well aware about the nature of offence and the consequences thereof.[29]

The test conducted to determine the IQ of the juvenile was for the children up to the age of 15 years and none of the tests conducted were designed for the children above 15 years of age.[30] Even in those tests conducted by the Board, the IQ of the petitioner was below normal i.e., 95, which shows that as per said test, the mental age of the petitioner was not even of 15 years. In this case it was clear that principles of natural justice were not followed by both the Courts below as no opportunity was given to the petitioner or his parents to rebut the reports in question.[31] A very short period was given to them to go through the reports but copies thereof even were not supplied to them.[32]

From the case of Bholu vs central investigation bureau lack of proper implementation of the law is very clearly visible. The author through this paper is not trying to cover up the misdeeds of juveniles; the main focus is on the harsh way juveniles are dealt with. It is very evident from the Bholu case that the assessment test conducted by the Board is done just for the sake of it and is not at all sufficient when it comes to judging the mental capacity and understanding of the child. Immaterial of the fact whether the juvenile is at fault or not, how can a mere test gauge the mental capacity of the child while performing the crime. Although JJBs have psychologists and sociologists on board, there are no specific indicators to gauge the mental maturity of an offender.

The next argument the researcher would like to put forth is that 16-18 is an extremely sensitive and tender age, and does imposing harsh punishments for juveniles really reform their character. By being subjected to the horrific environments in India jails, there are chances for these children coming out of jails even more bitter and prone to committing worse crimes. Yet, looking at the way JJBs would work, it is possible that JJBs may send wrong juveniles to adult courts. The Board's assessments are subject to judicial review and

[29] id at.53
[30] id at.53
[31] Bholu vs Central Bureau of Investigation on 11 October, 2018, https://indiankanoon.org/doc/88300452/
[32] Id.at.63

this might set off further litigation over whether one 16-year-old was let off lightly or another was wrongly sent to an adult court. It is also a huge possibility that. Such decisions might be influenced by the prevailing public mood in case such a heinous crime.

Another aspect that cannot be ignored is that transferring the juvenile to the adult courts is violative of the confidentiality and the privacy of the child and makes it difficult for the child to re-enter the society without being looked at as a criminal. Some of the collateral consequences the juvenile faces are the public release of juvenile records which will affect them for the rest of their lives are when looking for educational and job opportunities.

The next bone of contention is another clause through which a person of age more than 21 can be tried as an adult for serious offences he/she committed as a juvenile.[33] This provision violates Articles 14 and 20 of the Constitution and is also morally wrong as it tries to punish the juvenile for failure of the investigative agencies.[34] Another blatant violation of natural justice is found in section 15 of the Act. This section prescribes the JJB to conduct an assessment into the capacity of the juvenile to commit a crime. It is essential to understand that the language of this section presumes the child to be guilty from the beginning, regardless of whether he/she actually committed the crime or not.[35]

This appears to be a case of sentencing before guilt and is against the test of procedural fairness, which is an integral part of due process **(*Maneka Gandhi v. Union of India*)**[36], as it introduces a bias against the child from the start.[37] It is in contravention of the principles of presumption of innocence and best interests which must be followed in administration of the Act. Another criticism of the decision of the government to repeal the 2000 JJ Act is that the Supreme Court of India, in cases of ***Salil Bali v. Union of India***[38] and ***Subramaniam Swamy***

[33] Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis, (march 16th ,2020), https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d
[34]Ritwik Tyagi,The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis,(march 16th ,2020), https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d
[35] Id.at.65
[36] Maneka Gandhi vs UOI, AIR 597,1978
[37] Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis, (march 16th ,2020), https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d
[38] Salil bali vs UOI, (2013) 7 SCC 705

v. Raju*[39]*, had upheld the constitutionality of the Act, mandating that all children in conflict with law be dealt with equally irrespective of the gravity of their offence.[40]

THE LACUNAE IN THE DEFINITION OF HEINOUS CRIMES

There is a clear lacune when it comes to the scope of heinous crimes. Under the IPC heinous crimes includes all those crimes which award a minimum punishment of imprisonment for 7 years or more. Theft, treason, arson, trafficking is some of the crimes that come under heinous crimes. Now does that mean that a juvenile of 16 would have to undergo imprisonment of 7 years just for theft? There is a necessity for this ambiguity to be cleared and there should be some exceptions put forth when it comes to juveniles.

Other major situations where this legislation can be misused can be say a 25-year-old woman, filing a false rape case against a 17-year-old boy, the boy will be tried as an adult in this case. Similarly, if a boy and a girl both fall in love and start a physical relationship and at this point the girl's father files a rape case against the boy, the boy will be tried as an adult. The legislation was a knee jerk reaction to public demand post the Nirbhaya's case; it has a lot of gaps which can be easily misused by many.

THE IMPORTANCE OF LOOKING AT THE MIND OF THE JUVENILE AND ADOPTING A PSYCHOLOGICAL POINT OF VIEW

The second issue the researcher deals with in this paper is the impact prisons have on juveniles who committed heinous crimes. In the researcher's opinion there is a dire need a more reformative structure. The upbringing and condition in which the child is brought up is also extremely crucial. Can punishing solve all problems? Example say a small child does something wrong, the parents' first instinct is to hit the child or punish the child or lock that child in a dark room. Similarly, when a juvenile commits an offence all we want to do is shut the child away. The real question here is that, does that really help. Does a parent punishes that child or law punishing him; really make that child a better person with a better mindset? The parents or society, so called elders or the law by punishing the juvenile delinquent are doing nothing but adding to the pains of an already hurt mind. It is proved that post getting out of jails these children tend to commit more offences. The mind of a child is extremely

[39] Subramaniam Swamy vs Raju, (2014)8 SCC 390

[40]Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis,(march 16th ,2020), https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d

sensitive and delicate and correcting them through love, care and gentle counselling should be focused on, rather than imposing them to harsh conditions. The brain of a 16–18-year-old is not fully developed. There are 2 systems in the brain, the cognitive and the more adventurous one. [41]Both of these continue to develop till a person is in his early 20's.[42]
It is extremely crucial is to also understand the background of the child in conflict with law. A lot of children brought up in disturbed households and who are financially backward tend to commit more crimes. Poverty and financial and economic backwardness are some of the factors and by putting a juvenile in jail it doesn't really correct them and make them better people. Most of these children come from vulnerable sections of our society, neglected by the Government, society and every other person.

Some of the factors we have to look delve deep in to before deciding the appropriate punishment for the child are-

Physical factors- Such as malnutrition, lack of sleep, developmental aberrations, sensory defects, speech defects, endocrine disorders, deformities, nervous diseases, other ailments, physical exuberance, drug addiction.[43]

Mental factors- Such as mental defect, superior intelligence, psychoses, psychoneuroses, psychopathic constitution (including emotional instability), abnormalities of instinct and emotion, uneven mental development, obsessive imagery and imagination, mental conflicts, repression and substitution, inferiority complex, introversion and egocentrism, revengefulness (get-even complex), suggestibility, contra-suggestibility, lethargy and laziness, adolescent emotional instability, sex habits and experiences, habits and association.[44]

Home conditions- Such as unsanitary conditions, material deficiencies, excess in material things, poverty and unemployment, broken homes, mental and physical abnormalities of

[41] Rashme Sehgal, Does the Juvenile justice Act need Amendment, (July 28th ,2014) , 18:44, https://www.rediff.com/news/column/does-the-juvenile-justice-act-need-amendment/20140728.htm
[42] Rashme Sehgal, Does the Juvenile justice Act need Amendment,(July 28th ,2014) , 18:44, https://www.rediff.com/news/column/does-the-juvenile-justice-act-need-amendment/20140728.htm
[43]Shreya Mahajan, HOW DO JUVENILE JUSTICE BOARDS DECIDE THE FATE OF 16-18 YEAR OLDS? PRELIMINARY ASSESSMENT UNDER SECTION 15 OF THE JUVENILE JUSTICE (CARE AND PROTECTION) OF CHILDREN ACT, 2015, ILI Law Review, summer issue 2020, file:///C:/Users/admin/Downloads/shm%20(2).pdf
[44] Id.at.77

parents, or siblings, immoral and delinquent parents, ill-treatment by foster parents, stepparents, or guardians, stigma of illegitimacy, lack of parental care and affection, lack of confidence and frankness between parents and children, deficient and misdirected discipline, unhappy relationship with siblings, bad example, foreign birth or parentage and superior education of children.[45]

School conditions- Such as inadequate school building and equipment, inadequate facilities for recreation, rigid and inelastic school system, the goose-step, poor attendance laws and lax enforcement, wrong grading, unsatisfactory teacher, undesirable attitude of pupil towards teacher, bad school companions and codes of morals.[46]

Neighbourhood conditions- Such as lack of recreational facilities, congested neighbourhood and slums, disreputable morals of the district, proximity of luxury and wealth, influence of gangs and gang codes, loneliness, lack of social outlets, over stimulating movies and shows.

Occupational conditions- Such as irregular occupation, occupational misfit, spare time and idleness, truancy, factory influences, monotony and restraint and decline in the apprenticeship system.[47]

Hence through these arguments the researcher intends to say that the basic psychological aspect cannot be neglected and reformatory measures should be customised according to the needs of that particular child. Soo many children are locked in prisons today, if their potential is channelised in the right direction, they can go far ahead in their life. Our youngsters are the future of our country.

SUGGESTIONS AND CONCLUSION

Firstly, regarding the psychological assessment test the time period should be extended from 3 months to about 10 months to a year to properly analyse the situation and make appropriate decisions.

[45] Id.at77
[46] Shreya Mahajan, HOW DO JUVENILE JUSTICE BOARDS DECIDE THE FATE OF 16–18-YEAR-OLDS? PRELIMINARY ASSESSMENT UNDER SECTION 15 OF THE JUVENILE JUSTICE (CARE AND PROTECTION) OF CHILDREN ACT, 2015, ILI Law Review, summer issue 2020, file:///C:/Users/admin/Downloads/shm%20(2).pdf
[47] Id.at.80

The psychologists must meet more than at least 5 times and interact with the children in conflict with law, only then a proper analysis of their mindset is possible, for even in the day to day lives, we do not get to know a person that well, let alone deciding the fate of such children. The probation officers, the members and all the related functionaries should be sensitized towards children in conflict with law and instead of a one- time training, they should be given training at different and regular intervals. Unless the child's experiences and reality are understood, no decision can be taken by any authority on how to ensure their care, protection, treatment, rehabilitation and reintegration.[48] It is crucial to understand the root cause of why or what led the juvenile to commit such an act.

There is a huge shortage of good juvenile homes. Most remand homes are in pathetic condition and need a massive overhaul. Juvenile homes must be created in a manner where delinquents have the opportunity to tune themselves with the rest of the society.[49] They must receive the opportunities to reform and be educated, to be ready to make the plunge back into civilised society and live an honourable life. In Sangli, a programme called 'Disha' has been turning around the lives of juveniles.[50] With focus on rehabilitating them, the observation home has recorded a number of success stories by training and providing employment to such youth.[51] The process of rehabilitation involves a multi-faceted psychological approach towards confidence building and employability, at the end of which the juveniles are ready to face challenges of everyday life.[52]

The focus should not be on more stringent and tougher laws, it should be on proper implementation of the existing laws. The lack of infrastructure, resources and knowledge we have now is not enough for proper implementation of the law. While it cannot be disputed that children are capable of committing crimes, the solution does not lie in jailing them.[53] The focus should be on educating them and rehabilitating them[54]

[48] Id.at.80, pg.25
[49] Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis,(march 16th, 2020), https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d
[50] Id.at.85
[51].id.at.85
[52] Smita Nair, Justice League: An Attempt to Institutionalise Juvenile Reform and Rehabilitation, https://indianexpress.com/article/india/juvenile-justice-correctional-home-rehabilitation-5857362/, (31–07–19, 00:16).
[53] Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis,(march 16th ,2020), https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d
[54] Id.at.91

A number of countries around the world are moving away from policies of deterrence to that of restorative and reformative justice. The way forward should therefore be to demonstrate that the reformative and rehabilitative model does work, and that as a country with one of the best constitutions in the world, and a wealth of healing traditions, we have the vision, the will and the heart to prove it. We have good scope for betterment of the juvenile legislation. Our children, our victims of juvenile crime and our society deserve no less.

CASE COMMENT: INDIAN YOUNG LAWYERS ASSOCIATION & ORS vs. STATE OF KERALA

S. Karpagam

VIT University, Chennai

SYNOPSIS

This case is popularly known as Sabarimala case which has a great impact in our Indian Society. There had been a nation-wide chaos after the Judgement. This is a very famous case about the violation of fundamental articles under constitution. This case is a PIL filed by Indian young lawyers association in 2006 stating that the custom followed by the temple affect the fundamental rights of citizens especially women citizens. In this case there is a temple in state of Kerala namely Sabarimala temple which restricts the women of menstruating age. It is a custom followed for decades. The PIL was filed by saying that this restriction is unconstitutional because it violates the fundamental rights like right to freedom, freedom of religion etc. In this case the petitioner made their case to be one of general discrimination in this patriarchal society.

BACKGROUND

Sabarimala Shri Dharmasastha temple is a Hindu shrine which is the largest annual pilgrimage in the world with upto 50 million visitors every year. It is located inside the Periyar Tiger Reserve in 'Pathanamthitta' district of Kerala. As per the custom followed in Sabarimala shrine the women in menstruating age is restricted to enter the temple; even some women's try to enter the temple, but they can't be able to make it because of the physical assault against them. The reason why they are not allowing the menstrual age women because the god namely Ayyapa in the Sabarimala temple in in form of Naisthik Bramachari so they believed that the presence of young women should not affect the asceticism and solemnity. There are some certain customs to be followed by the devotee before he appears to worship the god; the customs like the devotee also must be in state of celibacy for 41 days before him going to sabarimala temple.

He needs to wear black or blue dress; they did not allow shaving or cutting their hairs; they had to stop drinking alcohol for those days and they need to eat only vegetarian foods. The

temple will only open for worship during mandala pooja [Nov 15- Dec 26], Makara Sankranti and Maha Vishuva Sankranti and first five days of each Malayalam month.[1] Section 3 of the Kerala Hindu places of Worship (Authorisation of entry Act) required that places of public worship be open to all sections and classes of Hindus subject to special rules of denominations. Rule 3(b) provided for the exclusion of "women at such time during which they are not allowed by custom to enter such place of public worship". The petitioner argued that the provision of legislations is unconstitutional to Article 14 (Right to Equality), Article 25(1) (Freedom of worship), Article 26 (freedom of religious denominations to regulate their own practices) whereas the defendant Devasthanam board argued that entering the women into the temple will also affect their religious right under Article 25 distinct to their religious denominations.

FACTS

Sabarimala temple situated in Kerala managed by the Travancore Devasthanam located in Periyar Tiger Reserve in 'Pathanamthitta' district Kerala had a custom like restriction of women during their menstruating ages i.e. (10-50) due to their customary practice which is legally valid under Sec 3(b) of Kerala Hindu places of Worship (Authorisation of entry act). In 1990 the first petition was filed. In 1991 Justice of Kerala High Court K. Paripooranam and K. Balanarayana Marar held that the restriction of women entry is a long-lasting customary practice and became an established norm, the High Court directed the Devasthanam board or priest to decide on traditions. In 2006 the Indian Young Lawyers association filed a PIL by challenging that this customary practice is unconstitutional; this case was reffered to the 5 Judge benches. In 2018 the apex court at 4:1 majority held that the restriction on women entry in Sabarimala temple is unconstitutional as it violates the Article 14, Article 25 etc and allow all age Women's can enter the temple and they can worship.

ISSUE

Three main issues were framed before the court and argued to find whether the restriction of women entry in unconstitutional.

(i) Whether the restriction of particular gender (women) entry into the temple amount to discrimination and it is violative of Article 14, 15, 17, 25 & 26.

[1] https://www.scobserver.in

(ii) Whether the Kerala Hindu Places of Public Worship Act permits the restriction of women?

(iii) Whether the Ayyappa temple has a denominal character and whether it is permissible on the part of a religious denomination?

ARGUMENTS

Arguments by petitioner:

Petitioner argued that we cannot claim women as impure based on the menstruation which amounts to gender discrimination. Petitioner argued that the entry to the temple is neither the ritual nor the ceremony associated with Hindu religion and restriction to enter is nowhere mentioned in the custom They also argued that the customary practice which is mentioned in the Rule (3) of the Kerala Hindu places worship act violates the Article 14 and individual religious right or follow any religion[2]. Senior advocate Indira Jaising argued that restriction of women not to enter the temple offends the concept of gender equality or gender justice which will affect their social interactions as well as interactions with family members. "The sole basis of restriction is menstruation of women as seen as polluted". She pointed that the restriction amounts to Untouchability is abolished and its practice is any form is forbidden.

The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law[3]. She also argued that devotees of Ayyappa is not considered as religious denomination as they are Hindus if so, they were assuming such practice cannot restrict the women Hindus to enter the temple; if they are considered as devotees of Ayyappa then their rights should move from Article 26(b) to Article 25(2)(b)[4]. Petitioner mentioned the impact test in ***Bennet Coleman & Co & Ors vs Union of India & Ors***[5] which says discrimination is only based on the sex because biological feature of menstruation emanates from the characteristics of particular sex as it is completely based on sex it violates Article 15.[6]

[2] Article 25 of Indian Constitution
[3] Article 17 of Indian Constitution
[4] Sri Venkata Ramana Devaru & Ors vs Mysore & Ors 1958 AIR 255 1958 SCR 895
[5] 1973 AIR 106, 1973 SCR (2) 757.
[6] https://www.scconline.com

Petitioner argued that right to worship and religion is both for men and women under Article 25. Senior advocate Mr. Raja Ramachandran who is amious cursie in this matter argue that under article 25(2) women has the right to enter the temple and restriction of women's entry is meddling women's right to privacy. Petitioner argued that after 1950 Act no Devasthanam board can act differently both in religious and administrative matters as they lost their distinctive character and Sabarimala no more remained a temple of any religious denomination after the takeover of its management. Petitioner by citing a judgement argued that if any accretion added for any historical reason has become of the said religious denomination the same shall not protect under Article 26(b) if it is so and it is against the basic concept of constitution. Petitioner also argued that the mere sight of women cannot affect the one's celibacy if one must take oath; they stated that devotees did not go to Sabarimala for celibacy's oath but for lord Ayyappa blessing.

Arguments by respondent:

Respondents argue that it is a religious practiced followed as old tradition to respect God. Respondent argued that this customary practice is immemorial without any disturbances, so it became custom and as per sec 13(3) laws allows custom. As per Sec 25(2) (b) there should be no discrimination; they argued that this article has no importance here since there is no total ban for all aged girls only for a limited age group that to based on customary practice. Respondent mentioned the fact that girls below the age group 10 and above age 50 have the rights to enter the temple and worship as per their wish. Respondent argued that as per Sabarimala pilgrimage it is important to maintain 41 days Vrutham and it needs to be followed to attain spiritual refinment for entering the temple. This vrutham is not only for girls and for boys; in these 41 days the devotee must separate himself from the family and if anyone break the vrutham cannot enter the temple.

As per scientific Ayurveda women get their periods every 30 days for rest of their body and a period of uncleanliness of their body from which they had many discomforts; so, they can't make vrutham and observance of intense spiritual discipline for 41 day's is not possible. Respondent argued that lord Ayyappa is the character of deity as Naishtik Brahmachari and right to possess religion can only be protected if the character of deity is protected. They also mentioned that women can enter the other temples of Ayyappa so their claim as not to worship will not be valid and they also mentioned that in some temple like Bagavathi temple Kerala were men also restricted to enter and there is more temple. Respondents argue that

devotees of Ayyapa constitute a religious denomination as they follow Ayyappa Dharma which is already observing by the Kerala High Court[7]. Men devotees are called as Ayyappans and eligible female devotees called as Malikapurams. Respondents give the answer to the question of untouchability that main object of Article 17 is to protect untouchability which is not practiced in the temple.

FINDINGS

1. The issue submitted before the court is related to gender inequality/ discrimination of female gender respective to worship and right to freedom of worship i.e., a particular age group of females were restricted to enter the temple which affects their rights under article 25, 26, 27.

2. By the evidence provided before the court, court observed that devotees of Ayyappa did not constitute a religious denomination because there is a need of methodology for religious denomination which lacks here. Court stated that certain practices from time immemorial do not make it as distinct religion.

3. Court denied accepting the exclusionary practice as an essentiality of religion as there is no textual evidence and made opinion that allowing women into the temple will not change any fundamental concept of the religion.

4. Court also observed that as per article 25 a person has rights to provide right to religion irrespective of their age and if any customary practice forbids them to worship at temple, they have a right to freely worship their Hindu religion.

5. Court held that plain reading of rule 3(b) of 1965 rules shows that it is ultra vires to sec 3 and 4 of the same act.

REASONING

The verdict was passed on 28 September 2018. The verdict was delivered in 4:1 majority as women are liable to enter the temple; the customary practice there violated the fundamental rights like right to equality, right to freedom etc. This case is a mix of law and fact and it should decide by the competent court of jurisdiction. By the words of Hon'ble chief Justice

[7] S. Mahendran v The Secretary, Travancore Devaswom board & Ors

and other justice it is upheld that the religious matters, faiths, beliefs, and practices in India are bound to the constitution. It declares Rule 3(b) of Kerala Hindu Places of Public Worship Act was unconstitutional. Justice Malhotra hold different opinion that devotees of Ayyappa have religious denomination, so they entitled to protect under Article 26 and observed that restriction is partially based and not fully restricted.

DISPOSITION

This verdict had suppressed all the beliefs and faiths of customary practices related to this of different tradition of different religions. The verdict itself passed in 4:1 opinion was four of them accepts the evidence to enter and the other judge were not ready to accept that law overcome the custom which may set difficult precedent for future references do not respect to this kind of issue. The bench nullified the claim for essential practice of religion by stating that for the essential practice it should need the new methodology where the practice like this is common for all religions. As per opinion of Justice Indu Malhotra Rule 3(b) is not ultra vires since it protects religious denomination and she also observed that equality of doctrine shrine does not overrule the right under Article 26. As of now all women can enter the temple during the period of worship as per the judgement. Public opposes this and PIL was filed.

CRITICAL ANALYSIS

As we all know that religious practice is predominant in nature and have certain customs or practices which define the nature of the religion. As for the concern of Hindu religion it has several rituals and practices which they follow for time immemorial for particular reasons. Law should be fair for the reasons provided. The myth we all know that Hindu religion has countless deities in different temple and different practices across the world and each is ound to the nature and belief of each devotees. It is important to note that court had ignored the particular nature of deity. Banning of entry of women into temple is not an essential religious practice whereas it is subjected to right to enter the temple. As stated, above women has right to enter all other Ayyappa temple and worship there; there is not fully restrictions of women.

The only reason for not allowing into Sabarimala is the nature of Deity Ayyappa is different from compared to other temples. Here the deity is in form of Naishtik Brahamachari so the certain age of women was not allowed here whereas in other temple of Ayyappa all women can enter as there is different deity of Ayyappa. The reason given by the court for denominational character is uncommon for non-followers or tourists where they visit temples

did not mean that their faith did not have religious denomination. The humble opinion of the author is banning of women entry is not based on gender issue or sex and it is only for the celibacy of the deity since the nature of deity in Sabarimala in unique in nature and as the women have the right to worship at all other Ayyappa temple from which there is no violation of fundamental rights.

Even in many temples men were also not allowed to worship in the temple is not because of gender biasness rather it may have some certain custom or practice which follow by the nature of the deity and belief of devotees.

CONCLUSION

In this case the apex court tries to make a bride between constitutional rights and social reality where there is a distinction between them. The judgement was given in 4:1 majority which supports the entry of women into the temple, but it is also important to protect the heritage of the temple. It is true that women are discriminated in many ways with respected age, sex etc but in concern of this case women can enter other Ayyappa temples which did not affect their fundamental rights and the reason for ban the entry is to protect the particular nature of deity presented in Ayyappa.

CASE COMMENT: JOSEPH SHINE VS UNION OF INDIA

Ayushi Arya

SOM Law College

Full Case Name – Joseph Shine v Union of India

Judges/Quorum – Dipak Mishra, R.F. Nariman, A.M. Khanwilkar, D.Y. Chandrachud, Indu Malhotra

Citation(s) – 2018 SC 1676

INTRODUCTION

Adultery law is defined in Section 497 of Indian penal code.

Section 497 IPC (Adultery):-

Whoever has sexual intercourse with a person who is and whom he knows and reason to believe to be the wife of another man, without the consent or connivance of that man. Such sexual intercourse does not amount to the offence of rape and is guilty of adultery.

A man found guilty of adultery should be punishable with imprisonment of either description for a term which may extend to the five years or with fine or both.

In such case the wife shall not be punishable as an abettor. Section 497 comes under the purview of the courts several times in the past but every time Supreme Court held Section 497 as valid. But the Supreme Court on 27th September 2018 in the case of Joseph Shine v Union of India has brought down the 158 year old Victorian Morality Law on Adultery.

The petition was filled by a non resident of Kerala named Joseph Shine who has raised question on the constitutionality of the Section 497 of the Indian penal code. The judgment has overruled all the past judgments which uphold the criminalization of adultery. Now, adultery has become legal but it is still not ethical with the society. The institution of marriage is based on the trust between both the partners i.e. husband and wife. Therefore, Honourable Supreme Court of India does not interfere in the personal and moral lives of the

people. Currently, adultery is only considered as a civil wrong and the remedy for the act of adultery is only divorce.

INGREDIENTS

The following ingredients are essential for this offence:

- Sexual intercourse by a man with a woman who is or who he knows or has reason to believe to be the wife of another man.
- Such sexual intercourse must be without the consent or connivance of the husband.
- Such sexual intercourse must not amount to rape.
- Woman must be married.
- Since, in an offence of adultery marriage is an ingredient; therefore the fact of marriage must be established fully.
- It must be established that the marriage as an event took place and the parties are not simply living together.
- The particular number of witnesses must be examined to prove the fact of marriage.
- The evidence of the husband and wife that marriage between them took place is not sufficient to prove it.
- Where a man and woman lived long together as a husband and wife, a presumption arises in favour of marriage which must be rebutted.

CONNIVANCE

Connivance is the willing consent to a conjugal offence or a culpable acquiescence in the course of conduct reasonably likely to lead to the offence being committed. It is an act of mind. It implies knowledge and acquiescence.

According to the Allahabad High Court, connivance is a figurative expression meaning a voluntary blindness to some present act or conduct, to something going on before the eyes or something which is known to be going on without any protest or desire to disturb or interfere with it. Where the woman has been abandoned by her husband and inference of connivance cannot be drawn by a court of law.

In a case the husband was driven out from his house by his wife and the accused lived with her. The husband though saw this but filed complaint only after 18 months since cohabitation commencement. The delay in filing complaint was not explained by the husband, therefore, his act was held amounting to connivance. It was held that where there exists sexual relations between the accused and someone's wife and while she did not resist while being taken away by the accused to his house and voluntary accompanied him to be a participant in the sexual intercourse with him, then the accused will not be convicted under section 497 or section 498 of IPC, but would be convicted for the offence of abduction under section 366 of IPC.

Wife is not punishable as abettor. Under Section 497, wife is not punishable as abettor because authors of the code were of the view that Indian society is of different kind which may well lead a man to pause before he determines to punish the infidelity of wives. But the reason given by the authors of the code for not punishing the wife has been criticized.

BACKGROUND OF THE SECTION 497 OF IPC

There were several times before where the question has been arisen on the constitutional validity of Section 497 of IPC and Section 198 of IPC.

- **Yusuf Abdul vs. State of Bombay case, 1954**

  It has been argued that the section violates two articles of the Constitution of India i.e. Article 14 and Article 15. Supreme Court upheld the validity of Section 497 in Yusuf Abdul vs. State of Bombay case, by pointing out that neither a man nor a woman can prosecute their disloyal spouses. It is only the outsider to the relationship who can be prosecuted and that too by the aggrieved husband alone.

- **Sowmithri Vishnu v Union of India case, 1985**

In ***Smt. Sowmithri Vishnu v Union of India case***, it was contended that Section 497 is violative of Article 14 and 15 of the constitution on the ground that it makes an irrational classification between men and women in that.

 It confers upon the husband the right the adulterer but it doesn't confer any rights upon the wife to prosecute the woman with whom the husband has committed adultery.

 It confers upon the husband the right the adulterer but it doesn't confer any rights upon the wife to prosecute the husband who has committed adultery with another woman.

 It does not take in cases where the husband has sexual relations with an unmarried woman with the result that the husband has, as it were, a free license under the law to have extra marital relationship with unmarried woman.

But the Supreme Court rejected these arguments and held that it cannot be said that in defining the offence of adultery so as to restrict the class of offender to men, any constitutional provision is infringed. It is commonly accepted that it is the man who is the seducer and not the woman. The court further observed that this position may have undergone some change over the years that women may have started seducing men but it is for the legislature to take note of this transformation and amend Section 497 appropriately.

- **V. Revathi v Union of India, 1988**

The Supreme Court observed that adultery law was a "shield rather than a sword". The court ruled that the existing adultery law did not infringe upon any constitutional provisions by restricting the ambit of Section 497 to men.

JOSEPH SHINE VS UNION OF INDIA

FACTS OF THE CASE

 Joseph Shine the hotelier challenged the constitutionality of the Section 497 of Indian penal code.

 The core reason behind their petition was to shield Indian men from being punished for extra marital relationships by vengeful women or their husbands.

 Petitioner's close friend in Kerala committed suicide after a woman co-worker made malicious rape charges on him.

 Further Section 497 is an egregious occurrence of sexuality unfairness, authoritative imperialism and male patriotism.

 The traditional framework in which Section 497 was drafted is no longer applicable in modern society.

ISSUES

 Whether Section 497 of Indian penal court is unconstitutional?

 The petitioner wanted certain problems with Section 497 to be addressed.

 Adultery law provides that man to be punished in case of adultery but no action is suggested for the woman. Hence, it made the gender neutral.

 As per Section 497 there is no legal provisions that a woman can file a complaint of adultery against her husband.

 According to Section 497, if the husband gives his consent for such an act then such act is no more considered as a crime. Therefore, women are treated as an object under adultery law.

PETITION

 In December 2017, Joseph Shine has filed a petition raising the questions on constitutional validity of Section 497.

 A three judge's bench headed by **CJI Dipak Mishra** has referred this petition to a five judge constitution bench which comprised of **CJI Dipak Mishra** and **Justices R.F. Nariman**, **A.M. Khanwilkar**, **D.Y. Chandrachud** and **Indu Malhotra**.

JUDGMENT

The court had observed that law is based on certain 'Societal presumption'.

In the four different judgments, the court has struck down the law and declared that husband cannot be master of his wife. The judgment held the following things:-

 Section 497 is archaic and is constitutionally invalid.

 Adultery is no longer a criminal offence.

 Section 497 is arbitrary.

 Freedom of an individual to make choices in respect of his/her sexuality is most intimate choice of life and thus should be protected from public censure and criminal sanction.

 Wrongs punishable from penal sanction must be public wrong not be merely act committed against individual victim.

 There can't be masculine dominance in community or patriarchal monarchy or husband monarchy over wife.

 Right to live with dignity also includes right not to be subjected to public censure and punishment by state when absolutely necessary. If there can be civil remedy to serve the purpose then that should be ought to force. If the purpose can be served by civil sanction, then why penal sanction.

 Criminal law should be in consonance of constitutional morality provision of adultery enforces construct of marriage where are partner has to surrender sexual autonomy to another.

Section does not pass test of constitutionality and it is opposed to constitutional guarantee of liberty and dignity. The Supreme Court by this judgment has discriminated adultery as an offence but the court added that adultery will still remain a ground for divorce. Undoubtedly this historic verdict of Supreme Court is based on securing dignity of people, obviating punishment when civil remedy like divorce is available to the aggrieved husband, thus

dispensing with the post millennial archaic law. The Supreme Court finally held that Section 497 is unconstitutional hence it is struck down as a penal provision of women and treated them as "chattel of husbands".

CONCLUSION

- **What struck down**: Section 497 of Indian Penal code that said: "Whoever has sexual intercourse with a person who is the wife of another man, without the consent of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery".

- **The problem**: It treated woman as victim of offence and as property of her husband. It was not an offence if a man had sexual intercourse with a woman after getting her husband's consent.

- **After the Judgment**: Adultery can be ground for divorce but it is no more a criminal offence attracting up to 5 years' jail term.

- **Govt's problem**: Centre in the affidavit before the apex court had said that it would be against the sanctity of marriage to dilute the offence of adultery.

- **Keep in mind**: Though adultery per se is no longer a crime, if any aggrieved spouse commits suicide because of partner's adultery, it could be treated as abetment to suicide - a crime.

"*Adultery can take you to court, not to jail*"

CASE COMMENT: MUKESH & ANR V. STATE (NCT OF DELHI) & ORS

Rhythm Sharma

SRM University, Sonepat, Delhi NCR

BENCH- Ashok Bhushan, R. Banumathi, Dipak Misra

SYNOPSIS

One of India's landmark judgments that has resulted in many reforms in the country's rape laws because it includes extremely grotesque and barbaric acts Jyoti Singh, a 23-year-old physiotherapy intern, boarded a bus from Munirka to Dwarka in Delhi with a friend. A ravenous beast consumed several organs as well as a small town Indian girl's hopes and ambitions on the night of December 16, 2012, infamous molesters and attackers committed one of the most horrific crimes in our country's history.

BACKGROUND

In the cold winter night of 16 December 2012, around 21:00, a 23-year-old girl along with her boyfriend boarded a private bus in New Delhi. The bus had already been boarded by six men including the driver and a juvenile. A few minutes later, the lights of the bus were switched off; the girl was taken by four of them to the rear side of the bus, while her boyfriend was beaten up badly on the front side of the bus.

In a sadistic manner, “the girl’s clothes were torn over and she was slapped repeatedly over her face. They possibly could not have imagined that she would be a prey to the savage lust of a gang of six, face brutal assault and become a playful thing that could be tossed around at their wild whim and her private parts would be ruptured to give vent to their pervert sexual appetite, unthinkable and sadistic pleasure. What the victims had not conceived of, it all happened, as the chronology of events would unroll. The attitude, perception, the bestial proclivity, inconceivable self-obsession and individual centralism of the six made the young lady to suffer immense trauma and, in the ultimate eventuate, the life-spark that moves the bodily frame got extinguished in spite of availing of all the possible treatment that the

medical world could provide. The death took place at a hospital in Singapore where she had been taken to with the hope that her life could be saved.[1]

FACTS OF THE CASE

1. Nirbhaya is the pseudonym used for the rape victim of the infamous 16 December 2012 Delhi gang rape incident. The victims, a 23-year-old woman, Jyoti Singh, and her male friend, were coming back to home on the night of 16 December 2012 after watching the film Life of Pi in Saket, South Delhi.

2. At around 9:30 p.m., they boarded the bus in Munirka bound for Dwarka (IST). The bus had just six passengers, plus the driver. Minor, one of the guys had summoned passengers and told them that the bus was on its way to their destination.

3. Her friend grew suspicious when the bus deviated from its usual route and shut its doors. When he protested, the other six men on board, including the driver, ridiculed the pair, asking what they were doing alone at such a late hour.

4. When the friend attempted to defend Nirbhaya, he was beaten up by the attackers. During the debate, a fight broke out between her friend and a group of men. With an iron bar, he was beaten, gagged, and knocked unconscious. The men then pulled Jyoti to the back of the truck, where they hit her with the rod and raped her as the bus driver drove away.

5. Nirbhaya was not just sexually violated; her body was mutilated beyond human imagination. A medical report later said that she suffered serious injuries to her abdomen, intestines and genitals due to the assault, and doctors said that the damage indicated that a blunt object (suspected to be the iron rod) may have been used for penetration. That rod was later described by police as being a rusted, L-shaped implement of the type used as a wheel jack handle.

6. As indicated earlier, the prosecutrix and PW-1 were noticed by PW-72, Raj Kumar, who heard the voice of 'bachao, bachao' from the left side of the road near a milestone opposite to Hotel Delhi 37. PW-72 saw PW-1 and the prosecutrix sitting naked having blood all around.

[1] https://indiankanoon.org/doc/68696327/

About 11:00 p.m., PW-73 took the victims to Safdarjung Hospital, New Delhi. She later died of multiple organ failure, internal bleeding and cardiac arrest on the 29th of December.[2]

7. As aptly observed by **Justice Dipak Misra**: It sounds like a story from a different world where humanity has been treated with irreverence.

8. There were three judged in this case's bench who decided that the accused did not deserve sympathy at all.

CHARGES FRAMED AGAINST THE ACCUSED

After the case was committed to the Court of Session, all the accused were charged for the following offences:

1. u/s 120-B IPC;

2. u/s. 365 / 366 / 307 / 376 (2) (g) IPC / 377 IPC read with Section 120-B IPC;

3. u/s. 396 IPC read with Section 120-B IPC and /or;

4. u/s. 302 IPC read with Section 120-B IPC;

5. u/s. 395 IPC read with Section 397 IPC read with 120-B IPC;

6. u/s. 201 IPC read with Section 120-B IPC and;

7. u/s. 412 IPC.

During the course of trial, accused Ram Singh committed suicide and the proceedings qua him stood abated vide order dated 12.10.2013.[3]

[2] https://indiankanoon.org/doc/68696327/
[3] https://indiankanoon.org/doc/68696327/

JUDGMENT BY THE TRIAL COURT

Learned Sessions Judge, vide judgment dated 10.09.2013, convicted all the accused persons, namely, Akshay Kumar Singh @ Thakur, Vinay Sharma, Mukesh and Pawan Gupta @ Kaalu under Section 120B IPC for the offence of criminal conspiracy; under Section 365/366 IPC read with Section 120B IPC for abducting the victims with an intention to force the prosecutrix to illicit intercourse; under Section 307 IPC read with Section 120B IPC for attempting to kill PW-1, the informant; under Section 376(2)(g) IPC for committing gang rape with the prosecutrix in pursuance of their conspiracy; under Section 377 IPC read with Section 120B IPC for committing unnatural offence with the prosecutrix; under Section 302 IPC read with Section 120B IPC for committing murder of the helpless prosecutrix; under Section 395 IPC for conjointly committing dacoity in pursuance of the aforesaid conspiracy; under Section 397 IPC read with Section 120B IPC for the use of iron rods and for attempting to kill PW-1 at the time of committing robbery; under Section 201 IPC read with Section 120B IPC for destroying of evidence and under Section 412 IPC for the offence of being individually found in possession of the stolen property which they all knew was a stolen booty of dacoity committed by them.

JUDGMENT BY THE SUPREME COURT

- In a simple mandate, the court stated that the diabolic act had shaken the common consciousness of the nation and that the court should regard it as the rarest of rare cases in which death sentences could be awarded. According to the Supreme Court, DNA recognition, fingerprints, witness testimony, and odontology confirmed the identity of the accused on the bus and their role in the case.

- The bench said, the way they played with the identity, body, dignity & privacy of a women is unforgivable and their evil deeds has no mercy to be given.

- The Supreme Court delivered justice to the victim's family and all women in the country by upholding the death penalty for the four convicts in the Nirbhaya gangrape and murder case, describing it as the rarest of rare, most violent and barbaric assault on Jyoti Singh, a 23-year-old paramedic student. The convicts treated the victim as if she were a doll and abused her/his friend at an unforgivable extent.

- A three-judge bench unanimously affirmed the Delhi High Court's ruling, which complied with the trial court's decision in the matter. Mukesh, Pawan, Vinay Sharma, and Akshay Kumar Singh were hanged to death for their violence against a countrywoman. The bench sentenced them to death because their crime matched the rarest-of-rare requirements. Following the incident, since he was a minor at the time, the fifth accused was not charged and was returned to a correctional institution for three years.

- The last accused Ram Singh of this case did a suicide in Tihar jail while his trail which proves his guilty mind.

AFTER MATH OF THE CASE

1. Nirbhaya case showed a great impact on the law and society as well. Government showed a great sense of responsibility after this case towards the women of our country and her privacy. After the huge amount of protest nationwide and worldwide, it became a turning point for a woman of this country. In the time India's government made several laws and legislation against this heinous crime.

2. The Criminal Amendment Act, 2013 is also popularly referred to as the ***Anti-rape Act***. Under this change, new offences such as stalking, acid attacks, and voyeurism were added into the definition of rape.

3. Even the threat of rape is now a crime and the person will be punished for the same.

4. The minimum sentence was changed from seven years to ten years considering the increase in the number of rape cases.

5. In cases that led to the death of the victim or the victim being in a vegetative state, the minimum sentence was increased to 20 years.

6. The character of the victim was totally irrelevant to rape cases and it doesn't make any difference in granting punishment for the crime.

7. Since one of theaccused in this case was a juvenile, another flaw in the system was identified after this case. So, the age for being tried as an adult for violent crimes like rape was changed from 18 to 16 years, that to the Juvenile Justice Act, 2015. There was also the inclusion of registering complaints and medical examination. The report categorically mentioned, Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed. The committee gave extensive recommendations regarding avoiding marital rape as well as rapes committed via commission of void marriages.

CONCLUSION

Rape laws have gone a long way, but there are still some problems that need to be discussed, such as gender neutrality (under the IPC, a man cannot be the perpetrator of rape) and the definition of marital rape. The laws are dynamic; they change with time; however, the main problem with rape laws is that the legislation is only changed when anyone among us suffers; therefore, it is essential that the rape laws function with all of their dynamism, and that the required reforms are made. Following that, the three convicts, except Akshay, requested a summary of the verdict, but it was denied. The Supreme Court rejected Akshay's appeal petition on December 18, 2019, and he was eventually hanged on March 20, 2020.

CASE COMMENT: SAHARA INDIA REAL ESTATE CORPORATION LTD & ORS VS. SECURITIES & EXCHANGE BOARD OF INDIA (SEBI) & ANR

Medha Sarin

GD Goenka University

INTRODUCTION

Clienteles nowadays are more apprehensive regarding coming into contact with high quality services while capitalizing. The anticipation is not just in receipt of an investment or financing offer from the financial institutions in form of a commodity. They rather expect the institution to have a personality of its own with wider recognition in addition provide the expected return on the economic instruments, which transports services in an atmosphere with satisfaction. In the financial sector the superiority of service is whirling out as an imperative differentiator among the rivals. This case is about Sahara group which did a fraud with their investors. Company failed to act in accordance with a Supreme Court's order in 2012 to pay back investors in the bond scheme, which the court has said was illegal. With this regard law enforcement agency arrest Sahara group owner Subrata Roy in March 2014 and to appear in court over failure of two Sahara companies to pay Rs 19,000 crore by way of dues to be paid to investors.

ABOUT SAHARA GROUP

Sahara India Pariwar was established in 1978 is an Indian conglomerate headquartered in Lucknow, by means of business interests in finance, infrastructure, housing, media & entertainment, consumer merchandise retail venture, manufacturing as well as information technology. The company had an estimated market capitalization of US$25.94 billion as of March 2011.

TIMELINE OF THE CASE

January 4, 2010- Roshan Lal, a resident of Indore sent a note to the national housing bank, requesting it to inspect into housing bonds issued by two companies of the Lucknow-headquartered Sahara group viz., Sahara India real estate corporation and Sahara housing investment corporation. Being a CA, Roshan Lal brought into being the fact that the bonds,

bought by a large number of investors, were not deal out according to the rules. The national housing bank did not have the wherewithal to investigate the accusation, so it forwarded the letter to the SEBI, The capital market watchdog.[1]

November 2010-Securities and Exchange Board of India puts a bar on Sahara India Pariwar chief Subrata Roy and two of its companies - Sahara India Real Estate Corp (SIREC) and Sahara Housing Investment Corp (SHIC) from raising money from the public as they raised several thousand crores via optionally fully convertible debentures which SEBI deemed illegal.

December 2010 - Sahara made appeal in the Allahabad High court which ordered SEBI not to take any action in anticipation of a court order is passed.

January 2011- Delhi High court issued a warrant against Sahara India Pariwar chairman Subrata Roy besides four other officials of the group on a complaint that it mislead and deceived investors in a proposed housing project of Rs.25,000 crore.

February 2011- Delhi High court stays proceedings against Sahara India Pariwar chairman Subrata Roy and four other officials of the group on the basis of aforementioned.

October 2011- Securities Appellate Tribunal (SAT) ordered two unlisted Sahara Group companies to repay within the time frame of six weeks about 17,656.53 crore with 15% interest which it had raised through a flotation of OFCDs.

November 2011- Sahara India Pariwar moved to Supreme Court against SAT's order and in favour of Sahara Group it stayed the SAT order, and ordered the two companies to refund 17,400 crores to their investors also questioned the details and liabilities of the companies.

January 2012- Supreme Court gave three weeks' time to Sahara India Pariwar to decide on between either to give sufficient bank guarantee or attach properties worth the amount raised through OFCD's.

[1] Jagannathan, R. (2016, March 31). Why Is Subrata Roy Not Eager To Get Out Of Jail? The Sahara Case Gets Curiouser. New Delhi, India.

June 2012- SEBI made conversant to the Supreme Court that real estate division of Sahara India Pariwar had no right to mobilize Rs.27, 000 crore from investors through optionally fully convertible debentures (OFCD) devoid of abide by norms of Market regulator - SEBI.

August 2012- Supreme Court directed the India Real Estate Corporation Ltd. (SIRECL) and the Sahara Housing Investment Corporation Ltd. (SHICL) to repay over Rs. 24,400 crore.

February 2014– Subrata Roy was arrested by law enforcement agency on a Supreme Court's warrant, in a dispute with Market Regulator -SEBI.

26 March 2014- He was granted interim bail by Supreme Court of India for the same on condition of depositing Rs 10,000 crore with the market regulator SEBI. As of August 2014, Roy was still in jail and was trying to sale some of his hotel properties to enough so that he could deposit the bail amount.

5 September, 2014- Sahara chief Subrata Roy requested SC for 15 more days to sell properties. Appearing before a bench headed by Justice TS Thakur, Roy's counsel submitted that there have been massive remonstrations outside the hotels subsequently an International newspaper published story that Sultan of Brunei is buying the properties.[2]

31 October, 2014-. Roy was allowed by the Supreme Court to use the jail's conference room in order to sell his hotels in order to collect Rs 10,000 crore for his bail.

QUESTIONS IN ISSUE

Issue 1: Whether SEBI had the Jurisdiction to try the matter or not?

Issue 2: Whether the hybrid OFCDs falls within the definition of "Securities" within the meaning of Companies Act, SEBI Act and SCRA so as to vest SEBI?

Issue 3: Whether the issue of OFCDs is a Private Placement so as not to fall within the purview of SEBI Regulations and various provisions of Companies Act?

[2] Kanteti, D. V. (2015). Corporate Social Irresponsibility towards Investors- A Case Analysis of Sahara Group. Indian Journal of Research, 198-199.

Issue 4: Whether hybrid instruments also with the ambit of the SEBI to regulate or?

Issue 5: Whether listing provisions under Sec 73 mandatorily applies to all public issues or depends upon the "intention of the company" to get list?

Issue 6: Whether the Public Unlisted Companies (Preferential Allotment Rules) 2003 will apply in this case?

OBJECTIONS RAISED BY THE SEBI

• As per the provision of Section 55A of the Companies Act, 2013, it surfaces the pathway for SEBI's jurisdiction and also confines it to listed public company. In this case, the company in question being an unlisted one does not fall under domain of SEBI's jurisdiction.

• As per the facts of the case if Sahara put up with the fact that it was a private placement and only nominated clienteles were requested for investment then the whole task of OFCD should have been enfolded up within 10 days in accordance with rules and regulations as well as in adherence to the guidelines. Furthermore the offer should have been limited to not more than 50 members.

• In this case more than 23 million people invested in the scheme and it continued for more than 2 years which made it an onus upon the company to make it listed as per Section 73 of the Companies Act, 2013 which forbids private company to take deposits from the public and permits only eligible companies to receive deposits from the public.[3] It must be informed to the registrar of the company. Furthermore, in such a state of affairs should bring forward within the purview of the SEBI.

• Consequently, in the light of facts provided and arguments advanced SEBI put forth that OFCD scheme is within the ambit of the definition of securities as provided by SEBI Act 1992 and Sahara should be ordered to refund the deposits of more than Rs. 24000 crores to its investors as it was taken in contravention of the laws of the land.

[3] Pande, A. (2014). Corporate fraud in India- case studies of Sahara and Saradha. seven pillars institute

OBSERVATIONS OF THE SUPREME COURT

• Legislative intent and Rule of Harmonious Construction was put in use in this case SC. These rules are used where legislation is ambiguous, or does not appear directly or adequately address a particular issue, or when there appears to have been a legislative drafting error. Section 55A was inserted in the Companies Act 1956 by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000. The Statement of Objects and Reasons give an indication of the intention of the Legislature read as follows: "to provide that the Securities and Exchange Board of India be entrusted with powers with regard to all matters relating to public issues and transfers include power to prosecute defaulting companies and their directors."

Consequently, from aforementioned it is clear that Section 55A, of the legislature, was to vest SEBI with powers to investigate and adjudicate in all the matter related to the public issue of securities.

• The SC rejected the arguments put forth by Appellants and relied on Section 67 to conclude that an offer to 50 or more persons establishes a public issue; hence the issuance of OFCDs by the Appellants was a public issue. To arrive at this conclusion, the SC also lifted the veil to scrutinize the conduct and method adopted by the Appellants further placed reliance on inter-alia the following to conclude that even in spirit the issuance by the Appellants was a public issue.

i) In the IM circulated by the Appellants, it was specified that if the number of interested parties to the OFCD issue surpassed 50 they would approach the ROC to file RHP as per Section 67(3) of the Companies Act;

ii) The Appellants made disclosures that the issue was being made on a private placement basis and that OFCDs would be obtainable only to such persons to whom IM would be circulated. But the fact remains that it was circulated to more than three crore people inviting them to subscribe;

iii) Though put up with, the Appellants could not validate their claim that the investors were friends, associated group companies, workers/employees and other individuals who were the associated/affiliated or connected with Sahara Group.

• The SC specified that Section 73(1) of the Companies Act casts an onus on every company proposing to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no preference but to list their securities on a recognized stock exchange, once they call subscription from over 49 investors from the public. If an unlisted company articulates its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal compulsion to make an application on a recognized stock exchange for listing starts. The Appellants had argued that since they did not intend to offer the OFCDs to the public, this provision should not apply. Nonetheless, as cited above, the SC on the basis of the conduct of the Appellants concluded that they intended to offer the OFCDs to the public and henceforth they were obligated to apply for listing of OFCDs.

• SC specified that the OFCDs allotted by the Appellants absolutely were unsecured debentures by name and nature. And yet, they have the dual features of shares and debentures, as defined by the term "hybrids", though, they remain debentures till the time they are converted. Further, the SC also stated that the definition of "debentures" in Companies Act take account of 'any other securities', and noted that the Appellants have treated OFCDs only as debentures in the IM, RHP, application forms and also in their balance sheet.

• SC relying on the contention of SEBI's jurisdiction over OFCDs, stated that the definition of "securities" in the SCR Act is an inclusive definition and not exhaustive. Further, the definition of "securities" in the SCR Act includes any "other marketable securities of like nature". The SC stated that any security which is capable of being freely transferable is marketable. Since, the OFCDs issued by the Appellants were freely convertible; consequently, they fall within the ambit of "securities" in the SCR Act.

• The SC also stated as Section 55A of the Companies Act, which provides provision regarding delegation of powers to SEBI refers to "securities", and the definition of "securities" in Companies Act includes "hybrids", as a result, SEBI has jurisdiction over hybrids like OFCDs issued by the Appellants.

DECISION OF THE SUPREME COURT

The Hon'ble Supreme Court ordered Sahara to repay the deposits collected by it via Red Herring Prospectus along with an interest rate of 15% up to the date of repayment. It also directed to SEBI to take lawful alternative in case Sahara fails to meet the terms with the said order.

CRITICAL ANALYSIS

The observation made by the Supreme Court is justified from all viewpoints firstly it highlighted the fact that how Sahara exasperated to violate the provisions of various statutes like SEBI Act, 1992, Companies Act, 2013. Secondly put at risk the survivals of numerous investors who predominantly belonged to the lower strata of the society and hardly made sufficient to keep fulfil their necessities. Sahara's gambled the life of majorly illiterate group of people who barely had any knowledge of the financial position of a company and consequently were confused regarding connecting the prospect to make profit out of schemes such as OFCD which necessitates acquaintance and awareness about presentation and performance of the company and of course basic knowledge regarding accurate time to convert such debentures into shares which will be a lucrative for them. Such investors are unacquainted and naive of the risk that approaches lengthwise with such enticing schemes besides out of ignorance they put all their money in one faith given by such deceitful and devious administrators of such companies. This decision of the Supreme Court in every modus will be a foremost precedent which will act as a deterrent for them not to embroil themselves in such incoherent schemes.

CONCLUSION

Many individuals used to invest in Sahara even from low income families also which points toward the factum that Sahara targeted low income group as well as high income group. Sahara was having differentiated merchandises for a number of income groups of the marketplace. Nevertheless many of the clienteles didn't get their projected returns. This fraud case dwindled its popularity and people started losing their faith in Sahara hence most of the customers don't want to invest again in the Sahara moreover, Sahara's clienteles stayed disgruntled and offended with its association in this scam.

CASE COMMENT: SHAYARA BANO V. UNION OF INDIA

A Siva Sangari

VIT University, Chennai

FORUM: Supreme Court of India

CITATION: AIR 2017 9 SCC 1 (SC)

DATE OF JUDGMENT: 22nd August 2017

JUDGES BENCH (5): Justice Jagdish Singh Khehar
Justice S. Abdul Nazeer
Justice Rohinton Fali Niraman
Justice Uday Umesh Lalit
Justice K.M. Joseph

LAWS APPLIED: Muslim Personal Law (Shariat) Act 1937

PARTIES OF THE CASE:

Petitioner: Shayara Bano

Petitioner's lawyer: Amit Chandha, Salman Khurshid

Respondent: Union of India, Ministry of Law and Justice, Ministry of Women and child development, Ministry of minority affairs National Commission for women, AIMPLB, Ahmad (Bano's Husband)

Respondent's lawyer: Mukul Rohatgi, Kapil Sibal, and Manoj Goel.

SYNOPSIS

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INTRODUCTION

This case is confined to the topic called "***Triple Talaq***"

What is Triple Talaq?

Triple Talaq means a practice where, by uttering the word called 'Talaq' thrice times the Muslim man can get divorce. With the advancement of technology, this concept was misused, where husband send talaq through even voice notes, Whatsapp messages and all.

DESCRIPTION OF THE CASE

Instantaneous Triple Talaq is held unconstitutionality by the constitutional bench.

BACKGROUND OF THE CASE

A short note to the facts

A woman survivor of the grounds like domestic violence and dowry Harassment was divorced by her husband through Instantaneous triple talaq. She then filed the petition before apex court stating that this Instantaneous Triple Talaq, Polygamy and Nikah Halala in personal law of Muslim, are violating Art 14, Art 15, Art 21 and Art 25 of the constitution. It was supported and criticised by many organisations. After that Instantaneous Triple Talaq gone without legal validity and held as unconstitutional. This was already illegal, because since 1980's a number of judgements in High Court held that, for the talaq to be legally valid, it must hold the following principles.

- Pronouncing for a reasonable cause
- Must be come last by as many attempts for reconciliation held by facilitators representing both parties.

These principles are not followed in most of the cases by the husband. So, it is already illegal. This case goes a long way to the case called ***State of Bombay vs. Narasu Appa***[1] Bench in Bombay HC, where it was said that personal law is a source of religion and not state because personal law is not covering the phrase '*laws in force*'. The SC for this showed a positive reaction in ***Sri Krishna Singh vs. Mathura Ahir (1980)***[2], Subsequently it was reversed in the 1996 judgement of the case ***Masilamani Mudaliar and others v The Idol of swaminathaswami Thirukoil***[3] and the 1997 judgement of Ahmedabad women's action group Union of India, it was again upheld. Shayara Bano case was vital not only for her immediate claims out also gave an opportunity to classify the personal law's constitutional status.

FACTS OF THE CASE

The Supreme Court through a 5 judge bench held that this practice was unconstitutional on August 22nd 2017 in a 3:2 majority.

Majority: Rohinton Nariman J and U.U. Lalit J

Heretic / Dissenting: J.S. Khehar and Abdul Nazeer

Concurring: Kurian Joseph

Shayara Bano gets married with Rizwan Ahmed for 15 years. She was divorced by him through instantaneous triple talaq (talaq –e – biddat) in 2016. She then filed a writ petition on SC, on the ground that because they are violating Articles 14,15,21,25 of the constitution, the following three practices should be held as unconstitutional.

- Talaq –e – biddat
- Polygamy(multiple wives)
- Nikah – halala

[1] AIR 1952 Bom 84
[2] AIR1982 SC 686
[3] 1996 AIR 1697

Nikah Halala also termed as tahleel marriage, in which a woman, through triple talaq she was divorced, married with another man, consummating the marriage, in order to remarry her former husband, she is getting divorced again.

The Court asked to give written submissions for the above said grounds like Talaq – e-biddat, Polygamy and Nikah Halala from Shayara Bano, Union of India, various bodies supporting women's rights and AIMPLB (All India Muslim Personal Law Board) on 16th Feb 2017. Union of India and Organisations specifically for Women's rights like Bebaak collective and Bhartiya Muslim Mahila, Andalon (BMMA) gave support on the ground that these practices are unconstitutional to Ms. Bano's Plea. But AIMPLB made an argue statement stating that through Art 25 of the constitution , it is protected that these are some of the essential features of the Islamic religion and uncodified Muslim Personal Law is not subjected to the concept of constitutional judicial review under Article 13(2).

On 30th March 2017, the Supreme Court formed a 5 judge constitutional bench and accepted Shayara Bano's Petition. Then on 22nd August 2017, by a 3:2 majority, the 5 judge constitutional bench held that the instantaneous practice of triple talaq is unconstitutional.

ISSUES IN SHYARA BANO CASE

- Whether the practice of talaq-e-biddat specifically mentioning Instantaneous Triple Talaq an essential practice of Islam?

- Whether the practice of Instantaneous triple talaq violating any fundamental rights of the constitution?

- Whether Triple Talaq protected under Act 25 of the constitution?

- Does Shariat Act give triple talaq Applicability?

CONTENTIONS

<u>Argument supporting Shayara Bano (petitioner)</u>

Mr. Amit Chandha made an advent into argument by arguing that Muslim personal law doesn't recognise a form of divorce called 'Triple Talaq'. And also made a statement like

unilateral form of divorce and triple talaq had brought no quranic sanction. Divorce under Muslim law is in need of two concepts called reasonable cause and preceded attempt of reconciliation. He also argued like, because it is violating Article 14 and Article 15 of the constitution, it should be struck down. He gave a solution to the alternative form of divorce where irrespective of gender; the entire Muslim community will get divorce which is known as "Dissolution of Muslim Marriage Act, 1939".

Arguments supporting Shayara Bano by Mr. Salman Khurshid

He made an advent into argument by saying that under Quran, after reconciliation attempts failed and with reasonable cause, if a man utters talaq 3 times, he can get divorce. And also, under Quran it is mentioned that the pronouncement of each talaq should accompany a waiting period of 3 months (Iddat) for reconciliation. And during the reconciliation period if they are not reconciling, husband by pronouncing talaq at the third time can get divorce which is effective and unalterable. Also made an argument by saying that most of the Muslim communities which are prevailing are Sunni (90%) and they don't made triple talaq as a valid one, so it must be declared void.

Arguments supporting respondents by Mr. Kapil Sibal (supporting AIMPLB)

He made an advent by saying that since Muslim marriage is a private contract, the concept of judicial review is not acceptable. And also mention that Art 13 is something which does not include personal laws. Court can access validity only after parliament made any changes on secular activities (freedom of religious practice) under art 25(2). And also, triple talaq is not discriminating Muslim woman and for bad marriages also, she can claim remedies under.

- Special marriage act,1954
- By delegating right to talaq to herself
- Insisting high mehar amount

Arguments for respondent by Mr. Mukul Rohatgi (supporting Union of India)

He made an advent into argument by declaring the constitutional validity of three grounds called triple talaq, polygamy, and Nikah halala. The AG argued on the basis of Narasu Appa Mali case, stated that "Immunity to uncodified personal law from fundamental rights challenges" is at the point of revisiting. Through Masilamani case, **J. Kurian Joseph**

suggested that personal law was also subjected to fundamental rights. He then stated to argue about the scope of art 25. Also he made a stressed statement like triple talaq is protected under art 14, 15, 21. He concluded by saying that the court must invalidate triple talaq as it is infringing Art 13,14,15,21,51 by striking down sec 2 of Shariat act 1937.

Arguments by Manoj Goel in favour of Shayara's husband

He made a major argument in the point that divorce is actually between two individuals and no state action is involved for that **J .Nariman** made a counter argument like Shariat act 1937 includes state; therefore the state's involvement is mandatory.

FINDINGS

The court by analysing the following points came to the final judgement.

Amit Chandha, a petitioner's side advocate made a very important point like triple talaq is not recognised by Muslim personal law (Shariat act) and it is totally against quranic principle, therefore received no legal sanctity.

Salman Khurshid, also a petitioner's side lawyer made an argument where in which he stated that triple talaq is not followed by a majority of people(called Sunni's) therefore, it is not an essential religious practice. These are the findings which the court analysed to give the final judgement which was given by majority judges (**J. Nariman and J. Uday Umesh Lalit**) and also concurring judge called (**J. Joseph**)

The findings from which the dissenting judges (**J. Khehar** and **J. Abdul Nazeer**) gave their judgement are:

Kapil Sibal, a respondent side's lawyer gave a statement stating that Muslim marriage being a private contract, is not subjected to judicial review. **Mukul Rohatgi**, another respondent's lawyer, stating that it is an intrinsic part of personal law and not subjected to declare its constitutionality. **Manoj Goel**, also a respondent's lawyer stated that divorce is between two individuals therefore the involvement of state in it is not necessary.

REASONING

The solutions which are provided for the questions which are raised in the issues...

a) **Whether the practice of talaq –e- biddat specifically mentioning Instantaneous triple talaq an essential practice of Islam?**

Essential practice is something which relies basically on their custom. If such practice / custom is not followed or restricted to follow means, that is not the essential religious practice of that religion; the essential practices are something which is fundamental to the proliferation of that religion. It is commonly known as "vivacious practice of that religion". If the encroachment of such religious practice causing any intervention of state, then that right is violated under Art 25(1) . And the instantaneous triple talaq is not followed in mode of the Muslim countries and they declared that this is not the essential practice of Muslim. This question was actually been raised from the minority judge **J.S Khehar** and he was arguing, as this was followed by an optimum number of people and it was sanctioned by religious denomination, therefore it is the most important and essential religious practise and made it as constitutionally valid

b) Validity of Triple Talaq

Art 25 of the constitution says that if it is an essential religious practice, you cannot strike it out, but if not and it is found arbitrary you can strike it out, that is covered under Art 25(1).

As per majority decision, it was not a thing which is protected under Art 25, because although is followed by one school called Hannifin, still is considered as s sinful matter according to theology of Islam. And it is completely against the basic motto of Quran and if it is found arbitrary against Quranic principle, then of course it is against Shariat Act too. And just by the fact that it is followed by a majority of people cannot be validated by the constitution.

And also, Act 25 guarantees the person under the following exceptions alone to proliferate any religion of choice

- Public Order
- Health
- Morality
- Other provisions of part III

The following issue is in no way related the first three exceptions but related to the 4th exception (i.e.). It is violative of Art 14.As held by **J. Nariman and J. Lalit** that, the major institutional tie that marital tie is broken without the consent of wife (gender inequality) and

without reconciliation, and everything is in the hand of husband, clearly indicates that it is violative Art 14 and this is not the principle which is followed in the divorce of other religion. The same gave the answer to Issue No: 3 that are whether triple talaq protected under Art 25. (i.e.) No protection will be given by constitution why because:

"*What held to be evil in Quran cannot be a virtuous thing in Shariat and what is evil in theology cannot be a virtuous thing in law as well*"

c) <u>Does Shariat Act give Triple Talaq applicability?</u>

According to Muslim law "the Muslim man under the circumstance like the woman is in docile or with a bad character alone, can divorce his wife otherwise he can't"

The answer to the question:

- It will come under Art 13(1) (Pre constitutional law) because it came before the commencement of the constitution (i.e.) at 1937.

- According to pre constitutional law , if anything that infringes fundamental rights, then that should be declared as void according to their inconsistency level by using doctrine of eclipse and severability.

- Triple talaq is violative of Art 14 because it gave privileges to male alone and not female and according to Art 13(1) Shariat Act, as far as giving applicability to triple talaq should be struck down. This is the applicability of triple talaq in Shariat Act.

DISPOSITION

The case is disposed of accordingly.

By a 3:2 majority, the constitutional bench of the Apex court held that triple talaq is an unconstitutional practice on 22nd August; 2017. The judgement was reserved for this case after an argument which went for about 6 days. Parliament was directed by the court to bring legislative measures against the practice of triple talaq. Muslim personal law regulated talaq-e-biddat which is the holding position of **J. Rohinton Nariman, Uday Umesh Lalit**. Because of the arbitrariness, they held triple talaq as unconstitutional in its nature. Concurring opinion was given by **J. Kurian Joseph** in which he held that due to arbitrariness

of triple talaq against the holy quranic principle it lacked the legal sanctity. The dissenting/heretic opinion was given by **CJI Khehar** and **Abdul Nazeer** in which they elevated the personal law into fundamental rights in the debate of constituent assembly on Art 25 and Art 44. They made a statement where they held that triple talaq is protected under Art 25 why because even though it is not regulated by Shariat act, still it is an intrinsic part of personal law. And they made a statement stating that we cannot challenge its constitutionality just because of the fact to provide a solution to gender discriminatory practice of it and it is totally up to legislative action. And the judgement is still applicable and not overruled.

CRITICAL ANALYSIS

Analysing personal and constitutional law in Triple Talaq

In most of the cases, we will think that the correct one to take is the court's decision and the same also can be used as precedent in many case but this case made a different approach because the principles which was given by the majority judges give rise to a new debate called in a secularized country like India how to look at personal law. The major arguments which was raised to **J. Khehar** was that scope of the sovereign law does not include an uncodified law of personal law to be enacted and authorised by state and also the general principle is only state enacted laws are subjected to fundamental rights and here it is not similar to the general principle. For this he gave a varied opinion to the constitution and same was held valid too. **J. Nariman's** decision made a different view that he included triple talaq under Art 13 "*law in force*".[4]

Analysing the violation of Article 14

J. Nariman made test of arbitrariness as void but the general principle is art 14's violation can be found through test of reasonable classification as well as test of arbitrariness. He finally reached the conclusion where he focuses the arbitrariness of religious practice of triple talaq rather on the inequality of two genders.

Analysing right to gender equality under Art 14 and Art 15

The major point which was missing in the argument was gender inequality. They formed more towards unislamic practice rather than on the ill effects of triple talaq. It will follow the same result of Shah Bano case if AIMPLB view it as a problem of Muslim identity. Nothing

[4] https://www.shoneekapoor.com/shayara-bano-case-triple-talaaq-illegal/

happened like in the judgement of shah bano case and they gave a judgement which is similar to equality, where marriage had been given a higher priority as an institution.

Analysing right to freedom of religion

J. Nariman made an argument by saying that it was not protected under art 25. **J. Joseph** also came with similar opinion but move the case in a quite different manner by saying that it is the judge's duty to decide on the case and clearly explain where private law is unclear about something. His only focus was to determine legal sanctity of triple talaq in Muslim personal law rather to choose constitutional aspect. He tactfully invalidates instantaneous triple talaq by mainly focussing commentaries by Muslim judges on Muslim law and thus made a judgement which is politically viable. Finally we arrive at a judgement which was given by majority judges that they struck down the repressive triple talaq.

RELEVANT CASES

Ishrat Jahan v Union of India[5]

Court: High Court of Judicature at Patna

Case no: 9643 of 2017

Mohd Ahmed Khan v Shah Bano Begum[6]

Court: Supreme Court of India

Aafreen Rehman v Union of India[7]

Writ petition no: 288 of 2016

CONCLUSION

Even though triple talaq was held unconstitutional by a 3:2 majority in apex court, still there is an ambiguity which is prevailing on the part of reasoning which is given and the same is proven by judges. Triple talaq was considered as unislamic and unconstitutional by **justice Nariman, Lalit, Joseph**. Presently the law of the land is clear and it was abolished by the constitution of India and also to curb the menace the legislation was enacted by the government of India.

[5] CIVIL WRITJURISDICTION CASE
[6] 1985AIR 945
[7] (2017) 9 SCC 1

CASE COMMENT: THE SECRETARY, MINISTRY OF DEFENCE V BABITA PUNIYA & ORS

P. Gayathri

VIT University, Chennai

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SYNOPSIS

Gender equality has been always a controversial topic in India since ages. Equality for women in armed forces is clearly shown in Babita puniya v ors. This case is concerned about the women officers admitted through Short Service Commission for permanent commission started on 30th Jan 1992.The permanent commission provides a career to the officers till the retirement in army. It also provides advantages like pension and other facilities. Only ten or fourteen years' appointment is given to the SSC officers. A group of women officers and advocates raised their voice against it. So this case law revolves around this issue which was taken by the apex court in the year of 2011.

BACKGROUND

Sec 9(2) of Navy act, 1957[1] speaks about Indian naval reserve does not enroll any women. This was given raise by article 33 of Indian constitution[2]. And also sec 12 of army act, 1950[3] is about no women is eligible to enroll in army except departments that official gazette notifies. Even today women in armed forces are not appointed in combative service or as front line warriors.

1992: Now the women candidates were granted Short service commission by a notice from union government. They can work in departments like engineering, army postal services, judge advocate general, regiment of artillery, corps of signal, intelligence department for 5 years. From the narrow role now the role was bit widened. Women appointed in these departments started seeking for equality in obtaining permanent commission as male officers.

2003: A writ petition on nature of public interest litigation was filed by a practicing advocate, Babita puniya in order to get permanent commission for women officers as their counterpart male officer who was appointed by Short service commission. Petition was also filed by various women officers who were later tagged with the petition of Babita.

2005 and 2006: The validity of appointment schemes was extended for women officers who were issued by ministry of defense. Later on 2006, it was issued those women officers can serve a period of 14 years. But again few petitions was filed asking for permanent commission by Lt col Seema singh and Major Leena Gaurav and also to challenge the circular which was issued previously that year.

2008: Departments like Army education corps and Judge Advocate general were provided with permanent commission to SSC officers. Again it was challenged as the PC was only provided to two departments.

2010: SSC women officers who served for 5 or more years should be provided with PC with the other benefits like pension was what held in Delhi High court. Later this order was challenged by Army on July and was moved to Supreme Court.

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[1] Section 9 (2) of Navy Act, 1957.
[2] Article 33 of the Indian Constitution.
[3] Section 12 of Army Act, 1950.

2018: Granting of PC to SSC women officers was considered which was said by central government to Supreme Court.

2019: The Supreme Court granted PC for SSC recruited women officers but only those women officers will be eligible who were commenced after this order.

ISSUES

1. Whether PC should be given to women officers in Indian Army?

2. Is the guidelines given on 15th Feb 2019 by government of India are implemented?

3. Is the condition of women officer in Army proper?

ARGUMENTS

Appellant:

Appellant i.e the secretary and ministry of defense's argument was carried forward by Union of India who kept various points which also included the challenging of Delhi high court's decision on granting of PC to women officers.

1. It was argued that Sec 10 and Sec 12 of Indian army act[4] was not considered by High Court of Delhi including the instruction by government of India.

2. They also had put forward that the border areas do not have proper facilities or they have minimal hygiene and basic facilities so taking this as a major criteria the women officers were not appointed as a front line combat in the services.

3. The structure of Army will collapse if women officers are provided with the PC.

4. As the lower court and government of India ordered about the pension and other beneficiary that were already bestowed to the women officers by SSC.

[4] Section 10 & 12 of Army Act, 1950.

5. They mentioned that male officer legitimate dues are been compromised due to the long leave by women officers for some essential reasons like maternity leave, child care leave which leads to a vast problem.

Respondent:

1. They cited that beneficiaries were not provided even after receiving the order from High court of Delhi.

2. As the Union of India stated that the presence of women officers is a great collapse. The respondent objected this by saying that equal opportunities should be offered to women as well.

3. Army does have a particular set or mandatory course for both men and women. After undergoing such rigorous training process women are also eligible and deserving for promotion and PC.

4. The retired male officers of colonel rank were been filled in vacant place due to shortage of officers. Even after having the capabilities the women officers are not given chance. There are only 4% of women officers in Indian army.

5. About 30% of women officers are already appointed in sensitive and border areas without any proper facilities so this will not new to the women officers.

FINDINGS

Basic outline of this case is about gender equality i.e, the women officers and advocates in army fought for their equality to get PC who were recruited from SSC commission. According to the rules in Army act women were not allowed to get PC, or to work as a front line combat. Now after a particular point the women officers came up with an issue that even after being competitive enough and having the capacity they are discriminated on the basis of sex and were not provided with the equal opportunities and PC.

The judgment of this case was passed on 15th Feb 2019.Before the case arrived in SC, the HC ordered the army to provide PC for particular group but the Army did not follow it. But once the case was in apex court and judgment was given in February.

The Army training would be rigorous in nature and they are trained in such a manner that they can survive in a harsh condition and climate. As one of the argument raised by appellant that they are not supposed to be transferred to a warfare area or border area due to lack of basic facility and proper hygiene which would affect their motherhood.

REASONING

Justice Dr Dhananjaya Y Chandrachud J and **Hemant Gupta J.** came up with justice who was fair enough and supportive to women officers for providing PC to them after a long fight for it. The judgment that was passed by SC on Feb as the final decision for providing with PC, the army subsequently followed these instruction and supplied the women officers the necessary beneficiary and PC in following years. Women officers in their argument stated that even in existing case there is lot of women officers who are transferred to border areas without any proper facilities and hygiene so now it would not a big deal to handle such situation by them.

DISPOSTION

The Justice stated that there was a violation of Article 14 of Indian constitution[5]. Also included that article 33[6] has allowed some kind of restriction on Fundamental rights but also only to an extent that it was necessary to ensure proper discharge of duty and maintenance of discipline.

There is some condition with the direction of Article 69 of Indian constitution[7] imposed on women officers in PC through SSC by the union for policy decision:

1. If the women officer have crossed fourteen years of service or may be 20 they are eligible to get PC.

2. With the PC the women officer will also be entitled with beneficiary of promotion, pension and financial incentives.

3. They can continue their service until pensionable service.

[5] Article 14 of the Indian Constitution.
[6] Supra 2
[7] Article 69 of the Indian Constitution.

4. The clause ‘various staff appointment only’ shall not be enforced.

PROVISIONS INVOLVED

1. **Sec 10 of Army act, 1950**: The president has all the power to appoint an officer whom he thinks is fit.

2. **Sec 12 of Army act, 1950**: No women are eligible in regular army rather they can be appointed as a staff member.

3. **Article 14 of Indian Constitution:** Equality before law
Everyone is equal before law within the territory of India.

4. **Article 15 of Indian Constitution**: Prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.

5. **Article 16 of Indian Constitution**: Public employment should be on the basis of equal opportunity.

6. **Article 33 of Indian Constitution**: Power of parliament to modify the rights conferred by this part in their application etc.

CRITICAL ANALYSIS

Even after 73 years of Independence the real question that arises is “whether the women are provided with equal rights and opportunity in all the fields? This time the court took a stand and supported for the gender equality in armed force. Although the women have the capacity and eligibility they are not provided with the equal opportunity due to which they face a lot of difficulty in their career growth. We have a bunch of articles in Indian constitution relating to the rights and equality like article 14 to 18, specifically article15 (3) etc. On March 2021, the SC expressed anguish as the judgment allowing PC for women officers were not implemented by Indian Army.SC also stated that “there is a different story about the service condition of women officers, so it is not enough to proudly say that Indian Army allow women officers.”

In terms of gender inequality the landmark cases like ***Air India v Nergesh Meerza***[8] which revolves around the equality for airhostess which included restriction from marriage and termination from job in case of pregnancy which also violates articles like article 14, 15(1), and 16(2). The major myth in our society is women are of weaker sex and it is assumed that women are the one who should solely take all the domestic responsibilities. The submission by Union of India was considered as sex stereotype and gender inequality by the Supreme Court as this judgment was carried by Dr Dhanunjaya, J and Hemant Gupta. Holding back or restricting their period of service even after having the capacity is not a fair decision by Army act.

CONCLUSION

The judgment provided PC to women officers with the beneficiary of pension and promotion which is appreciable. It removed the restriction that was imposed on women officers. But it left us with a question, in this case the rights are been provided to women officers but what about the gender discrimination and lack of opportunities in each and every house of India. Women are discriminated in various ways like politically, economically, socially, educationally, which are not even bought in light in many cases. In this case the advocate like Babita puniya and other women officers raised their voice against their issue and got justice finally after years and also the court took a stand with the women and provided justice. This judgment will always remain as a best judgment for gender equality in defence service includes Army, Air Force and Navy.

[8] Air India v. Nergesh Meerza, 1981.

CASTE SYSYTEM: AN INVITATION FOR DISCRIMINATION

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INTRODUCTION

India is a vast country with several problems as like child labor, corruption, honor killing, domestic violence, gender discrimination, caste discrimination etc. One of the biggest among them is 'Caste Discrimination'. This Article contains the basic idea about Caste discrimination, the history, some stats about caste discrimination, recent examples of caste based violence and its modern impact. Now starting with the intro:

Caste discrimination or Rank segregation influences an expected 260 million individuals around the world, by far most living in South Asia[1]. It includes monstrous infringement of common, political, monetary, social and social rights. Position based segregation can impact all circles of life and abuse a cross-part of essential basic freedoms including common, political, social, financial and social rights. It is additionally a significant hindrance to accomplishing improvement objectives, since influenced populaces are frequently rejected from advancement measures. Caste frameworks partition individuals into inconsistent and progressive social gatherings. Those at the base are considered 'lesser individuals', 'tainted' and 'contaminating' to other rank gatherings. They are known with the name of 'untouchables' and exposed to the 'untouchability practices' in both public and private spheres of life. 'Untouchables' – referred to in South Asia as Dalits – are frequently coercively allocated the grimiest, humble and risky positions, and many are exposed to constrained and fortified work. Because of avoidance rehearsed by both state and non-state entertainers, they have restricted admittance to assets, administrations and improvement, keeping most Dalits in serious neediness.

In spite of its sacred cancelation in 1950, the act of "untouchability"- the inconvenience of social incapacities on people by reason of birth into a specific caste remaining parts a lot of a piece of provincial India. Speaking to more than one-6th of India's populace or around 160

[1] Study commissioned by the European Commission to the International Dalit Solidarity Network.

million individuals Dalits suffer close to finish social alienation.[2] "Untouchables" may not go too far partitioning their piece of the village from that involved by higher ranks. They may not utilize similar wells, visit similar sanctuaries, or drink from similar cups in tea slows down. Dalit kids are habitually made to sit at the rear of homerooms. In what has been called India's "concealed politically-sanctioned racial segregation," whole villages in numerous Indian states remain totally isolated by caste.[3]

"Untouchability" is fortified by state allotment of assets and offices; separate offices are accommodated separate caste based areas. Dalits frequently get the less fortunate of the two, in the event that they get any whatsoever. In numerous villages, the state organization introduces power, disinfection offices, and water siphons in the upper-caste segment, however fails to do likewise in the neighboring, isolated Dalit region. Fundamental civilities, for example, water taps and wells are likewise isolated, and clinical offices and the better, covered rooftop houses exist only in the upper-rank settlement. As uncovered by the contextual investigation beneath on the quake in Gujarat, these equivalent practices remain constant even in the midst of extraordinary catastrophic event.

India's Caste framework is maybe the world's longest enduring social pecking order. A characterizing highlight of Hinduism, rank includes an unpredictable requesting of social gatherings based on custom immaculateness. An individual is viewed as an individual from the position into which the person in question is conceived and stays inside that caste till the very end, despite the fact that the specific positioning of that rank may change among districts and over the long run. Contrasts in status are generally advocated by the strict precept of karma, a conviction that one's place in life is dictated by one's deeds in past lifetimes. The framework generally demoralizes individuals from various positions to interface with one another more than due to legitimate need, for instance by disallowing between station marriages. Particularly in rustic regions, station divisions rule in lodging, marriage, and general social cooperation - divisions that are fortified through the training and danger of social avoidance, monetary blacklists, and even actual viciousness. It should be noticed that in contemporary metropolitan India, social mentalities towards the customary rank definition are changing, particularly as new types of occupations are creating. Albeit some station based bias positioning actually existed, abundance and force was presently less

[2] Asia division of Human Rights Watch.
[3]Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables"*.

connected with rank. Caste turned into much less critical piece of day by day to day routines of individuals who experienced in metropolitan zones contrasted with country regions, however its essentialness actually differs by social class and occupation. Among metropolitan working class experts, rank isn't transparently examined and is pretty inconsequential, aside from with regards to conjugal courses of action. That being said, there are changes made with contemplations towards training, occupation, and pay, just as religion and language. In spite of the fact that segregation based on station has been banned in India, is still exists in the network today.

The caste framework is a strict progressive system defined to separate Hindus into unbending gatherings "dependent on their karma and their obligation "[4]. The framework is separated into five principle classes with the Brahmins being viewed as the most elevated and most very much regarded while the Dalits or Untouchables are named the least class. The pyramid framework represented in the figure to the correct exhibits the pecking order of each class, yet in addition what jobs each class fills inside this sub-society. For example, individuals a piece of the Brahmin class fill the function of ministers subsequently accomplishing the most elevated type of regard inside this framework, though individuals of lower classes fill the parts of laborers and cleaners hence deserving far less admiration than their upper partners.

Conventional grant has portrayed this over 2,000-year-old framework inside the setting of the four head varnas, or huge station classifications. Arranged by priority these are the Brahmins (clerics and educators), the Ksyatriyas (rulers and warriors), the Vaisyas (dealers and merchants), and the Shudras (workers and craftsmans). A fifth class falls outside the varna framework and comprises of those known as "untouchables" or Dalits; they are frequently relegated assignments excessively ceremonially contaminating to justify incorporation inside the conventional varna framework.[5] Almost similar structures are also clearly seen in Nepal. Since India's autonomy from Britain in 1947, there has been impressive unwinding of rules identified with the caste framework. There was all the more sharing between individuals from the center and upper castes, however those in the most reduced positions kept on eating independently from the rest. There was additionally a critical change in word related objectives and interests among men from 1954 to 1992. Prior, most men were devoted to their conventional rank related positions, yet by 1992, most had taken up fresher occupations.

[4] "What is India's Caste System" *BBC*, 19 June 2019.
[5] Ainslie Embree , *Sources of Indian Tradition: From the Beginnings to 1800*.

The caste framework especially affected the monetary structure in the Indian village. The village was basically a food-giving unit, where every group of the specialty or administration position was connected with at least one of the land claiming rancher station family. This framework was known as the jajmani framework, which made due in India up to the appearance of the British. W.H. More shrewd in his Hindu Jajmani System shows the commonality of relationship in a village network dependent on the trading of merchandise and enterprises between various stations.6 In the village that Wiser contemplated, he found that "there were 24 castes fixed by birth—minister and instructor, poet and geologist, bookkeeper, goldsmith, flower vendor vegetable cultivator, rice producer, woodworker, ironworker, hairdresser, water-conveyor, shepherd, grain parcher, seamster, potter tradesman, oil-presser, washer man, tangle creator, cowhide specialist, sweeper and cess pool cleaner, Mohammedan hobo, Mohammedan glass bangle dealer, Mohammedan cotton carder, and Mohammedan moving young lady" . Every individual had a fixed financial and economic wellbeing. Indeed, even the bum, for instance, had a fixed status. Offering donations to the hobo was considered as a strict obligation with the goal that it could be requested starting at right and each was identified with others in utilized boss relationship. Essentially, a similar person who was a business in one relationship was the utilized in another. It very well may be seen from the above rundown of position qualifications that the snare of financial soundness and security that was given by a person's separate station and by those connections the individual gained through their occupation was basic to village live. The station framework is the thing that drives framework remains flawless these connections and these connections are one reason the caste.

IN MODERN INDIA

Connections between castes have become more loosened up today. There is more food sharing among stations and significantly all the more eating done at neighborhood eateries where position qualifications are less inclined to be made. Probably the greatest change that occurred in India was word related interests among men (and ladies later on). Prior, most men didn't veer away from their station connected occupations, for example, blacksmithing and earthenware making. Many have now taken up fresher occupations that don't identify with their rank, for example, government occupations, instructing, retail and administrations, and machine fix. Abundance and force in the village is presently less connected with rank than previously, and landownership has gotten more enhanced. Additionally, the possibility that

immaculateness and contamination is brought about by the lower castes has lessened a decent sum. It has, in any case, just fairly lessened in the general population, while away from public scrutiny and on stately events, filtration ceremonies identified with rank status are as yet watched. Endogamy is as yet implemented among families, however not as exacting as in the past. A ladies' status is still essentially attached to the status of the male, however instruction and familiarity with evening out for ladies has broadly spread all through India. In provincial territories, development out of rank practicing occupations and admittance to assets is as yet troublesome and delayed for the lower stations, however in metropolitan regions, caste is presently a less critical piece of day by day life. In spite of the fact that discrimination based on caste has been prohibited in India, caste has become a method for viewing for admittance to assets and force in current India, for example, instructive chances, new occupations, and improvement in life possibilities. This pattern is associated with India's special approaches and the execution of these arrangements.[6]

Execution has been lopsided amidst discussions and contentions over the particular arrangements, yet they have still had a critical effect on numerous segments among the lower castes and classes. There has been an expansion in portrayal of SCs, STs, and OBCs in chose workplaces and they have procured solid nearby help. They have additionally become a significant component in discretionary governmental issues and have proceeded to shape solid ideological groups in different districts. Individuals from these impeded gatherings have to a great extent advanced into government occupations just as all degrees of instructive organizations.

Lamentably, nonetheless, just a moderately little extent of the lower positions have profited by these special arrangements. Indeed, even idea there is an expanding acknowledgment of lowercaste people, there is likewise more plain antagonism and viciousness communicated against the lower ranks and classes in numerous pieces of India. For instance, in parts of Bihar, which is a state in eastern India, upper-rank landowners shaped a private armed force in 1994 called the Ranvir Sena to "secure" themselves from the lower castes. Despite the fact that this was prohibited, the Ranvir Sena had done 20 slaughters of Dalits by mid 1999. Antagonism is likewise communicated by the numerous individuals who uphold the expulsion of held government occupations and in establishments for specialized training, especially with respect to numerous from the generally higher castes who are monetarily

[6] McGraw-Hill, *"Modern India"* (Boston, 2000).

hindered. Singular accomplishments, merit, just as financial position are likewise still altogether influenced by caste.

SOME HOT INCIDENTS RELATED TO CASTE BASED VIOLENCE

- **Kilvenmani massacre, Tamil Nadu, 1968 on 25 December**: In 1968 a gathering of 44 striking Dalit village workers were killed by a posse or gang, sent by their landowners, as they were requesting higher amount for wages.

- **Karamchedu massacre, 1985:** Karamchedu slaughter is a slaughter which happened in Karamchedu, Andhra Pradesh on 17 July 1985, where madiga rank dalits were executed by the upper castes in 1985. Numerous individuals lost their lives in the episode.

- **Ranvir Sena**: During 1990s Ranvir Sena is a local army bunch situated in Bihar. The gathering is based among the higher-caste landowners, and completes activities against the prohibited naxals in provincial zones. It has submitted savage acts against Dalits and different individuals from the planned station network with an end goal to keep their territory from going to them.

- **Tsundur Andhra Pradesh, 1991:** The village got notorious for the slaughtering of 8 dalits on the 6 August 1991, when a horde of more than 300 individuals, made out of principally Reddys and telagas pursued down the casualties along the bund of a water system channel.

- **Bara Massacre, Bihar, 1992**: At 12 PM on 12–13 February 1992, the Maoist Communist Center of India (presently the Communist Party of India (Maoist)) mercilessly slaughtered 35 individuals from the Bhumihar rank at Bara Village close to Gaya District of Bihar, India.

- **Bathani Tola Massacre, Bihar, 1996**: 21 Dalits were murdered by the Ranvir Sena in Bathani Tola, Bhojpur in Bihar on 11 July 1996.[7] Among the dead were 11 ladies, six youngsters and three babies. Ranvir Sena horde slaughtered ladies and kids specifically with the aim of dissuading any future obstruction which they predicted.

[7] "All accused in 1996 Bihar Dalit carnage acquitted" *The Hindu*, April 17, 2012

- **Melavalavu murders, 1996:** In the village of Melavalavu, in Tamil Nadu's Madurai area, following the appointment of a Dalit to the village board administration, individuals from position Hindus (Kallar) bunch killed of six Dalits in June 1996.[8]

- **Kambalapalli incident Karnataka, 2000:** On 11 March 2000, seven Dalits were secured or locked in a house and consumed alive by an upper-rank Reddy horde in Kambalapalli, Kolar region of Karnataka state. The Civil Rights Enforcement (CRE) Cell examination uncovered profound established enmity between the Dalits and the upper-stations as the purpose behind the savagery.[9]

- **Khairlanji massacre Maharashtra, 2006**: On 29-9-2006 four individuals from the Bhotmange family having a place with the Mahar people group were executed by a horde of 40 individuals having a place with the Maratha Kunbi position. The episode occurred in Kherlanji, a little village in Bhandara region of Maharashtra. The Mahars are Dalit, while the Kunbi are named an Other Backward Class by the Government of India.

- **Dharmapuri violence, 2012**: In December 2012 roughly 268 residences – cottages, tiled-rooftop and a couple of room solid places of Dalits of the Adi Dravida people group close to Naikkankottai in Dharmapuri area of western Tamil Nadu were burnt by the higher-station Vanniyar. The casualties have asserted that 'methodical decimation' of their properties and job assets has occurred.[10]

- **Gang-rape and Murder of Nandini, Tamil Nadu, 2016:** On December 2016, a Hindu Munnani Union Secretary and three of his associates assaulted, and killed a 17-year-old minor Dailt young lady in Keezhamaligai village, Ariyalur locale. The police uncovered that the Hindu Munnani functionary was bothered over the lower-station dalit young lady who demanded to wed her after she got pregnant with him.

- **Saharanpur violence, 2017:** The brutality broke out during the parade of Rajput fighter ruler Maharana Pratap over the noisy music. In the viciousness one man was executed, 16 were harmed and 25 Dalit houses were destroyed.

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[8] Praveen Swami , "Down and out in Punjab Archived" (2008)
[9] " Kambalapalli carnage probe completed" *The Hindu*, April 14 ,2018
[10] "3 Dalit colonies face mob fury in Dharmapuri". *The Hindu*, May 16 ,2013

- **Suicide of Dr Payal Tadvi 2019 On May 22, 2019**: Dr Payal Tadvi, a 26-year-old Schedule Tribe Muslim gynecologist, kicked the bucket by ending it all in Mumbai. For quite a long time paving the way to her demise, she had revealed to her family that she was exposed to ragging by three "upper" caste ladies specialists in any case, the blamed denied for having any information on Dr Payal's ancestral foundation. They supposedly went to the latrine and afterward cleaned their feet on her bed, called her casteist slurs, ridiculed her for being an ancestral on WhatsApp gatherings and threatened to not permit her to enter activity theaters or perform conveyances. A couple of hours before she ended her life, she had purportedly revealed to her mom, by and by, about this badgering.[11]

- **Hathras Murder 2020**: In September 2020, a dalit young lady in Hathras area of Uttar Pradesh was supposedly killed by 4 men from Thakur society. As per casualty's family, the young lady was assaulted and so as to take out the confirmations her spine was broken and her tongue was cut by the culprits.[12]

  There are several other incidents also present in India related to the discrimination against the lower caste people. India is just a portion of South Asia if we count it in a whole then there would be millions of cases related to caste discrimination. The cases which are shown above are the reported ones, we should also not forget about the cases which are not being reported because of several reasons as like threat, unsupportive attitude of public officers, political reasons etc. If a count is made to the cases of discrimination as a whole (including the unreported cases also), then one would easily say that the earth is not a place of living for the Dalits or lower caste people.

[11] "Payal Tadvi suicide case: Three accused sent to police custody till May 31" *The Times of India*. August 9, 2019

[12] "Dalit girl assaulted in UP's Hathras succumbs to injuries". *Newslaundry*. October 2, 2020

EFFECT OF FORCE MAJEURE CLAUSE AND THE CONTRACTUAL OBLIGATIONS IN LIGHT OF COVID -19: AN INDIAN PERSPECTIVE

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ABSTRACT

The pandemic has not simply resulted within the humanitarian disaster but additionally had a devastating effect on the commerce lives and the global economies all around the world which had consequently ended in lockdowns and restricted movement of people. It additionally had a huge impact in India. This is a Non-doctrinal research paper of case commentaries which focuses mainly on the effect of force majeure in the performance of contracts in context of India. This paper also opens up the contract cases of the High Court and Supreme Court and analyzes the various remedies available to the parties. Finally, the extent of limitation period of a contract is also critically analyzed.

Keywords: Humanitarian disaster, Global economies, Non-doctrinal, Force majeure, Performance of contract, Remedies, Limitation

INTRODUCTION

As the outbreak of the Covid-19 throws a huge shadow over various sectors, contracts have ended up in the non-performance of contracts. Contracts have to be reconsidered and responsibilities ought to be reassessed. Force majeure is an occurrence that cannot be anticipated, stopping a party from finishing something that that they had undertaken to do. It includes each acts of nature, including floods, and acts of man, such as riots, and wars. If an occasion or situation comes within the circle of a force majeure event and fulfils the situations for applicability of the clause then the result could be that parties might be relieved from performing their respective obligations to be undertaken via them below the settlement at some step in the period that such force majeure occasions might keep.

The regulation accepts that a force majeure clause is binding even though force majeure isn't always statutorily described and the events are unfastened to agree the said contractual

phrases. But, section 32 of the Indian contract Act, 1872, which affords for contingency contracts, can be taken into consideration a statutory place to begin for this.

If a contract that does not contain any force majeure clause the parties can see section 56 of the Contract Act which deals with agreements between the parties to do an impossible act can be applied to such contract so as to discharge the parties from their contractual obligations. The force majeure clause also includes the Government orders and acts and notice should be given by either of the parties to the contract within 30 days from the date of occurrence and the goods are deferred for six weeks. If it continues for a prolonged time the parties may even terminate the contract. Suspension of obligations by the parties upon the force majeure event is one of the consequences. This is basically the force majeure clause and in this pandemic it shall be deferred for a period of lockdown until it is in effect. Likewise there are many contractual obligations and its related cases of High Court and Supreme Court which is analyzed in this paper.

METHODOLOGY

This is a non – doctrinal research on breach of contract dealing with the cases of High court and Supreme Court. Going through various cases, we apprehend that the above - mentioned case was unique and it will be a best case to research on the breach of contract and award compensation. The present case that is taken for the study is ***Tuticorin Stevedores Vs The Government of India*** on 14th September ,2020 before the Madurai bench of Madras High Court, Coram The Honourable Mr,Justice G.R.Swaminathan WP(MD) n.6818 of 2020 and WMP(MD) no.6217 of 2020[1], where the petitioner is an association of stevedores that has been registered under the Tamilnadu societies Registration Act,1975 and the respondent is the Government of India that imposed lockdown order dated 24.03.2020. The forth respondent had filed a counter affidavit against the petitioner and the learned counsel gives its Judgment on account of the prayers of both the parties.

ARGUMENTS

Case: Tuticorin Stevedores'… Vs The Government of India on 14th September, 2020 before the Madurai bench of Madras High Court, Coram The Honourable Mr. Justice G.R. Swaminathan WP (MD) n.6818 of 2020 and WMP (MD) no.6217 of 2020

[1] https://indiankanoon.org/doc/20717870/

1. **Petitioner**

1.1 The petitioner is an affiliation of Stevedores who has been registered below the Tamil Nadu Societies Registration Act, 1975 whose individuals are engaged at Tuticorin port in clearing of shipment.

1.2 The government of India imposed lock down order dated 24.03.2020, following the outbreak of Covid-19 pandemic. Despite the fact that precise exemption come to be given in apprehend of operations of Railways, Sea port for cargo moves and inter-kingdom movement of cargo, the government identifying the ground reality, directed that every essential port shall exempt or remit demurrage, floor lease over and above the free period, penal anchorage lease prices and any other basic performance related results that can be levied on port associated sports together with minimal ordinary overall performance assure, everywhere applicable.

2. **Respondent**

2.1 The fourth respondent Port considers had filed its counter affidavit opposing the prayers that has been made by the writ petitioners. The found status suggested for the Ministry submitted that he's adopting for the stand of the fourth respondent.

2.2 The stand of the port accepts as true with is that it is not viable to increase the relaxation measures past the stipulated period through the Ministry and the Directorate trendy of delivery, Mumbai. Consistent with the Port government, they would have supplied all preparations and facilities.

2.3 Yet some other competition superior with the aid of the port trust is that the stevedores aren't the shipment owners and that the comfort measures this is supplied by means of the respondents are meant to be passed directly to the quit customers.

2.4 Since normalcy have returned to port operations and there may be no foundation for keeping this writ petition.

3. **Findings**

3.1 Whether on account of the pandemic outbreak of Covid-19, the parties can invoke the principle of force majeure?

3.2 Whether the petitioners could have cleared the cargo during the said 22.03.2020 to 03.05.2020 period?

3.3 Whether the plaintiff is entitled to get the compensation out of the lockdown imposed by the government of India?

3.4 Whether the counter affidavit filed by the fourth respondent is valid before the honorable court?

4. Analysis of Precedent Cases

The High court highlights positive troubles

4.1 ***Plaintiff: m/s. Tungabadra Minerals Private***

Defendant: The Chennai port Trust

Court: High Court of judicature at Madras

Judge: The Honourable Mr. Justice C.V Karthikeyan

Case no: C.S. No. 1050 of 2010

Dated: 12th of January 2017 [2]

Issue: The ban on issuance of the mineral dispatch lets in will invoke Force Majeure

The plaintiff is n agency under the provisions of the Indian Companies Act, 1956 which is concerned with business activities that includes ore mining. The state of Karnataka holds a total share of 26% within the plaintiff's company. The plaintiff holds the license to mine ore within the state of Karnataka and most particularly the Bellary district. The plaintiff was turned into allocated transit area by the 1st defendant from 1st February 2010 to 31st December 2010 by allotment order no: 5/2010 dated 31st January 2010 which also continued in addition allotment order no 15/2010 issued on 5th February 2010.Since the settlement had become void the defendant are not entitled to retain the security deposit. It was stated that the performance become impossible because of government orders and the mining became unlawful. Therefore, the suit had been filed for relief. It was said that the plaintiff was not entitled to relief and the suit was dismissed on the cost of defendants 1 and 2.

[2] https://indiankanoon.org/doc/23208461/

4.2 ***Plaintiff: m/s. Unicorn Maritimes (India)***

Defendant: Valency International Trading Pte

Court: The High Court of Judicature at Madras

Judge: Mr. Justice C.V Karthikeyan

Case no: Application NO.1674 of 2020 IN CS.D.NO.50213 of 2020 [3]

Issue: Court exercising discretion to supply an anti-suit injunction

The plaintiff is a personal restrained employer having its register office at Chennai. The primary defendant has its registered office at Singapore. The 2nd having their register office at Mumbai and workplace at Singapore. The plaintiff had instituted a clean searching for damages and for assertion that a letter dated 31st august 2018 issued through the plaintiff to the second defendant in favor of the first defendant is not operative, awful in regulation, null and void for everlasting injunction in HC/S 297/2020 in opposition with the Plaintiff for costs. For those reasons that are mentioned in the case the plaintiff below clause 12 of the Letters Patent can't be granted. No orders as to charges.

4.3 ***Plaintiff: m/s Polytech Trade Foundation***

Defendant: Union of India & Ors

Court: The High Court of Delhi at New Delhi

Case no: C.M. No. 10546/2020 in W.P. (C) 3029/2020

Dated: 22ND OF MAY, 2020 [4]

Issue: In want of a few remedy measures to assist and rebuild the logistic chain.

The petitioner is stated to be an association who is registered with the Registrar of societies under the Societies Registration act, 1860 which accommodates persons/dealers/traders who are inside the business of uploading plastic/polymer and supply it to the producers group engaged in packing of meals, drugs, clinical equipments and so on. Petitioner claims that due to the urgency of pandemic the requirements have to be met such as the sanitizers, mask, and personal protective equipments, helmets, googles, etc which use their intermediate as PVC resin. On the other side respondent no. 3 who were the association of container freight stations, whose individuals are worried inside the average coping with the containers. The Ministry of shipping, authorities of India through Order No PD-13/ 33/2020-PPP/c-339106

[3] https://indiankanoon.org/doc/178344624/

[4] https://indiankanoon.org/doc/75064702/

dated 20.03.2020 and letter dated 24th March, 2020 has already intimated the predominant Ports that the COVID-19 pandemic may be taken into consideration as a 'natural calamity' that might entitle invocation of 'pressure majeure' provisions in as a lot as duties below numerous are involved. In view of the above distinct discussions, no grounds for providing of injunction/restrain order in favour of the petitioner and towards the respondents are made out at this level. The petition filed by way of petitioner below section 151 CPC for injunction is, therefore, disregarded.

4.4 ***Plaintiff: Golden Importers***

Defendant: Union of India

Court: The High Court of Kerala at Ernakulam

Judge: The Honourable The Chief Justice Mr. S. Manikumar & Mr. Justice Shaji P.Chaly

Case no: WA.No.870 OF 2020

Dated: 22nd of July 2020[5]

Issue: Issue a writ of mandamus or some other appropriate writ, or direction, commanding the respondents to permit the petitioner herein to clean the imports.

Instantaneous writ appeals are filed in opposition with order dated 30.06.2020 passed by a single judge of this court in W.P. (C) No.11958 of 2020 and linked cases. By the said order the writ petition was submitted but there was a decline in the relief measures for the petitioners. But, the learned single judge ordered that the certain orders such as container detention charges or other charges by the petitioner. Meanwhile, due to the outbreak of COVID-19 pandemic, China underwent a large and complete lockdown which completely prohibited motion by any person in the country., Ministry of Finance vide exhibit-P2 workplace Memorandum No.F.18/four/2020-PPD dated 19.02.2020 has clarified that said disruption of supply chains because of the spread of Coronavirus in China or every other country might be blanketed in the force Majeure clause. Earlier than the writ court, the 3rd respondent in W.A. No.870 of 2020, viz., MSC Agency (India) Pvt. Ltd., Cochin, represented via its handling Director, has filed a counter affidavit refuting all the allegations raised through the appellant. within the counter affidavit, 3 rd respondent has contended, inter alia, that granting the reliefs sought for in W.P.(C) No.11958/2020 might bring about arbitrariness/inequalities and unreasonableness, as it would defend the importer we're of the

[5] https://indiankanoon.org/doc/99793986/

considered view that there may be no mistakes within the meantime order dated 30.06.2020, warranting interference inside the immediate appeals. Consequently, the writ appeals are dismissed.[6] No costs.

The Supreme Court of India highlights the following issues,

4.5 ***Plaintiff: Chairman Board of Trustees***

Defendant: m/s Arebee Star Maritime

Court: The Supreme Court of India Civil Appellate Jurisdiction

Case no: Civil no. 2525 of 2018 ON 5th August 2020 [7]

Issue: Liability to pay 'ground rent' for the containers unloaded within the Cochin Port.

The sequence of events which led to the stalemate refers to those incidents which passed off in 1998 while there import synthetic woolen rags inside the Cochin port .The stated boxes were destuffed for examination and to return the empty boxes to the steamer sellers. The destuffed cargo occupied a wide area and was not promptly cleared by means of the consignees in a view that the cargo virtually did not constitute old woolen rags as mentioned, however they usually had been trendy garments which could not have been cleared. This court held that no matter Rasiklal now not being a proprietor of the goods, he changed into susceptible to pay demurrage for the aforesaid length. Accordingly, they put off the appeals that had been filed in this case against the impugned high court judgment. The impugned judgment is set aside on one query of law, particularly, that the expression "may additionally" in sections 61 and 62 of the MPT Act can't be read as "shall", difficulty to the caveat that because the "state" underneath Article 12 of the constitution, a Port trust ought to act fairly, and attempt to promote the products inside an inexpensive length from the date on which it has assumed custody of them. The High court held that the 'ground Rent' can be demanded under the orders issued by TAMP and for a maximum period of 75 days only. Hence, the contention of the port trust was rejected.[8]

[6] Janice M Ryan ,"Understanding force majeure clauses" 02/2011 ,https://www.venable.com/insights/publications/2011/02/understanding-force-majeure-clauses

[7] https://indiankanoon.org/doc/65701425/

[8] Richard A. Loube," The Doctrine of Impossibility/Frustration of Purpose", March 25th, 2020, https://steinsperling.com/the-doctrine-of-impossibility-frustration-of-purpose/

DOCTRINES

Doctrine of Frustration

Where an unexpected event occurs that renders performance under a contract impossible, whether it may be permanently or temporarily, a party may be excused from their performance unless the risk was assumed by the party.

A party must show the underlying points,

- The unexpected occurrence of an intervening event
- The risk of that event was not allocated by agreement or any custom
- That the occurrence made the performance impossible to take place

CONCLUSION

The petitioners shall publish a detailed representation to the first respondent starting off their case for continued applicability of the relaxation measures announced on 21.04.2020 until the lock down is lifted within the country of Tamil Nadu and the first respondent shall take a call in the matter within a period of six weeks from the date of receipt of a copy of the representation. Till such decision is made the fourth respondent should not take any coercive measures. The fourth respondent can permit clearance of the goods by taking a bond or by putting the applicants on any other appropriate condition. On these terms, the writ petition is disposed of and no cost is allowed.

AREAS FOR FUTURE RESEARCH

In the present research case, based on the analysis of precedent cases and suggestions given, it is open to the members of the petitioner association to apply for provisional release of the goods. So, the future researcher can go through the above said facts and can tie his/her research on the grounds of provisional release of the goods and can compensate the appropriate remedy to the petitioners association.

EVOLUTION OF ADR IN INDIA AND A COMPARATIVE STUDY OF THE ARBITRATION ACT OF 1996 AND 1940

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ABSTRACT

"Peace cannot be kept by force it can only be achieved by understanding."[1]

Albert Einstein

The Above mentioned quote by Sir Albert Einstein focuses on the concept of ADR is alternative dispute resolution he want to say that through this quote any issue cannot be solved by force but by arbitration and meditation. The process of arbitration always had been practiced since time immemorial in our country the people be of opinion that the dispute must be resolved with four walls otherwise it will affect their dignity and responsibility in the society consequently the ADR mechanism in prevalent in India since ancient period village level institution are the good example of arbitration where the disputes are resolved since long period of time which is properly known as Panchayat and headed by "Sarpanch".

During the period of Empire the king came to decide the matter Les and dispute where resolved by the intervention of trainees and such other self governing bodies. At the time of Mughals the disputes between parties were resolved by village court itself and its some cases where appointed as arbitrator during the era of British the arbitration clause was passed Bengal regulation law as Bengal regulation of 1772, 1780 and 1781 where framed to strength the arbitration system and discuss the unnecessary litigation. The arbitration act of 1996 the act passed after the act of 1940 modernized the same law and for the development it of informal way to said the dispute between the parties.

INTRODUCTION

The alternative dispute resolution is the process which exit in India since ages the panchayat system village level institution play a very crucial role where the matter where settle by elders contain the Council of members popularly known as **Panch** or **Sarpanch**. In ancient

[1] http.Philosiblog.com.

time the dispute between parties peacefully adjudicated by the meditation of ***kulas*** Parishad before the rule came to decide.[2] The head of the villages had the power to resolve the dispute of their villages if the matter where not settled despite the intervention of the village head then there are those matters where is resolve in the court of the king the panchayat of the respective villages where subordinate to the court of law either Court of king.

In Mauryans empire the ruler was had the court of laws as well as all the laws were made by the order of him there were many special courts in the boundaries of state. In the criminal matters where adjudicated by **kantakasodhna** and civil matters where decided as per the Hindu code of law which is engaged in the ***shastras*** .the decision was taken by Council of arbitrators with an option of an appeal before the court of king. During the Mughals the matters where decoded by the village quotes itself and appeal to the Impartial umpire (salis) some disputes where adjudicated by the king in ***diwan-es-aam*** if any dispute was related to the main member of the royal family were decided by the king in the ***Diwan-a-khass.***[3]

During the time of Colonial rule the modern arbitration law is our country was created by the Bengal regulation of 1772, 1780 and 1781 and encourages informal justice delivery system.
India has a long remarkable history of settlement of matter by the informal justice system in the modern era the process of arbitration conciliation and mediation very efficient alternative which are inexpensive as well as less time-consuming and the disputes can be resolved without the litigation in the courts. In the past two or three decades it has been observed that settlement outside the courts by the alternative means like arbitration conciliation and meditation and its scope have been broadly increased in the commercial field. Development and developing countries like USA, UK, France, Canada, China, Japan, South Africa, Australia, Singapore, etc. have adopted and acknowledgement. The Alternative Dispute Resolution for sitting the international disputes regarding trade and Commerce and other important matter.

NEED OF ALTERNATIVE DISPUTE RESOLUTION

Surely, alternative dispute resolution ADR is prevalent in India since ages but scope of the same concept have been expanded and development to settle the dispute friendly and rapidly

[2] www.adr.gov.in.
[3] www.lawtimesjournal.in.

the will of the related parties. Establishment of alternative dispute resolution is in the modern society is in the most recent necessity where the litigation process is very complicated.

1. **Peaceful settlement of disputes-** It is indeed that alternative dispute resolution provides amicable settlement of disputes between the parties in the commercial field it can be sensible approach to have that competitor is not the foe undoubtedly we can say the healthy competition improve and effect the shark half services product. In present time even the criminal disputes are settled friendly it would be applicable to bring up the concept of bargaining mentioned under Criminal Procedure Code 1973.

2. **Expeditious settlement of matter**- The alternative dispute resolution is very efficient and effective process that provide speedy in the settlement of dispute between the parties under the same process there is no scope of at adjournment as for like as the courts length and time taking litigation.

3. **Inexpensive settlement of disputes**- The alternative dispute resolution is the process that delivers cheap or inexpensive solution settlement of the matter in other words the litigation expenses and standing counsel for could be avoided by settlement by the major by way conciliation and mediation.

4. **Time saving process**- Time is very precious at important thing in our life the alternative dispute resolution is that time saving process where the matters can be settled without the following lengthy and procedure of normal litigation.

5. **Reduce the burden of the courts of law**- It is very recent need of alternative dispute resolution number country the same concept reduce the workload of the regular Court of laws India now has almost 4 crore spending case in Supreme Court various High Court and in also many subordinate courts according to data collected for Ministry of law and Justice.

In the apex court of the country they are 3.65 crore pending cases as the 1st February 2.20 if we talk about the high court of a state the Allahabad High Court has the highest number of

pending cases.[4] At subordinate level the state of Uttar Pradesh top the list with the 1.80 lakh pending cases the union territory of Ladakh has the least number of cases.

METHODS OF ALTERNATIVE DISPUTE RESOLUTION

Undoubtedly the alternative dispute resolution has many method but the just natural is compulsory to be followed while adopting any procedure the method of alternative dispute resolution are as follows.

1. **Arbitration**- The same method is a process where parties to the dispute agree that one or more than one party can make a decision and matter can be settled outside the court in this process the whole settlement process is being governed by the arbitrator who is appointed by third party.

2. **Negotiation**- It is a process by which the parties settled their difference in other words the method of settlement of any dispute between the parties with or without the assistance of any third party.

3. **Mediation**- It is the process to attend a conciliation solution of any matters or disputes.

4. **Conciliation**- What is the method practice under law the whole process is to be activated by the person who is known as conciliator.

5. **Skilled appraisal**- It is very popular method of alternative dispute resolution under the method a person who is an expert in that field related to dispute is appointed to investigate the situation and a non-binding opinion.

6. **Neutral evaluation**- The said method a non-binding evolution in an unbiased manner.

THE ARBITRATION AND CONCILIATION ACT 1940

Arbitration and conciliation act 1940 was in enacted before independence which integrates and amended the rules and regulation retail to arbitration Centre as covered in the Indian arbitration act 1899 as well as the second schedule of Civil Procedure Code 1908 the main

[4] www.bloombergquint.com

objective of said Act was to settle disputes through the arbitration process selected by the disputing parties. The act of 1940 e default only with domestic arbitration there was no substantive law for international arbitration. According to the act of 1940 interference of the court was compulsory in all three step of arbitration either before the reference of dispute to the arbitrator terminal time span of the proceeding before the arbitral Tribunal and after the award was passed by the arbitral Tribunal. Reference of the court was mandatory for the expansion of time for making forming and award.

Lastly prior to award can be enforced it definitely required to be made the rule of court of law. In the landmark judgement of ***M/S Guru Nanak Foundation vs. M/a rattan Lal Singh and sons***[5] The Honourable Supreme Court of India observed. "*The way in which the proceedings under the act are conducted and without any exceptions challenged in court has made lawyer laugh and legal philosophy weep experience shows the law Reports carry sample testimony that the proceedings under the act have become highly technical accomplished by unending proximity at every stage providing a legal trap to the unwary informal forum sallied by the parties for expenditures disposal of disputes has by the decision of the courts been clothed with 'legalise' of unforeseeable complexity*".

THE ARBITRATION AND CONCILIATION ACT 1996

The act of 1996 which revoked the act of 1940 was passed to provide an efficient and expenditure dispute process which would stimulate confidence the dispute resolution system in India. The 1996 act carries to unusual features that vary from the UNCITRAL model law. Firstly, the time when uncritical model law was formulated to apply only to International commercial arbitration.[6] The act of 1996 deals with both International as well as domestic arbitration.

Appointment of an Arbitrator

According to the old act of 1940, disputing parties to get an arbitrator appointed had to proceed before the jurisdiction of civil Court either under section 8 of section 20 of the arbitration and conciliation act 1940. The provisions mentioned under the above mentioned sections were time consuming that is why are unable to fulfil the conditions of time saving. But after the enactment of the new act of 1996 if the dispute in parties fail to get an

[5] 1981 4 SCC 634.
[6] www.lawctopus.com.

agreement as mentioned in subsequent to or within 30 days if they are the other party fail to confirm the receipt of the request by them the Honourable chief justice can proceed for the appointing an arbitrator under sub clause (5) a sub section 11 of the arbitration and conciliation act 1996 the chief justice has the power of delegation for the apartment to any authorised person or institution.

In the arbitration process the arbitrators are to be appointed by the disputing parties when they fail to settle their disputes by own. The Important features of arbitration and conciliation act 1996 that the laws mentioning to interim measures which authorise the arbitrator or arbitral tribunal to pass and orders related to the dispute on the request of either party in the arbitration and conciliation act 1940 had such rule except it could only make an entry in award but the act of 1996 provides for the enforcement of certain for an award made under New York convention.

Jurisdiction of Arbitrators

In the arbitration and conciliation act 1940 they had no provisions of arbitral tribunal was authorised to make final decision in the jurisdiction but in the latter act section 16 stated that the arbitral tribunal has been permitted the power to make a ruling on its own jurisdiction In the case The Honourable Supreme Court of India held that section 16 (1) authorise the arbitral tribunal to have power about its jurisdiction.[7]

CONCLUSION

As we all know that the old Court system is damaged with procedural and a lot of pending litigation that converts into unusable delay and it could not be affordable by middle class people because of costly charges and court fees etc. In the same process is a private Independent and friendly that are reasonable and inexpensive. The arbitration and conciliation Act of 1996 was passed by the Parliament of India to increase the quick and economical dispute resolution.

These are some suggestions which are as follows:-

- A Separate Act should be enacted for recognition and imposition of arbitral awards.
- Enough training should be provided to the judges considered to undertake the procedure.

[7] S.B.P. & Co vs. Patel Engineering Ltd. & Anr., AIR 2006 SC 450 2005 (9), https://main.sci.gov.in/jonew/judis/27300.pdf.

FARM BILLS 2020

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"I would rather be on my farm than be emperor of the world" ¬George Washington

INTRODUCTION

AGRICULTURE, it is not a single word; rather it is the backbone of our nation. Agriculture is not just a profession or a practice. It's a science between human and land in cultivating crops. Agriculture is not a modern practice, rather practiced many long years. Many developments with relation to present technological era have been made in agriculture. Many schemes have been introduced for farmers. Many new irrigation methods have been introduced and more efficient fertilizers and seeds have been provided to the farmers. But still, there is a big question that, Has Agriculture gained much importance in India. Even though many developmental schemes have been provided, why there is a mass protest called "Bharat Bandh" has been accomplished by our farmers.

For proper regulation of a country, many laws, bills, ordinance have been passed by the government. But one such bill had stunned the entire nation. A small - scale protests had been accomplished in Punjab after the bill made public. But once the bill is passed, entire nation astonished. Approximately three lakh farmers have accomplished the protest against the bill passed by the government. Many farmer unions joined the "Bharat Bandh" protest. People all over the country and opposition government too started supporting the farmers.

Why these farm bills 2020 gained much protest. What actually these farm bills 2020 deal with? Is farm bills 2020 can be supported or opposed? The answer for these questions can be dealt in this article. This article mainly focuses on the farm bills passed by the central government in 2020. In addition to, this article discusses about the support and opposition for the farm bills. Additionally, this article utters about what are the other laws involved in this farm bills and what are the rights violated. And finally, whether this article can be

implemented or nullified.[1] If implemented, in what ways the bill can be progressed, so that it doesn't affect the rights and well - being of the farmers.

ABOUT FARM LAWS 2020

The Union Government initiated the three Farm bills:

1. The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act 2020;
2. Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020;
3. Essential Commodities (Amendment) Act 2020

It was passed by the Lok Sabha on 17th September 2020 and by the Rajya Sabha on 20th September 2020 and got the assent of the President Mr. Ram Nath Kovind on 27th September 2020.

The first bill, The Farmers Produce Trade and Commerce Act 2020, allows the farmers inter - state and intra state merchandise and to sell their commodities beyond Agricultural Produce Market Committee (APMC) Markets. This act levies farmers from market fee or any other remuneration collected by the state government.[2] Additionally, this act allows the farmers, electronic trading provides specified area to buy and sell their commodities through online trading platforms.

The second bill, Farmers Agreement on Price Assurance and Farm Services Act 2020, allows the farmers to engage with agriculture business, import and export of commodities, for farm services, selling etc. with another farmer or wholesaler or any other parties through a transparent and fair Farming agreement with a mutually concerned remuneration between the two parties.

The third bill, Essential Commodities Act 2020 was an amendment of Essential Commodities Act which was enacted in 1995. The 1995 ESA Act regulates the production and distribution of certain commodities which is declared as "Essential". The commodities include pulses, onions, potatoes, edible oils etc. Under the 1955 Act, the government can fix the Minimum

[1] https://en.wikipedia.org/wiki/2020_Indian_agriculture_acts
[2] https://timesofindia.indiatimes.com/india/what-are-new-farm-laws-and-and-why-farmers-are-protesting/articleshow/79609234.cms

Support price (MSP) for the commodities which is declared as Essential. After the Amendment made in 2020, the Government of India according to the Amended ESA Act 2020, delisted certain products which includes onions, potatoes, cereals, oil seeds and other agriculture produce commodities from the list of essential products. In addition to the amendment, the Union Government issued a notice that, the above delisted products, would be regulated only if famine or any other natural calamities occurs. And the stocks or price can be regulated only if, there is 100% increase in retail price (In case of Horticulture products) and 50% increase in retail price (In case of perishable food items produced through Agriculture).

UNION GOVERNMENT QUARREL ON FARM BILLS, 2020

The Union Government, on the Farm Bills 2020 refrains that, by increasing merchandise to inter – state and intra state, and to barricade trading only in Agricultural Produce Market Committee (APMC) markets, and entering into a transparent and fair Farming agreement with the private parties or any other Farm businesses, State Government can rely remuneration only on the Firm businesses and not on the farmers. This initiative will levy farmers from market fee or any other remuneration. (Farming agreement or Contract Farming can be defined as an agreement between farmers and other parties for production and supply of agricultural products frequently by pre – determined prices.) Under this Contract Farming, Farmers can approach courts as an alternative and their lands will be safe and no loans will be given on farmers land by mortgaging it. In addition to, The Union Government has given a written assurance that, the existing MSP system will be continued and no changes would be made to it.

FARMERS QUARREL ON FARM BILLS, 2020

Farmers and Farm unions, on the Farm Bills 2020 articulates that, by increasing the entry of private Farm business firms, will put a conclusion to Agricultural produce market committee (APSM) markets, Government markets and the private firms would be the decision maker. Crops will be supplied at a price, decided by the private firms. And by these acts, the Union Government gives permission to State Government in regulating traders and remuneration and this gives consent to anyone to acquire grains at prices of their wish. In addition to, under Contract Farming, there will be grabbing of Farmer's land. Union Government had issued that; there will be no sale or lease of Farm lands under Contract Farming. But if the farmers can't repay the loans, there is no other way, other than selling Farmer's land. The

Union Government had issued a notice that, the working of MSP will be continued. But the only objective of these acts is to abolish the MSP system.[3] By delisting the agricultural products from "Essential" products, MSP system will not be applicable to the above mentioned delisted agricultural products and the price would be decided only by the wholesalers or the private business firms with whom the contract has been indulged. By abolishing MSP system on these delisted products, Government rate and the Farmers rate on agricultural products depending upon the production would be diminished and the rates fixed by the private business would be applied. In return, this will rely strain upon farmers and appropriate remuneration for production and supply would not be given to the farmers.

VIOLATION OF RIGHTS AVAILABLE TO FARMERS

The "Golden Triangle of Indian Constitution" provides constitutional rights to the farmers. Article 14, Article 19 and Article 21 of the Indian Constitution is commonly known as Golden Triangle of Indian Constitution. These articles are of much importance and ensure liberty, equality and fraternity to every citizen of India. Farm Bills 2020 affects the right to equality before law and right to liberty.

Article 19 (a) (b) (c) of the Constitution of India states that, all citizens shall have the right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions. Farmers had organized the mass protest called "Bharat Bandh" in a peaceful manner without any arms or weapons and do not affect the peace of the society. And the farmers had formed unions and joined the protest in a peaceful manner. This is the Fundamental right applicable to the farmers.

Article 14 of the Constitution of India states that, "The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India". Article 14 ensures equality to every citizen of India despite religion, caste, colour etc. The right to equality before law is a fundamental right applicable to farmers. But the Farm Bills 2020 allows international trade and diminishes merchandise in APMC Markets. This may be beneficial to Big Farmers and corporates, but middle level and rural farmers get affected and discriminated. The Farm bills 2020 are not equal to all farmers, and certain are discriminated.

[3] https://indianexpress.com/article/explained/farmers-big-concern-and-what-govt-could-negotiate-7073291/

In this way, the bill does not ensure equality to everyone and it violates Article 14 of the Indian Constitution which ensures every citizen equality before law.

Article 21 of the Constitution of India states that, no person shall be deprived of his life or personal liberty except according to the procedure established by law. The Farm bills affect the personal life and liberty of many farmers. The three bills protect the liberty of big farmers and private business firms, rather the rural level and middle level farmers life and liberty is affected. In this way, the Fundamental rights have been violated.

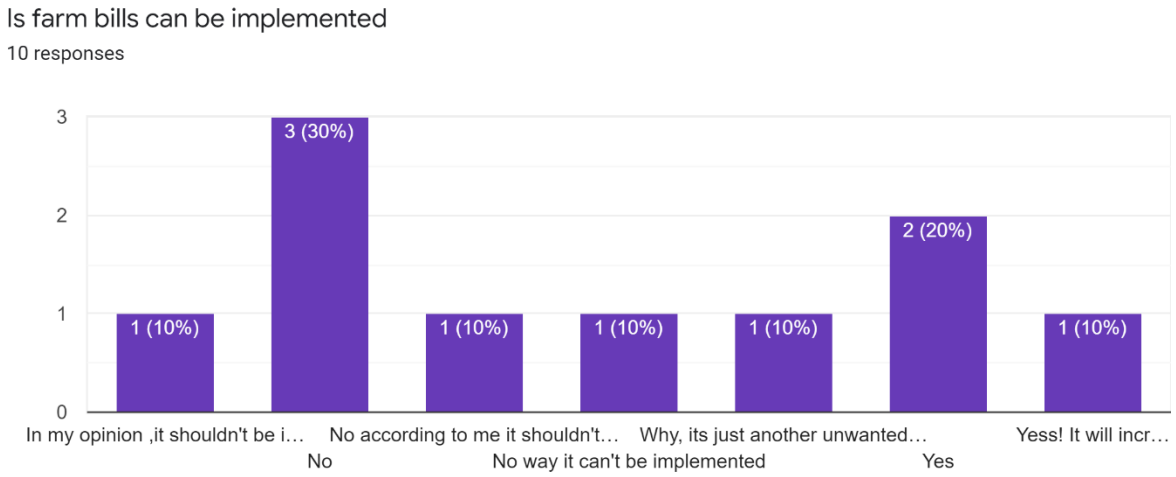
In addition to Article 38(2), 39, 43 of Directive principles of state policy are some of the rights available to the farmers. These articles of Directive principles of state policy ensure that the state must strive in regulating the inequalities in income, status and opportunities available to the citizens of India. And the articles ensures that by any legislation or act passed by the Government, the state shall provide equal and liberal opportunities to all agriculture, industries, workers etc and ensure a standard cost of living to everyone without any discrimination. But the Farm Bills 2020 violates the Directive principles of state policy by not ensuring equal opportunities to every farmer and diminishes the standard cost of living of the affected farmers.

IS FARM BILLS CAN BE IMPLEMENTED OR NOT?

The Farm Bills passed has its two - sided aspects. By increasing the merchandise level to inter - state and intra state level, it helps farmers in improving the trade beyond APSM markets and increase investments from private business firms and big farmers. Also, they can enter into a fair and liberal farming agreement, in increasing the production and supply of the commodities. By delisting certain commodities from the list of “essential”, the farmers can produce and supply of their own without any regulation at any affordable price without any regulation. These are some of the positive aspects of Farm Bills 2020. But looking on the other aspect of the bills passed, by abolishing trade only in APSM markets, and by increasing the merchandise it can attract private investment, and by delisting the agricultural products from the list of “Essential” the farmers can sell of their own decided price. But if the production of crops and commodities is low, the farmers cannot decide their price. It is the private firms will decide the price, and by delisting, the commodities delisted do not come under Minimum Support Price (MSP) system and the price will not be regulated by the

government. This will in turn affect the farmers and the price will be decided by the in - between private firms and wholesalers.

The Farm bills may be beneficial to big farmers and corporate investors, but the middle level and rural level farmers are terribly affected, and their life and personal liberty will be vanished. The Farm bills is not equal to every farmer and only the private firms and wholesalers who buy crops from the farmers at any price without any regulation are benefited. This is the reason for mass protest called "Bharat Bandh" and almost three lakh farmers accomplished the protest.[4] It may increase the level of merchandise and it will attract private business firms and corporate investment, but only a group of big farmers and middle corporate and wholesalers will be benefited and not the rural farmers. Hence the new bills must not be implemented.



Given these a short survey, highlights about what others notify about in implementing the Farm Bills 2020. 8 out of 10 notify that, the bill should not be implemented. The Bill is an unnecessary initiative to lay agriculture in the hands of the corporate. Hence the survey notifies that bill must be passed in such a manner that personal liberty and life of farmers is not shattered.

IF IMPLEMENTED, IN WHAT WAY IMPLEMENTATION CAN BE DONE?

The Farm Bills can be implemented, if it does not affect the rights and liberty of the farmers. By ensuring that, the farmers can merchandise beyond APSM Markets, with an assurance

[4] https://www.jagranjosh.com/general-knowledge/farm-bills-indian-farm-reforms-2020-1606901455-

that, at any situation the farmers must be the decision maker in price and not the private business firms and wholesalers who buy the commodities from the farmers. By assuring that Farming contract must be a fair and transparent contract with a mention that farmers can approach judiciary if the contract is breached or violated. Government must bring a change in the commodities which have been delisted from the list of "Essentials". Easily perishable vegetables and fruits must be mandatory in the "Essentials" list. Other commodities such as cereals, pulses, oil can be delisted with an extra statement in the amendment mentioning that, the present Minimum Support price (MSP) system is not abolished for those commodities which have been delisted and the regulation of prices will be undertaken by the Government.

CONCLUSION

Agriculture is of prime importance. Technology may develop but food can't be provided by any Artificial intelligent or robots. Food can be provided only through agriculture and by farmers. Hence Farming is considered as a science between man and earth and the backbone of our nation. Hence the laws influencing such a phenomenal act must be effective to farmers and not a bill which vanishes the liberty of farmers. Bills passed relating to farmers must be advantageous to farmers. Because Farming is not a profession to see profits rather a service that adds GREEN TO OUR LIFE.

FEMALE GENITAL MUTILATION & LAW OF INDIA

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INTRODUCTION

Female Genital Mutilation, also known as *khatna* or *Khafd* in cultural language, is a religious practice in Daudi Bohra community people, found mainly in Saudi Arabia, South Africa, and Asia, including some parts of India like Kerala, Maharashtra, etc. There is no specific legislation that bans this practice therefore we look into the existing legislations in this paper.

Female Genital Mutilation, hereinafter referred to as FGM, has not been defined but for our sake, we will refer to the definition given by WHO, UNFPA, and UNICEF in their joint statement as "All procedures that involve partial or total removal of the external female genitalia or any other injury to the female genital organs for non-medical purposes". It must necessarily exclude any surgical procedure for the purpose of a girl's mental or physical health or any postpartum procedure performed by a registered medical practitioner.

This practice is still prevalent in India because the government denies its existence. It is practiced discreetly such that only the mothers and grandmothers of the community are at its core to ensure that the practice is performed year after year, generations after generations on girls, from the age of infancy to adolescence. FGM leads to extreme pain, infections, excessive bleeding, wound healing problems, fever, urinary infections, mental trauma, shock, vaginal problems, menstrual problems, scar tissue formation, sexual problems, even death in some cases.

There exist 4 types of FGM:

Type 1: Partial or total removal of the clitoris.

Type 2: Partial or total removal of clitoris along with labia minora.

Type 3: Narrowing down the vaginal opening by covering through a seal by positioning the labia minora or labia majora, with or without the removal of clitoris.

Type 4: Includes all other harmful procedures like cutting, piercing, scraping, etc.

WHY IS FGM PERFORMED?

1. There exist various social norms which consider FGM as an integral part of the culture. It is often considered a necessary part of raising a girl and preparing her for adulthood and marriage.
2. It is often motivated by beliefs about what is considered acceptable behavior i.e. to ensure premarital virginity and marital fidelity.
3. To resist extramarital sexual acts by decreasing a woman's libido by restricting their sexual behavior.
4. It is associated with cultural ideals of femininity and modesty.
5. It is favorable to the husband and gets a lit face to the woman.

There should be a balance between the laws of the land and culture. **Article 6 of the UNESCO Universal Declaration on Cultural Diversity**[1] states that cultural rights are an integral part of Human Rights and all people should be able to participate in cultural practices of their choice but that is subject to respect for Human Rights and Fundamental Freedom.

The paper talks about FGM through the angle a cultural practice as well as through the perspective of law of the country, namely, Human Rights, Constitution of India, Protection of Children against Sexual Offences Act and Indian Penal Code. The paper cites news articles, domestic legislations and various judgments as authorities to support both for and against the motion.

DOMESTIC LEGISLATIONS OF THE COUNTRY

FGM is violative of **Article 14**[2] **and 15**[3] **of the Constitution** of India because circumcision in men is good for their health but FGM serves no such benefit. FGM is done to prevent women from having pre-marital coitus but nothing is done with men in this regard. The community wants to keep the premarital virginity and marital fidelity of females intact. The inhumane practice of FGM is widely perceived as a way to control a female's sexuality and

[1] Article 6 - Towards access for all to cultural diversity: While ensuring the free flow of ideas by word and image care should be exercised so that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.

[2] Article 14 of the Constitution of India – Equality before law.

[3] Article 15 of the Constitution of India - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

sexual desires. This is deep into the patriarchal roots of the society where women are viewed as objects, which also infringes their Right to Dignity enshrined under Article 21 as well as their Right to Equality.

However, the cultural practice opiates Equality by saying FGM is a way to attain religious spirituality just like Male circumcision. If FGM is prohibited, there would be deprivation of women from attaining spirituality.

FGM also violates **Article 21 of the constitution**[4], KS Puttaswamy J., talks about how dignity is the core principle which unites the Fundamental Rights of the constitution. Right to Dignity includes the Right of individuals to develop the full extent of their potential and the Right to Autonomy over fundamental personal choices. The chilling effects of social disapproval are a result as reflected as the punishment of crime. FGM is performed on girls below 15 years of age without their consent and is not even for medical purposes; therefore it is discriminatory in nature and violates Right to Dignity. Dipak Misra J., in the case of ***Sunita Tiwari v. UOI***[5] asks why do women have to go through such a practice only to be favored by men. The practice of FGM lacks gender sensitivity. In another case of ***Shafinjahan* v. *Ashokan KM and ors.***[6], the case of non-compliance with cultural norms was established as resulting in excommunication. In another case of ***Prem Shukla* v. *Delhi Administration***[7], the Supreme Court talks about humane part of the Preamble of the constitution. The realization of social order is found in Justice, Equality, and Dignity of the individual. In another case of ***Francis Mullin v. NCT of Delhi***[8], the court held that it is a violation of Article 21 of the constitution which basically talks about the Right to Life and Personal Liberty. Female Genital Mutilation is a violation of bodily integrity.

There is a risk of being boycotted by the community if such practices are not performed or if a person stands against this practice. **Bombay Prevention of Excommunication Act, 1949** was enacted as a redressal sought by boycotted members of the Daudi Bohra community. It prohibited boycotting of any member of the community. This leads to forced coercion and therefore infringes upon the right to personal liberty under Article 21 of the Constitution of

[4] Article 21 of the Constitution of India – Protection of life and personal liberty.
[5] (2016) 2 SCC 725.
[6] Shafinjahan v. Ashokan KM and ors, AIR 2018 SC 357.
[7] Prem Shukla v. Delhi Administration,1980 AIR 1535.
[8] Francis Mullin v. NCT of Delhi, 1981 AIR 746.

India. This act was challenged in the Bombay High Court in the case of ***Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay***[9], the majority judgment in this case regarded excommunication as legitimate under Article 26 of the constitution of India by the Supreme Court. It is a process of managing the religious affairs of the community.

Coming to **Article 25**[10] **and 26**[11] **of the Constitution of India**, even before Islam was recognized as a religion, the practice of FGM was there but the Quran doesn't talk about it. Therefore, FGM even precedes Islam. It is not an essential practice since it is not prescribed in Quran. These Articles are subject to public order and the health of the individuals. Here, constitutional morality also comes into question since even Sati practices, child marriage, and Dowry practices are eliminated. Religious Freedoms enshrined under Section 25 and 26 should pass the test of other Fundamental Rights provided. While the supporters of the practice say that FGM has been prevalent since the 10th century.

The **Protection of Children from Sexual Offences Act (POCSO)** is a gender-neutral act that is its specialty. **Section 2(1)(f)**[12] talks about Penetrative Sexual Assault as referred in **Section 3(b)**[13] of the Act which further uses the term "object" which would include blades, the section does not talk about sexual intent but actus reus is enough to constitute an offence**. Section 9**[14] talks about aggravated sexual assault, on a narrow look sub-clause (h) as well as (n), would come into play when it comes to FGM. Section 9 uses the word "person" while the pronoun used is "he". If we refer to Section 8[15] of the Indian Penal Code, the pronoun "he" would include both males and females. Therefore, if looked upon, the POCSO would also consider FGM as an offense when performed on minor girls.

In Section 375[16] **of the Indian Penal Code,** "penetration" need not be complete, the term *labia majora* is also included in vagina. Section 375 explanation 1 read with Section 3 of the POCSO Act would cover FGM to be an offence. Since Section 375 explanation 1 clearly

[9] Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, 1962 AIR 853.
[10] Article 25 of the Constitution of India - Freedom of conscience and free profession, practice and propagation of religion.
[11] Article 26 of the Constitution of India - Freedom to manage religious affairs.
[12] Section 2(1)(f) of POCSO Act – Definition of Penetrative Sexual Assault.
[13] Section 3(b) of POCSO Act - Penetrative Sexual Assault.
[14] Section 9: Aggravated Sexual Assault.
[15] Gender: The pronoun "he" and its derivatives are used of any person, whether male or female.
[16] Section 375of IPC- Rape.

states that even slight insertion is insertion in the eyes of law. Here, the intention of sexual assault does not play any role but the actus reus does.

Section 324[17] and 325[18] of the Indian Penal Code talks about grievous hurt through the use of dangerous weapons and prescribes punishment of imprisonment extending to seven years and fine. It is to be noted here that the intent here may not be sexual but it is to cause hurt. FGM leads to extreme bodily pain, mental trauma, menstrual problems, extreme blood loss and even death in some cases.

In 2016, the **Maharashtra Prohibition of People from Social Boycott (Prevention, Prohibition and Redressal) Act** was passed which defines the boycott by panchayats, local bodies and any community as an offense. The punishment for such is imprisonment up to 7 years or fine which may extend to 5 lakh rupees or both. This act is applicable to every community in Maharashtra and therefore is applicable to Daudi Bohra.

In the case of ***Sunita Tiwari v. UOI***[19], it was contended that FGM is an essential religious practice and is therefore, protected under Article 25 and 26 of the Constitution but has no mention in Quran. The Hon'ble Supreme Court issued a notice seeking complete ban on it to the Centre, while also demanding it to be held as a cognizable, non-compoundable, non-bailable offence.

IS FGM AGAINST HUMAN RIGHTS?

There have been a number of occasions where people have contented against the practice of FGM and supported to put a full stop on this practice. Due to its anti- human right nature, Congress MP Shashi Tharoor has supported the ban on the practice of FGM. He stated that, "Women's right to dignity supersedes right to freedom of religion. Law cannot question the idea of divine, but must regulate human action that hurts others"[20]

The then Union Women and Child Development Minister, Maneka Gandhi, also held her view against the inhuman practice of FGM. She promised that her ministry will write to

[17] Section 324 of IPC- Voluntarily causing hurt by dangerous weapons or means.
[18] Section 325 of IPC- Punishment for voluntarily causing grievous hurt.
[19] (2016) 2 SCC 725.
[20] The Hindu (2018). FGM a human rights issue: Tharoor.

Syedna (the high priest of Bohra community) and make them give up the practice of FGM as it is against human rights and violates provisions of the IPC and the POCSO Act.[21]

It is safe to say that FGM is an abuse of basic human rights like the right to life, the right to be free from gender discrimination, the right to physical integrity that is associated with the right to freedom from torture and the right to the highest possible standard of physical and mental health. It is also reflected as a form of child abuse. As per Indian legal perspective, people undertaking FGM may be prosecuted under the IPC, however, since it is "not explicitly an offence under the IPC", a complaint under Section 326 which covers causing grievous hurt can be registered. It is also to be noted that FGM may be covered under the POCSO Act, 2012.[22]

CONCLUSION

This paper discussed about Female Genital Mutilation and the law of the country which makes it an unlawful practice while also accounting for the cultural phenomenon. Additionally, it violates the basic Human Rights of women in a cruel way by targeting their mental alongwith physical state. The issue is a taboo in the society, such that most of the population doesn't even know about it, it makes it even difficult for the legislature to pass a legislation on the subject. Daudi Bohra's have continued to live in countries where FGM is outlawed like UK and Australia. Various Muslim scholars have refuted FGM's association with Quran. Some rationale could be found in male circumcision but none in Female Genital Mutilation.

Majority of the women who undergo FGM have not even consented for it. The need of the hour is to spread awareness about the practice to unnormalize going through such pain for no apparent reason. The UNFPA estimated in 2019 that about 59 countries have already banned the practice by passing law against FGM, these include Spain, Norway, Sweden, New Zealand, United Kingdom, Canada, etc. 26 out of 29 African countries have banned FGM by imposing penalties including imprisonment, or fine, or both.[23]

[21] Das Gupta, M. (2017). Govt will end female genital mutilation if Bohras don't: Maneka Gandhi. Hindustan Times.
[22] First Post (2017). Female Genital Mutilation: Report recommends separate law, sensitisation to eradicate practice in India.
[23] *FGM And The Law Around The World*, Equality Now, June 19, 2019.

The need of the hour is a special law relating to the cultural practices which violate the basic human rights without an apparent reason. FGM is a practice which is not heard of on a regular basis but it definitely exists in our society. If not for a special law, existing laws are feasible to punish the practitioners and to empower women who have been subjugated for generations in the name of culture and for their own benefit which cannot be seen.

FEMALE LABOR FORCE IN INDIA: ISSUES AND CHALLENGES

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ABSTRACT

We know that India is always been a country in which the stigma of "Gender Discrimination" is very high. In day to day life we can clearly see that women face lot of difficulties and they have to fight for every right. The discrimination is very much on the basis of caste, color, education, sex, etc. It is very hard to find perfect equality in the human society. It does not mean male and female should be made equal in all aspects and all the time, but their responsibilities, rights should be equal in every aspect be it at workplace, in education field, political activities etc. If these things will be considered by the society then this problem of gender discrimination can be reduced to a minimum extent. Women should be given equal chance to show their skills. Therefore, I have done my research mainly on one factor which is female labor force in India and how females face lot of challenges and issues. For better understanding I have also covered other points like challenges, legal provisions, and development at global level, government schemes etc with the help of some case laws.

INTRODUCTION

Over the past few years the percentage of female labor force has been declining. In 2006 the participation of females was 34 % but in today's time in 2020 it has come down to the level of 24% which is not a good sign for a growing economy like us. This recent major decline in female labor force participation i.e. (FLFP) rate in India has been a very crucial matter of debate as it is related with the Growth rate of a country and its Gross Domestic Product. Indian economy is a mixed economy and because of that private sector and government sector play equal role in the growth process. In the past decade the agriculture sector has major contribution to the economy but in recent times the growth of public sector also increased and this also plays a very crucial role. So, we can analyze that while the rate of growth has increased in the past time but the participation of women labor force has decreased.

There are many factors which are particular to females only as a consequence of which female cannot actively participate in the development activities in comparison to the male labor force. Women's in rural areas are mostly engaged in agricultural activities in comparison to the urban area females and that is why rural area women's are limited to that area only but the rural area women's have a upper-hand because their participation is more but the problem here is that they are not getting paid for the work they have done.

Firstly; India is a country in which different types of culture, trends, communities, caste system exist and these are the factors declining rate of female labor force. Secondly; in India there is this mentality that women are made for doing household work only. Basically Indian economy is a care - economy in which women do all the household work like taking care of child, do the domestic work along with their jobs that is why many females are unable to do overtime work and that is the reason why many companies, factories do not appoint a large number of female labor force. Thirdly; population is also a factor because India's population rate is higher and that is the reasons why we have the problem of unemployment arise.

ISSUES FACED BY FEMALES

- **Technological Development**– If a normal woman wants to be technically advanced than she must have her pockets full with the currency. We know that in today's era many different kinds of technology are coming and to operate them high level knowledge is required. So, industrialization is also increasing in India and because of that in every sector, be it in a company or in a job special skilled employees and workers is required. Now, the problem here is that to operate that high quality machines skilled labor is required so that peacefully work can go and production will increase in a short span of time but in India many people don't know about the high- tech machines because they do not have the knowledge of these type of machines and the reason of the lack of knowledge is education. Yes, education is the primary reason of this cause because the illiteracy rate in India of female is much more than that of male. Again the problem of discrimination arises. So, women do not have the proper knowledge and they do not much about the technology they are not able to do the work and that is why they are afraid to do the job. They are not participating in these types of activities.

- **Training**- This thing is also a barrier because training opportunities is very less in number for the female labor force and the available one are very expensive. Many of the time they are

not eligible for the training part as it requires money and strength and because of this barrier they are not able to compete and they have to take a step back. Hence again because of lack of opportunity and proper means of training female labor force participation is less.

- **Sexual harassment at workplace**– this is always been a problem in India and a lot of women are still facing this issue in India. That is why many women left their jobs because of this reason or they do not want to work. This kind of activity is very gross because they treat women like an object. Most of the women in companies or in other places of work are work on a lower position and males are on the higher position. They exploit women in many manners. They took advantage of their family conditions. Sexual harassment can also be seen in hospitals, at home, in educational institutions and also in police station. This is very shocking that law protectors are the ones who violates the norms and the laws and took advantage of women.

  Case- ***Vishakha and others* v. *State of Rajasthan***[1] in this case what happened was that Vishakha which is a name of an NGO and other women's groups filed Public Interest Litigation (PIL) against the state of Rajasthan and the Union Government of India to authorize the essential privileges of working ladies under Articles 14, 19 and 21 of the Constitution of India. The appeal was recorded after Bhanwari Devi; a social laborer in Rajasthan was severely assaulted for stopping a child marriage. Following 16 monotonous years an Act called 'Prevention of Sexual Harassment Act' (POSH Act)[2] was passed and this demonstration characterizes 'sexual harassment' in accordance with the Supreme Court's meaning of 'sexual harassment' in the Vishakha Judgment.

- **Maternity leaves**– This is also a big concern because in many cases women left their jobs due to maternity reasons. They do not get the sufficient leaves and sufficient money. Women did not get the maternity benefits.

  Case- ***Anshu Rani v State of U. P. And 2 Others*** in this case what happened was that the petitioner was married on 18.2.2018 and after that petitioner was conceived a child so, here in this case the petitioner doctor advised her to take complete bed rest then the petitioner submitted an application to the Block Education Officer as well as to the District Basic

[1] 13 August, 1997
[2] 2013

Education Officer. They granted her maternity leave for only 90 days. The petitioner requested them and said that she wanted 180 days leave as her condition was also not good but they denied and they did not grant leave or more than 90 days. So, here we can see she was suffered and she did not get the full maternity leave.

- **Discrimination**– There is always a high possibility of discrimination in India. Because we know in many places male have the more authority than that of female. For example- if female works equally like men in terms of working hours but they face an issue of reduction in salary, or wages – male gets the higher amount of money but female worker not get that much. So, there is a discrimination which is faced by women not only in salary or in wages terms but also in promotional activities or when property is divided etc.

  Case– ***P.K Phutuppan* v *K.S. Girija***[3] this case is also talks about the violation of fundamental right and gender equality should be there is it in workplace or any other institution and also talks about the harassment at workplace.

- **Mental Harassment**– this mental harassment become a very big issue because in Indian society people see women that they are not able to the work like men can do all the work. There is always a misconception about this thing. They do not know that women are the pillars of the society they can do more work. People think that women can manage to do the household work and take care of the family. Society torture women and because of that mental pressure creates and in many cases they left their job because they did not get proper or equal treatment like men.

- **Income level**- as we know Indian society is male dominating society and if income level increases they think women do not have to work because now their income level is stable. Even if female is not married then they have to leave their job and do the household work. The society only sees the stability factor and again decline in women participation increases.

- **Social Attitude**- people live in rural area generally having an orthodox type of mentality. They think that their wives, daughters cannot do the work other than household work and

[3] 27 August, 2008

they have a fear in their mind that always distracts them and that is why they wives and daughters for work.

- **Transport Facilities**– in rural areas the transport facilities are very less available and because of that the women cannot get a job in the urban areas. Even if they manages to get the job then they have to travel for a very long time and thinking of rural area people is more of stereotype they do not give them permission and they also have fear in their minds because the crime rate is also increasing. Due to lack of transport facilities like less number of bus services, roads are not properly constructed and because of that travelling will be time consuming but Central Government launched a scheme named Pradhan Mantri Gram Sadak Yojana[4] and with the help of this scheme the roads are constructed properly and in year 2012 many more villages were accessible by good quality roads.

- **Infrastructure**- In small scale factories working environment is not good and females who works there generally face lot of difficulties for instance suffocation, lightning problems etc. most of the major problems arises when female have to sit in a particular posture while working and they have to work for 8 to 14 hours per day.

- **Education**- The problem in urban area female force participation is declining because in urban areas people mainly focuses on girl's education and for that they do every possible step so that their girl can get the best education. But when it comes to employing them, their families not allowed them to work. So, main question arises that why they are investing so much amount of money in their education? This is really disheartening that we are investing so much in their studies but we are not letting them work. The director of CSR[5] Dr. Ranjana she said that well-educated females like they are having degrees of doctors, engineer, lawyers etc. but they are not doing any job they are just sitting at home and making no contribution. I mean people do not know how to utilize education in a proper way, and the outcome of stereotype thinking will be harsh for the females as well as for the country's development. Along with education people should also promote job creation facilities and this is the need for more urbanization.

[4] 25th December, 2000
[5]Center for Social Research

IMPACT OF COVID- 19

We know that in India gender discrimination gap is widening and women are still trying to cop up with the problems like sexual harassment, female unemployment and many other things, the Covid-19 pandemic will likely intensify the situation. India is already in bad shape in terms of female labor participation in workforce for instance according to the report of Public Affairs Centre's over 80 percent of females are still remain outside the workforce. Now we can easily analyze how Covid-19 pandemic is effecting the situation. The labor participation was 41.9 percent in March 2020 and it was 42.6 percent in February 2020 and this is the first time when the rate has fallen to this extent and this data is given by the Centre for Monitoring the Indian's Economy. Due to this pandemic India's GDP rate is -23.9 % this is the first growth rate contraction in 40 years.

By this massive problems of financial crisis arise and because of that industry, company's starts retrenched their employees without giving any compensation. As this new normal came into existence and in this new normal technology plays a vital role because many people are working from home but major defect in this is that people also do not have access to these types of technologies and because of that the companies, industries instantly remove their employees. According to International Labor Organization on average basis women in India spend 5 hour on unpaid work every day and male only spend 29 minutes and this gap is growing faster in this pandemic time. New economy reforms and structures are necessary if we want to remove the gender gap otherwise like in this pandemic time problem of discrimination also increases and after this pandemic this problem still remain same if further majors has not been taken.

GOVERNMENT REFORMS

- Females were facing an issue regarding maternity leaves. Therefore, Government took various important steps to increase female participation rate and Government introduce Maternity Benefit (Amendment) Act[6]. This amended act provides for enhancement in paid maternity leave which was previously 12 weeks to 26 weeks. Now, female can take leave for 26 weeks.

[6] 2017

- There are other measures are also provided in this amended Maternity Benefit Act- for instance crèche facilities should be provided so that female can take care of their child while working and this facility should be provided where more than 50 employees are working, another step is women can work in the night shifts as like men can do and proper safety measures should be provided to the females.

- To increase the female participation Government is providing special training to the females like WITI,[7] National and Regional Training Institutes are some institutes which provides training to them so that they can perform well and by this way they will participate more.

- Females are facing the issue of equal remuneration. Hence, Government said there should be equal pay for equal work and everyone should be treated equally. Hence The Equal Remuneration Act[8] provides for payment of equal remuneration to both male and female labor for same nature of work without any type of gender discrimination. As we can see in The Minimum Wages Act,[9] wages fixed by Government are equal for both male and female workers so that discrimination should be not arising.

CONCLUSION AND SUGGESTIONS

As a result of this research work done, it is concluded that the situation of female labor force participation is declining at a very fast speed more so because of Covid- 19 pandemic. However, even prior to the pandemic the rate of female labor force participation was declining. The reasons for declining female labor force participation have already been discussed above also it is important to note that the Government reforms or policies are mostly made for the organized sector. As a result of which the females working in the unorganized sector are left out. Women who are working in the unorganized sector largely constitute women who do household work and there are no policies for such women.

Further wherever welfare schemes and options exists for such women they are limited only to documentation and are not enforced in reality. In order to increase the participation of female labor force in the market the Government should allocates funds and implement the existing policies so that women benefit from them, For example job quota facilities and credit should

[7] Women Industrial Training Institutes
[8] 1976
[9] 1948

be specially created for female so that they participate in the market labor force. Moreover employers should see that appropriate environment conditions are available for women in both the private and public sector. Creating a safe working environment would go far in eliminating the stigma and reducing the insecurities associated with working women also there, care should be taken and there should no caste related discrimination and gender related discrimination with working women. So, that more and more women come out to join the labor force.

HEALTH AND BASIC SANITATION IN INDIA: OBSTACLE FOR EMPHASIZING CONTROL STRATEGIES

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ABSTRACT

Basic sanitation is a significant general public health problem in India. Late interventional concentrates on ecological sanitation in India featured the significance of focusing on control systems. Exploration identified with the suitable financially savvy mediation systems and their usage in Indian setting is a major test. This paper talks about different mediation procedures identified with natural disinfection in India and underlines to focus on it as indicated by the need of country.

Keywords: Control techniques, ecological sanitation, India, prioritization

INTRODUCTION

Environment sanitation visualizes advancement of soundness of the local area by giving clean climate and breaking the pattern of illness. It relies upon different elements that incorporate cleanliness status of individuals, kinds of assets accessible, imaginative and fitting innovations as indicated by the necessity of the local area, financial advancement of the country, social components identified with natural sterilization, political responsibility, limit working of the concerned areas, social variables including standard of conduct of the local area, authoritative estimates received, and others. India is as yet lingering a long ways behind numerous nations in the field of ecological sanitation.[1]

The unsanitary conditions are horrifying in India and need an extraordinary sterile arousing like what occurred in London during the nineteenth century.[2] Improvement in sterilization requires fresher techniques and focused on intercessions with follow-up evaluation.[3] The

[1] 1. Pandve HT. Environmental sanitation: An ignored issue in India. *Indian J Occup Environ Med.* 2008; 12:40. [PMC free article] [PubMed] [Google Scholar]

[2] 2. Majra JP, Gur A. India needs a great sanitary awakening. *Indian J Occup Environ Med.* 2008; 12:143. [PMC free article] [PubMed] [Google Scholar]

[3] 3. Kumar SG, Jayarama S. Issues related to sanitation failure in India and future perspective. *Indian J Occup Environ Med.* 2009;13:104. [PMC free article] [PubMed] [Google Scholar]

need of great importance is to distinguish the current arrangement of natural disinfection as for its construction and working and to focus on the control methodologies as per the need of the country. These needs are especially significant in light of issue of water imperatives, climate related medical conditions, quick populace development, unjust appropriation of water assets, issues identified with authoritative issues, urbanization and industrialization, relocation of populace, and fast monetary development.

CURRENT SITUATION

According to gauges, deficient disinfection cost India nearly $54 billion or 6.4% of the country's GDP in 2006. More than 70% of this monetary effect or about $38.5 billion was well being related, with the runs followed by intense lower respiratory diseases representing 12% of the well being related effects. Proof proposes that all water and disinfection enhancements are cost-advantageous altogether creating world sub locales.

Sectoral requests for water are filling quickly in India owing for the most part to urbanization and it is assessed that by 2025, over half of the country's populace will live in urban areas and towns. Populace increment, rising earnings, and modern development are additionally answerable for this emotional move. Public Urban Sanitation Policy 2008 was the new advancement to quickly advance sterilization in metropolitan territories of the country. India's Ministry of Urban Development authorized the overview as a feature of its National Urban Sanitation Policy in November 2008.[4]In country zones, nearby government foundations accountable for working and keeping up the framework are viewed as frail and do not have the monetary assets to do their capacities. Likewise, no significant city in India is known to have a ceaseless water supply and an expected 72% of Indians actually need admittance to improved sterilization offices.

MEDIATION PROCEDURES

Various creative ways to deal with improve water supply and disinfection have been tried in India, specifically in the mid 2000s. These incorporate interest driven methodologies in country water supply since 1999, local area drove all out disinfection, public–private

[4] 6. Water supply and sanitation in India. [Last cited 2011 Apr 1]. Available from: http://www.searo.who.int/LinkFiles/SDE_trends-ind.pdf

organizations to improve the congruity of metropolitan water supply in Karnataka, and the utilization of micro credit to ladies to improve admittance to water.

Absolute disinfection crusade gives solid accentuation on Information, Education, and Communication, limit building and cleanliness schooling for successful conduct change with inclusion of panchayati raj establishments, people group based associations and nongovernmental associations (NGOs), and so on The key intercession zones are singular family lavatories, school disinfection and cleanliness instruction, people group sterile complex, Anganwadi latrines upheld by Rural Sanitary Marts, and creation focuses (PCs). The principle objective of the public authority of India (GOI) is to destroy the act of open crap by 2010. To offer fillip to this undertaking, GOI has dispatched Nirmal Gram Puraskar to perceive the endeavors regarding money grants for completely covered PRIs and those people and organizations who have contributed fundamentally in guaranteeing full disinfection inclusion in their general vicinity of activity. The venture is being executed in provincial zones accepting area as a unit of usage.[5]

A new report featured that arrangement move to incorporate better family unit water quality administration to supplement the proceeding with extension of inclusion and updating of administrations would give off an impression of being a practical well being mediation in many non-industrial nations.[6] A large portion of the intercessions (counting various meditations, cleanliness, and water quality) were found to altogether lessen the degrees of diarrheal ailment, with the best effect being seen for cleanliness and family unit treatment intercessions. Intercessions to improve water quality at the family unit level are more successful than those at the source. Shockingly, in agricultural nations, general well being concerns are typically raised on the institutional setting, like city administrations, clinics, and natural sterilization. There is a hesitance to recognize the home as a setting of equivalent significance alongside the public foundations in the chain of infection transmission locally.[7] Administrators of home cleanliness and local area cleanliness should act as one to upgrade get back from endeavors to advance general well being. An overview through top to bottom meetings with in excess of 800 families in the city of Hyderabad in India reasoned that,

[5] Total sanitation campaign. [Last cited 2011 Apr 1]. Available from: http://www.ddws.nic.in/tsc_index.htm .
[6] Haller L, Hutton G, Bartram J. Estimating the costs and health benefits of water and sanitation improvements at global level. *J Water Health.* 2007;5:467–80. [PubMed] [Google Scholar]
[7] Nath KJ. Home hygiene and environmental sanitation: a country situation analysis for India. *Int J Environ Health Res.* 2003; 13:S19–28. [PubMed] [Google Scholar]

regardless of whether furnished with market (not concessional) paces of financing, a significant extent of helpless families would put resources into water and sewer network associations.

The part of the WHO Guidelines for Drinking Water Quality accentuates an incorporated way to deal with water quality evaluation and the board from source to customer. It stresses on quality assurance and avoidance of defilement and encourages being proactive and participatory, and addressing the necessities of those in agricultural nations who have no admittance to funneled local area water supplies. The rules stress the support of microbial quality to forestall waterborne irresistible sickness as a fundamental objective. Furthermore, they address assurance from substance poisons and different pollutants of general wellbeing concern.

At the point when sterilization conditions are poor, water quality enhancements may have insignificant effect paying little mind to measure of water tainting. On the off chance that every transmission pathway alone is adequate to keep up diarrheal illness, single-pathway intercessions will have insignificant advantage, and eventually mediation will be fruitful just if all adequate pathways are disposed of. In any case, when one pathway is basic to keeping up the infection, general wellbeing endeavors should zero in on this basic pathway. The positive effect of improved water quality is most noteworthy for families living under great clean conditions, with the impact genuinely critical when sterilization is estimated at the local area level however not huge when disinfection is estimated at the family level. Improving drinking water quality would have no impact in neighborhoods with poor natural sterilization; in any case, in territories with better local area disinfection, diminishing the centralization of fecal coliforms by two significant degrees would prompt a 40% decrease in looseness of the bowels. Giving private excreta removal would be required to decrease the runs by 42%, while taking out excreta around the house would prompt a 30% decrease in loose bowels. The discoveries recommend that upgrades in both water supply and disinfection are vital if baby well being in non-industrial nations is to be improved. They additionally suggest that it isn't epidemiologic however behavioral, institutional, and economic factors that should correctly determine the priority of interventions. Another investigation featured that water quality intercessions to the point-of-utilization water treatment were discovered to be more compelling than recently suspected, and numerous mediations (comprising of joined water, disinfection, and cleanliness measures) were not more viable than intercessions with a

solitary core interest. Studies have shown that hand washing can decrease loose bowels scenes by about 30%. This critical decrease is practically identical with the impact of giving clean water in low-pay territories.

Absence of safe water supply, poor ecological disinfection, ill-advised removal of human excreta, and helpless individual cleanliness help to sustain and spread diarrheal sicknesses in India. Since diarrheal sicknesses are brought about by 20–25 microorganisms, inoculation, however an alluring illness counteraction system isn't attainable. Notwithstanding, as most of youth bowel issues are brought about by Vibrio cholera, Shigellae dysenteries type 1, rotavirus, and enterotoxigenic Escherichia coli which have a high bleakness and mortality, antibodies against these creatures are fundamental for the control of plagues. A solid political will with suitable budgetary designation is fundamental for the control of youth diarrheal illnesses in India.

SOCIETY-BASED MANAGEMENT APPROACH

Public water strategies are moving to local area based administration approach since neighborhood specialists are in every day contact with clients, of whom about half are ladies. Generally, public arrangement moved from regard for conveyance of interests in the water area to redesign of water organizations and to developing the limit of private or willful offices. The nearby setting takes into consideration more productive and viable reactions to neighborhood conditions. Neighborhood organizations and gatherings are better prepared to request nearby cooperation. Nearby water asset arranging is vital in fortifying the monetary and individual limit of destitute individuals in immature territories. Involvement with Mahesana, Banaskantha, and Sabarkantha in Gujarat state underpins this exercise learned. One of the hindrances in Gujarat to water asset advancement is distinguished as expanded interest for public water administrations and insufficient arrangement of administrations because of distance of the zone and monetary limits of focal organizations. Framework is likewise ineffectively kept up.

Giving private excreta removal would be required to lessen looseness of the bowels by 42%, while taking out excreta around the house would prompt a 30% decrease in the runs. The discoveries propose that enhancements in both water supply and disinfection are vital if baby wellbeing in agricultural nations is to be improved. They additionally infer that it isn't

epidemiologic however conduct, institutional, and financial variables that ought to effectively decide the need of mediations.

Bleakness and mortality because of waterborne infections have not declined similar with increment in accessibility of consumable water supply. All the more significantly, small kids bear an enormous piece of the weight of infection coming about because of the absence of cleanliness. India actually loses somewhere in the range of 0.4 and 0.5 million youngsters under 5 years because of loose bowels. While newborn child mortality and under 5 death rates have declined throughout the years for the country in general, in numerous states, these have deteriorated lately. One reason is the inability to gain critical ground in improving individual and home cleanliness, particularly being taken care of by small kids and the conditions encompassing birth.

SOME OTHER DEVELOPMENTS

The farming area represents somewhere in the range of 90 and 95% of surface and ground water in India, while industry and the homegrown area represent the excess. Simultaneously, a few significant measures are being taken to manage the above issues. On the water assets the board front, the National Water Policy, 2002 perceives the requirement for very much created data frameworks at the public and state levels, places solid accentuation on nonconventional techniques for use, for example, inter basin moves, counterfeit re-energize, desalination of salty or ocean water, just as customary water preservation practices, for example, water gathering, and so on, to increment utilizable water assets. It likewise advocates watershed the board through broad soil protection, catchment region treatment, safeguarding of woods, and expanding timberland cover and the development of check dams. The approach likewise perceives the possible need to revamp and reorient institutional game plans for the area and underscores the need to keep up existing framework.

While no exhaustive investigation on value issues identifying with water supply, disinfection, and wellbeing has been led for the country overall, regular value gives that plague the area in most non-industrial nations likewise remain constant for India. Likewise, complete investigations on the financial estimation of the water and disinfection area in India additionally don't exist.

It is essential to emphasize the requirement for Rural Water Supply and Sanitation [RWSS] and Urban Water Supply and Sanitation [UWSS] offices to work connected at the hip with

their wellbeing and schooling partners to together screen markers of RWSS, UWSS, wellbeing, training, neediness, and value to gain critical ground in the separate areas. Existing wellbeing advancement and training projects ought to be made more compelling and intended for accomplishing conduct changes expected to improve cleanliness.[8]

URBAN SANITATION

Percent of metropolitan populace without legitimate disinfection in India is 63%. The eleventh long term plan conceives 100% inclusion of metropolitan water, metropolitan sewerage, and country sterilization by 2012. In spite of the fact that interest in water supply and disinfection is probably going to see a bounce of 221% in the eleventh arrangement over the tenth arrangement, the objectives don't consider both the nature of water being given, and the maintainability of frameworks being set up.[9] Expanding accentuation on utilization of data innovation applications in metropolitan administration and the board to guarantee fast admittance to data, arranging, and choice emotionally supportive networks are the essential concern territories identified with ecological sterilization. Strong waste administration is likewise progressively seen as a significant zone in UWSS. Enactment on city squander dealing with and the executives has been passed in October 2000. A few techniques on strong waste administration incorporate planning of town-wise all-inclusive strategies, preparing of metropolitan staff, IEC and mindfulness age, contribution of local area based and nongovernmental associations, setting up and activity of manure plants through NGOs and the private area, upgrade of the limits of some state constructions like State Compost Development Corporations with accentuation on business tasks and private area inclusion. Varieties in lodging type, thickness and settlement design, neediness status, and admittance to arranged administrations will prompt various answers for sterilization in various pieces of the city or inside a similar area.

DIFFICULTIES

- Anticipation of defilement of water in conveyance frameworks,
- Developing water shortage and the potential for water reuse and preservation,
- Actualizing creative ease disinfection framework
- Giving supportable water supplies and sterilization for metropolitan and semi urban regions

[8] Kumar SG, Kar SS. Sustainable behavioral change related to environmental sanitation in India: Issues and challenges. *Indian J Occup Environ Med.* 2010; 14:107–8. [PMC free article] [PubMed] [Google Scholar]
[9] The water and sanitation sector in India. [Last cited 2011 Apr 1]. Available from: http://www.pppinindia.com/pdf/ppp_position_paper_n_sanitation_102k9.pdf.

- Decreasing differences inside the districts in the country
- Manageability of water and sterilization administrations.

The general wellbeing challenge intrinsic in gathering the MDG targets is guaranteeing that enhancements bring about admittance to water and disinfection for the basic in danger populaces. Creative methodologies are needed to guarantee the accessibility of minimal effort, straightforward, and locally worthy water and disinfection mediations and coordinating these methodologies into existing social establishments like schools, markets, and wellbeing offices.

CONCLUSION

Execution of ease sterilization framework with lower sponsorships, more prominent family inclusion, scope of innovation decisions, choices for clean edifices for ladies, rustic waste frameworks, IEC and mindfulness building, association of NGOs and neighborhood gatherings, accessibility of money, human asset improvement, and accentuation on school disinfection are the significant zones to be thought of. Additionally fitting types of private cooperation and public private organizations, development of a sound area strategy in Indian setting, and accentuation on maintainability with political responsibility are requirements to bring the change.

JUDICIAL ACTIVISM OR JUDICIAL OVERREACH?

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ABSTRACT

The judiciary acts as a watchdog for our democracy. It is the guardian of the Fundamental Rights. It is important for such an institution to be active in securing the rights of the citizens with the changing society. It transforms to a more active role by taking up cases involving fundamental right violation in a suo moto action. The main aim of judicial activism is to ensure justice and equality to all. However, the judiciary must not take such decisions whimsically or interfere with the functions of executive and legislature. This encroachment is termed as "judicial overreach". There are various instances where judicial activism took the shape of judicial overreach and the judiciary overstepped its boundaries which proved to be detrimental for the country. It is high time for courts to regulate such activities and follow "judicial restraint".

INTRODUCTION

India has separated the functions of law making, law enforcement and law interpretation into three independent institutions namely, the legislature, executive and judiciary that work within their established jurisdictions. However, we know that such a demarcation is not absolute, and the three organs are not divided into water-tight compartments. Interdependence of one organ over the other is inevitable. Each organ has the authority to maintain checks and balances over the other to prevent any encroachment. The judiciary is conferred with the power to review the actions of the Executive and Legislature to ensure that they are within the constitutional boundaries. It can strike down any law made by the legislature if it violates any constitutional provision and strike down any executive action if found illegal and arbitrary, according to Articles 13, 21, 32, 226 and 227 of the Indian Constitution. Article 142 extends the power of the Supreme Court by giving it extraordinary authority to pass any order or decree to provide 'complete justice' in any matter that is presented before it.

Judicial activism and its methods are not defined by the constitution or any authority to indicate its origin. The court takes up cases on a suo moto (latin for on its own) basis and through Public Interest Litigation. As office holders became less representative of people's will, the Supreme Court needed to expand its jurisdiction and issue directives to the executive and legislature. Suo moto cases and PILs discontinued the principle of locus standi and enabled the judiciary to take up public cases even when there was no formal complaint by the aggrieved party. When this practice goes overboard it becomes judicial overreach as it trespasses the functions of the executive and legislature. This is undesirable for any democracy.

STATEMENT OF PROBLEM

Judiciary should uphold the constitutional values, rights, and interests of citizens if there are various legal hindrances that stand in the way of justice. And thus, emerged the concept of judicial activism. But with rise in the activist role of the judiciary, judicial overreach has also increased. Its embracement can menace good governance. The friction between the judiciary and executive has escalated due to the overreach by courts. This paper looks forward to finding suitable measures to resolve the above conflict.

LITERATURE REVIEW

1. <u>Judicial Activism, Overreach, or Romanticism: What Is the Supreme Court Up To?</u>

The article differentiates between activism and ordinary adjudication on the basis that there is no litigation between the parties and the advisory opinion of the court is not binding on the government and cannot be executed as a judgement of the court. It realizes the need for an active judiciary but at the same time recognizes judicial overreach goes against the spirit of separation of powers. It talks about the complications arising from the invention and ease of filing PILs. It argues that "democracy is not limited to the over-intellectualized counterparts of the urban areas who have easy access to courts and money to fight the case, but also to the 70% of the rural population who rarely get to visit courts and the urban poor who probably don't even understand what a PIL is"[1]. Courts have a duty to dispense affordable and speedy justice to the poor as well. Through judicial activism courts are trying to govern the country and correct every ill that exists. It finally concludes that for the rule of law to prevail judiciary must be impartial, impersonal, universal, and most importantly restrained.

2. Judicial Activism v. Judicial Overreach in India

The research paper begins with defining the term "judicial activism" as the process in which the judiciary steps in the shoes of legislature and executive and comes up with new rules and regulations. It explains why the Supreme Court had to expand its jurisdiction because of failure on the part of other organs due to corruption, delay, non-responsiveness and other inefficiencies, violation of basic human rights. In matters of privacy in cyber space, right to life, environment the legislature sometimes fails to fulfill its duty and thus it becomes necessary for the judiciary to step in. it went on to describe the areas of judicial activism by citing recent Supreme Court cases. It defined 'Judicial overreach' as an "extreme form of judicial activism where arbitrary, unreasonable and frequent interventions are made by the judiciary into the legislature's domain, with the intention of disrupting the balance of powers between the three organs of the government and is a challenge to the basic structure of the Constitution"[2]. There is a thin line between activism and overreach. It contends that the importance of judicial review and activism cannot be denied, but what is required by the courts is to ensure they don't cross the line. It concluded that a country cannot be run by judicial decrees that create an unhealthy asymmetry in the institutions of the government.

3. Judicial Activism and Overreach in India

The author has explained the significance of judicial activism with the help of wide variety of cases. Judicial activism was a response to several cases dealing with violations of fundamental rights. At the same time the courts must be aware of their limitation, within which it should function. Judges must not encroach upon the other two organs of the government. The research paper has been systematically divided into specific side headings ranging from history of judicial activism, its early cases, when it becomes overreach, the need for judicial restraint. The author is of the view that activism sometimes goes against the scheme of the constitution as frequent interventions by the courts weaken the legislature and executive. It must acknowledge the difference between activism and overreach. While according to the author judicial restraint is the need of the hour, he has also identified challenges to it, which are lack of accountability and abuse of power of contempt.

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[1] Judicial Activism, Overreach, Or Romanticism: What Is the Supreme Court Up To: By Shubehndu Anand, Ayush Anand and Mansi Agarwal

[2] Judicial Activism v. Judicial Overreach in India: B Nagarathnam Reddy

RESEARCH GAP

The research papers discussed above have talked at length about how 'judicial overreach' goes against the doctrine of separation of powers and how it negatively impacts the functioning of a democracy but fail to provide effective measures to correct the same. How should the judiciary be restrained and how should it make sure it doesn't cross the 'line' is not explained with a practical approach.

RESEARCH QUESTIONS

- When does judicial activism take the form of judicial overreach?
- What are the concerns relating to judicial overreach?
- What can be done to prevent judicial overreach?

RESEARCH OBJECTIVE

- To critically analyze the overstepping of judiciary into the matters of legislature and executive.
- To suggest effective measures to regulate and prevent judicial overreach

CONCEPT OF JUDICIAL ACTIVISM

It is impossible to imagine courts as 'inactive'. Rather than being silent spectators the judiciary has always strived to secure the rights and well-being of the citizens. It is compelled to do so because of the action/inaction of the executive and legislature that deprive the citizens of their basic freedoms such as right to life, livelihood, sleep, clean environment etc. It is imperative for the judiciary to assume the role of an activist and opt for suo moto action, or else the marginalized and vulnerable sections of the society will not be duly represented in merely because of financial constraints and social status. These factors obstruct justice. It is the court's duty to ensure that justice is affordable and accessible to all irrespective of such restraints. It prevents the judges from strictly adhering to the exact words of a law and allows them to use their own interpretation in certain cases.

HISTORY OF JUDICIAL ACTIVISM IN INDIA

The first instance of judicial activism was seen in an 1893 Allahabad High Court judgement where the judge delivered a dissenting decision. The case involved an under-trial who did not have enough money to engage a lawyer. The question before the court was, whether to decide

the case by merely looking at the papers produced by him. The judge held that a case can only be heard only when somebody speaks. Thus, he laid down the foundation stone for judicial activism in India. The theory of judicial activism developed further in the late 1960s and 1970s during Indira Gandhi's regime. The abolishment of Privy Purses and privileges given to kings and princes of princely states and nationalization of 14 banks by the government was not taken well by the judiciary and so it declared the legislation as unconstitutional. The essence of judicial activism can be seen in the court's affirmation regarding the quality of judicial review. In ***A.K Gopalan v. State of Madras***[3] the court asserted that judicial review is inherent to the Constitution. Even in its absence, if any legislative enactment violates any fundamental right the court has the authority to declare the act as invalid. In ***Golaknath v. State of Punjab***[4], while dealing the constitutional validity of 17th amendment held that Parliament cannot amend Part III of the constitution or take away any fundamental right. The Supreme Court in the ***Keshavananda Bharti v. State of Kerala***[5] held that Parliament by no means can alter the contents of the basic structure. The ***Bhagalpur Blinding case***[6] held that the right to free legal aid to the poor, representation of a lawyer are included under Article 21 and strictly mandated that the accused should be produced before the magistrate within 24 hours. In ***Balaji v. State of Mysore***[7], the court observed that, though the backward classes are eligible for protective discrimination, it must not deny right to equality and equal protection of law. In the ***Asian Games case***[8], the court held that the workers who were temporarily hired for construction services were to benefit from the relevant labor and industrial laws and could seek implementation under article 32. These were few examples that led to the origin and development of judicial activism in India.

WHY JUDICIAL ACTIVISM?

- **<u>Failure of the legislature and executive in discharging its functions</u>**

The power of lawmaking is solely vested with the legislature. However, such separation of power between the three organs does not hold any ground in today's scenario because of rampant corruption, prioritizing personal interests, ignoring the exploitation of the masses. The legislative process has become more of a majority rule than reason[9] and so it fails to

[3] 1950 AIR 27
[4] 1967 AIR 1643
[5] AIR 1973 SC 1461
[6] 1982 AIR 1008
[7] 1963 AIR 649
[8] 1982 AIR 1473
[9] https://nickledanddimed.com/2019/07/14/defending-the-need-for-judicial-activism-within-the-indian-/

satisfy the ends of justice. When the legislature fails to enact a suitable enactment with respect to the dynamic nature of the society and government agencies do not perform their duties sincerely, a democracy loses the faith and confidence of its citizens. In such extra-ordinary scenarios, it is only reasonable for the judiciary to take a proactive role.

- **Pressure to aid citizens in case of fundamental right violation**

  Where the government, its agencies or any third party violates the fundamental rights of citizens, the judges may take upon themselves to aid citizens. When citizens require protection of their rights and interest they always turn towards the judiciary for help. The judiciary is always under tremendous pressure to provide such help. The courts have encouraged and initiated PILs on various occasions by relaxing the requirement of locus standi, adversarial form of litigation and also presumed the role of an investigator, counselor, and monitored administration.

- **Failure of legislature to fulfill all societal needs**

  Despite having numerous legislations on various topics, there are questions of law which have no legislation yet. This is because of lack of exposure to such issues, lack of attention and indifference of the legislature. Where the legislature fails to make a law that is essential to meet the need and demands of the society, the judiciary indulges in judicial legislation.

- **Public confidence in the judiciary**

  The faith and confidence of the public in the judiciary acts as an inspiration for the courts to exceed their capacity and go out of the way to fight for their rights. As the guardian of fundamental rights, it is natural for the citizens to expect the judiciary to safeguard their interests.

- **Role of Individual Players**

  Individual players and NGOs such as people right activists, consumer right groups, environmental action groups, women right groups, civil right activists, lawyer-based groups etc are responsible for encouraging judicial activism[10]. Some judges have individually too laid down the path for judicial activism.

[10] Upendra Baxi, ―The Avatars of Indian Judicial Activism: Explorations in the Geographies of (in) Justice‖ in S.K.Verma and Kusum, Fifty Years of Supreme Court of India – Its Grasp and Reach 173 (2000).

BUT ARE JUDGES OVERREACHING?

"The line between judicial activism and judicial overreach is a thin one…A takeover of the functions of another organ may become a case of over-reach"

-Dr.Manmohan Singh[11]

The then Prime Minister had accused the Supreme Court of judicial overreach as it had taken over legislative and executive functions. Instances where the courts arguably crossed the line and directed the executive to perform its obligations are many. While this may be desirable, it is against the order of the Constitution. In cases such as labour policy, environmental and ecological matters etc. judicial behavior can be proactive, but once it starts intervening in matters related to the financial policies of the government, political affairs of the country or even the proceedings of the legislature it commits judicial overreach. When the judicial activism goes beyond its scope and appropriates judicial adventurism it leads to judicial overreach. Following are the recent instances of judicial overreach in India:

a) The National Anthem Case- *Shyam Narayan Chouksey v. Union of India*[12]

The Apex court made it compulsory for cinema halls to play the National Anthem before a film started and that all present should stand up to show their respect. The entry and exit doors shall be closed and the National Flag should be displayed on the screen while the Anthem is being played. The court neglected the landmark Bijoe Emanuel case and the Uphaar Tragedy case where the court said that under no circumstance should the doors of a cinema hall be shut. It violated the Prevention of Insults to National Honour Act, 1971 which mandates that no film, drama, or show can display the National Anthem as a part of the show.

b) Lodha Committee Report on the Board of Control for Cricket in India

The Supreme Court set up the Lodha Panel as charges of corruption, match-fixing, and betting were made against the BCCI. The panel endorsed the inclusion of BCCI under the RTI, legalization of cricket betting and recommended that ministers and government servants should not hold office positions, one post per person etc. It was a case of judicial overreach because Lodha community had no authority because BCCI was listed under the Tamil Nadu Societies Act, received no funding from the government and was not controlled by the central or any state government. Autonomy of sports bodies should be respected. External

[11] Speaking at the Conference of Chief Ministers and Chief Justices held in New Delhi in Apr 08, 2007.

interference is not good for their development. With the one state one rule, the court ignored that India has teams participating in the Ranji Trophy from Railways and Services. This strict provision of geographical territory excludes Mumbai, Baroda, and Saurashtra etc.

c) NJAC Bill 99th Constitutional Amendment

The Supreme Court order to declare the 99th amendment and the National Judicial Appointment Commission Act 2014 as unconstitutional and void to replace the collegiate system, has been the most controversial form of overreach. The Apex court rejected the government's plea to appeal the case to a higher bench but has invited suggestions to improve the existing collegiate system. The NJAC ensures transparency in judicial appointments. The commission to select judges comprises equal number of judges and non-judges so that power is not exclusively vested only in the hands of judiciary or the political class.

Judicial overreach negatively impacts a government in the following ways: -

1. Violation of the doctrine of separation of powers

Powers and functions of a government should be divided among three organs namely legislature, executive and the judiciary with proper checks and balances. But judicial activism created a scope for judge made laws which is abuse of constitutional power.

2. Rule of Court is Detrimental

Judicial activism does aid the execution of rule of law. But when a court overreaches itself it is results in "judicial populism"[13]. Judges are not supposed to create laws but must ascertain their true meaning otherwise it would create a situation of turmoil.

3. Lack of Accountability

The extended jurisdiction of judiciary is a matter of concern as it causes abuse of power. Transparency and accountability are very important for a democracy; the judiciary is also required to be transparent and accountable. Unfortunately, this is not the case as it damages the checks and balances mechanism.

[12] (2017) 1 SCC 42

[13] S. P. Sathe, „Judicial Activism: The Indian Experience" (2001) 6 Washington University Journal of Law & Policy 29.

CRITICAL ANALYSIS

When judicial activism is overtly exercised it encroaches the powers of the legislature and executive. The Supreme Court has laid down in various cases that a writ of mandamus cannot be issued to the Legislature by courts. The legislative power of the judiciary is derived from judicial activism. It cannot be used as a tool to fill gaps in legislation or create rights and liabilities that the law doesn't provide. "Judiciary is the least competent body to function as a legislative or administrative agency, as they lack the ability to make probing enquiries. It does not have any means to supervise the consequences/effects of its orders and judgements, or reverse the judgements if they require any modification or are found unworkable."[14]

The social dimension of PILs has diluted. It is observed that the court's intervention in the present times, does not enforce the rights of the poor but corrects the actions/ omissions of the executive, public officials or government bodies. Instances of such intervention can be seen where the court passed orders against the use of black films in automobiles, when it ordered exclusion of tourists in the certain areas of tiger reserves, banning of firecrackers, controlling of loudspeakers, interlinking of rivers which is clearly an executive function. The Apex Court did not hesitate to interfere into the military operations of the country. The verdict materially affected the operation.

It destroys the spirit of our constitution as India firmly believes in separation of powers and creates conflicts between the judiciary and legislature. The legislature is portrayed as an inactive institution. Courts are more interested in intervening with public policy matters in the name of judicial activism or fundamental rights violation, even when there is no such violation. Judicial overreach destroys the very reason as to why the concept of judicial activism was developed; to strengthen people's faith in the judiciary. It is a waste of the court's time and only increases the pendency of cases when that time can be utilized for hearing important matters that actually involve the public interest. The judgments given have the tendency to be influenced by the judge's bias or selfish motives. Repeated interventions by the judiciary diminish the confidence of people in the efficiency and integrity of the government.

"There is a very fine line between the judiciary instructing the executive to do something and instructing the executive on how to do something. There is a danger to courts engaging in the

[14] Judicial Activism and Constitutional Democracy in India‖ commended by Professor Sir William Wade, Q.C.

latter because from a broad perspective, such decisions should be the prerogative of the legislature and executive, and from a narrow perspective the subject matter often involves technical or economic decisions outside the expertise of the judiciary"[15]. Government's policies are always subject to judiciary's scrutiny. The distribution process of food grains for people below poverty line was monitored by the court. In the 2G license case, all public resources and assets were held as a matter of public trust and could be disposed only through a public auction. The judiciary has completely disregarded constitutional separation of powers and has taken up the role of a supervisor of all the other branches of the government.

One judgement becomes the standard ruling for other cases which results in overreach. It restricts the law-making power of the legislature. The response of the judiciary with regards to overreach is that they are compelled to do so because the legislature and the executive fail to meet their obligations. The political branches of the government by the same logic claim that there are many areas where the judiciary has failed to meet the expectations of the public and that it must also be kept in regular check. This debate can go on and on. Hence, unless PILs are strictly formulated and observed they would encroach upon the other divisions of the government.

RECOMMENDATIONS

The judiciary needs to understand and be aware of the thin line between judicial activism and overreach. The doctrine of separation of powers should be strictly considered. New methods should be adopted by the government to hold the judiciary accountable to ensure transparency. The legislature must aim to not leave any vacuum in laws so that there is less need for judicial review and intervention.

Most importantly the court must try to practice judicial restraint. The Supreme Court on various occasions has emphasized the importance of restrain to maintain a balance between the three organs of the government. It is a type of judicial interpretation that encourages judges to limit the exercise of their power. It requires them to strike down a law only when it is completely unconstitutional. It holds that law-making is not the job of the judiciary. It will only enhance its prestige and respect. It acknowledges the equality of the other two organs, and reduces judiciary's interference into other branches. It also safeguards the independence of judiciary and complements the doctrine of separation of powers. An activist court cannot

[15] https://bit.ly/32ItSrk

deal with cases involving details of a legislative subject and thus needs to apply breaks to it personal motives. Courts cannot enter the sphere of economic policy and conduct administration of the country. Every matter of public interest cannot be included in a PIL. Non-compliance of the government or its agencies and actual violation of the fundamental rights of citizens are the grounds on which the judiciary can intervene. Judiciary has to adopt the principle of judicial self-restraint while exercising their power of judicial review.

CONCLUSION

A rightful judicial intervention is one which falls within the permissible limits of 'judicial review'. Matters regarding the government policy or politics which lack core legal issues are outside the purview of the judiciary. In cases where the government fails to discharge its responsibilities such as environmental degradation, sexual violence, educational reforms, corruption etc the judiciary can step in to secure the interests of the citizen and issue a writ of mandamus to the concerned public body. However, there is a thin line that separates judicial activism from overreach, and the courts must respect that. What makes activism as overreach is based upon the perception of citizens. Therefore, it becomes difficult to regulate it and more the reason for the courts to be cautious in the suo moto cases they undertake. It is concluded that the judiciary was not created to resolve the shortcomings of the government. It is essential for the judiciary to be impartial, independent but most importantly restrained.

LEGALIZING THE PROSTITUTION IN INDIA

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ABSTRACT

Prostitution is engaging oneself in the sexual activities for the payment. The one who engages in such kind of activities are known as prostitutes. This is a way long practised activity since the society was organised. This is a problem which is been prevalent both in ancient and modern India. In ancient days it was practised in the form of devadasi system. In a literal sense they have been devoted to god which means they are the wife of god and don't require to marry a mortal being. Later these women were mishandled by the priests of the temple. The report suggests that the women who indulge in such kind of activities are from the poor background and has no way for survive since they don't get any parental guidance. Though it's been practised in India for a very long period of time, prostitution as an institution is always been evil. On the other hand, some part of the society states that prostitution is a necessary evil in order to avoid rapes and unwanted sexual coercion. The prostitutes are the most vulnerable people in the society. In order to protect them there are many laws in the society. In 1956, immoral traffic (suspension) act was passed, which ban the practise of prostitution in public but can be done privately. Section 372 of IPC prohibits the selling of children for prostitution. Though there are certain provisions and act to protect them, it is not been clearly mentioned whether prostitution is legal or illegal unlike United Kingdom where it had made prostitution as illegal. This paper is all about prostitution and effect of legalising prostitution in India. Will also be analysing effect of not legalising prostitution in India and also the laws which protects the prostitutes in India?

***Keywords*:** prostitution, legalising, prostitute, sexual coercion, women.

INTRODUCTION

Prostitution is the act of involving in sexual activities in exchange of money. The term prostitution is derived from the Latin term called prostitute which means to expose publicly. It is sometimes mentioned as commercial sex or hooking. It is an assortment of structures, and its legal status varies from one nation to the other. It is just one part of the sex business

the other side include pornography or other sexual entertainments. Like other form of violence that is been committed against women, prostitution is another gender specific issue because women are the one who are vulnerable and the victim of such kind of activities. But we wouldn't be completely being ignorant on the fact of sexual exploitation and violence against men. Earlier only females were working as prostitutes and men were their clients. But in this era both men and women are indulged in this profession. According to the report of BBC, the rate of men prostitutes in India are hiking. Male prostitutes are called as gigolo.

Moreover, the transgender often gets unnoticed when we speak about prostitution. Billions of profits are been made in India out of the prostitution by taking advantage of socially and economically backward class people. Basically, taking advantage of the vulnerable people in the society. Prostitution in India is a way old profession. In Hindu mythological inferences sex workers were referred as asparas. Prior to the colonial period devadasi system was much prevalent in the Indian society. The women were given to god but when feudalism and colonialism diminished, these women were been exploited by the temple priests. This is one among the oddest forms of prostitution in India. Even the Vedas there was a reference to the prostitution. In Rig Veda as stated by Kausalya, "women who lived by their beauty can entertain men". This shows the existence of prostitution in ancient India. In India prostitution is legal only if it is carried out in the private but it excludes some other form of sexual activities such as owning or managing brothel, kerb crawling, soliciting in public place, and prostitution in hotel and child prostitution. But many brothels illegally have been operated in metropolitan cities of India.

LEGAL PROVISIONS RELATED TO PROSTITUTION IN INDIA

Immoral trafficking act, 1956, defines prostitution as sexual exploitation or abuse of a female for monetary purpose and a prostitute is a person who gains the commercial benefits.[1] This act is also known as SITA. This act mentions that the prostitutes can carry out their trade in private but not in public. The clients will be arrested if it is been carried out in the public. According to this act, women shouldn't indulge in commercial sex within 200 yards of public place. Even the prostitute doesn't come under the ambit of labour laws.

[1] https://indiankanoon.org/doc/69064674/

Later an amendment was made to this act in the year of 1986, where it stated that the prostitutes can be arrested if they are found soliciting in the public or seducing others. The mobile numbers of the call girls shouldn't be posted in the public. If it is been published then they can be punished for 6 months along with the penalty. If the client is indulging with the sex worker within the area of 200 yards of public space can be imprisoned for 3 months with fine. In case of involving in a sexual activity with the minor, he/she can be punished with imprisonment of 10 years. If an adult man lives with a prostitute then he is found guilty unless he proves himself as innocent or he will be punished with imprisonment for 2-4 years. The ITPA, 1986 is vital because it is in accordance to the preamble as well gives effect to the trafficking convention signed at New York on 9th May, 1950 for preventing the immoral trafficking against women and children.

In **"*The State of Uttar Pradesh vs. Kausalya*"**[2] the constitutional validity of the ITPA was challenged. The facts of this case are that few of the prostitutes were asked to be removed from the city of Kanpur in order to maintain the decorum of the city. The HC of Allahabad held that section 20 of this act abridged article 14 and article 19(1) (e), (d). The act was held to constitutionally valid and there was an intelligible differentia and also the reason ought to be achieved by the act.

This act it focuses on maintains decorum and morality in the society and also to rescue the women and girls by providing them with rehabilitation so that they become decent member of the society.

A proposal was made to amend this act in 2006. The amendment bill it removes the provision which penalize prostitution by soliciting the clients. Also intended to criminalize the person who visits the brothel for the purpose of sexual exploitations of the trafficked victims with fine amount of Rs. 20,000[3]

Article 21, it discusses about right to protection of life and personal liberty. Also mentions that no person shall be deprived of life and personal liberty except according to the procedure established by law.

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[2] 1964 AIR 416, 1964 SCR(4)1002.
[3] Diva Rai, legal aspects related to prostitution in India, from https://blog.ipleaders.in/legal-aspects-related-to-prostitution-in-india/.

In the case of ***"Budhadev Karmaskar v. State of West Bengal"***,[4] in this case it was held that the sex workers are also human beings and they should be treated with humanity and dignity. This shows that article 21 was upheld in this case.

In the constitution of India, a provision for trafficking is explicitly mentioned. **Article 23** prohibits trafficking in every form including sexual exploitation of women and girls. In addition to the ITPA and the constitution, we have certain provisions mentioned under IPC.

Under IPC

1. Section 366-A deals with procuration of minor girls
2. Section 366- B deals with importation of girls.
3. Section 372 deals with selling of girls for prostitution.
4. Section 373 deals with buying of girls for prostitution.

The provision related to rape is also applicable for the rape of brothel inmate but it must be without her will. The minimum punishment is 7 years under IPC.

LEGALIZING PROSTITUTION IN INDIA

Legalizing prostitution what does the term legalizing mean? Does it mean that they can open a sex parlour or brothel? Does it mean that like doctors they could also open the parlour and hang the board mentioning the availability of girls? It is not in such a way. Legalizing mean giving legal recognition to those sex workers so that they have certain rights. There have many arguments and discourses regarding giving legal status to the prostitution in India. Many countries like France, Canada, Germany, Denmark, Wales etc... Have regulated and legalized the prostitution.

In the German country the prostitution is being considered as a profession not only legal but also taxed, where the brothels are allowed to advertise and send job offers to the companies and the country had passed the recent legislation in 2016 which regulates and protects the prostitutes but providing the permit for all prostitution trades and a prostitution registration certificate.[5]

[4] C.R.A. NO. 487 OF 2004.

[5] Dr. Sandhya singh, prostitution- an overview of socio- legal perspective, IJTRS international journal of technical research & science, volume 3 issue VI, July, 2018.

In India, there's no provision under law which states that prostitution is a criminal offence but, seducing any person in the intention of prostitution or running a brothel is illegal[6].

Bombay high court, justice prithiraj chavan said that prostitution is not considered has a criminal offence under the immoral traffic (prevention) act, 1956.[7]

To say that legalising the prostitution would reduce the rape rate in India. The logical solution could be to legalise the prostitution with the hope that the government would able to regulate the trade in the interest of the sex workers.

EFFECTS OF LEGALISING THE PROSTITUTION

- It constitutes the better life for the sex workers
- It ensures the labour rights for sex workers
- Generally, prostitutes are scared to go to police station, if it's legalised the fear for going police station would change and they will have a right to go to the police station without any fear.
- Sex workers will have respect in the society and not degraded.
- The government will have track or have a data and ensure that no minor is being involved
- Regular health check-ups would ensure that no more sexually transmitted disease
- The concept of forced prostitution will be abolished since when its legalised and the government will have a tap on it
- The major change will be reduction of rape rates and trafficking
- The sex work will be considered as a work and will not be degraded
- It will boast the economic empowerment
- Taxes must be introduced instead of bribes
- Rehabilitation and related service must have the special legislation or the provision for the same.
- Legalisation of prostitution will enhance and upgrade the system.
- The main thing is about eradication of the forced prostitution will come to an end
- The right of the sex workers will be protected.

[6] Yashi Verma, legalisation of prostitution, from http://www.legalserviceindia.com/legal/article-3392-legalization-of-prostitution-in-india.htm.

[7] https://www.indiacode.nic.in/handle/123456789/1661?locale=en#:~:text=India%20Code%3A%20Immoral%20Traffic%20(Prevention)%20Act%2C%201956&text=Long%20Title%3A,the%20Prevention%20of%20Immoral%20Traffic.

Thus, the scope of gender equality which must include equal dignity and respect towards the women who chooses this line of profession of prostitution and future policy needs to focus on the growth of such areas, government, social and security support to NGO's working for the same cause will add more effective and power of the struggle towards this where the authorities can join hands with the locals and once it becomes legal then the harm of harassment of women of the sex workers and the fear of police would reduce completely.

EFFECTS OF NON-LEGALISATION THE PROSTITUTION

On the other side it becomes more socially acceptable. "It's wrong" since the human body is a gift, meant to be kept pure. Selling it would lead to immoral. Feminist view on against the prostitution argues deprived of lives of most women who enter into this trade.[8] No doubt that India's position in prostitution of the sex worker industry is being looked down upon and degraded. And to put an end for trafficking the right way is to criminalise the prostitution.

The others effects are thus following;

- It reduces the trafficking
- Violent sex would be abolished
- No to male dominance over females
- The minor sex workers will be reduced
- Low pay
- No longer there will be an effect on the prostitutes
- Decrease in STDS.
- It won't change the social stigma attached to prostitution.

Thus, there are more benefits of regularisation and legalisation of prostitution that not legalising it.

SOLUTIONS

The problems involved in the prostitution are very much complicated. It can be solved in two ways

1. Prevention of entry of new prostitutes.
2. Rehabilitation program for the women who are into prostitution.

[8] Prostitution and beyond: An analysis of sex work in India (New Delhi: SAGE publisher, 2008).

PREVENTION OF ENTRY OF NEW PROSTITUTES

1. Counselling and guiding programmes should be given to the public with regard to the cause and problems of the prostitute. More economic opportunity should be given to the prostitutes since they are most vulnerable in the society. The concept of community policing should be made popular so that the police officers would be familiar with the local inhabitants. The involvement of civilians and NGO in policing can be done.[9]

2. The children of the prostitutes should be given respectable future.

REHABILITATION PROGRAM FOR PROSTITUTES

The government along with the NGO should conduct rehabilitation program along with that for the victims they have to conduct vocational training so that they get other jobs and have a respectable life in the society.

CONCLUSION

Prostitution is an old profession which is been flourishing for a very long time. It is the legal responsibility of the government to conduct the rehabilitation programmes for the women involved in the prostitution. Decriminalising the sex workers with proper health security and better wages and protection would lead to better society. Not only in the society but it will lead to a progressive step which will eliminate many social evils, from the society like rapes and child prostitution, etc.., A better inclusive legal legislation, laws and frameworks and implementation of all the safeguard would lead a better society.

[9] Dr. Tulsing sonwani, prostitution of Indian society: Issues, trends and rehabilitation.

"MANDATING 'COMPULSORY VACCINES' ON RELUCTANT CITIZENS - THE COVID-19 ERA"

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INTRODUCTION

The weakened microorganisms causing such developments in the bodies to attack their pathogen counterparts. How better could human minds function!

From treating diseases with herbs, taking long time to cure, the human race, wanting quick results, has come around a time of vaccination with greater effectiveness. The technique of immunization with vaccines has existed and developed over hundreds of years. The world has gone through major diseases that for then had crippled the lives of people all across and still it would leave its impact for decades to come. Not to forget these diseases- polio, tetanus, influenza, Hepatitis B, measles, chickenpox, diphtheria, just to name a few.[1] History has been a witness of the fact that these major diseases have been able to be eliminated by the effectiveness or may it be said, the magic of vaccines. Polio was eliminated in the US by 1979 through widespread vaccination efforts. So, was the 'ring vaccination' method adopted to eradicate smallpox, wherein all those who had a possibility of coming in contact with an exposed patient, was tracked down and vaccinated.[2] However, hardships are never far away from any scenario and so have been in this case. While vaccines have their own benefits and advantages but why should the reluctance from the population still follow? And even after the success and efficacy of vaccines are guaranteed by the organizations and governments, can still such resistance be place over the danger posed by the widespread diseases?

Where experts believe vaccines to be one of the major achievements of the 20th century, still there might be a section that would not believe in so, owing to the myths and misconceptions. Science has failed before misconceptions and myths. All this dates back to the time when

[1] '14 Diseases That You Almost Forgot About' (*Centers for Disease Control and Prevention*) <https://www.cdc.gov/ > accessed 26 February 2021

[2] 'Disease Eradication' (*The History of Vaccines*)<https://www.historyofvaccines.org/> accessed on 26 February 2021

vaccines were administered for small pox and people strongly condemned and criticized it on hygiene, sanitation, religious and political basis. The reasons are not limited to this but go beyond this where the skepticism is for logical reasons like, the fear of allergic reactions or some adverse reaction that could cause some significant damage to the body.[3] This is in the worst case scenario let alone is the time where the disease is eliminated, and then there is no motivation or cause to get vaccinations.

But where there is a possibility that the citizens are under misconceptions and outweigh non-existent damages, owing to myths and misconceptions, with the benefits of vaccine, then the governments in the past have resorted to laws that have been passed that require vaccinations as a measure of public health. Thus, citing public health as a necessary reasonable defense, the vaccines are administered to the citizens. This becomes all the more important when we currently are dealing with the worst disease of all times that was declared as a pandemic situation by the World Health Organization (WHO). The situation becomes even more worse where the virus mutates and new strains can be more dangerous, then the best tool in hand is vaccine. And for it to work positively, it is to be made sure that a large chunk of population is administered with vaccines. Now, yet again the question is upon the reluctant citizens, what does the government do about it and can it force such administration of vaccinations?

SAFETY ASSURANCE OF VACCINES

The 2020 pandemic made people curious about the vaccines and it was daily news in households about the stages that various vaccines crossed. Much was made known to people about how there are phase wise trials and then approvals by various organizations and the governments of respective countries. This is just the plain information but there are a lot other procedures go on inside.

To remember it throughout, that, currently vaccines are the most effective medium to prevent diseases and it is stated by WHO that every year at least 2-3 million lives are saved through it. [4]To ensure the safety of vaccines, it is declared safe only after the governments, scientists, vaccine manufacturers, medical experts work with the WHO vaccine safety programme which monitors such safety.

[3] 'Understanding Opposition to Vaccines' <Healthline: Medical information and health advice you can trust.> accessed on 27 February 2021

[4] 'Vaccines and Immunization: Vaccine Safety' (*World Health Organization*)<https://www.who.int/> accessed on 28 February 2021

There are vaccines that exist today which have been approved for a long time and have been used for decades to a point where they have successfully helped in eliminating and eradicating serious diseases. And there are other set of vaccines which are, under development or are just approved, being prepared to administer to population to help prevent life threatening diseases such as that of- COVID-19, Zika or Nipah viruses.

What is common to all the vaccines, whether already in widespread usage or under development, are that they all undergo proper tests and monitoring and there are phase wise trials wherein in each subsequent trial, the number of subjects keep on increasing. This ensures that people from different regions are able to have the uniform benefits of vaccine and the efficacy can be trustworthy. There, of course, is a possibility of side effects from vaccines, which is very much normal and are minor and for a short duration. But this usually gets people a reason for being skeptical and much worse, to completely condemns the vaccine.

PROPBABLE CAUSES FOR HESITATION AND RELUCTANCE

Before anything, stating the obvious that people's willingness is the key to achieve the herd immunity goal which in turn might save the human population from its long lasting doom. The Delhi-NCR Coronavirus Telephone Survey Round-4 was able to bring out the evidences of vaccine hesitancy in the light. The pattern was such that, firstly, the uneducated lot was much hesitant and then was the religion and caste minorities. This minority hesitancy has been observed in the US too, where the white population is much more willing to take the vaccines than the black counterparts.[5]

The issue is the perspective of how far are people knowledgeable about the working of vaccines or the supremacy of myths over scientifically-backed vaccines. Where the development of vaccines in the COVID-19 era has been at a much faster pace than ever witnessed, the most popular argument that comes from people is the concern regarding the compliance, protocols and approval process. The doubts over, if the governments are quickly approving the vaccines so that there can be profitable earnings from these. Side-effects from the vaccine are another important reason behind people's reluctance. The LocalCircles

[5] Shantanu Pramanik, Sonalde Desai, 'Reluctance To Take COVID-19 Vaccines Could Hinder Achieving Herd Immunity Sooner' (*The Indian Express,* 28 January 2021) <https://indianexpress.com/> accessed on 28 February 2021

Survey in November 2020 indicated that 59 per cent of Indian citizens were hesitant citing side effects, efficacy and also the fear instilled from adverse events resulting during the trials of vaccines. [6]Moving further in time, where vaccines actually have completed the first phase of vaccination and the second phase has just rolled out, another reason for reluctance is the resulting deaths of severe cases or some serious complications that follows, all across the world. Phase-1 reported various reasons for why the frontline workers were hesitant- some worry about the costs, if there will be a guarantee of treatment in case there is fallout, being wary of getting vaccinated and other reasons. But there were cases where the workers or employees were forced by the senior officials of respective domain to get vaccinated despite any condition. However, there were health centers that ensured there is no pressure to take the vaccine and people have their free will and can opt out if they wished to.[7]

All these reasons still dominate over the fact of each pharmaceutical company presenting reports of the procedures, the results of the phase wise trials and even after that got approvals from the WHO and governments of respective countries. So, what is clear here is that the lone efforts of these pharmaceutical companies would not suffice. The cooperation and proactive role is to be played by the governments and health policymakers who in collaboration with each other need to promote the vaccination by educating the public and implementing such policies that ensure health and the financial risks associated with the adverse events that might follow vaccination.

MEASURES TO ENCOURAGE TAKING VACCINATION

The Government of India released the 'COVID-19 Vaccine Communication Strategy' before the vaccine rollout and was purposed to disseminate timely, accurate and transparent information about the vaccines in order to alleviate apprehensions about the vaccines and thus, making its acceptance widespread and encourage uptake. This strategy is also aimed to tackle the issue of hesitancy which comes up on account of apprehensions around safety, efficacy and any other myths and misconceptions. And to achieve the goal of ensuring that all eligible groups are accordingly vaccinated with confidence. This strategy would give all prior details plus any information that would have to be given in case there are some changes in

[6] Milan Sharma, '60% Polled Indians Still Hesitant Towards COVID-19, Shows Survey' (*India Today*, 27 January 2021) <https://www.indiatoday.in/> accessed on 28 February 2021

[7] Sadia Akhtar, 'Some Health Workers Reluctant of Getting Vaccines: Claim Pressure From Superiors' (*Hindustan Times*, 16 January 2021) <News Headlines, English News, Today Headlines, Top Stories | Hindustan Times> accessed on 1 March 2021

plans and information pertaining to- new vaccines, availability, safety, and timelines and other processes.[8] This detailed Communication Strategy is so designed and strategized as to address all popular doubts and concerns that can arise as regards the vaccination drive.

Another major player here is the World Health Organization, which has constantly released statements on various aspects of COVID-19. This also includes the information on efficacy and safety of each of the vaccines that have been released as till now. Also, it addresses the frequently asked questions and the most common questions that can arise from the population. In a recent event, where more than 2,800 scientists gathered on a virtual platform hosted by WHO to identify knowledge gaps and accordingly set research priorities for vaccines against SARS-CoV-2 (virus causing COVID-19). The discussions included the safety offered by the existing vaccines and upcoming new candidates, the ways to optimize limited supply and the need for additional safety studies. Even after the administering of 30 million vaccines in 47 high-income countries, the challenges still persist and the fight has yet not come to an end.[9] Experts have suggested that there is a need for critical research on administering vaccines to different target populations along with vaccination delivery strategies and schedules. This would include trials, modelling and observational studies, all of which would help in informing the policy.

All this only points out the fact that there is a constant struggle by organization, scientists and experts to ensure safety through best possible ways.

CAN VACCINATIONS BE MANDATED TO OVERCOME RELUCTANCE?

The goal of herd immunity to be achieved has been the center of focus since the beginning of the pandemic. To achieve herd immunity naturally, is next to impossible as it would take years and would be coupled with great devastation and bringing the normal life to a halt for the longest times. The only way out then is large scale vaccination. Considering the above analysis where in every way the vaccinations are being encouraged and assured of its safety still if people do not turn out in required numbers, can it be mandated and forced upon people?

[8] 'COVID-19 Vaccine Communication Strategy' (*Ministry of Health and Family Welfare*) <https://www.mohfw.gov.in/> accessed on 1 March 2021

[9] 'Scientists Tackle Vaccine Safety, Efficacy and Access at Global R&D Forum' (*World Health Organization*, 16 January 2021) <https://www.who.int/news/item/> accessed on 1 March 2021

The COVID-19 vaccines as of now have not been mandated, rather, are advisable to get vaccinated and thus are optional at the will of the population. However, vaccination has been mandated in the past in various countries and the judicial branches have had a role to play where various decisions considered vaccination mandates as valid and attempted to address the conflict between individual rights and protection of the public's health.

The US Supreme Court in a case upheld the constitutionality of the mandatory smallpox vaccination programs that were initiated which were valid for the preservation of public health. [10]Another such instance was when many US schools required the students to get smallpox vaccines before they could attend the school and a number of cases were filed in the court. One such case was considered by the US Supreme Court where a student, Rosalyn Zucht, was excluded from a public school upon failure to present proof of vaccination. The argument proposed was that the city ordinance mandating vaccination violated the due process and equal protection clauses of the Fourteenth Amendment. The court dismissed the argument and held that city ordinance was a law of the state and that it was "within the police power of a state to provide for compulsory vaccination."[11]

Considering the present Covid-19 era, vaccination has yet not been mandated and at most there are advisories and encouragement through information dissemination or subjecting people to various conditions like getting a passport only if vaccinated or vaccination being a precondition to attending schools. In November 2020, the New York State Bar Association recommended the state to make it mandatory for all residents to get the shot, except those exempted by the doctors. Similarly, the Australian Prime Minister suggested mandatory vaccine but later backtracked on these statements.

Dr. Anthony Fauci (key member of the White House coronavirus task force) assured and stated that it never has been the case where the vaccines have been mandated and the population is forced to take the shots. They can be mandated for health workers but not for the general population. Mandate from the federal government would both be unenforceable and inappropriate. This mandate can flow from the orders issued by the states, cities or businesses, but even these, would not be forced vaccination meaning that no one would enter

[10] *Jacobson v. Massachusetts*, [1905] 197 U.S. 11
[11] 'Government Regulation' (*The History of Vaccines*) < https://www.historyofvaccines.org/> accessed on 2 March 2021

the houses of people, pin them down and forcibly inject them with shots. Dorit Reiss, (a law professor at the University of California Hastings College of the Law) who studies legal and policy issues related to vaccines stated that refusing to follow a mandate could only mean a fine, tax or some other sort of penalty.[12]

There are these groups of people probably called the anti-vaxxer group has emerged which is blamed to be anti-science and are also against such compulsory vaccinations. No such group exists here in India but there are legal frameworks that give enough powers to the government to enforce compulsory vaccination. However, the basic premise to be kept in mind is that this shall only be initiated if it is in the larger public interest.

Firstly, as a legislative measure, the parliament can always enact a specific law that would only be incorporating the law around such obligation just like the British government did to deal with the smallpox epidemic through the Compulsory Vaccination Act, 1892. To back any executive action in this regard the Epidemic Diseases Act, 1897 empowers the state government to take the necessary measures to prevent the outbreak or spread of an epidemic disease however it is subject to the requirement that it shall be a grave health crisis of the century. The National Disaster Management Act, 2005 confers wide powers on the national authority and the national executive committee created under this Act through which it is possible for these authorities to mandate compulsory vaccination through appropriate departments in the state governments and central government. The central government too can enforce such a measure through Section 62 of this Act. Then the next creative way to enforce compulsory vaccination is through imposing high cost on refusing vaccination. Like, under the Passport Act of 1967, the government can either refuse the issuance of a passport or revoke an already issued passport of any person who refuses to get vaccinated.[13]

This does pose a question on the individual rights of the citizens. Here, what can be claimed by the citizens as a matter of right are- the right to privacy (Article 21 of Constitution of India) and right to religious freedom (Article 25 of Constitution of India)? However, both stand countered, as right to freely practice religion is subject to restrictions on account of public order, morality and health. And another that right to privacy is not an absolute right

[12] A Powlowski, 'Will The COVID-19 Vaccine Be Mandatory?: What the Law Says' (*Today*, 3 September 2020) < https://www.today.com/health/> accessed on 2 March 2021

[13] Rangin Pallav Tripathy 'Indian Government has Multiple Legal Options To Force Citizens to Vaccinate Against Covid' (*The Print*, 30 April 2020) < https://theprint.in/> accessed on 2 March 2021

and can be curtailed as long as the procedure is fair, just and reasonable.[14] Thus, there is a sufficient leeway through constitution for the government to own such powers of enforcing compulsory vaccination.

CONCLUSION

As much as one can feel that their individual rights are being compromised, it is not to forget that even such powers of mandating the vaccines is subject to the condition that there shall be a grave public health crisis compromising the lives of the citizens. And COVID-19, declared as a pandemic is one of its kind widespread disease that has taken millions of lives globally and the menace is ever growing with mutations and new strains of virus popping up in a number of countries, rendering a possibility of inefficacy of the vaccines (though such has yet not been confirmed). The only savior in such a time of crisis is the widespread vaccination of populations around. Considering the gravity of this pandemic, the vaccinations have yet not been mandated. And other measures are being adopted to encourage and inform people through various means to gain people's confidence in vaccination and taking the shot. One popular means that has come around is the leaders of various countries getting vaccinated in public eye and ensuring safety and thus encouraging vaccination. Prime Minister Narendra Modi got the first dose of COVID-19 vaccine in the Phase-2 of vaccination, on March 1st, 2020 and what followed is the obvious. Health centers witnessed an increase in the number of people to get vaccinated.

It is always a better and worthwhile option to make people informed rather than forcing upon. Also, it always works from both the sides, not only should the government be careful but the citizens too have to believe the scientific data rather than the myths and misconceptions and blatantly rejecting the procedures. The world is now susceptible to more such happenings and it will be a struggle between science and such occurrences. Thus what is required and expected of people is to prepare them beforehand so that it can be avoided in time before it gets worse.

[14] *Justice K.S. Puttaswamy and Ors v Union of India* [2018] 1 SCC 809

NEEDED BIFURCATIONS FOR HAVING ROBUST PROCESS OF LEGISLATION, SUPERVISORY AND FRAMEWORK FOR FINANCIAL INSTITUTIONS, AUDITORS AND BORROWERS

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ABSTRACT

The article mainly emphasizes on the bifurcations, measures and methods for protecting and safeguarding the hard earned savings of the centric depositors and ensurance to protect their investment and savings by expressing concern and accountability upon any default in banking sector. Further the piece discusses on the situation of the present age of the banking that has been deteriorated, reasons for such aftermaths articulated as demotion in operating performances, dismay in long term ratings, substantial fall in recovering dues from the big borrowers etc. The major part of the dialogue covers the much highlighted recent failure of the Yes Bank and how it had hit the functioning segment of banking authorities to maximum also how the very much critical financial standoff had amply occurred the financial as well as money lending institutions financial collapse, crisis and declining in the banking industry. The reasons of such unprecedented situation had been discussed in detailed in the further part of the article. Further the article discusses the structure and working of the Reserve Bank of India (RBI) had also been explained for better understanding of the role in holding, monitoring and functioning the financial sector. Further also it is being elaborated as to how the fourth largest private bank of India graced this financial failure in a row to be considered as a matter of serious concern of second thoughts. Also, in further content the role of Hon'ble Supreme Court is being as how it came forward for protecting the rights and interest of the depositors. At, last but not the least it is being discussed that how weaker mechanism of the banking segment needs to be strengthened, how it is essential that both RBI as well as government must act as a very supervising anatomy and legislate some indestructible and stringent provisions more specifically in Banking regulations Act,1949 for combating fallouts and scams.

Keywords: Bifurcations, centric depositors and ensurance, institutions financial collapse, starved financial sector, yes bank case, banking business and trade, boasting the economy.

INTRODUCTION

Banking segment have been one of the most trusted end financial institution pertinently for centric depositors alike middle class and lower middle segment those meant to deposit their hard earned savings and income, keeping their vital trust and interest upon the bank and its workers, ensuring to protect their investment and savings by expressing concern and accountability upon any default in maneuver with banks to be resolved pro rata, assuring to prevent the depositors and investors from facing any complication while accessing the benefits from bank in return of their savings or investments. Furthermore, the situation erstwhile is not same at present age of the banking sector, though had been deteriorated, further the reasons for such aftermaths articulated as demotion in operating performances, dismay in long term ratings, substantial fall in recovering dues from the big borrowers, failure in catch hold of the corporate houses manipulating depositors monies, lethargy in checking financial status quo of the entities, and committing the modus in granting loans without mortgaging adequate collateral, etc., articulated as reasons for banks collapses or fallouts.

FALLOUT OF BANKS AND ITS IMPACT ON THE BANKING SECTOR AND OTHER INTERRELATE SEGMENTS

In the scam-hit banking industry, on 05 March, 2020, the much highlighted recent failure of the Yes Bank had hit the functioning segment of banking authorities to maximum, the very much critical financial standoff had amply occurred the financial as well as money lending institutions, as the reasons of this unprecented situation being no check in the financial health of the borrowers during the tenure of the loans granted by bank to the debtors including corporate houses, businesses, companies, non-banking financial corporation's etc., intended for gaining high rate of interest on the loans, which later classified as Non-performing assets (NPA's) when the borrowers to whom the loans were extended were unable to pay the Easy monthly installments (EMI's) within the stipulated timing, considered as one of the major reason of the collapse of the bank and further accumulative other factors were elaborated ahead. The shortcomings and difficulties that could not be resorted with the banks reflects that the borrowers to whom the loans had been granted being entities like IL&FS, Jet Airways, CG Power etc. have faceoff negative progress in recent years, diluted or framed under money laundering cadre, etc.

The scope and commencement of granting loans to the borrowers in case discussed herein is enormously intended for gaining higher rate of interest on loans, which later on one after the

other classified as NPA's, the frame soon came into the attention of the Enforcement Directorate, which later grabbed the Yes bank for generating money through undetermined resources and then laundered the amount. Later, it came into the upfront when it was figured out after making enquiries that Yes Bank had disbursed the loans which later they had corroborated. Soon, thereafter bank loans variations, deviations and provisions reported Non-performing assets. According the Securities and Exchange Board of India, banks are now required to disclose deviations and differences in the asset classification and to act immediately upon receipt of RBI's final Risk Assessment Report (RAR).

The huge financial collapse, crisis and declining in the banking industry significantly was a reason tragic shirk of Yes Bank being fourth largest private bank in India, as within the timeline of past three four years there had been many instances which self-explained that the cash starved financial sector have proved to be a fallout failure for the reasons that the expressed negligence of the supervisory of public interest and their income savings. Despite, having implementations of enforcement action framework and complying guidelines ensuring and committing regulatory supervision; resolving corporate governance issues; appropriate action for any lapses or discrepancies found in audits while inspecting balance sheets, etc., as per Banking Regulation Act, 1949, and other enactment within the legal framework itself been legislated by the Central Government that despite such laws and rules the alleged lethargy and mishandling, keeps the government as well as the supervisory on their toes.

EXPLANATION OF RESERVE BANK OF INDIA'S STRUCTURE AND FRAMEWORK AND THE FACTORS THAT NEEDS TO BE CHECKED BY RESERVE BANK OF INDIA WHILE GRANTING LOANS

Since the fallouts of the banking sector had disclosed the inattentive and remiss framework of the authorities for the causes of the loopholes in the action framework. Henceforth it is necessary to make the legislation more core though for understanding the same. The Reserve Bank of India's structure and framework has been explained herein for better understanding of the role in holding, monitoring and functioning the financial sector as playing a vital part in strengthening the bank, auditors and corporate governance which are must:

- **Board of Financial supervision**

The RBI performs the supervisory function under the guidance of the Board for Financial Supervision (BFS). The Board was constituted in November 1994 as a committee of the

Central Board of Directors of the Reserve Bank of India under the Reserve Bank of India (Board for Financial Supervision) Regulations, 1994. The constitution and legal framework of the Reserved Bank of India revolves and carbs around:

- **Main key Functions**

Some of the ingenuities taken by Board for Financial Supervision include:

1. Boosting the statutory audit process of banks
2. Widening auditors role in supervisory;
3. Establishment of the internal defenses within supervised institutions such as internal control and audit functions, management control and risk control systems etc.;
4. Supervision regarding fraud risk management framework in banks;
5. Establishment of enforcement framework in respect of banks etc.

It is now a better understood significance from the above understanding that at which cornerstone the RBI as well as the government had been lethargic, negligent and over lookers and had even after "facing huge crisis and criticism on major supervision lapses in cases like Punjab National Bank (PNB) and Punjab and Maharashtra Cooperative Bank (PMC)"[1] and in recent had established another example of Yes Bank had not changed their process functioning and working mechanism in a much wider and manner which is an issue of serious concern. Henceforth, the accumulated factors that were to be pertinently checked by the RBI as well as the government but were ignored were elaborated hereunder:

(i) Granting loans to the corporate houses, businesses , companies, non-banking financial corporations, etc, are with the clear agenda for gaining high rate of interest on loans, which soon turned into incremental bad-loans, as the borrowers later were inable to pay the EMI's and loans within the stipulated timing, which later classified as Non-performing assets;

(ii) "Increase in divergence in the bank loans and provisions reported Non-performing assets", "resulting in difference in assessment";

(iii) RBI's shortcoming as a supervision authority as well as its supervision lapses

[1] https://www.moneycontrol.com/news/business/companies/yes-banks-financial-failure-is-first-for-a-new-age-private-bank-was-rbi-late-in-acting-5008051.html

(iv) The "Corporate Governance issues gradually eroded the investor trust in the Bank";

(v) "Outflow of liquidity".

REASONS ELABORATED HEREIN UNDER OF THE CRISIS WITH THE BANKS AND THE RBI'S ROLE IN CONTROLLING IT

The said reasons of which the crisis occurred with the fourth largest private bank of India as elaborated above further graced this financial failure in a row to be considered as a matter of serious concern of second thoughts.

Further, firstly as far as the doubt of the loan which were granted to the corporate houses, businesses, companies, non-banking financial corporations, etc., are with the clear agenda for gaining high rate of interest on loans, which soon turned into incremental bad-loans, as the borrowers later were unable to pay the EMI's and loans within the stipulated timing, which later classified as Non-performing assets, the experts of the banking segment believe that with intent to generate the high-interest rate, whereas the bank lended the money to the corporate on easier norms without checking the financial condition of the companies.

Secondly, increase in divergence in the bank loans and provisions reported Non-performing assets, resulting in difference in assessment, the RBI identified major divergence in the reported NPA's numbers and the actual bad loan figures due to which the financial ratios deteriorated. Divergence in provision issues was a major problem faced by bank.

Thirdly, firmly audit lapses resulting in errors in bank's financial statement, wrong clarifications and information given by the auditors had been one of the major reasons for most of all was that even in the frame of bank failures, also indicates a serious risk of the health of the banking system and in a hard situation which duly shifts the onus upon the auditors of banks which in Yes bank case is BSR and Co. who had been the statutory auditor. Further, the Central Bank will now specifically look at whether the auditors had issued any intimation over past one year. At, times for committing fraud the assesses i.e., the bank in case herein use advantage of e-filing at the time of submission of accounts and Balance sheets and Income tax returns, involves their auditor company by giving them unscrupulous offers by violating the law and its provisions for which the auditor agree, misconducting their

audits, lapses resulting in errors in financial statement etc., with prolix, oppressive and determined intentions above all with per incuriam ignore the due process of law even not taking the vigilance and supervision being under RBI body and an important pillar, where even the dishonest corporate houses and businesses for doing fraudulent are also involved, making depositors the easiest target.

Fourthly and a major drawback is RBI's shortcoming as a supervision authority as well as its supervision lapses as the supervisory committee being established with the agenda having the primary role to supervise the Banks, Consortiums, Money Lending Institutions instead in many past instances and at present committed defaults, thereby when "In parallel with SEBI, RBI has also ratcheted up its supervision on auditors in the banking sector. In June 2018, RBI issued a graded enforcement action framework to enable appropriate action by the RBI in respect of the bank's statutory auditors for any lapses observed in conducting a bank's statutory audit."[2] Where the Reserve Bank of India default in its supervision framework has a serious worries to the security of the hard earned money and income of the depositors. The serious discrepancies in the statutory audits occurred, whilst at the time of "preparation of accounts, journal and ledger, balance sheet income, tax returns and their audits due to non-compliance of Section 29, 30 and 31 of the Banking Regulation Act, 1949, where in the said act under Section 29 it had discussed about preparation of accounts and balance sheet, under Section 30 it is being explained the process of auditing of balance sheet and profit and loss, whereas Section 31 discusses how returns to be submitted. Perhaps at most of the times such law is not complied as per the process given under the said section of the said act."[3]

Fifthly, the corporate governance issues gradually eroded the trust in the bank. The bank witnessed issues related to the corporate governance is a concern of serious in nature for private sector lender and deteriorating practice. Sixthly, the outflow of liquidity faced by banks had been a technical issue, in such situation the bank witness withdrawal of deposits from depositors that being a pertinent reason the RBI capped the withdrawal limit.

[2] http://www.mca.gov.in/Ministry/pdf/2018_CommitteeExperts_Report_08112018.pdf
[3] Universal's, New Delhi, India, The Banking Regulation Act, 1949

ROLE OF HON'BLE SUPREME COURT IN PROTECTING THE RIGHTS AND INTEREST OF THE INVESTORS

The rights and interests of the investors and depositors were to be the highest priority as they are the assets who wheel the financial institutions, though for protecting the same the Hon'ble Supreme Court had came forward couple of times in ensuring the RBI to keep vigilance and to recover the amounts from big borrowers who are in obligation to pay dues:

The Hon'ble Supreme Court being top ,highest and well-built anatomy of the judiciary having original, appellate and advisory jurisdiction had in past years as well as in present given some of the well methodized, well explained and law indorsed judgments and in depth discussed banking provisio case laws with per curiam keeping in view the rights and interests of the investors and depositors, actual flooring have serialized and planned the working of Banking sector in a bona-fide and germane way since after such vigilance and surveillance and even after such high level of directions given to the supervisory as well as to Banking Companies more specifically to private banking companies for mechanism adoption, despite of such directions the alleged derelictions by the banks led to the third such crash.

ROBUST PROCESS OF LEGISLATION, SUPERVISORY AND FRAMEWORK FOR FINANCIAL INSTITUTIONS, AUDITORS AND BORROWERS ARE DISCUSSED HERE AFTER

Problems faced by the investors and depositors on dereliction in adherence of functioning by banks and they being easy targeted before or after any difficulty on crisis during fallout of financial institutions, as well the mechanism adoption for having robust process of legislation, supervisory and framework for financial institutions, auditors and borrowers are discussed here after:

The financial institutions for easily defrauding the customers have now and then voluntarily adopted a practice of laundering of the investment of the investors and depositors or by other ways which is a grave offence under the law, as a medium of lending the loans to big business man and corporate houses, lead to corruptive steps by the chairman, founders, directors, executives, officers as well as the employees of the Bank, borrowers, auditors etc., had never been new or a shocking revelation even in recent age as well as in old times as the innocent customers who get their account open for saving their investments are when the bank associate approach and by their means convince the customers for opening their bank

account in their respective bank, with the agenda to run and operate their banking business and trade in fasten process by making irrelevant commitments, which should be stopped.

As, most of the times the fraud executed by undue means gets hidden by bank from government and supervisory. In recent times as most of the process of requirements of a customer are done through digitization, which had actually been a major hassle for the depositors after the failure of the banks one after the other as in the Yes bank case the "customers faced difficulties as most cash dispensing machines ran dry and withdrawals as bank branches were possible thru the old and much slower token system, thereby resulting in long queues. Depositors also faced trouble because internet banking services don't work."

That the cash reserves limit should be increase from the limit which is at present for putting shield on such crisis faced by the investors and depositors, also there should be extension of vigilance and the administered acts should be more stringent, whereas the enforcement actions framework must be fastened for the banks and for curbing any fallouts due to fraudulent activities played by the banks, even for containing such activities. Though for curbing out the complications in Yes bank scenario "the scheme of reconstruction has been proposed u/s 45 of Banking Regulation Act, 1949 which gives RBI enormous power to deal worth a bank superseding any norms of the market regulations."[4] For the cash starved bank. "In its draft 'Yes Bank Ltd. Reconstruction scheme, 2020, RBI said the strategic investor will have 49% stake and it cannot reduce holding below 26% before three years from the date of capital infusion, SBI board has already given in principal approval to explore investment opportunity in Yes Bank, as per the scheme full repayment of all deposits, dilution of equity, and write-off of Rs 10,800 crore of additional tier one (AT-1) bonds."[5] The said mechanism of a draft reconstruction that had been adopted along with other measures at a later stage whereas in a bid to reassure depositors and markets a moratorium of 30 days had been imposed the resolution should have been executed much earlier.

[4] https://timesofindia.indiatimes.com/business/india-business/yes-bank-crisis-ed-questioning-founder-rana-kapoor-customers-scramble-for-cash/articleshow/74528636.cms
[5] https://timesofindia.indiatimes.com/business/india-business/sbi-set-to-acquire-49-in-yes-bank-even-as-ed-raids-promoter-kapoor/articleshow/74520493.cms

CONCLUSION

The scheme and measure taken are less than sufficient as the more need for RBI as well as the government at present and in future as of Yes bank case study had been discussed and the factors of fallout were elaborated and the schedules passed, the big worry is of weaker mechanism that expeditiously needs to be strengthened and the establishment of a new regulator for stabilizing the banking methods and system is not necessary. Furthermore the RBI as well as government must act as a very supervising anatomy for combating such fallouts, and scams. Also, must legislate some indestructible and stringent provisions more specifically in Banking regulations Act,1949 and other administered acts for a robust process of legislation which would not only affirm and uphold the pre clinch of such scams but will also aid and influence in boasting the economy of the nationwide at large, and may even be an accelerating boost in gearing up in stabilization of the economy and will also be a fence or carve in securing and protecting the interest and hard earned money of the depositors and investors much of lower middle class and middle class sector, who deposit their money in the banks trusting upon the mechanism and the system at the earliest needed to be more stout, for detecting and getting rid of such frauds and a transparency, colossal supervision and a better vigilance of banks and consortiums is required at expedite.

PENDENCY OF SUITS IN COURTS OF INDIA DURING COVID "JUSTICE DELAYED IS JUSTICE DENIED"

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ABSTRACT

In India there are rapid changes in the society which sometimes lead to conflict in the interests India. Society is now more aware of their rights and litigation becomes a part of life for resolving various issues. Because of significant increase in number of cases and due to lack of judges and pendency in the suits the judiciary is now overburden. Due to that the pendency of suits are increasing day by day and justice giving process is delayed. The main focus of the paper is that reasons why there is delay in the justice to be served. As per NJDG (National judicial data grid) almost most of the cases are in stay. Over 32244239 cases are pending currently as per NJDG. The main reason to analyze is lack of authority to solve the dispute. In this era the environment of society is changed and mental condition of the persons also. By then changing scenario the judicial system also has to change with the changes. There are more discussions regarding pendency of suits in courts in India and regarding the reasons why there is pendency. In judicial system it works in a hierarchy manner as Supreme courts than high courts then high courts are having district courts as they all have to work together with efficiency so there is no compromise in getting justice and justice can be served faster. Almost 3/4th pending cases over a decade, from which 72% are criminal and rest are civil in nature. In pendency the main reason is "stay" and "non trial cases" as per NJDG. The research is concluded in suggestion that there must be more efficiency in judicial frame work, increase in number of judges, more vacancies should be made and also awareness regarding PILS and RTI should be spread.

INTRODUCTION

The judiciary is for giving justice with equality to the people as The Constitution of India gives the right for the speedy trial under Article 21 means right to life with personal liberty but delay in the justice lead to violation of it. As "JUSTICE DELAY IS JUSTICE DEINED". The Right to Speedy trial is given in the law commission of India in report no. 221[1]. In the bail petition in ***Babu Singh v. State of UP***, the honorable Justice Krishna Iyer has remarked,

[1] http://lawcommissionofindia.nic.in/reports/report221.pdf

"Our justice system even in grave cases, suffers from slow motion syndrome which is deadly to 'fair trial' whatever the final decision. Speedy justice is an essence of social justice in which the community, as a whole, is concerned in the criminal being warranted and punished within a time and the innocent person gets the justice". As speedy trial is a right from which suits can be disposed as soon as possible as this right there for giving justice to people and can give punishment to actual accused.

In the 11th finance commission recommended that to create the fast track court for the speedy disposal of suits. In case of ***Brij Mohan Lal vs. Union Of India*** [2] in this case when they consult with the ministry to provide funds to state government for creating of fast track courts. So the problem of pendency can be solved by it.

Indian judiciary system consists of Supreme Court of India, High Courts in the states, District Courts and the Courts at lower level. India has integrated judiciary. Judiciary has power to make decisions and enforcing also. On 26th January 1950, the Indian Constitution is made and it also the lengthy written constitution. The Constitution of India gives provision regarding functioning of judiciary in India. Article 124-14 of Part V of constitution the functioning and setup of Supreme Court has given article 214-231 of part VI tells about rules and regulation of High courts and lastly in Article 233-237 is for subordinate courts.

The judiciary system in India works in hierarchy manner like Supreme courts institute with High Courts and then District Courts with Subordinate. As Judiciary system has power to enforce and give decisions as it work as independent organization without interference of legislative or executive. Due to that issue of pendency has been increased in the lower courts and other Courts.

With delay in justice system is a major defect in efficiency in judiciary it regard to delay in justice. Due to delay in the justice the suits are increased, because of that the rights and obligation of citizen are still remaining. The report of national crime records bureau (NCRB) report of 2018 says that from 2016 to 2018 the number of prisoners are increased.[3]

Economy survey 2018-19 says there is a huge pendency in suits in India and needed almost 8521 judges in future the same concern was given by Chief justice Dipak mishra Some of

[2] (2005)6 SCC 502

[3] https://ncrb.gov.in/prison-statistics-india-2018

recommendations of Arrear committee for the pendency of suits that can solve there are number of elements which are responsible for it.

1. The ratio of judges and the vacancies
2. Accountability of judges
3. Provisions related to adjournment
4. Reformation policy

One more committee is made Malimath committee which recommends the reformation policy on criminal justice system and to give justice in simple procedure.

The number of cases instituted during year 2020 (till now) is 4815357 [4] as per NJDG. Amongst which criminal cases are 1353830, civil matters are 2036094 and writ 1425433 cases. The National judicial data grid which provides the status of courts across India, NJDG is most significant part which is an integrated mission mode that helps to track the statistics of courts. As we can see the number of cases in fig 1.1 below -

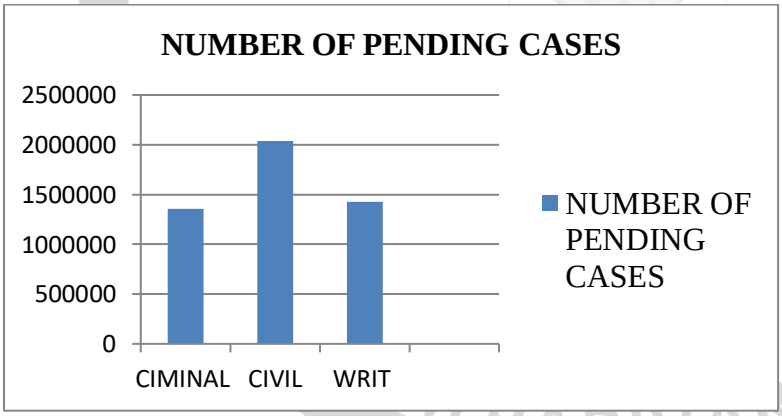

Fig 1.1

METHODOLOGY

In this research paper Doctrinal methodology is used. Doctrinal research is also a traditional form of research or theoretical research used for the cases, research papers, articles etc. this is for the legal research for the concepts. As primary sources research is not possible. Only secondary sources are used in this.

[4] https://njdg.ecourts.gov.in/njdgnew/index.php

OBJECT OF RESEARCH STUDY

The research is on the pendency of suits in courts in India. As the research is done for finding out some issues –

1. To find out the reason why there is pendency in suits and to understand it
2. What solutions can be there to improve the pendency

PENDENCY IN SUITS IN INDIA

In India almost 3.3 million suits almost 12666546 cases where instituted and almost 11609259 has been disposed form 2015-2018 and almost from more than 1 year 3116546 cases are pending in India from which more than 1298963 cases are of civil and remaining criminal suits 877359 and writ suits 940224 suits. As we can see the number of cases pending from many years and not yet disposed till now. The civil matters are more from criminal and writ. The increases in suits as citizens are more aware of their rights and they have faiths that will get justice as soon as possible.

Pendency of suits means delay in getting justice. The law commission of India studies and conduct survey to find out the various things that are elements in getting delay in justice .This gives some reformative reforms and tells the importance of law and justice for the simple procedure.

In Indian judicial system it works in hierarchy manner the lower court has to be strengthening the most and judges and court room also need to increase there are many states whose population is huge and they need more officers for it and disposal needed to do little fast. The courts are connected with each other and they play independently without interference of legislative and executive. In case of ***Imtiyaz V State of UP*** in this the law commission suggests to step up additional subordinate for elimination of delay in the courts. The law commission report no. 245.

PENDENCY OF SUITS IN STATES OF INDIA

In table below which shows the statistics in pendency of suits across India is there from which it can be seen the suits pendency of each state below in fig 1.2[5]

[5] https://njdg.ecourts.gov.in/njdgnew/index.php

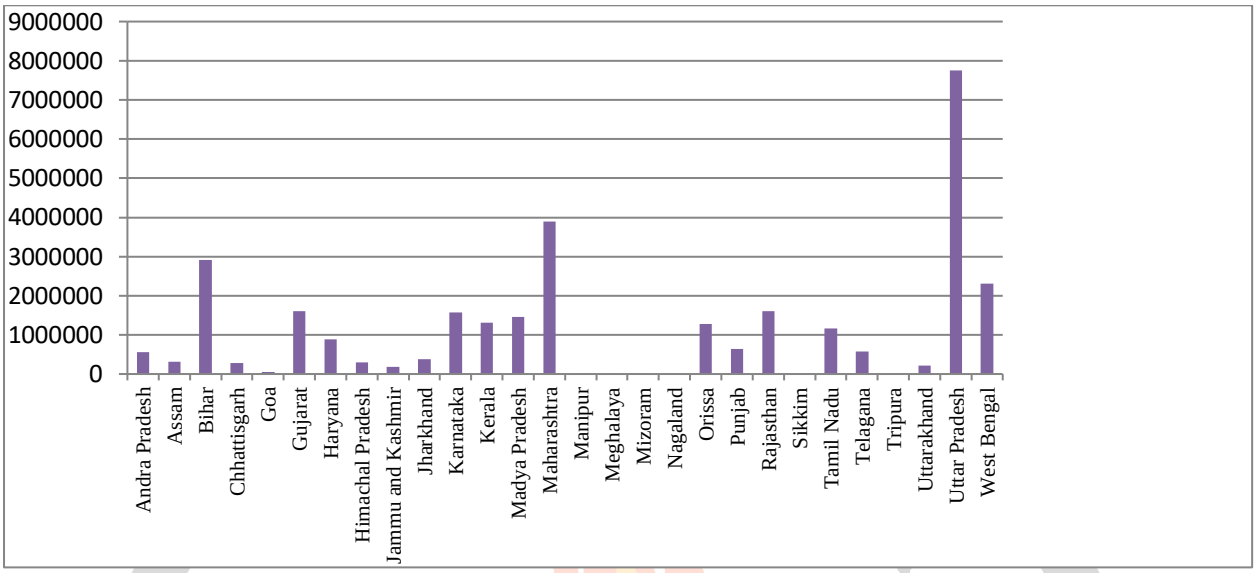

Fig 1.2

In above statistics tells about the pendency of suits in states-

1.1 Total number of pending cases as per NJDG is 32262508. From which the highest number state is Uttar Pradesh in which there are almost 7748898, than in Maharashtra the number is 3887579 and then Bihar is 2910581. There are three states highest number of pending suits.

1.2 Then in Gujarat the pending suits almost 1602041, than in Karnataka 1576229 suits are pending. As statistics we can see the number of pending suits in states.

1.3 Than in West Bengal also it can be seen almost 230382 suits and in Rajasthan 1597103 suits due to lack of judges the pendency is increased in all the states.

1.4 Lowest number of pending suit is in Manipur, Mizoram, Nagaland, Tripura and Goa where there are less number of pending suits. And in Sikkim also there is lowest suits pending 1319. In this state's they also lower courts are having workloads due to that pendency in suits.

1.5 Andre Pradesh having 566266 suits than in Assam 3087176 and in Chhattisgarh almost 277501 suits. As there are suits pending but not as high as in Maharashtra, Uttar Pradesh and Bihar this are the states in which there are highest number of suits pending.

1.6 In states like Haryana there are 893471, Himachal Pradesh almost 298079and in Jammu and Kashmir are having 180570 suits pending.

1.7 In states of Jharkhand the suits are 378661, than in Kerala the number of suit is 1317169, Madhya Pradesh having 1451096 suits pendent, Uttarakhand having 212750.

1.8 The suits are pending in almost all the states across country. In Supreme Court says due to lack of manpower in judiciary the filling of suits are increased. In law commission has submitted 245th report for taking effective measures to disposal of cases and recommended uniform data for High courts.

1.9 In most of the states in India is having pending cases as the population is factor that increase the pendency of suits.

REASONS FOR THE PENDENCY IN SUITS

1. **Less number of judges**– According to the report of March 31st 2018 says nearly 5748 officers are [6]needed in the courts. One of the major causes of pendency in suits is the shortage of judges in the courts. As less number of judges are there due to that the workload of judges are getting more and more and because of it pendency in suits are increased. As per guidelines in India 19 judges per 10lakhs people. Law commission of India report says that the pendency is increased in rapid number to deal with it there needs to strength the number of judges to deliver the justice to the citizens of country without delaying it.[7]

2. **Lack of training of judges**– As in lower courts the judges needs to trained properly and if quality of judges are efficient than the pendency can be reduces. Because there is lots of work load in lower courts almost most of the cases are in under trail process. As judiciary works in hierarchy so there need to train judges in effective and quality manner. According to National judicial data grid almost 58% of cases are stayed and 10% cases are because of bulky cases.

3. **Awareness to be spread**– By the changing society the people seek to go to the courts for the getting justice and uses there legal right but not everyone is aware of RTI means right to information and about PIL available. By getting proper education people are more aware and which results the increase in cases.

4. **Need for reformation**- By changing era the laws and rules need to change and amendments as the procedure are taking lots of time and by giving dates and dates for next proceedings is because the procedure if taking time which leads to pendency in suits. There are many laws which need to be change by the changing scenario. Need updated laws.

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[6] https://economictimes.indiatimes.com/news/politics-and-nation/india-has-19-judges-per-10-lakh-people-data/articleshow/65935214.cms?from=mdr

[7] http://lawcommissionrepoetno.245

5. **Due to increase in competition amongst lawyers**– Sometimes the justice is delayed due to some wrong allegations ,by taking dates for next proceeding so to earn money, due to lack of drafting the suits the suits may rejected .some more reasons but due this all almost suits are delayed and lead to pendency.

6. **Population increase** – The increase in population has direct impact on litigation. India is having very populated country. The more population the more suits but there is shortage of judges due to that workload increases and pendency of suits occur.

7. **Due to change legislation things**- Radical change in society that also impact on parliament because it is dealing with lots of causes in across country. Increase in litigation.

8. **Lack of disposal of old cases**- New suits are instituted and old are remaining in same stage due to that the suits are increasing and pending because of reasons like shortage of judges or absence of person or document etc that lead to pendency in suits.

As per NJDG reasons for delay in suits are in below fig1.3
As we can seen in below table –

1. The highest reasons for pending cases as per data are that most of the cases are stayed.
2. The second most reason is the presence of parties or any person related to cases not present at time of proceedings this can lead to pendency in suits.
3. In few cases due to lack of documents or lack of evidence the suit is pendent and in some suits there is delay in execution that lead to huge pendency.
4. Some cases are not attendant means due to increase of prisoner in the jail the population has been increase that lead to increase in pendency.
5. Some more reasons we can see in below table. Fig 1.3

REASONS IN PENDENCY	NUMBER
AWATING	2128

RECORDS	
BULKY CASES	5779
EXECUTION DELAYS	296
HUGE PENDENCY	703
OFF SHOOTS	1843
SECURING PRESENCE	10787
STAYED	30682
UNATTENEDED	655

Fig 1.3

CONCLUSION

India with a huge population is now experiencing lots of explosion and experiencing increase in pendency in suits which can also lead to various issues because a lay man who believes that he will get justice from the court , that person who is having faith on it but due to pendency it goes low. At present there are lots of pending cases across the country. Which can lead to pendency of cases and also it raise question to the efficiency of the judicial system? By seeing various factors lead to pendency that can be solved. By researching on this topic we can conclude that by increase in judicial courts, or officers by giving proper training and by another means from which justice can be delivered like Lok Adalat, ADR (Alternative dispute resolution) or right of speedy trial etc. pendency can be managed. In Article 39(A) in this person can avail equal justice and free legal aids.

As in Article 14 also constitution gives right to citizens "Equality before law." Challenges can be faced by giving justice in time with equity, good concise and fairness without dealing it. Justice giving in time is ok but justice giving in hurried is justice buried. By research we have seen number of states with their pendency of suits about there is three states which are having highest number of pending cases Maharashtra, Uttar Pradesh and Bihar. By seeing the increase suits the challenges are increased. The pendency in the cases leads to low faith in justice system. Lack of disposal of suits or any challenges lead to pendency. By making software by IT the things can be managed easily as to conclude lots of changes are needed in

judicial system to reduce the pendency of suits. The alternate dispute resolution can help more in resolving the disputes and also fast track courts. In ADR there is variety of option to solve the dispute and it also have civil jurisdiction that is acceptable.

1. **Lok Adalats** – This is a mechanism for the alternative dispute resolution in this the small cause cases off civil nature involve in it .this is under legal service authority (in this free legal aid is provided those who cannot afford the fees but they can get justice through legal aid services) in this the case dissolve through compromise .In this there are no arbitrator or conciliator .It is up to parties whether to solve the dispute with compromise or not.

2. **Mediation** – In this third party get involved for specific issues by consult of both party and can enforce the award and by compromise or by agreeing into terms.

3. **Conciliation**- In this it simply facilitates communication or help in direct settlement in dispute. In this also the award if legally enforceable to both parties and to resolve the dispute by agreeing to the terms.

4. **Arbitration**- This is also by third Party but to decide how to dissolve the dispute there is a third party involved in it and voluntary both parties agree to agreement. This is legally binding upon both parties and the award is enforceable to both.

5. **Negotiation**- In this the structure is created to dissolve the dispute directly by negotiation between parties and no third party is involved.

SUGGESTIONS

1. By recruiting more judges and filling the vacancies in the courts.
2. By giving quality training, seminars or workshops for judges.
3. By using technology there can some software made for it.
4. Making a proper infrastructure.
5. By using right of speedy trial ,and ADR
6. Reform judicial policy should be made.
7. Work load of lower courts should be managed like some number of cases should be there.
8. Give more information about RTI AND PIL
9. Virtual courts should be made for resolving dispute in less time.

RACIAL DISCRIMINATION IN INDIA

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INTRODUCTION

Racism is a type of discrimination by an individual, community or institution against an individual dependent on their participation of a specific racial or ethnic gathering, normally one that is a minority or minimized in a nation. It is a conviction that a gathering of the people have diverse ways of features comparing to the actual arrival and can be detached, reliant on the prevalence of the race over another[1]. Prejudice is a moderately current impression, evolving in the European time of imperialism, the resultant expansion of free initiative, and mostly the Atlantic slave interchange, of which it was a substantial main thrust.[2]

Racism is a truth and that it is being constantly practised and deliberately bloated in all cultures through the geopolitical spectrum in the World Wide Web of Equality, Liberty and Fraternity. Racism assaults all-encompassing normative scheme and wear down all facets of mortal value in life. The citadels of the racism are still alive and India is a victim among all the other countries since colonialism and imperialism. The Indians in the US, UK, Canada, Australia and other paths of the realm are exposed to racial corruptions attributed to the developing styles of extreme right-wing political discourse in these countries.

Racial discernment based on origin or bodily or social features is now being connected with definite features such as skin colour, hair texture or styles or definite facial features. This happens when a man deals with less positivity or not provided equal doors as compared to certain individuals.

RACISM IN INDIA

India is a diverse country which consists of 29 states and 7 Union Territories and thus promoting “unity in diversity” and takes pride in multi-cultures and diversity. But according

[1] ADAM KUPER, THE SOCIAL SCIENCE ENCYCLOPEDIA (2004).
[2] Fredrickson, George M. 1988. The arrogance of race: historical perspectives on slavery, racism, and social inequality. Middletown, Conn: Wesleyan University Press.

to the World Values Survey, India is considered to the 2nd most racialist country where the individuals from different nations been tested in a different way totally based on skin colour, their origin or any their particular feature that are quite different. Mostly the Africans were affected in India and had been denied living and many times been attacked and killed. The bias and generalization are very obvious.

GENDER EQUALITY AND THE CONSTITUTION OF INDIA

Human rights are being provided to people so that they can hold a quality of the social relationship, economic equities and institutional jurisdictions. This also encourages people to demand more for themselves. In a world of patriarchy, women are given less importance when they work more than 67% hours of work but are only been given only 10% of world's income and only 1% of world's possessions. And approximately, 35% of females worldwide have been either subjected to sexual or physical viciousness by spouse or non-partner at some point in their life. And few nationwide studies show that about 70% of females were physically and sexually maltreated by their near ones.

The Constitution of India is that article which contains the civil liberties and human freedom to all Indians so that they can live in harmony and agreement. Article 14[3] and 15 are the most significant which assurances Right to Equality and states the issue of discernment and arrange for equivalent shield under laws in India. Article 15[4] forbids discrimination on the basis of race. Class, gender or birth place. Nonetheless, the major irony in contrast to the danger of racism is that although the privileges are accessible for the inhabitants of India but not contrary to the Indian state and not in contrast to the discernment practised and dedicated by private entities.

RACIAL DISCRIMINATION AND INTERNATIONAL LAWS

Non-discrimination is considered to be the main principle of international laws. A mortal is a combination of different features and characteristics and these attributes generate impediments and distrust amid the human relationships among the diverse-driven culture like India. Beneath International Law, the prevention of racial discernment has been confirmed in all treaties and International Court of Jurisdiction (ICJ). In 1965 UN Convention on All

[3] Article 14 in The Constitution Of India 1949, https://indiankanoon.org/doc/367586/ (last visited Dec 3, 2020).
[4] Constitution of India, , https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2019 (last visited Dec 3, 2020).

Abolition of Racial Discernment[5] defined racial discrimination and constitutes the fundamental principle of rights of humans. Ever since then India has been a part of this CRED.

STEPS FOR THE SAFEGUARD

A. Filing Police Complaint

If a person is a victim of such offence the 1st step that should be taken by that person is to approach the police and file a thorough criminal complaint against the accused. This can be done as per the criminal procedure code.

a. 1st is to lodge an FIR (First Information Report) at the police station, which policeman takes note of when a complaint is placed for a crime.

b. Then the police are required to hear what the victim has to say and advise him to go to the District Magistrate for more act.

c. FIR can be lodged if one has witnessed a crime in front of him or any kind of crime was committed against him.

d. This is the must process for any criminal justice process to start.

B. Complaint made to an NGO who is working against Racial Discrimination

Many NGOs work against racial discrimination in India and they help to protect and safeguard the victims interest in India. The victim can visit the NGO and make a complaint against the crime he has faced and with this, he will not only receive help from them but also those people will help to spread the issue further and many people who are needy and poor will also join this cause and file a complaint who wouldn't have in the fear of a legal procedure and the cost. It will not only save a lot of time but also is cost-efficient and will decide the material quickly and decrease pressure on courts.

[5] International Convention on the Elimination of All Forms of Racial Discrimination - Main Page, , https://legal.un.org/avl/ha/cerd/cerd.html (last visited Jan 1, 2021).

TYPES OF RACISM

Racism is not only about the colour, but it also has many different variants like the shade of lips, hair texture, etc. although till now from 18th-century skin colour is the dominant factor in India. In such a diverse culture, awareness of all cultures is impossible and with that rise of ignorance leads to all these discriminations.

- **Direct Discrimination**

  This is a type where a person treats someone with more pity than somebody else in a situation for that person's race.

- **Unintended discrimination**

  It occurs when a connection has a specific methodology or technique for functioning that places persons of racial social event off guard.

- **Harassment**

  Harassment happens when someone causes you to feel mortified, irritated or defiled.

- **Victimization**

  This is where you are dealt with severely on the grounds that you have griped about the racial segregation looked under the Equality To Act or in like manner occur for the situation when you are supporting someone who has made a dissent of race-related division.

RACISM LAW IN INDIA

The Home Ministry had already proposed a providing in Indian Penal Code as section 153(A)[6]

a. As of late, Shashi Tharoor, Offered in ***Anti-Discrimination and Equality Bill 2016***[7], The law conveys necessity to make sure about every individual who is at risk to a wide range of off the mark partition under a singular broad institution which should be unprejudiced and liberated from tendency. The bill oversees direct partition and aberrant detachment, goading, separation, one-sided mercilessness, abuse. The Central Administration is nevertheless to

[6] Section 153A in The Indian Penal Code, , https://indiankanoon.org/doc/345634/ (last visited Jan 1, 2021).
[7] Dr Shashi Tharoor, *ANTI-DISCRIMINATION AND EQUALITY BILL, 2016* 29.

show the Bill to a Parliamentary standing leading body of trustees for a more broad open meeting and examination and prepare for its organization.

b. In 2015, the Ministry of Home Affairs had inquired the Delhi High Court to introduce two new areas which will regulate racial separation.

The was first had been added with the view to an arrangement with specific issues identifying with the break of public serenity which was not been covered. The ward has been enlarged now to male the advancement of disharmony, animosity and sensations of contempt or malevolence between various racial, strict, language or local gatherings culpable.

Anti-Discrimination and Equality Bill, 2016

This bill was passed to ensure that equality is been maintained to all the citizens of the country and to provide protection against all forms of social evils.

Who can make a complaint under this act:

a. Any aggrieved
b. And if victim or the distraught person is departed then any near relation for an eg spouse or any person who has the intention to marry her or have a sexual relationship with
c. An organization who is representing the victim with his/ her consent
d. Any person who is having the same interest and wants to act on behalf of the victim or for the benefit of all the victims

No protest will be stacked except if allowed by the Central Equality Commission or the State Equality Commission.They should permit unless it has taken enough measures to verify that its true and notify the aggrieved persons. And any person who has falsely filed complaint must be held liable to pay the damages.

What should be done if discrimination on racial grounds is done by schools/ Universities?

Discrimination in education field not only hampers the education of student but also destroys the growth of the country.

a. One should file a complaint or a report to the local police station, i.e, FIR as it is a violation of the fundamental rights under article 14 and 15 of the constitution of India.
b. Also, a complaint can be filed online and appeal the sector of education to inspect the events.
c. The police after the complaint might investigate the matter and then would suggest the steps necessary to take and would later direct it to the district court.

Discriminating on racial grounds by the Restraints or Cinema halls

Individuals are confronting tons of bigotry in cafés, films and a lot more open places even today.

Universally, generally open and private spaces, for example, bars, film corridors, and shopping centres keep "privileges of affirmation held." This is done to evade culprits. In India, nonetheless, this is additionally an apparatus to keep up the class-restrictiveness of the premises. Individuals figure just norm and sharp looking individuals should be permitted in their eateries and so forth to keep up its norm and class. Be that as it may, restaurants can't separate as lengthy as they are receiving payment.

Additionally, under Article 15(2) of the Indian constitution denies limitation of any resident on grounds of belief, race, position, gender or birth place, from getting to shops, community eateries, lodgings, and spots of public amusement.

CONCLUSION

The Constitutional advancement of constitutionalism on essential opportunities imbue a sensation of pride among "We, the People of India," yet constitutionalization thereof is presented to predispositions in each layer of state set-up, definitive gadget and political stuff of the country. Subsequently, India has become an ivory pinnacle of unreasonable social solicitations and Indian culture stands isolated today on the ground of being a person from a particular get-together or social origin or minority or religion or race or rank or political evaluation, and so on so forward. It is grounded assurance that India is a land that can't get by without the majority rules system of assortment and significance of multi-culturalism. Since India has become a party to 1965 UN Convention on the Elimination of All Forms of Racial Discrimination in 1967.Therefore, time has, indeed, come to have an all-compassing Anti-Racial Law to check the danger of creating racial fierceness, scorn infringement and xenophobia.