VIDHI INSIGHT JOURNAL

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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

I congratulate the entire team of Vidhi Parivartan for coming up with the second issue of the Vidhi Insight Journal. It is indeed a pleasure for me to go through the varied contents ranging from legal news updates to miniatures compelling the reader to pause and absorb the essence of the contents and furthermore, putting it in an easy-to-comprehend manner.

This issue also features a supplement which covers the key findings of a research study conducted by the authors. It is the result of the combined efforts of the young budding lawyers and the team of Vidhi Parivartan. Kudos to all!

Happy Reading!

ANUBHAV YADAV
CONTENT HEAD &
EDITOR-IN-CHIEF

It is with great pride, enthusiasm, and anticipation that I invite you to read the second issue of the Vidhi Insight Journal. The journal aims to present merit papers on numerous legal issues. An enormous amount of work has gone into the development of this journal and I believe you will see that effort reflected in this edition.

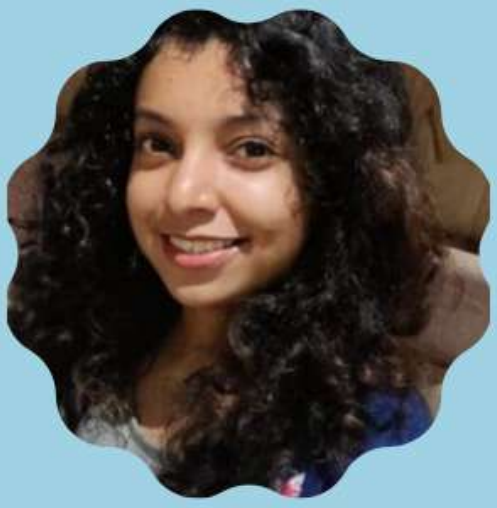
I take this opportunity to acknowledge the contribution of the Editorial Board and Founder & Publisher Ms Nancy Garg. I would also like to express my gratitude to all the authors, reviewers, and all the other members of the Vidhi Parivartan for their support in bringing out yet another Issue of the Vidhi Insight Journal.

Happy Reading!

Editorial Board Members

Adv. Chaitanya M Bhandari

Adv. Meenu Padha



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CASE COMMENT: SHATRUGHAN CHAUHAN & ANR V UNION OF INDIAN [DEATH PENALTY AND MERCY PETITION 2014]

R. Jeeva Dharshini

VIT University, Chennai

Court: In the Supreme Court of India Criminal Appellate Jurisdiction

Case no: Writ petition (Criminal) no.55 of 2013

Appellants: Shatrughan Chauhan & Anr

Respondents: Union of India & Ors

Bench: Hon'ble Justice P.Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh

SYNOPSIS

The study deals with the analysis of the ***Shatrughan Chauhan & Anr vs Union of India & Ors*** on 21 January 2014 case in light of the Constitutional provisions contested thereon. In this case, the writ petition was filed under Article 32 of the constitution either by the convict who was awarded death sentence or by the family members of the convicts or by the **Peoples Union for Democratic Rights (PUDR)** which is based on the mercy petition which was rejected by the Governor and President of India. This case provides another momentous occasion, where the court is called upon to decide whether it will be a violation of Article 21 amongst other provisions to execute the levied death sentence on the accused notwithstanding the supervening circumstances. Further, it was also prayed that the order passed by the Governor or President of India rejecting the mercy petitions were illegal and unenforceable. This is a non-doctrinal research paper on case commentaries that discuss discretely the facts and above said prayers and observed the judgement of the hon'ble court.

***KEYWORDS*:** Constitutional provisions, writ petition, death sentence, mercy petition, supervening circumstances, unenforceable.

INTRODUCTION

Our Constitution is highly valued for its articulation. The preamble of our constitution begins like: We the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic…do hereby adopt, enact and give to ourselves this constitution. To any civilized society, nothing is more important than the life and personal liberty of its members. This is evident from the paramount position given to Article 21 of the constitution.

One such drafting is Article 21 of the Constitution which postulates that every human being has an inherent right to life and mandates that no person shall be deprived of his life or personal liberty except according to the procedure that is established by law. In this case, writ petitions were filed under article 32 of the constitution of India by the convicts or their family members. Article 32 of the Constitution says about the remedies for the enforcement of rights:

1) The right to move to Supreme Court by appropriate proceedings for the enforcement of rights that can be enforced by this part is guaranteed;

2) The Supreme Court has the power to issue directions or writs, which is in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of rights conferred by this part.

In this case, the constitutional power vested under Article 72/161 had violated the fundamental rights of petitioners therein. The nature of power that is guaranteed under Art 72/161 is as follows: Article 72 says about the Power of the President to grant pardons, etc. and to suspend, remit or commute sentences in certain cases.

1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or to commute the sentence of the person convicted for any offence.

a. In all cases where the punishment or sentence that is by a court-martial;

b. In all cases where the punishment or sentence is for an offence against any law relating to the matter to which the executive power of Union extends;

c. In all cases where the sentence is that of a death sentence.

2) Nothing in the sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court-martial.

3) Nothing in sub-clause of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State, under any law for the time being in force.

Article 161 of the Constitution of India talks about the power of the Governor to grant pardons etc and to suspend, remit or commute sentences in certain cases. The Governor of a state shall have all the power to grant pardons, reprieves, respites or remissions of the punishment or to suspend, remit or to commute the sentence of any of the person convicted of any offence against any law relating to a matter to which the executive power of the state extends. So, let us examine the supervening circumstances of each case to arrive at a coherent decision of our present case commentary.

BACKGROUND

This is a Non- doctrinal research paper that focuses on the case ***Shatrughan Chauhan & Anr vs Union of India & Ors***[1] on 21 January 2014 which was headed by the bench of Hon'ble Justice P. Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh and the writ petition (criminal) no.55 of 2013 was filed in the Supreme Court of India. Across various cases, the reason for specifically choosing this case is that to know about the Constitutional remedies under Article 32 and their power under the Constitution of India.

Another thing that makes one go for this case is that the Mercy petition and their unreasonable rejections. In this case, the main issue was the undue delay by the President in rejecting the mercy petitions to death row convicts amount to torture. Such inordinate and

[1] Shatrughan Chauhan & Anr vs Union of India & Ors, 21 January 2014 https://indiankanoon.org/doc/59968841/

unexplained delay by the President is sufficient in itself to entitle a convict to a commutation. It seeks to correct the re-emergence of the death penalty. It also laid down certain crucial steps to a more humane process.

FACTS OF THE CASE

The brief facts were: Devender Paul Singh Bhullar, who was convicted by the Delhi court for various offences such as TADA, IPC and was found guilty and the death sentence was given. The appeal as well as review filed by him was dismissed by the court. Soon after he filed the mercy petition on the prayer of commutation of sentence on 14.01.2003 to the President of India under Article 72 of the constitution.

During the pendency of this petition, he also filed a curative petition (criminal) no .55 of 2013 which was also dismissed by the court on 12.03. 2013. After the rejection of his petition by the President, he filed a writ petition under Article 32 of the Constitution. While issuing notice in Writ Petition Criminal Diary No. 16039/2011, this Court had directed the respondents to clarify why the petitions made by the petitioner had not been disposed of for the last 8 years.

The court after observing the mercy petitions accepted that there was a delay of 8 years. It was a sufficient ground for commutation of death sentence into life imprisonment but the court dismissed the writ petition stating that it cannot be invoked in cases where a person is convicted for an offence such as TADA or other statutes. The court by analysing the prayers of both the parties had decided the judgement.

ISSUES

1. Whether the petitions are maintainable before the hon'ble court?

2. Whether the delay in the execution of the death sentence would amount to a violation of the right to life under Article 21 of the Constitution?

3. Whether delay in the execution of a death sentence at the end of the judicial process is wholly unconstitutional?

4. Whether the inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life?

CONTENTIONS

Contentions in favour of the Petitioners

- All the writ petitions were filed under Article 32 of the constitution either by the convicts who were given a death sentence or by their family members on the rejection of the mercy petition by the President and Governor of India.
- The writ petition consistently relates to the issuance of a writ of a declaration by stating that execution of death sentence in pursuance of rejection of mercy petition is unconstitutional and to set aside the death sentence by commuting it to imprisonment of life.

- Further prayed to declare that the order passed by the President or Governor of India was illegal and unenforceable.

- It has been repeatedly argued that the power to pardon rests on the advice tendered by the executive to the President under provision Article 74(1).

- An inordinate delay in execution of sentence of death is violative of Article 21 is available to all persons including convicts and continues till last breath if they establish and prove the supervening circumstances, undue delay in disposal of mercy petitions, undoubtedly, by virtue of power under Article 32 and every possible effort should be made to protect the human life and the same should be commutated into imprisonment for life.

Contentions in favour of the Respondents

- On 22.04.2001, Respondent no.1 (Union of India) wrote to Respondent No. 2 asking the record of the case and information on whether the mercy petition had been rejected by the Governor of India Meanwhile, other mercy petitions were received by Respondent No. 1.

- On 13.12.2001, without receiving the trial court judgement Respondent no .2 advised the Governor to reject the mercy petition and the same was rejected by the Governor after taking nine months. On 19.02.2011, Respondent No. 1 advised the President to reject the mercy petition.

- The alleged delay happened because these details are collected and gathered from the State/prison authorities and it takes lots of time according to the Union of India. Delay in itself does not entitle a person under death sentence and commutation of sentence to life imprisonment.

- Article 72/161 of the Constitution entail remedy to all convicts and is not limited to death sentence cases and must be understood accordingly. The power conferred by Article 72 can be used only to reduce the sentence of punishment, and not for enhancing it. It was also contended that there is no time limit prescribed to the President under Article 72 of the Constitution.

- According to the learned counsel for the Union of India, the death sentence is imposed on a person found guilty of an offence of heinous nature after adhering to the due procedure that is established by law which is subject to appeal and review. Therefore, delay in execution must not be a ground for commutation of the sentence of a heinous crime.

FINDINGS

In the case of ***A.R. Antulay Vs. Union of India (1988) 2 SCC 602*** the court clarified and pronounced that any writ petition under Article 32 of the Constitution challenging the validity of the order passed by the court as nullity or on the other hand incorrect cannot be entertained. Through this, the maintainability of the petitions was examined. The aforesaid petitions under Article 32 for the infringement of fundamental rights on failure on the part of the executive under Article 71/161 of the constitution within a reasonable time. The petitioners are not challenging the final verdict of the court. They also asserted that if the sentence is executed then and there would be no grievance or cause of action.

In ***Kuljeet Singh vs. Lt. Governor (1982) 1 SCC 417***, the court held that the power of the President under Article 72 of the Constitution to lessen the sentence may have to await examination on an appropriate occasion. Therefore refusing to lessen the sentence of the petitioner, the President has in any manner transgressed his discretionary power under Article 72. Two aspects were highlighted by the learned amicus curiae: One relating to the desirability of reasons in the order of granting pardon and the second was the power to withdraw the order of granting pardon/remission.

According to the Union of India, the time taken in the re-examination of the case may depend upon each case. They said that there cannot be a specific time limit for the examination of mercy petitions. Article 72 envisages no time limit within which the mercy petition is to be disposed of by the President of India. Accordingly, it is contended that the courts may not go into or fix any outer limit. Power of President under Article 72 is discretionary and cannot be altered, modified or interfered with in any manner.

In ***Smt Triveniben Vs. State of Gujarat(1988) 4 SCC 574***[2], the court held that this court will examine only the nature of delay caused and circumstances that ensued after the sentence was confirmed and will have no jurisdiction to re-open the conclusion reached by the court.

REASONING

The power to pardon is a part of the Constitutional scheme and we do not doubt in our mind that it should also be treated in our Indian Republic. It is a Constitutional responsibility of great significance exercised when the occasion arises. It is not denied as mentioned in the argument of the learned counsel of Petitioners that the power to pardon rests on the advice tendered by the Executive to the President, who is subject to the provisions of Article 74(1) of the Constitution.

Sometimes, repeated filing of mercy petitions by the family members of convicts had caused the delay and also due to the gathering of details from the respective State /prison authorities was a cause for undue delay. Even though it is the discretionary power of the President and Governor of India, there should be proper consideration of the prevailing circumstances.

DISPOSITION

The right to life under Article 21 is the most fundamental of all rights, provided that no person should be deprived of their life and liberty in accordance with the law. Human life is sacred and inviolable and every effort should be made in such a manner that it is protected. Undue delay in disposal of mercy petitions, undoubtedly under Article 32 the court can commute the sentence of death into life imprisonment. Apart from the order of high

[2] Smt. Triveniben vs. State of Gujarat (2004), https://indiankanoon.org/doc/981147/

dignitaries, in cases of unexplained and inordinate delay, the grievance of the convict can be considered by the Hon'ble court[3].

CRITICAL ANALYSIS

In ***R.D. Shetty vs. International Airport Authority (1979) 3 SCC 489***, it is said that no matter whether the violation of fundamental right arises out of executive action or not. Article 32 can be used to enforce the fundamental rights in either of the events' the present case the fundamental right of the petitioners were violated by the Constitutional power vested in the executive under Article 71/161 of the Constitution. The court passed appropriate orders as in the cases of ***T.V. Vatheeswaran vs. State of Tamil Nadu (1983) 2 SCC 68***, ***Sher Singh and Ors. Vs. the State of Punjab (1983) 2 SCC 344***, ***Smt Triveniben vs. the State of Gujarat (1988) 4 SCC 574*** etc. Accordingly, the petitions are, maintainable before the Hon'ble court.

Significance of Article 32 as foreseen by Dr Ambedkar; His words were appositely reiterated in ***Minerva Mills Ltd. and Ors. Vs. Union of India and Ors. (1980) 2 SCC 625*** as follows:- If I was asked to name any particular Article in this Constitution as the most important an Article without which this Constitution would be a nullity I could not refer to any other Article except this one.

In ***Smt. Triveniben vs. the State of Gujarat, (1989) 1 SCC 678*** this Court, in para 22, appreciated the aspect of delay in execution in the following words: It was contended that the delay in the execution of sentence will entitle a prisoner to approach this court as his right under Article 21 is being infringed.

It is well settled that the judgment of the court can never be challenged under Article 14 or 21 and therefore the court's judgement on awarding death sentence is not open to challenge as violative of article 14 or 21 has been laid down in the cases of ***Naresh Shridhar Mirajkar vs the State of Maharashtra*** and also in ***A.R. Antukay V. R.S. Nayak***[4].

In 1972 Privy Council case of ***Noel Riley vs. Attorney General (1982)*** Criminal law Review 679 quoting sentence of death is one thing, sentence of death followed by lengthy

[3] R.D Shetty vs. International Airport Authority (1979), https://indiankanoon.org/doc/1008926/
[4] A.R Antukay vs. R.S Nayak, (1988) https://indiankanoon.org/doc/873751/

imprisonment before execution is another. The appropriate relief where there is a delay in execution of death sentence, the court held is to vacate the sentence of death.

CONCLUSION

Our constitution is highly valued for its articulation. In the above said cases, we decide upon the evolving jurisprudence, which India has to its credit for being at the forefront of the global legal arena. Mercy jurisprudence is a part of the standard of decency, which is the hallmark of society. The death sentence is passed lawfully, the execution of it should be in consonance with the Constitutional mandate and it should not violate the Constitutional principles. It is well known that exercising power under Article 72/161 by the President /Governor is a Constitutional obligation and not a mere Prerogative.

Considering the high status of the office, the framers of the Constitution did not stipulate any outer time limit for disposing of the mercy petitions, where it should be decided within a reasonable time. However, the delay seems to be unreasonable, unexplained and exorbitant and the court should consider this aspect. Every Constitutional duty should be with due care and diligence. Finally, the court held that the delay of twelve years is a sufficient ground for the commutation of the death sentence into life imprisonment. All the writ petitions were accordingly allowed on the above-mentioned terms of the case.

FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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ABSTRACT

Freedom of speech and expression is guaranteed as a fundamental right to the citizens of India. Diversity in India is based on religion, caste, languages etc needs this freedom of speech and expression to express their views, opinions, feelings to each other which will increase unity. India is the world's largest democracy and to maintain democratic values this freedom is necessary. People through the preamble of the constitution declared themselves the liberty of thought and expression. Article 19(1) (a) guarantee freedom of speech and expression with the restrictions under Article 19(2) of the constitution. There are various aspects of freedom of speech and expression like the right to know, freedom of commercial speech, right to broadcast etc. Here, the author will discuss freedom of the press and hate speech in India. Press is one of the pillars of democracy and so its freedom is necessary, impact and restrictions on this freedom will be discussed by the author. Hate speech means the thoughts, views, opinions delivered by various politicians, legislators and other prominent or order public which creates distress or conflicts in society. Hate speech is now becoming a great weapon to spread conflicts between people who belong to a different association, religion and beliefs. Social media are emerging as a platform to deliver hate speech. Government should implement strict laws regarding hate speech in India otherwise it will hinder democratic values. Freedom of speech and expression is also recognised by various International conventions as a basic human right. In a complex society like India freedom of speech and expression is like a tool to connect society and maintain unity.

INTRODUCTION

Man is a social animal and through speech and expression conveys his thoughts, feelings, sentiments etc in society to each other. The right to speech and expression is one of the basic features of a democratic country where people have the right to freely express their thoughts and feelings. India by the constitution provided its citizens with the right to Freedom of Speech and expression as a fundamental right. The people of Indian declared in the Preamble of the constitution, where they resolve to secure all citizens' liberty of thought and expression. Article 19(1) (a) says that “all citizens shall have the right to Freedom of speech

and expression". Freedom of Speech mad expression means the right to express one's own opinions by writing, words of mouths, pictures, painting or any other mode. Freedom of speech and expression includes not only expressing one's ideas or opinions but also includes the right to propagate or publish the opinions or ideas of other people or a community. This right of Freedom of speech and expression is granted only to the citizens of India and not to an alien or a foreigner. A company or corporation also cannot claim this right as they are not a legal or natural person.

The freedom of speech and expression is exercisable not only in India but also outside as there is no geographical limit to this freedom. In ***Maneka Gandhi v Union of India***[1], the question was raised that how the fundamental right could be intended to operate outside India as the state cannot protect this right outside its territory; the Supreme Court rejected this contention and held that the right to freedom of speech and expression has no geographical limitations. This right provides freedom to express his opinion or ideas not only in India but also outside.

FREEDOM OF PRESS

Press is one of the pillars of democracy and hence plays an important role in the proper functioning of democracy. Freedom of the press is not expressly mentioned in the constitution but it is implicit in the right to Freedom of speech and expression. Democracy can only prevail in any country when there is freedom of the press to express the opinion of the public in the wider picture. The press always expresses the opinions of the public about the government or any policy or working of government, on the other hand, the press is also used to convey the ideas or policies of government to the public. The expression of freedom of the press means protection from the interference of any authority in the name of public interest in the content as it will hinder the democratic belief. The freedom of the press is the heart of political and social interactions.

In today's society where there are various political and social issues, the press plays an important role in connecting the people from each other. It helps to know what is happening in society and measures taken by the government to tackle these problems. Press presents the reality of any matter or issues in front of the society and helps them to choose better for

[1] AIR 1978 SC 597

themselves, thus enriching the democratic values. In the era of this pandemic of covid-19, when there was lockdown all over India, the press help people to tackle the situation by giving information regarding the situation and measures taken by the government in battling the pandemic. The press always plays an important role in every situation from the freedom struggle to these pandemic days by connecting the society.

Freedom of the press cannot be restrained by the government or any other authority except by the constitution or bye-laws. But nowadays, we can see some external interference in the press, like it is used by the government to propagate its political agenda. When government implement any law or scheme or agenda, the press is used by the government to express only the positive side and not the real one. According to the recent report of the World Press, Freedom Index India ranked 142 among 180 countries. The Indian press is considered bad in various publications. As we know press or media is a pillar of democracy so its freedom from any influence is necessary, whether it is from the government or any other body. Article 19(2) of the Indian constitution imposes some limitations on the freedom of the press.

HATE SPEECH IN INDIA

Hate speech is not defined in Indian laws, but free and responsible speech is guaranteed under the constitution as a fundamental right to the public. Laws also ensure that the liberty of free speech should not be against the principles of a diverse country like India. Hate speech is a statement delivered by various politicians, legislators, writers and so on in their speech and writing. In a country like India where people belong to different castes, classes, religions, languages etc the hate speech poses a great challenge. Hate speech has always been a debate in India, especially on social media's platforms. These hate speeches are in debate mostly during the time of elections or the judgments of landmark cases. Candidates during the elections generally made hate speech against other political parties and their candidates. Hate speech is an expression that causes distress and offends one group of people toward another based on their beliefs and associations. The purpose of free speech is to strengthen democracy but when this freedom of speech creates chaos and distress it harms democracy. In ***Pravasi Bhalai Sangathan v Union of India***[2], the Supreme Court on the prayer that the state should take action against those who make hate speech held that the court cannot go

[2] AIR 2014 SC 1591

beyond the existing laws to penalise hate speech. The court held that the implementation of existing laws could solve the problems of hate speech to a greater extent.

In this age social media which are created with the purpose to connect people around the world are being used as a medium to create distress or conflict through hate speech. Whenever any debatable topic whether it is social, political or legal arises in-country people use social media to spread hate among society. Some social media platforms made rules to control these activities like Instagram launches features in the app to tackle hate speech, Facebook made changes for reducing hate speech in the news feed contents. The election commission of India made rules of conduct for political parties that no party or candidate shall include in any activities which can create conflict, hatred, differences or cause tension between different religions, communities, caste, creed or associations, in other words, no hate speech. Hate speech given by candidates participating in the election can influence election results which ultimately hinder democratic principles. In today's era hate speech are becoming a weapon that is used to create conflict and hatred among people at a mass level. Social media is spreading hate speech among society at a very vast rate. The Indian government have taken measures to stop hate speech on social media like the government can order to suspend the account of the person who made hate speech on his post within twenty-four hours and can ask for the details of the person to take action against him. Recently in the year, 2021 the government made new rules to restrict hate speech or fake messages on various social media platforms.

CONCLUSION

Freedom of speech and expression in the present complex society provide freedom to the people to express their feelings and expression in the society and help them to connect. It is one of the fundamental rights given under the constitution, and we can approach the court in case of a violation. Article 19 (1) (a) talks about freedom of speech and expression and have certain restrictions mentioned in Article 19 (2) in the constitution. Democracy is a form of government that is of the people, by the people and for the people and people can only participate in this form of government when they have the right to freely express their opinion and feelings. India is a diverse country where people belong to a different religion, caste, class; languages etc, freedom of speech and expression become more important in this diversity. This freedom of speech and expression is guaranteed and proposed under various International conventions. Different countries are recognizing this right in their country to

make better administration. Various prominent writer or thinkers like John Milton talked about the freedom of speech and expression that give people the liberty to express and utter their feelings above any other liberty.

But the right to freedom of speech and expression need restrictions at the same time because it can create conflicts in society. Freedom of speech and expression is beneficial when the ideas, beliefs, opinions are expressed positively, but when it takes forms of hate speech or violent speech it creates distress in society. India under Article 19(2) of the constitution and various other legislative provisions impose restrictions upon this freedom. Expression is a way through which we convey our ideas, opinions, thoughts to other people in society, so we should also be responsible for expressing our feelings, opinions and thoughts so that harmony can be maintained in the society and country.

LAW WITH RESPECT TO FAIR DISCLOSURE

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ABSTRACT

In this paper, the law concerning fair disclosure in the Indian context is being analyzed. The limitation that comes with the adversarial system, the role of the investigating authority along with the courts and prosecutor, the practice in other countries and the principle adopted in the United States, as well as United Kingdom with respect to fair disclosure, has also been discussed.

The right to fair disclosure in the Indian context is being divided into two parts to make the understanding of the procedure more clear, disclosure concerning both the Prosecutor as well the Investigating agency is discussed to trace the limits imposed on our system. To enthral and provide more clarity to the concept of fair disclosure several statutory principles in the Code of Criminal Procedure, 1973 along with the judgements of the courts in India finds mentioned in this paper and has been elaborated herein.

RIGHT TO FAIR TRIAL

"*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him*."[1]

The right to a fair trial is a cardinal principle of the rule of law. First, it must be recognized that fairness means fairness to both sides, not just one. The procedure adopted must give a fair opportunity for the prosecutor or claimant to prove his case as also to the defendant to rebut it.[2] Based on this principle, whether the procedure for the trials in India are fair in all aspects and is the 'concept of a fair trial' keeps pace with the requirement of the society are some of the fundamental questions that are addressed in the paper.

[1] Article 10, Universal Declaration of Human Rights, 1948.
[2] Tom Bingham, *the Rule of Law* 90 (Penguin Books India Pvt. Ltd., Panchsheel Park, New Delhi, 2011).

Adversarial system and Inquisitorial system are two major criminal justice systems and in India, we follow the adversarial system where the role of a judge is to facilitate the trial unlike the inquisitorial system where the judge is not a passive recipient but rather takes an active involvement in the trial. In this paper we will limit the discussion to 'right to fair disclosure' in a criminal trial, the impact it has on the fair trial principle and the process followed in India.

CRIMINAL TRIAL: AGENCIES INVOLVED AND ROLE OF INVESTIGATING OFFICER

We the people of India have given to ourselves a written constitution that ensures the procedure established by law. To maintain this stance several agencies works to ensure the rule of law and for that, the criminal justice system in India has four important components, namely, the Judiciary, the Investigating agency (Police), the Prosecution Wing and the Prison and correctional authorities. Each agency works within the limits assigned to them and ensures a swift criminal trial. One of the responsibilities of the police is the protection of the life, liberty, and property of citizens.

In the criminal justice system, the investigation of an offence is in the domain of the police. The aim of the investigation is ultimately to search for truth and bring the offender to book.[3] The power granted to police must be exercised in consonance with the Code[4], there are several safeguards provided within the Code which restricts the power of the police to ensure a fair trial. The Code also granted the power to the police to drop the investigation against the accused when no offence is made out. Subsection (b) to the first proviso of Section 157(1) of the Code of Criminal Procedure, 1973 which is a stage before investigation, specifies, "If it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case."

While section 169 of the Code also clearly mentions if no reasonable ground of suspicion exists against the accused or after the investigation the evidence found is not sufficient to justify the forwarding of the accused to a magistrate then-Police officer may himself release him on bond, with or without sureties and police can file a closure report under section 173 of the Code of criminal procedure, 1973.

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[3] *Manohar Lal Sharma V. Union of India* (2014) 2 SCC 532.
[4] The Code of Criminal Procedure, 1973 (Act 2 of 1974).

FAIR DISCLOSURE: LAW IN OTHER COUNTRIES

Is secrecy a new law? If not, then to what extent the parties are allowed to view the evidence collected by the investigating agency? What is the procedure followed in other countries?

In *Brady V. Maryland*[5] the issue that arose before the court was did the suppression of evidence by the state violated Brady's rights under the due process clause? The Supreme Court answered it in the affirmative and held that regardless of the bad or good faith of the state the evidence which is material to the guilt of the accused if suppressed violates the due process clause.

The provision with fair disclosure also finds a place in the statute of New South Wales which states[6], "Law enforcement officers investigating alleged offences must disclose to the director all relevant information, documents or other things obtained during the investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person." In the United Kingdom (applicable specifically to Wales and England), the practice of how police officers should disclose material to the prosecution is specifically mentioned[7] and stated as under:-

1. The function of the investigator, the officer in charge of an investigation and the disclosure officer are separate.

2. In any criminal investigation, one or more deputy disclosure officers may be appointed to assist the disclosure officer.

3. It is an essential part of their duties to ensure that all material that may be relevant to an Investigation is retained, and either made available to the disclosure officer or in exceptional circumstances revealed directly to the Prosecution.

If the pre-trial disclosure requirements are not complied with, then there is the imposition of sanctions[8]. The aim is to introduce two-fold disclosure by both the police and the prosecutor. It can be seen clearly that in other discussed countries the law concerning fair disclosure is somewhat extensive and clear.

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[5] 373 U.S. 83.
[6] Director of Public Prosecutions Act 1986, s. 15A.
[7] Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2020, s. 3.
[8] Criminal Procedure and Investigations Act 1996, s. 146.

FAIR DISCLOSURE PRACTICE FOLLOWED IN INDIAN CRIMINAL SYSTEM

In Indian practice, the right concerning fair disclosure has no specific legislation. Article 21 talks about 'procedure established by law' which is to be achieved by 'due process of law' as held by **Justice Bhagwati** in ***Maneka Gandhi V. Union of India***[9]**.**

In the Indian criminal justice system, the law concerning fair disclosure can be divided into two categories:-

1- Disclosure by Prosecution
2- Disclosure by the Investigating Authority

The law concerning disclosure by Prosecution is made clear in the case of ***V.K. Sasikala vs State Rep. By Superintendent Of Police***[10] where the situation has arisen before the court was whether the unmarked and uninhibited documents of the case that are being demanded by the accused which had been forwarded to the court under section 173(5) but are not being relied on by the prosecution can be claimed by the accused to fetch him the defence in the trial?

The primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and to ensure that all relevant facts and circumstances are brought to the notice of the court for a just determination of the truth[11] so that due justice prevails as also ensured by Article 19 and 21. To ensure the fairness of the trial is the major responsibility of the courts as well as the investigating agency. The major schemes of the Code are: -

1. In accordance with section 2(h) of the Code of Criminal Procedure, 1973 "investigation" includes all the proceedings for the collection of evidence conducted by a Police Officer, or any person authorised by the Magistrate. It is the solemn responsibility of the investigating agency to collect all the evidence and put it before the court to establish the guilt of the accused. The investigating agency must exercise the above power keeping in mind their power concerning section 157(1) Proviso (b) and section 169 of the Code of Criminal Procedure, 1973.

[9] AIR 1978 SC.
[10] AIR 1978 SC.
[11] *Sidhartha Vashisht @ Manu Sharma V. State (NCT of Delhi)* (CRL.) NO. 179 OF 2007.

2. The police officer may examine any person orally who is supposed to be acquainted with the facts of the case. The statement under section 161 of the Code of Criminal Procedure, 1973 is not evidence per se under section 162 of the Code. The Proviso to Section 162(1) bestowed the statutory right on the accused to confront the witnesses with the statements recorded under section 161 of the Code.

3. The Code ensures vide Section 207 and 208 that all the documents and evidence collected by the investigating agency, both in the trial based on Complaint case and trial on Police report after the cognizance is taken by the magistrate must also be forwarded to the accused.[12]

4. Section 91 along with section 243 of the Code ensures the right to fair defence to the accused as well; the power is given to the court to summon any document which the court considers necessary.

5. The statutory as well the equitable right of the accused under the Indian constitution is not absolute as vide Section 173(6) of the Code the police officer is empowered to withhold any statement as to the subject matter of the proceedings or if the interest of the justice demands and is inexpedient in the public interest.

The liberty of an accused cannot be interfered with except under due process of law. The expression due process of law shall deem to include fairness in the trial. The court gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights are given to the accused place an implied obligation upon the Prosecution to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during the investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.[13]

[12] *Miss "A" Vs. State of Uttar Pradesh,* (CRL.) NO. 10401 OF 2019.
[13] *Sidhartha Vashisht @ Manu Sharma V. State (NCT of Delhi)* (CRL.) NO. 179 of 2007.

RIGHTS OF THE ACCUSED IN PRE-TRIAL DISCLOSURE

In the Indian context, the sole authority in the collection of the evidence is bestowed on the Investigating authority and that there is nothing in the Code of Criminal Procedure, 1973 authorising the accused to claim pre-trial disclosure.

The lacuna in the Code makes the Investigating authority sole judge withhold any relevant information from going into the charge sheet. The Investigating authority can withhold the information that can exculpate the accused. The entire foundation of the charge sheet is based on the discretion of the police officer and the accused can claim no right in this regard. So, Can the Investigating officer file a charge sheet based on the evidence he chose to disclose or to hide or is there any safeguard available to the accused?

The court is the sole repository of justice, and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, getaway by manipulating the investigating and/or the prosecuting agency[14].

With this, one thing is clear that the court can exercise ample power to reach out the truth and to preserve the sanctity of the trial and so the power under section 91 of the Code has been granted to the court.

While ordinarily the court must proceed based on material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is the material of a sterling quality that has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 of the Code of Criminal Procedure, 1973 dehors the satisfaction of the court.[15]

[14] *Hardeep Singh Vs. State of Punjab and Ors*. (2014) 3 SCC 92.
[15] *Nitya Dharmananda @ k. Lenin vs. Sri Gopal Sheelum Reddy*, (CRL.) NO. 8279 OF 2016.

CONCLUSION

Based on the above discussion, it can be seen that not many safeguards are there for the disclosure of all the evidence by the investigating authority and much of it is still within the sole discretion of the investigating authority. In the Indian system, the prosecutor only gets involved during the process of trial. Thus, the possibility of concealment cannot be ignored at the stage of investigation too. The law must provide for the accountability of police and the prosecutor for any misconduct. Also, there must be competent prosecution lawyers and effective coordination between the prosecutors and investigators in the purview of the authority a prosecutor has.

An acquittal is not enough for wrongful prosecution and a need for proper compensation and assistance for leading a respectful life is also vital. The right to fair disclosure needs to be drafted to conduct the trial in India to intact the Rule of Law. However, the number of changes required should not deter us from aiming for an ideal fair system. A dire need for optimism, pragmatism, transparency, and accountability is the need of the hour and the same must be effectively mechanised in the present system rendering justice in our country.

LEGAL AID: ACCESS TO JUSTICE AND ROLE OF JUDICIARY DURING COVID-19

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INTRODUCTION

As William E. Gladstone, the erstwhile Prime Minister of the UK, rightly said, "*Justice delayed, is justice denied.*"[1] The main take away from this statement is if there is a provision for legal redressal and a piece of machinery to address grievances of the aggrieved party, none of it is truly valuable if it is delivered in an untimely fashion. Denying or not providing effective justice is equivalent to not providing justice at all. A legal maxim that adds weight to this premise is "*Ubi jus, ibi remedium*", which states, "When there is a right, there is a remedy". Thus, if a remedy is not provided instantly, a lack of timeliness would creep in.

As a member of the legal fraternity, we have a responsibility towards society and helping those in need. According to John Rawls, in his book: A Theory of Justice, he explains how there are two kinds of barriers that prevent people from approaching courts to seek relief.

- Natural barriers: These barriers are usually faced by people belonging to the low strata of society, as a result of poverty, illiteracy and lack of understanding about their rights.

- Artificial barriers: These barriers are faced by people, not belonging to a specific section of society, as a result of prejudices, physical disability, caste, ethnicity, sexual orientation.

When one talks about concepts such as legal aid and access to justice, it is crucial to understand, that the above two themes are interconnected, however, the underlying gap is bridged by the people who are willing to make a difference. For a broad categorisation, these people include- pro bono lawyers, social workers, people working at NGO's, and not to forget, law students. Thus, it is this section of people that would provide legal aid to the marginalised sections of society and give them the likelihood and hope of receiving timely

[1] Burstyner et al., *Justice Delayed is Justice Denied*, Victoria University Law and Justice Journal 46, 46-48 (2014).

and effective access to justice. In a democratic country like India, equal opportunity for access to justice is indispensable. Being ignorant, lacking awareness or simply having apprehensions about the legal recourse are not grounds to pose as a hindrance while obtaining justice. The preamble of our constitution rightly uses the words like, 'justice, and social, political, economic'. Thus, fulfilling and achieving constitutional goals is paramount. The constitution recognises the need for justice and reflects its beliefs in Article 38 and Article 39A.

It was Mahatma Gandhi who advocated the practice of *'Rule of Law'*, as opposed to '*Law*'. It is via rule of law that the principle of equal opportunity is effectuated. In this system, arbitrary actions by the legislature and executive are not followed, as compared to a system that strictly advocates law, thereby based on the supreme law, leaving little room for the procedural aspect of law. Thus, rule of law aims at improving the kind of relations, firstly between government and the citizens and secondly, among the people themselves.[2] B. R. Ambedkar rightly emphasised the essence of Article 32 of our Indian constitution, being the heart and soul, which provides people with a reliable platform to be heard and seek remedy if their legal right has been infringed. These footsteps are made in the right direction to empower citizens with wherewithal while approaching courts

IMPORTANCE OF LEGAL AID

Meaning

Legal aid simply means providing legal services, either free of cost or at a minuscule amount. The main purpose of providing legal aid is simple - ensuring no one gets left behind in the search for justice and not allowing insufficient funds to act as a deterrent for the weaker sections of society.

Legal aid to the marginalised sections helps to conserve and advocate rule of law in society. If a person is functionally illiterate and is not provided legal guidance, then it can be concluded that he was given an inadequate opportunity for relief. The judiciary has played an important role in its dealings with the legislature and brings about much-needed laws and provisions for the benefit of the poor and needy. In India particularly, there are a plethora of opportunities in providing aid, as the oppressed section of society still lack a platform in

[2] Shapiro et al., Government benefits and the rule of law: towards a standards-based theory of due process. A.L.R., 57, 107-108 (2005).

exercising their fundamental rights. Legal aid aspires to reflect different facets of the constitution in letter and spirit.[3]

Origin & History

Legal aid originated from Magna Carta in 1215, and still today, its effects are resonating since its inception promoting: right to a non-discriminatory trial and the right to justice. The English propagated the Magna Carta in their colonies, and invariably became the proponents of rule of law. This essentially eliminated all rules and laws dictated by the ruler and introduced a system of fairness while exercising rights and accessing privileges.

Article 21 of the Indian Constitution states "no person shall be deprived of his life or personal liberty except according to procedure established by law". Thus, we can say fundamentally Article 21 was introduced, keeping in mind the principles and what Magna Carta stands for today. However, in prevalent times, it is subject to interpretation and subjectivity due to the evolution of mankind and its principles.

Below are a few cases to document the progression and adaptation of the effects of the Magna Carta in the Indian scenario.

- ***ADM Jabalpur vs. Shivkant Shukla (1976)[4]:***

  When this case was first tried in 1976, the Supreme Court concurred that liberty is a fundamental right; however, it is not absolute, especially during unprecedented times such as an Emergency. However, this is a glaring exemplar, for if any political party decides to overstep the right of an individual and curtain their freedom and liberty, could easily get away scot-free, simply because there exists a lacuna in exercising fundamental rights in a democratic country. This case is well known as the "Habeas Corpus" case, leaving no room for national authorities to undertake numerous arrests indiscriminately. Article 22 protects if the accused is wrongly incarcerated under the Preventive Detention Act, proving to be a solace for them.

[3] Mallikarjun, Legal Aid in India and the judicial contribution, 7 NALSAR LAW REVIEW 234, 235-36 (2013).
[4] *ADM Jabalpur vs. Shivkant Shukla* (1976) 2 SCC 521

- ***Maneka Gandhi vs. Union of India (1978)[5]:***

  This case is a turning point, as the principle of the "Golden Triangle Rule" was introduced. The triangle signifying intersecting points between Article 14: "Right to Equality", Article 19: "Right to Freedom", and Article 21: "Right to Life and Liberty." Thus, the three above rights, are concurrent and coinciding in nature. For instance, if a law introduces a procedure to restrict people of their liberty, then it can do so, only if it meets relevant and coinciding requirements in Article 14 and Article 19. The court, in this case, ruled that right to travel abroad comes under the ambit of Article 21. Moreover, introducing a law to curtain personal liberty is not adequate to be implemented. The enactment needs to be justifiable, reasonable and practical.

The takeaway from the above two cases and the court's holding signifies that no person or even national authority for that matter can impinge and intrude on a person's right and privilege. At the end of the day, our constitution along with sensible and humane judgements dictated by the court gives us true and fair justice.

NEW WAVE IN INDIAN LEGAL AID & JURISPRUDENCE

In the opinion of Justice P.N. Bhagwati, legal aid can be defined as "*means providing for an arrangement in society which makes the machinery of administration of justice easily accessible to people*." This has been said, keeping in mind that India being a welfare state is accountable for social welfare on an individual basis and on a societal level too.

The government at the centre, state and even private companies have introduced a gamut of schemes and ensured the implementation of the same. They have affirmative faith that they along with bodies such as law students, teachers, lawyers, social workers can truly revamp the legal system in providing legal aid. Below are some methods and platforms to provide speedy legal aid:

- **Pro Bono:**

  The above term in English translates to "for the public good". It essentially means providing skilled legal work either free of cost or at a nominal fee, to the struggling sections of society. The objective of pro bono is to provide a platform for the underprivileged, to voice their

[5] *Maneka Gandhi vs. UOI* (1978) AIR 597

concerns. It is only when they are heard and represented by lawyers, can amendments, redrafting and adaptation take place. An ancillary objective of such pro bono lawyers is to spread awareness about their rights and viable solutions.

- **Tele Law:**

  As the name suggests, this form of legal advice is provided online via videoconferencing. For people who fall within Section 12 of the Legal Services Authorities Act, 1987, the legal aid provided is gratuitous, whereas, for the people who do not fall within this scope, a subsidised amount is charged. This scheme enables people to connect remotely, belonging to any part of the country.

- **Nyaya Mitra Scheme:**

  This scheme comes under the ambit of the Department of Justice and helps courts on cases that have pendency for more than 10 years.[6] It is a way of restoring people's belief and attitude towards the judiciary which may have been affected due to the incessant pile on of cases. It tackles cases and approaches them by keeping in mind Article 39 of the constitution.

- **Lok Adalat:**

  This is famously titled the "People's Court" and is a good way to provide immediate relief by suggesting a quick solution, which in turn helps in reducing the burden of courts. Thus, before a lawsuit can be filed, this is an amicable way to come to terms in the presence of an arbitrator. It does not foray into cases dealing with the criminal subject matter. Its reason for establishment is to provide fair justice and does not charge fees for the services provided.

- **Alternate Dispute Resolution (ADR):**

  ADR is a mechanism used to settle disputes out of the court with the consultation of a third party. Section 89 of the Code of Civil Procedure provides for "an option of settlement of disputes outside the judicial courts."[7] ADR can be broadly categorised into Arbitration, Mediation and Conciliation, with arbitration being the most effective in enforcement, power, and ability to decide which is binding on all parties.

[6] Bharatendra Singh, Nyaya Mitra Scheme, Ministry of Law & Justice, 2018, Lok Sabha.
[7] Code of Civil Procedure, Part V of 1908, §89.

CONSTITUTION OF INDIA - ACCESS TO JUSTICE

Below, legal aid is categorised into two phases: The pre-independence period and the Post-independence period.[8]

Pre-Independence Period

The Pre- British period was monarchical- where all the affairs of the state were handled and run by the monarch (a single ruler). To add to it, the constitution lies in the hands of the monarch, making power easily accessible to them. When states were ruled by Muslims and Hindus, people were provided justice; however, it was in an inexpensive form and immediate form, thereby compromising on quality. The British revamped the system and introduced an expensive administration of justice, where legal aid was mandated under the Code of Civil Procedure and exempted those people who were in an extreme state of poverty to pay court fees. Bombay Legal Aid Society was introduced in 1924 and is aimed at rendering legal advice to the needy, free of cost.

Post-Independence Period

Even though India became independent in 1947, it still faced turmoil due to battles like religion, poverty, illiteracy but that did not stop legal aid schemes from being introduced by Justice Bhagwati. The Law Commission made it a point to introduce different legal aid schemes, one of them introduced by M.C. Setalvad where he iterated that legal service must be provided to the needy free of cost by the State and they must appropriate funds in such a way that the poor are benefitted. The Law Commission also introduced different approaches in the Code of Criminal Procedure and the Code of Civil Procedure.

Code of Criminal Procedure, 1973

Section 304: "Legal aid to accused at State expense in certain areas"

"Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State."9

[8] KALPESHKUMAR GUPTA, LEGAL AID & AWARENESS IN INDIA: ISSUES & CHALLENGES 91 92 (Viralkumar Mandaliya, LAP Lambert Academic Publishing) (2018).

Code of Civil Procedure, 1908

Order XXXIII: "Court to assign a pleader to an unrepresented indigent person" (9A) - "Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the court may, if the circumstances of the case so require, assign a pleader to him." Thus, from the above two clauses, it is evident that the State provides recourse to indigent persons.

ACCESS TO JUSTICE IN OUR CONSTITUTION

Article 14

Article 14: *"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, prohibition on grounds of religion, race, caste, sex or place of birth."*

Two important takeaways from this article are that there should be "equality before the law "and" equal protection of the law". An important legal maxim to be highlighted is *Audi Alteram Partem*, which means "listen to the other side." However, in India, there are lurking evils such as illiteracy, social class, language barriers, and the religion which hinder the path in accessing equal opportunity for justice. Thus, equal opportunity of legal aid cannot be emphasised upon.

Article 21

Article 21: *"No person shall be deprived of his life or personal liberty except according to procedure established by law."12*

Article 21 is a fundamental right that aims at protecting life and personal liberty. Here, this article is strictly made enforceable, and no person shall be at a disadvantage while accessing their right, unless it is established by law. It is mentioned in Part III of the Constitution. For instance, a case in point- ***Sukh Das vs. Union Territory of Arunachal Pradesh***[9] held that "free legal aid at the State's cost is a fundamental right of a person accused of an offence."

Article 32

Article 32 (2)*: "The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto*

[9] *Sukh Das vs. Union Territory of Arunachal Pradesh* (1986) AIR 991.

and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part."

Here, Supreme Court is given the power to safeguard citizens' rights and plays the role of a warrantor. Having a list of fundamental rights is ineffective unless there is functional machinery to enforce one's rights and privileges. Another legal maxim called *Locus Standi,* which means "the person who has the right to be in court" is applicable in the legal system, where only the person who has faced some wrong can initiate a suit. However, there are exceptions such as Public Interest Litigation which allows representatives to initiate a suit, especially on behalf of indigent persons.

Article 39 (a)

Article 39 A*: "Citizen, men and women equally, have the right to an adequate means of livelihood."15*

Article 39 (A) of the Constitution provides free legal aid and justice to indigent persons, even if the persons are prisoners. A case in point- ***Hussainara Khatoon vs. the State of Bihar***[10], which held that "if an accused or even criminal is unable to afford legal services then he has a right to have free legal aid at the cost of the State and it is the utmost duty of the State to watch that the legal system promotes justice on basis of equity." This article emphasises that these rights are inviolable, and possess characteristics of being reasonable, balanced and justifiable in the eyes of law. It is mentioned in Part IV of the Constitution which talks about Directive Principles of State Policy (DPSP).

NATIONAL LEGAL SERVICES AUTHORITY (NALSA):

The Legal Services Authority Act was introduced in 1955, to set up a national web for granting legal services to the marginalised population. NALSA implements various legal schemes and oversees its functioning. It has its authorities at the district, state and taluka levels. Till 2019, there were 5.35 lakh legal awareness workshops conducted.[11]

[10] Hussainara Khatoon vs. State of Bihar, 1979 SCR (3) 532.
[11] Legal Services Authority Act, Chapter II of 1987, § 3.

LEGAL AID IN THE COVID-19 SCENARIO

The pandemic of Covid and the ensuing lockdown has greatly impacted and caused misery to the underprivileged and poor sections of society. The National Legal Services Authority aimed at addressing the concerns of such poor and weaker sections of society. In furtherance of their aim, NALSA issued a direction to the State Legal Service Authorities (SLSA) for the provision of legal aid to those who require it. NALSA highlighted the paramount importance of legal aid during such unprecedented events.

The United Nations High Commissioner for Human Rights made recommendations in relation to the effect of the outbreak of this virus in jails and prisons. The recommendations suggested different states ought to consider the release of prisoners to decongest the prison and thereby reduce the possibility of an outbreak. Based on the recommendations, the Supreme Court of India directed state governments to consider the release of some prisoners on parole to decongest prisons and prevent the further spread of the disease.

The High Powered Committee of each state along with the respective State Legal Service Authorities issued guidelines of which categories of prisoners will stay in jail and which can be released. The former mostly consisted of prisoners on trial for offences under the Protection of Children From Sexual Offenses (POCSO) Act, the Narcotic Drugs and Psychotropic Substances (NDPS) Act. As of data on April 15 provided by NALSA, 11,077 prisoners under trial across 232 districts were released from jail during the lockdown. Additionally, around 5,981 prisoners convicted of non-heinous offences were released on parole and furloughed to decongest the prisons. NALSA is offering assistance to such prisoners by way of a panel of lawyers.

Another pertinent issue was the increase in domestic violence incidents. To curb the problem NALSA requested coordination between SLSAs with the One-Stop Centres established by the Ministry of Women and Child. The paralegals and volunteers would assist the victims by filing cases, affidavits, and informing them about their rights. Additionally, helpline numbers were issued to provide women with assistance and legal aid. These are some of the initiatives taken by the legal service authorities and the government to ensure justice. Such initiatives illustrate the importance of legal aid enable basis subsistence and equality in poor and weaker sections of society.

PERMANENT COMMISSION FOR WOMEN IN ARMED FORCES

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"I ask no favour for my sex. All I ask of our brethren is that they take their feet off our necks"[1]

ABSTRACT

The profession of Arms is a way of life that requires sacrifice and commitment beyond the call of duty. To serve the country by joining the armed forces, one has to be physically, mentally, emotionally and physiologically strong. Women were discriminated against and stereotyped owing to their biological and physiological limitations and hence were granted only Short Service Commission and not the Permanent Commission. The tenure of Short Service Commission is 10+ 4 years whereas the tenure of the Permanent Commission is for the period until one retires, i.e. until the full age of retirement. This article provides an insight on Women getting Permanent Commission in the Indian Army, the challenges and stereotypical notions too are discussed in detail.

INTRODUCTION

India is the seventh-largest country in the world. India shares a land boundary of 15, 200 Km., with its neighbouring countries. It has a long coastline of about 7516.6 Km. To safeguard this vast territory we have Indian Armed forces namely – "Indian Army", "Indian Navy" and "Indian Air Force" and "Coast Guard". The President of India is the supreme commander of Defence Forces in India. Indian Armed Force is politically controlled by the Government of India. Whereas the executive control is exercised through the Union Cabinet, Defence Minister, Chiefs of Staff Committee and Chiefs of Army, Naval and Air Staff of their respective services. Ministry of Defence manages the matters related to finance, personnel and resources.[2]

[1] Late Justice Ginsburg quoted Sara Grimké, noted abolitionist and advocate of equal rights of men and women, while arguing before the Supreme Court of the United States of America in Sharron A. Frontiero and Joseph Frontiero v. Elliot L. Richardson, Secretary of Defense, et al., 411 U.S 677.

[2] Indian Army, https://indianarmy.nic.in/Site/FormTemplete/frmTempSimple.aspx?MnId=w3/OYjQUqovHoOpqywTopA==&ParentID=aj4xhbUiADqTlBkLdF7VJA= accessed on 29th September 2021.

India has the fourth-largest army in the world. Due to continuous attacks by the neighbouring countries, chiefly Pakistan and China necessitates the maintenance of strong armed forces. Armed forces are the guards of the country without their service the safety and security of the country are at the stake.

The role of women in the Indian Army began in 1888 when the 'Indian Military Nursing Service' was formed during the British Raj but in 1992 that the organisation opened doors and started inducting women in non-medical roles. In 2015, India also opened new combat air force roles for women as fighter pilots.[3]

Depriving the women in the Armed Forces from the permanent commission had hindered their professional growth, denied their job security and left them behind without promotional and pensioner benefits.

After a prolonged fight, the Judiciary played a major role in eliminating this difference and granted the Women officers too with the Permanent Commission.

JOURNEY OF WOMEN IN GETTING PERMANENT COMMISSION IN THE INDIAN ARMY

Services in the Army are classified into three broad categories: (i) Combat Arms; (ii) Combat Support Arms; and (iii) Services. SSC (Short Service Commission) for women was available only in Combat Support Arms and Services. Combat Arms have been excluded from SSC appointments for women in the Army.

Section 12 of the Indian Army Act, 1950 read as:

12. Ineligibility of females for enrolment or employment.- No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf."[4]

[3] Wion, < https://www.wionews.com/opinions-blogs/opinion-changing-role-of-women-in-the-indian-armed-forces-391292> accessed on 29th September 2021.
[4] Indian Kanoon, https://indiankanoon.org/doc/117198144/ Accessed on 29th September 2021.

The Union Government under the power conferred on it by Section 12 of the Indian Army Act, 1950 had issued a notification dated 30 January 1992 making women eligible for appointment as officers in specific branch/cadres of the office, which were –

- Army Postal Service;
- Judge Advocate Generals Department;
- Army Education Corps;
- Army Ordnance Corps (Central Ammunition Depots and Material Management); and
- Army Service Corps (Food Scientists and Catering Officers).

Women became ineligible under the following categories of corps/departments of the regular army –

- Corps of Signals,
- Intelligence Corps,
- Corps of Engineers,
- Corps of Electrical and Mechanical Engineering,
- Regiment of Artillery."

When the induction of women in the Army was envisaged with effect from 15 February 1992 in stipulated branches and cadres, the tenure of engagement was five years. The above stipulation of five years was deleted on 12 December 1996. On 19 November 2005, the MoD (Ministry of Defence) provided that the tenure of WSES (Women Special Entry Scheme) officers would be extended up to fourteen years. The Army instruction broadly followed the same course, as a consequence of which a cap on the length of service was introduced. The initial process of induction under the WSES was replaced by SSCs with an outer period of fourteen years. In February 2003, Babita Puniya filed a writ petition in the name of public interest litigation before the Delhi High Court for the grant of Permanent Commission to Women SSC officers in the Army.

Reasons given for not giving permanent commission to Women are summarised below:

- The Union Government gave the reason that it is entitled to frame a policy regarding the grant of PCs to women officers after accounting for the need for a balanced approach involving military services and national security and hence is entitled to take into account the inherent dangers involved in serving in the Army, adverse conditions of service which include an absence of privacy in field and insurgency areas, maternity issues and child care. These considerations are not open to judicial review;

- The Army has to cater for spouse postings, "long absence on account of maternity leave, child care leave" as a result of which the legitimate dues of male officers have to be compromised.

- There is a physiological limitation on the employment of women officers. There are even dangers of a woman officer being captured by the enemy and becoming a prisoner of war.

- Though the provisions of the 1950 Act, insofar as they infringe or affect fundamental rights, are protected by Article 33 of the Constitution, which empowers the parliament to determine to what extent any of the right conferred under Part III (Fundamental Rights) would apply to Armed Forces, be restricted or abrogated to ensure the proper discharge of their duties and the maintenance of discipline among them.

- According to the Union of India, women are not employed on duties that are hazardous unlike their male counterparts in the same Arm/Service who are liable to be employed in combat duties.

- Women officers must deal with pregnancy, motherhood and domestic obligations towards their children and families and may not be well suited to the life of a soldier in the armed force. A career in the Army comes with a serious set of trials and tribulations of a transferable service with postings in difficult terrains, even in times of peace. This is rendered infinitely more difficult when society relegates functions of domestic labour, care giving and childcare exclusively on the shoulders of women.

- The deployment of women officers is not advisable in areas where members of the Armed forces are confronted with "minimal facility for habitat and hygiene".

- The Union of India has also alleged that the presence of women has a negative impact on unit cohesion.

The grievance of Women in depriving them of Permanent Commission

- The Army considers women officers as an effective workforce until they complete fourteen years of service. The nature of duties is similar to male officers. But after having served

shoulder to shoulder with male officers for twenty-five years, they do not get the benefit of Permanent Commission as their male counterparts.

- Women officers on SSC have suffered from serious discrimination comprising of:
  (i) Lack of opportunity for professional growth;
  (ii) Absence of job security due to the ambiguous status of the cadre; and

- Women officers have been left in the lurch without pensioner and promotional benefits at par with their male counterparts despite having dedicated prime years of their lives to the service of the nation.

- 30 per cent of women are posted in combat fields and it is wrong to suggest that the security of women is periled.

- Not granting them with the permanent commission is violative of Article 14, Article 15(1) and Article 16(1) and cannot be protected under the garb of Article 33.

The Supreme Court in the Landmark judgement of ***Secretary Ministry of Defence v. Babita Puniya & Ors***[5]. held that – "All serving women officers on SSC shall be considered for the grant of PCs irrespective of any of them having crossed fourteen years or, as the case may be, twenty years of service; The option shall be granted to all women presently in service as SSC officers; Women officers on SSC with more than fourteen years of service who do not opt for being considered for the grant of the PCs will be entitled to continue in service until they attain twenty years of pensionable service; SSC women officers who are granted PC in pursuance of the above directions will be entitled to all consequential benefits including promotion and financial benefits".

CONCLUSION

The **United States, Israel, North Korea, France, Germany, Netherlands, Australia and Canada** are among the global militaries that employ women in **front-line combat positions.**[6] In India, there are still restrictions on it.

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[5] [2020] 7 SCC 469.
[6] Dhristi, < https://www.drishtiias.com/daily-updates/daily-news-analysis/women-in-military> accessed on 29th September, 2021.

Seventy-three years after the birth of a post-colonial independent state, there is still a need for change in attitudes and mindsets to recognize the commitment to the values of the Constitution. If society holds strong beliefs about gender roles – that men are socially dominant, physically powerful and the breadwinners of the family and those women are weak and physically submissive, and primarily caretakers confined to a domestic atmosphere – it is unlikely that there would be a change in mindsets. There are bundles of instances where the Women Officers have brought laurels to our country. Not even one field is left untouched by the achievement of women. In the Armed Forces too, women have represented our country in the Military exercises, United Nations Mission etc. and even lead the contingents including the all-men contingent.

Here are a few examples- ***Lieutenant Colonel Sophia Qureshi*** (Army Signal Corps) is the first woman to lead an Indian Army contingent at a multi-national military exercise named "Exercise Force 18" which is the largest ever foreign military exercise hosted by India. ***Lieutenant Colonel Anuvandana Jaggi*** served as the Women's Team Leader of the United Nations Military Observers Team in the UN mission in Burundi. She was awarded the United Nations Force Commander's Commendation and an Appreciation Epistle from the Chief of Army Staff for her commendable effort. ***Major Madhumita (Army Education Corps)*** is the first woman officer in the country to receive the Gallantry Award (Sena Medal) for fighting Taliban terrorists in Afghanistan. ***Lieutenant Bhavana Kasturi*** recently led a contingent of the Indian Army Service Corps, becoming the first woman to lead an all-men Army contingent in the history of India. Similarly, ***Captain Tania Shergill*** recently became the first Indian woman Parade Adjutant to lead an all-men contingent in New Delhi on 15 January 2020. The decision of the Supreme Court turned to be a great milestone in changing the lives of Women under the Short Selection Commission by granting them the permanent commission. The battle for equality has been long-drawn, engaging as much with reforming mindsets as with implementing constitutional principles.[7] The onus is now on the women to measure up to the exacting physical, intellectual, psychological and performance standards, and the conditions of service.[8]

[7] ***Lt.Col Nitisha v. Union of India &Ors***., 2021 SCC Online SC 261.
[8] The Print, < https://theprint.in/opinion/sc-cleared-way-for-permanent-commission-but-women-must-measure-up-for-their-armed-forces-role/632087/> accessed on 29th September 2021.

PROCEDURE OF TRADEMARK REGISTRATION IN INDIA

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ABSTRACT

The present article only attempts to give an overview of the topic. There are so many times when trademark owner has to end up in protracted litigation, all because they don't utilize the right time to do trademark registration in India of their brand name. Due to that mistake, the time which is investing and the money which is putting up to build a particular brand is seen to be used by another person. It is not a difficult task to register the trademark of your brand name. A simple few steps are explained and Trademark registration is a much needed legal protection for any brand name. Robbing an owner brand name not only confuse peoples to choose wisely but also harm the owner's reputation which he/she has earned. It is not an agreeable state of affairs. Registration of trademark not only helps people to distinguish between the goods and services of product from other market products. Besides these, it also helps to deterrent to others.

INTRODUCTION

A Trademark is a symbol that is the form of a word and it is not only a device or a label but also applied to the articles of commerce with a view which can stipulate the customers that can particular article good manufactured or otherwise. It helps to identify the product by its origin also and also it helps to distinguish it from other products[1]. It is not only a word but also it can be a phrase or design or symbol or any combination of words that are used in the course of trade, so it can help to distinguish or identify the source of goods and services of one enterprise from those to others. It is different from copyright or patent or geographical indication.

It is a type of intellectual property which is consisting of a recognizable sign, expression and design which identifies the products and services which are usually called service marks[2].

[1] N Acharya, Textbook on Intellectual Property, 2nd Ed

[2] McCarthy on Trade Marks and Unfair Competitions 4th Ed, Volume 1

Trademark Registration is very important for a company or any new trade and business. It helps to protect the company's logo, name or signature from the rest and make it unique also. It helps to protect from the others. For trademark registration the legal process is provided under the Trademark act, 1999. It makes the mark legally valid and it is very important to make the trademark registered so it will secure it from the rest of the business competition. Due to a lot of misuse of company assets business should be registered by symbol, mark, signature etc. There are a lot of benefits for registration of a trademark, it not only safeguards one's brand but also having a strong brand will help to act as a direct link to the customers and the product by making it sure for more reliability[3]. Under sections 9 to 11 of the trademark act names should not be similar to earlier trademarks and according to section 10, the combination of colours or even a single colour combination of word and device should not be similar.

Section 18 of the Trademark act, 1999 deals with the application of registration. The duration of the trademark application process is 12 to 18 months but it is also depending upon the various factors. It can be longer if there is any objection arising from the registry or the third party. Trademark registration lasts for 10 years and can be further renewed for 10 years. If the owner will not pay the renewed fee by the next renewed date the mark will expire. However, it is allowed for extra 6 months which will renew the registration and owners have to pay the fee for late renewal[4].

When the trademark is registered it not only gives guarantees to the good quality of goods and services but also gives credit to the good source of it. In the registration of a trademark, the cost depends on the nature of the trademark applied. Trademark registration is a long process that involves multiple steps.

The Trademark Registration process is as follows:

1. Trademark search
2. Trademark filling
3. Trademark application allotment
4. Vienna codification

[3] Expressive Generosity, Trade Marks as Language in the Pepsi Generation, R. Dreyfuss (1990) 65 Notre Dame Law Review.

[4] Any other established fact probative of the effect of use. application of the factors set out in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

5. Trademark examination
6. Trademark journal publication
7. Trademark registration

1. **Trademark search:**

   Trademark search refers to the check that whether your business name and logo is not similar to other businesses, already which are registered in trademark. There are mainly 2 kinds of search one is online and the other one is offline. People can do both the searches and once it is found unique then you can proceed to the next step of the procedure.

2. **Trademark filling:**

   After the search part is completed, the registration of the application is filled in by the trademark registrar. There should be a prescribed manner while filling the application of trademark and it is filled along with the fee for the registration of a trademark. It should be filled one of the 5 trademark registrar offices which is having come over the jurisdiction over the state or online[5]. For online application filling, it is through IndiaFiling.com or the agent and lawyer.

3. **Trademark application allotment:**

   After the based on the search is conducted the attorney of the trademark will conduct a draft for the trademark application and provide the logo/ name found to be unique and which was not similar to any other trademark and once the registration of application is filled in trademark registrar the application number is allotted within one or two working days.

4. **Vienna codification:**

   It is established by the Vienna agreement 1973 and once the registration of application is filled then the registrar will apply for the Vienna classification and while the work is in progress the application status reflects as “Sent for Vienna codification”.

5. **Trademark examination:**

   When the above procedures were done and completed, then in the trademark registrar office trademark registration application is allotted to a trademark officer. And after it would be

[5] European Intellectual Property Review, 2008, “Remedies and sanctions for the infringement of intellectual, property rights under EC law”.

reviewed by the officer about the application correctness and issue a trademark application report. Then the officer can accept and allow for trademark journal publication or it will object to the trademark registration application. If it is objected then the applicant has the right to appear before the officer of the trademark or address the objections relating to it or if the officer is satisfied with the justifications then it is allowed for journal publication.

6. **Trademark journal publication:**

Once the application is accepted by the registrar then the trademark which is proposed is ready to publish in the trademark journal. And it is published weekly and contains all the things which are accepted by the registrar. Once it is published then the public have the opportunity to object to the registration of a trademark, if the public believes that the registration is damaging then they can raise objections filed within 90 days of the publication and the mark will typically get registered within 12 weeks to months in time.

7. **Trademark registration:**

After there is no objections are arising and no one is opposing the registration application then the manuscript and certificate of registration will be prepared and sent to the trademark application and once it gets issued then it is considered as the trademark of the owner. And it gives the owner the granting power to use that mark. After seeing the above process of registration, India does not require much effort and one of the best things is that while registration process people do not have to worry about the deadline and responses and when you get the power of your brand name then it will help to run your business smoothly due to protection of trademark.

CONCLUSION

In the world of intellectual property, India is a very active member, so it is necessary to protect the trademark of our business. There is a growing part for the need of registration of trademarks in India and day by day there is indicating for awareness of developing among people safeguard to their products. Nowadays, trademark infringement is commonly sighting and violation of any kind of trademark leads not only negative impact on the individual but also to leads reducing of the value of that brand. Along with the direct infringement of trademark, these are indirect infringement is as well arising. Therefore, what is required is a little bit of awareness to avoid facing any kind of infringement on their product.