VIDHI SRIJAN

2020-21

Thakur Educational Trust's (Regd.)

Thakur Ramnarayan College of Law

(Approved by Bar Council of India & Affiliated to University of Mumbai)

(Hindi Linguistic Minority Institute)

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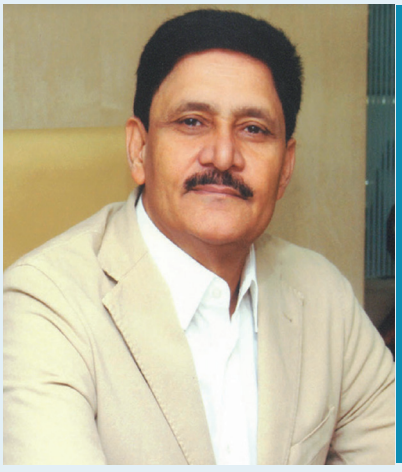

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ABOUT THE TRUST

Founded in 1990, Thakur Educational Trust is one of the oldest continually operating trusts in Mumbai. Thakur Educational Trust has a broad objective of lending a helping hand towards the welfare of the society at large. With this high objective, the trust has provided facilities catering to various needs of the society, such as education at all levels irrespective of sex, creed and religion. The Trust also provides financial aid to the students in need. It has undertaken many educational, cultural and, social activities on a tremendous scale.

ABOUT TRCL

Located in the vibrant Financial Capital of India, Thakur Ramnarayan College of Law (TRCL), a new GEM in the necklace of Thakur Education Group, imparts a rigorous and multi-disciplinary legal education with a view to producing world-class legal professionals, scholars and public servants.

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TRCL's expert faculty comes from across the spectrum of legal careers and engages in critical study that contributes to public debates both in class and country. TRCL is committed to provide quality education to learners at all levels. Baked by visionary spirit of the Thakur Group of Education, TRCL brings to Dahisar, a world class state of the art infrastructure and amenities for the new generation of students.

LINGUISTIC MINORITY

The status of TRCL is that of a 'Minority Institution' for the 'Hindi Linguistic Community'. The primary aim of the institution is to impart legal knowledge and prepare the students for various careers in law and also mounding the overall personality of the students.

TRCL MAGAZINE COMMITTEE
2020-2021

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ASST. PROF. SHAHIZA IRANI

STUDENT HEAD:

MS. PURVA NARVEKAR, T.Y.B.L.S/LL.B.

STUDENT MEMBERS:

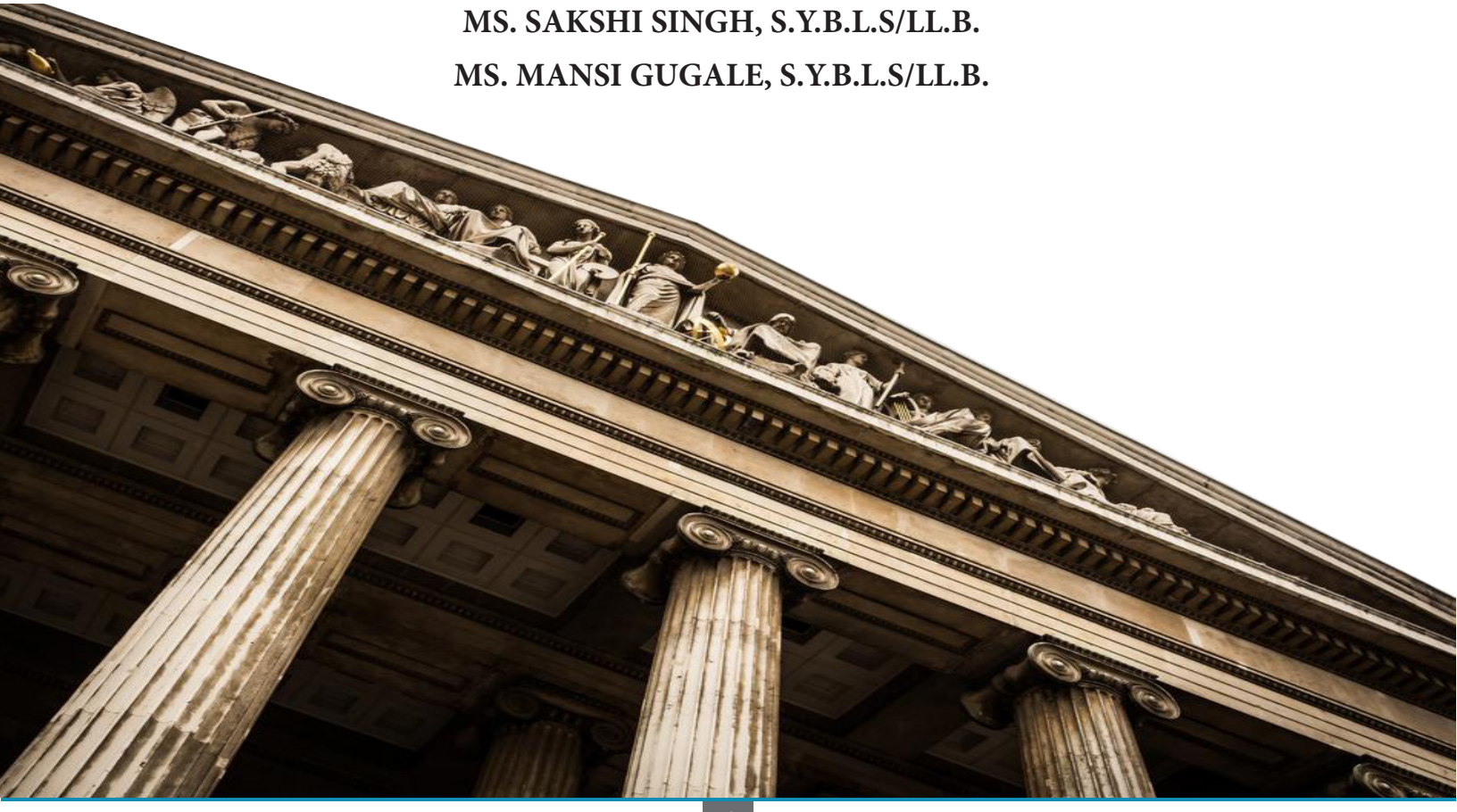
MR. VEDANG DESHPANDE, S.Y.LL.B.

MS. JUI KONDKAR, S.Y.LL.B.

MS. SONAM GUPTA, S.Y.LL.B.

MS. SAKSHI SINGH, S.Y.B.L.S/LL.B.

MS. MANSI GUGALE, S.Y.B.L.S/LL.B.



FROM THE PRINCIPAL'S DESK

"I am elated to release the third version of our annual magazine, Vidhi Srijan, though virtually, which is available on our website for review and building knowledge. I believe that our annual magazine, Vidhi Srijan, gives right platform to all our students to contribute and express their views to contemporary legal themes and issues. Likewise, the Magazine aims to keep all interested up to date with the latest developments not only in the field of law, but encourages authors to showcase their skills to undertake multidisciplinary writing. The poems have been penned thoughtfully by faculty members and students alike, so are the submissions in all languages including English, Hindi and Marathi. Through Vidhi Srijan, we aim to encourage an environment of reading, research, critical thinking and articulation. I truly hope you enjoy reading all our submissions."

DR. A.K. SINGH,
LL.M., Ph.D.(Law), Principal

KNOW OUR
MAGAZINE COMMITTEE TEAM

EDITOR IN CHIEF:
ASST. PROF. SHAHIZA IRANI

Ms. Shahiza Irani, is an Assistant Professor in the Faculty of Law, at Thakur Ramnarayan College of Law, Dahisar, Mumbai. Before joining Thakur Ramnarayan College of Law, she was working as a Programme Associate with the Tata Institute of Social Sciences (TISS), Mumbai. She has completed her LL.M in Human Rights Law from the National Law School of India University (NLSIU), Bangalore, LL.B from Government Law College and B.A (Political Science) from St. Xavier's College, Mumbai. Her papers have been published in various leading national journals on topics such as "Right to Drinking Water and Sanitation: Are We Doing Enough?" , "Indigenous Peoples, their Human Right to Health and its Violation: An Analysis" and "Working Mothers and the Law: Critical Analysis of the Maternity Benefit Act 1961 as amended by the Maternity Benefit Amendment Act 2017".

STUDENT HEAD:
MS. PURVA NARVEKAR

Ms. Purva Narvekar is currently in the 3rd year of the B.L.S LL.B program. She has keen interest in subjects like Criminal and Forensic Psychology, Cyber Security and Legal Literature. She Is fond of acquiring knowledge and participating in competitions. She has the ability to empower a team with enormous gratification and intends to do the same with her association with TRCL's Magazine Committee.

MEMBER:
MR. VEDANG DESHPANDE

Mr. Vedang Deshpande strongly believes that being a student, one's focus should not desert the co-curricular activities and opportunities. A balance between academics and non-scholastic activities helps chisel your career as well as personality. Similarly, Mr. Deshpande took advantage of the time in lockdown to enhance his research skills. The initial victory in an Online Article Writing Competition held by Law Community (May-2020) proved to be a catalyst in his process of developing research skills. Subsequently, in August 2020, along with his co-author, he participated in 2nd International Virtual Conference organised by Legge Rhythms Media and Publication. As a part of the competition, his paper under the title "Sexual Harassment-An Alternate Perspective" has been published in International Journal of Legal Research and Development. Also, the team was adjudged 5th Best Presenter for the same research paper.

MEMBER:
MS. JUI KONDKAR

Ms. Jui Kondkar is a student in S.Y.LL.B. She has completed her graduation from Mumbai University in Bachelors of Arts -BA Theatre Literature, History and Criticism. She has a great interest in psychology understanding human behaviour. She personally believes that being a student helps her to learn something new apart from academics that enhances your skills and personality. She has also done a personality development course. She has command over all three languages i.e., English, Hindi and Marathi. During the COVID-19 lockdown, she utilized her time writing articles, reading various books and attending few webinars. She aspires to amplify my knowledge and skills through similar opportunities.

MEMBER:
MS. SONAM GUPTA

Ms. Sonam Gupta has completed her graduation from Mumbai University in Commerce. She has profound interest in reading and studying. She has good command over English, Hindi and Marathi. Her interests including writing articles, reading books and building her knowledge.

MEMBER:
MS. SAKSHI SINGH

Ms. Sakshi Singh is a student of S.Y.B.L.S/LL.B. She believes her father is the biggest inspiration and motivation to pursue her legal career. She aims to become a successful judge to ensure that justice is effectively delivered and respect for law continues to prevail.

MEMBER:
MS. MANSI GUGALE

Ms. Mansi Gugale is a student of S.Y.B.L.S/LL.B. She is extremely passionate about law and has participated and won various competitions. She secured 11th rank in the national level quiz and also has numerous prizes in dance competition, poetry writing competition and poetry writing competition.

STUDENT
ACHIEVEMENTS 2019-20

Sakshi Baadkar, Abhishek Singh and Vishvendra Shekhawat won Justice P.N Bhagwati National Moot Court Competition, 2019 organized by M V N University

Bhairavi Jadhav, Sakshi Baadkar and Kritika Kotnis winning Runners' Up at S.K Puri Memorial International Moot Court, Jutisified-19, organized by Delhi University

Sakshi Baadkar, Bhairavi Jadhav and Kritika Kotnis won the S.K.Puri Memorial International Moot Court, Justified-19, organized by Delhi University

Shruti Dubey, Pallavi Thakur and Bhavesh Mehta winning 2nd Research Paper Prize at the One Day Seminar organized by KLE Society's College of Law, Kalamboli, Navi Mumbai

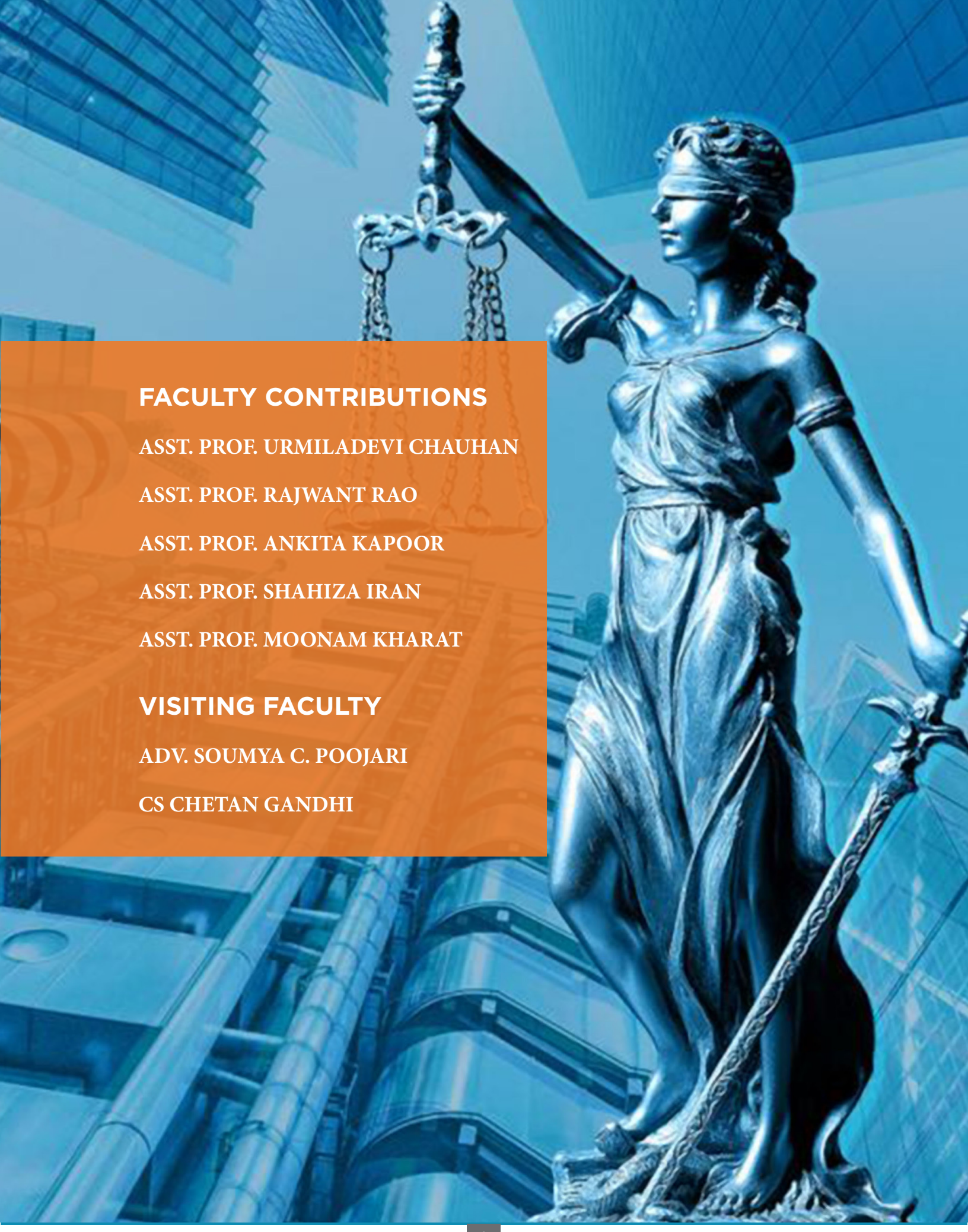
Fatema Kanchwala and Asmita Rajbhar winning 2nd Paper Prize at One Day Seminar Organized by KLE Society's College of Law

Kritika Kotnis (TYBLS), Shraddha Mishra and Kedar Nayak (both FYBLS) won 1st prize in Debate Competition organized by DLLE, KES Shroff College of Commerce and Science

Ms. Kritika Kotnis (T.Y.B.L.S), Ms. Aparna Achary (T.Y.B.L.S), Ms. Swati Pandey (T.Y.B.L.S), Ms. Mohika Padhey (S.Y.B.L.S) & Ms. Anjali Singh (S.Y.B.L.S) Secured 3rd position in Prajatantra 2020 held on 25th 27th &28th January 2020, organized by R.D. & S.H. National College and S.W.A. Science College in association with Praja Foundation.

Ms. Kritika Kotnis (T.Y.B.L.S.) secured 2nd position and Ms. Sayli Patil (T.Y.B.L.S.) & Mr. Bhavesh Ameta (S.Y.B.L.S) receivexd Consolation prize in debate competition 31st January 2020, organized by D.T.S.S. College of Commerce.

Kritika Kotnis from T.Y.B.L.S won "The Communicator" competition organized by Crafting Images



FACULTY CONTRIBUTIONS

ASST. PROF. URMILADEVI CHAUHAN

ASST. PROF. RAJWANT RAO

ASST. PROF. ANKITA KAPOOR

ASST. PROF. SHAHIZA IRAN

ASST. PROF. MOONAM KHARAT

VISITING FACULTY

ADV. SOUMYA C. POOJARI

CS CHETAN GANDHI

हाँ मैं हूँ परेशान.....

ASST. PROF. URMILADEVI CHAUHAN

हाँ मैं हूँ परेशान.....
अपनी ही दशा पर दुखी है मेरा हिंदुस्तान .....
हाँ इसीलिए मैं हूँ परेशान.....

जब भारतीय सेना करती है दुश्मनों पर वार,
तो विपक्ष करता है सबूतों की दरक़ार।
सरकार विरोधी होने का इनपे ऐसा छाया ख़ुमार,
की देश विरोधी होकर बन गए है ये ग़द्दार.
राजनीती के चक्र में घायल है मेरा हिंदुस्तान.....
हाँ इसीलिए मैं हूँ परेशान..

महामारी के इस दौर में दुनिया पर हैं संकट के बदल छाये,
ना जाने कितने गरीब मजदूरों के बच्चे सो गए बिन कुछ खाये।
कुछ तो पैदल ही निकल पड़े अपनों से मिलने की आस में,
चलते- चलते थक गया शरीर तो करने लगे विश्राम,
और रेल की पटरी पर हमेशा के लिए सो गया इंसान।
गरीब मजदूरों के आसुओं में डूबा है मेरा हिंदुस्तान.....
हाँ इसीलिए मैं हूँ परेशान.....

रूह कांप उठती हैं उन साधुओं की दशा देख कर
जिनकी घायल आँखे देखती रही उन वर्दी धारी हैवानो को,
और उस क्रूर भीड़ के आगे फिर एक बार दम तोड़ दिया इंसानों ने
नफरत की आग में झुलस गया हैं मेरा हिंदुस्तान.....
हाँ इसीलिए मैं हूँ परेशान .....

क्या कुछ नहीं देखा हमने आते- जाते,
एक मासूम को अपनी माँ की लाश से कपडा हटाते,
एक बेटी को अपने पिता को साइकिल पर घर ले जाते,
एक बेटे को पैदल अपनी माँ को कांधे पर उठाते,
गरीबों की बदहाली पर रो रहा है मेरा हिंदुस्तान.....
हाँ इसीलिए मैं हूँ परेशान .....

इंसानियत तो तब और हुई शर्मसार,
जब एक बेजुबान गर्भवती हाथी को इंसानों ने दिया मार,
उसकी खता सिर्फ इतनी थी की उसने इंसानों पर किया था ऐतबार,
दिनोंदिन मनुष्य कर रहा है मानवता की सभी हदे पार।
इंसानियत की मौत का मातम मना रहा है मेरा हिंदुस्तान.....
हाँ इसीलिए मैं हूँ परेशान .....

हाँ मैं हूँ परेशान.....
क्योंकि आज अपनी ही दशा पर दुखी है मेरा हिंदुस्तान .....
हाँ इसीलिए मैं हूँ परेशान.....

CASE STUDY OF SHREYA SINGHAL V. UNION OF INDIA

BY ASST. PROF. RAJWANT RAO

INTRODUCTION

The Supreme Court of India, in a landmark judgement struck down section 66A of the Information Technology Act, 2000 which provided provisions for the arrest of those who posted allegedly offensive content on the internet upholding freedom of expression. Section 66A defines the punishment for sending "offensive" messages through a computer or any other communication device like a mobile phone or tablet and a conviction of it can fetch a maximum three years of jail and a fine.

Over the last couple of years there have been many cases in which police has arrested the person broadcasting any information through a computer resource or a communication device, which was "grossly offensive" or "menacing" in character, or which, among other things as much as cause "annoyance," "inconvenience," or "obstruction." In a judgment authored by Justice R.F.Nariman, on behalf of a bench comprising himself and Justice J. Chelameswar, the Court has now declared that Section 66A is not only vague and arbitrary, but that it also "disproportionately invades the right of free speech."

FACTS OF THE CASE

Two girls-Shaheen Dhada and Rinu Srinivasan, were arrested by the Mumbai police in 2012 for expressing their displeasure at a bandh called in the wake of Shiv Sena chief Bal Thackery's death. The women posted their comments on the Facebook. The arrested women were released later on and it was decided to close the criminal cases against them yet the arrests attracted widespread public protest. It was felt that the police have misused its power by invoking Section 66A inter alia contending that it violates the freedom of speech and expression. In 2013, the Apex Court addressed with an advisory, under which a person cannot be arrested without the police receiving permission from senior officers. This judgment by Apex Court proved to be an invitation for a batch of petitions challenging the constitutional validity of Section 66A of the IT Act on the grounds of its vague and ambiguous and was being misused by the law enforcing authorities.

ISSUES

- Whether section 66A in infringes fundamental right to free speech and expressions.
- Whether this section has a chilling effect on the freedom of free speech and expression.
- Whether the rights entitled under Article 14 and 21 are breached as there is no intelligible differentia between those who use internet and those who use other medium of communication.
- Whether section 66A has given rise to new forms of crimes.

JUDGEMENT ANALYSIS

The verdict in Shreya Singhal is immensely important in the Supreme Court's history for many reasons. In a rare instance, Supreme Court has adopted the extreme step of declaring a censorship law passed by Parliament as altogether illegitimate. The Judgment has increased the scope of the right available to us to express ourselves freely, and the limited space given to the State in restraining this freedom in only the most exceptional of circumstances. Justice Nariman has highlighted the liberty of thought and expression is not merely an aspirational ideal. It is also "a cardinal value that is of paramount significance under our constitutional scheme."

Balance between rights guaranteed in Article 19(1)(a) and Article 19(2)

In its prefatory remarks in the judgment, the Apex Court has rightly observed that "when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme". Importantly, the Court has struck a distinction between discussion, advocacy, and incitement and has held that restrictions on free speech and expression may be imposed

only under Article 19(2) of the Constitution and only in instances where incitement is manifested. The Court categorically stated that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such rights and reasonable restrictions that may be imposed on such rights. The Court took a proper stand on this issue because nowadays, politicians forget that citizens are not their subjects or vassals. They are the ones who voted them in making public servants.

Vagueness of 66A

The frequently heard charge against Section 66A is its inherent vagueness, the absence of definitions for terms used in it and the conspicuous lack of mens rea as an ingredient. The Court has echoed the very same apprehensions since unlike the Indian Penal Code wherein the contours of offences relating to restrictions on free speech are narrow and clear, Section 66A uses completely open ended and undefined phraseology. The Court rightly puts that vague laws may trap the innocent by not providing fair warning. If arbitrary and discriminatory enforcement is to be presented, laws must provide explicit standards for those who apply them. This in a way is a veiled reference to the complacence of the legislature in framing the laws. The Court rightly refuted the government's guarantee that the law would be administered fairly. The Court said that 66A must be judged on its own merits without any reference to how well it may be administered.

Intelligible differentia

On the question of whether a different standard/yardstick must be applied to the internet by virtue of the peculiarity of the medium, in particular its reach, the Court has answered in the affirmative. While affirming the fact that the medium could not affect the content of speech that could be restricted, the court nonetheless upheld the contention that different laws might be needed for the unique features of different media. While this is an ambiguous formulation, the court certainly missed an opportunity to open the door for a future challenge to India's film censorship regime. Nonetheless, in its affirmation that content-based restrictions would have to pass 19(2) muster regardless of medium, the Supreme Court did open the door to a challenge to the government guidelines that are ridiculously overbroad and vague, and are most commonly invoked to censor films.

Public Order

The next litmus test that the Court has applied in examining the constitutionality of Section 66A is whether the acts proscribed by the provision truly result in disturbing public order, or do they merely affect an individual leaving the tranquillity of society undisturbed. The Court clearly holds that Section 66A is oblivious to such a nuance since it penalizes even one-to-one communication between individuals which has no nexus to public order. Simply put, according to the Court, mere annoyance to a certain individual does not satisfy the requirement of maintenance of public order, which justification is necessary to support the existence of Section 66A. To verify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced.

Reliance on American judgments and the principle of Market place of ideas

The judgment is heavily relied on American judgments in context of Art 19(1)(a) and the principle of "marketplace of ideas". American judgments only have a persuasive value but we can rely on them in order to understand the basic principles of free speech and the need for such freedom in a democracy. We can rely because both the US and India opine that a restriction in order to be reasonable must be narrowly tailored so as to abridge or restrict only what is absolutely necessary. Justice Holmes, deriving his justification from John Stuart Mill, has given the notion of market place of ideas in Abrams v. United States. In the marketplace of ideas good ideas will displace bad ideas. Wrong opinions will yield to more rational and factional ones. Justice Nariman's invocation of the marketplace of ideas is a claim that free speech is necessary in a liberal democracy because it will eventually ensure a public discourse driven by truth, honesty and rationality. This principle holds bad because it is too optimistic and it does not consider the play of power in liberal policies. So sexist, casteist, class ideologies will dominate a society not on the strength of its truth but on the strength of its hegemony over that society.

No objectivity

The absence of clear boundaries and definitions renders the provision capable of abuse, particularly when the acts forbidden by it are to be judged through the subjective lens of the recipient of a communication. In other words, what is grossly offensive to one, may seem perfectly normal

or justified to another and yet an offence would be made out under Section 66A if the recipient claims to be offended or annoyed. Therefore, the provision does not lend itself to the application of objective standards since it is dependent entirely on the recipient's sensibilities. The Court has also shed light on judgments where judicially trained minds can come to diametrically opposite conclusion on the same set of facts. In such a scenario, it is obvious that expression such as "grossly offensive" and "menacing" is so vague.

CONCLUSION

The history of the Indian Supreme Court's engagement with the freedom of speech has been fraught and conflicted. For every great judgment, there have been times when the Supreme Court has let itself down – along with the millions of citizens who repose their trust in it. Speaking broadly, Supreme Court cases cleave along two distinct lines, which are in deep tension with each other. One set of cases would have you believe that Indian citizens are corrupt and corruptible, prone to violence, and cannot be trusted with too great a measure of freedom – especially when it comes to speech, which is quintessentially corrupting. For their own good, Indians need to be protected from the malign influences of speech. This understanding was at work when the court upheld the constitutionality of sedition, pre censorship of films, and our own version of a blasphemy law. But another set of cases views Indians as thinking beings who bear the responsibility of choosing for themselves how to lead their lives, which doctrines to subscribe to, what is moral, or decent. It is not for the government to impose its vision of the good, right and true on individuals by restricting what they can see, speak or hear. The court endorsed this idea in its early cases on press censorship & also in some of its more recent cases on obscenity and film censorship. Consequently, every time the Supreme Court decides an important free speech case, its consequences go far beyond the individual judgment. Every free speech case strengthens one of the two competing visions and undermines the other. This judgment represents a rare instance of the Court adopting the extreme step of declaring a censorship law as passed by the Parliament as altogether illegitimate. The Court has struck a vicious blow against the duplicitous stand taken by the State, which consistently represents the freedom of speech and expression as a fragile guarantee at best. The immediate impact of the decision will be felt in the domain of online speech: fewer arbitrary arrests, and fewer persecutions of political dissenters. But it is perhaps in the long-term that the effects of the judgment will be most profound. We can now challenge the noxious culture of censorship that pervades the Indian State. This judgment deserves to be long-remembered in the annals of Indian free speech and civil liberties history.

DIGITILIZATION OF INDIAN LEGAL SYSTEM

BY ASST. PROF. ANKITA KAPOOR

The word "digitalization" has become a driving force for every industry across the world. Digitization is a common term which lacks a uniform definition and is often described as a suite of IT assets viz. network servers, software, cloud and the other tools. Digitization is the interplay of tools, tasks and resources – human and technological which includes models and processes designed for better serving customers and provide 24/7/365 connectivity between the provider and the clients. This revolution is underway in India as well, where 'Digital India' has become a national priority.

The legal service industry stands to gain immensely by going digital. With the digital world, the legal industry will be able to attract and retain talent, improve profitability and benchmark itself with global counterparts. With advancements in communications and client interactions, which were historically driven through personal meetings, calls and letters have now taken a shift towards video conferencing, online dashboards with MIS, Facetime, etc. This will also tend to help the new generation professionals in working in a modern and an efficient way in the organization.

Focusing on the current Indian legal system which relies mostly on paper work, resulting in thousands of courts and over a million advocates accumulating lakhs of ongoing cases and an enormous pile of pending cases which is mostly due to insufficient information. The traditional methods of legal documentation, paper work and court activities shall change through awareness, technology and pursuance by the government of India, as it needs to be implemented throughout the country. The key idea here is that digital transactions are faster and simplify the process of storing information. The ultimate desired outcome here then, is increased efficiency and transparency.

The big question lies on the fact that whether the government of India will dedicate sufficient funds and expertise towards developing resilient and reliable IT systems for the courts. We must understand that the technology is always the way forward and if the same gets implemented in an efficient manner the entire legal community will benefit to a great extent. However, one must pay special attention to the complications that might arise with the digitalization of a system that must function in a particularly time-sensitive manner and to ensure that these complications can be managed efficiently and effectively as and when they arise. For the said purpose, the introduction of new technological platforms, a need for a detailed government authorized plan on how the judicial system will efficiently and smoothly undergo this digital transformation in a sustainable and resilient manner shall be a positive step towards digitization.

To a great extent, digitizing legal work is also being encouraged by the government of India, with several efforts being made to embed technology in our courts. The intent was evident in last year's efforts when the Supreme Court of India digitized one crores five lakh pages and records of civil appeals back from the pre-independence era till 2002. The same year, Prime Minister Narendra Modi also launched the Integrated Case Management System to digitize the delivery of government services to Indian courts. While efforts like these lead to digitize the sector and the biggest impact will be made once the legal teams of big conglomerates join the effort to manage their practices digitally.

A digitized future oriented legal industry optimizes billable time in and out of the office, drives efficiency in administration and non-legal tasks and provides high-quality service to clients. This can be achieved by means of implementing practice management solutions which automate workflows and enhance collaboration inside an organization and with third parties. These solutions allow remote access to documents, allowing users to edit them on the go, thereby removing the necessity of a physical presence at a designated work-space. Hence, the file sharing becomes easy and the historical data is available via a simple search.

In times of increased competition in the legal world and with various inbound and outbound transactions taking place, the global conglomerates, law firms, etc. have taken cognizance of the

many benefits of adopting legal technology. These global firms have adopted certain cloud-based practice management solution which helps eliminating large upfront server and licensing costs, along with keeping the data safe from external attacks, environment damage and loss. Further to this, compared to the complicated folders like Drop-box, SharePoint, case management systems are helping these global firms to overcome challenges pertaining to retrieving and referring documents, linking to client information, emails, billing, task calendars, and more.

With the above said benefits of digitizing the legal industry, Ambuja had also initiated steps towards digitizing their legal functions. Till now, we have a legal and compliance portal in place which describes and helps the user in a big way towards keeping all the documents and records in virtual form, getting alerts towards updating the legal and compliance reports, providing real time updation on several cases filed by or against the Company, escalation Matrix, all the training materials and guidelines to be followed by the Ambuja employees had been digitalized, etc. We are further digitizing our legal functions to match with the smart technologies used by the global conglomerates to increase the efficiency of our legal and compliance functions.

The time has come for the Indian legal industry irrespective of their size, follow suit and reap the several benefits of digitization, like their global counterparts.

HEALTH AS AN INTERNATIONAL HUMAN RIGHT: A CRITICAL ANALYSIS

BY ASST. PROF. SHAHIZA IRANI

"It is my aspiration that health finally will be seen not as a blessing to be wished for, but as a human right to be fought for."

Former United Nations Secretary General Kofi Annan

INTRODUCTION:

Right to health has been recognised as a fundamental human right in various international human rights instruments. This right encompasses not only the right to healthcare including medical services responsible for the overall well being of people but also the right to health-related services such as environmental health protection and occupational health services. The preamble to the Constitution of the World Health Organization ("WHO") identifies "the highest attainable standard of health as one of the fundamental rights" of everyone and defines health as a "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". Almost seventy years since the establishment of the WHO, these words are more important than ever particularly in light of the alarming rate of diseases and health related challenges that the world is currently witnessing.

By recognising the right to health as a fundamental human right, States are brought under an international obligation to ensure that their respective people are provided with access to affordable, acceptable as well timely provision of healthcare services. It also includes within its ambit not only the provision of healthcare services but also the underlying determinants and factors leading to good health such as making available food, sanitation, pure and clean drinking water, housing, gender neutrality and providing as well as promoting health related awareness and education.

As is evident from the preamble of the WHO, the principle of non-discrimination also becomes important for the progressive realisation of the right to health. This ensures that all people can realise the highest attainable levels of health irrespective of their religion, the race they belong to, their political ideologies, ethnicity or gender. Thus, the principle of non-discrimination and equality impose obligations upon States to ensure that they prohibit any law or policy that contravenes principles of equality for all in accessing health related facilities and benefits.

RIGHT TO HEALTH IN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS:

For a long time, the right to health appeared to be an illusory right available merely in an aspirational form. However, with the advancement in discourses on importance of international human rights law, it has become evident that individual and social rights are interdependent on each other and such an approach of this nature has become untenable. The Universal Declaration of Human Rights ("UDHR") recognizes the right to a standard of living that is necessary not only for the individual concerned but also for his family, including clothing, food, medical care, housing, and social services in times of disability, sickness, unemployment and the like. The UDHR also recognises special assistance and care that periods of childhood and motherhood respectively need. Likewise, the International Covenant on Economic, Social and Cultural Rights ("ICESCR") recognises the "right to the highest attainable standard of physical and mental health" and calls upon States to take some actions in order to achieve this right, including measures for reduction of stillbirth rate mortality, ensuring better quality of industrial as well as environmental hygiene and creating such conditions as are necessary to ensure medical attention and service to all in times of sickness. In addition to the aforesaid international documents, another important instrument to

note is the General Comment No. 14 of the Committee on Economic, Social and Cultural Rights ("GC 14") given in the year 2000. The GC 14 is frequently considered to be an authoritative interpretation of the right to health as it specifies and elucidates upon the concept in terms of obligations of the States, not just general but also specific obligations.

CHALLENGES:

However, despite the existence of these international provisions, there exist challenges that pose an obstacle towards the progressive realisation of health as a human right. To name a few, it has been very often reported of the challenges that vulnerable groups of people such as refugees, indigenous peoples, women, children and people suffering from HIV/ AIDS face as far as exercising the right to health is concerned. For instance, in case of those suffering from HIV/AIDS, it has been observed by the United Nations that as far as their health related provisions are concerned, these people are subjected to conditions that very often leads to discrimination and violation of basic human rights such as equality before law, right to privacy thereby leading to difficulties in achieving highest standard of health. Thus, vulnerable groups continue to be at the receiving end as far as making the most of the right to health is concerned. Rising levels of inequalities not only between States but also within states is another major concern as this may lead to disparities in accessing health related facilities. Another important challenge in the effective realisation of the right to health is the absence of a strong monitoring mechanism that can monitor and review the progress made by States not only at national levels but also at an international level thereby highlighting the areas in which the State concerned may perform more efficiently.

CONCLUSION:

For realizing the right to health for all, States need to exhibit enhanced political will by ensuring that soft law provisions of international human rights are effectively implemented in their domestic legal regime on a strictly discrimination free basis. Reducing inequalities between people, fostering increased co-operation and assistance including sharing of technologies and know-how can also play an important role for making this right available to everyone. Increased awareness amongst people and enhanced budgetary allocations to the health sector are some of the ways for truly ensuring that the objective of the WHO as is enshrined in its preamble and other international human rights instruments indeed culminates into a reality, and does not merely linger on as an aspiration.

INCULCATING RESEARCH APTITUDE AS A HABIT

BY ASST. PROF. MOONAM KHARAT

In rapidly changing natural, social and cultural environment; meanings or perspectives needs to be redefined as per the requirement of that time. The very gift of nature to human race- Rationality, instills the will to know, explore and investigate the causal relationship between physical-social/ social- psychological events, which can be substituted with Search for right; knowledge; pertaining to any individual object or event.

Research aptitude is the natural ability or tendency or a skill to search for new facts in either to something already existing researches or something raw which is untouched in any branch of knowledge. The attempt is to know, to find out, to suggest, to interpret meaning free from ignorance, illusion or any form of false assumptions; to indulge one to derive right knowledge.

"Right knowledge (Samyay Jnanam) is the means to right Dharma, Artha, and Kama". **-Sage Vatsyayan, 3rd Century**

While referring to this quote and trying to understand it, few questions arise:

What is right knowledge?

Can the concepts of right and knowledge are same for everyone or it differs from person to person, situation to situation and society to society?

Who will be the torch bearers of such curiosities?

Why anyone shall be the ONE?

Right knowledge, according to 24th Thirthankar of Jain tradition, Mahavir: "that with the help of which we can know the truth and which controls the restless mind, and purify the soul."

Any attempt by any individual to find the answers to the above questions or to rebut it with another question, opens up a new avenue, a new perspective, a new possibility for search and research.

Research Aptitude as Habit:

Our character is a composite of our habits. Habits are consistent, often unconscious patterns and are an outcome of the integration of Knowledge (what to do and why), Skills (Procedure i.e. how) and Desire (goal, motivation or want).

Cultivation of research aptitude as a habit will lead to spirit of enquiry or search for right knowledge (reasoning, explanation, causation) for the events, beliefs and functioning of social, legal and political systems. The habits of self-study and introspection will promote first hand inquiry; objectivity in thought, compassionate subjectivity resulting in better decision- making at psychological levels, effective citizenship and better governance.

THREE STRIKES TO FREEDOM

BY ADV. SOUMYA C. POOJARI, VISITING FACULTY

Freedom is like a baseball game,
You have to be set and have an aim,
When that's done, now you're ready
To bat the ball with a steady arm.
Strike one, selfish is the ball,
Missing this one is like missing them all,
But you can strike it if you try,
Kindness won't let anything pass you by.
Strike two, the ball is hate,
If this ball could be struck before it's too late,
The world would be better than just,
Having everybody together because they must.
Strike three, equality is last,
Miss this one and you're back in the past;
Remember you can't sit still and wait
For everything to stop and suddenly be straight.

ARE YOU A SOUND LAWYER?

BY CS CHETAN GANDHI

Leadership & Life Transformation Expert & PCS

No school teaches that we should tell lies, however the profession of lawyers is often infamously misconstrued as the same. No school teaches that corruption should be encouraged, but lawyers are known to be bribing people in order to get a favourable judgement.

Every lawyer wishes to earn more and also be famous for the work done by him. However, it's often noticed that due to heavy inclination towards materialism the faith on lawyers has been lost. Normally the word "sound" in legal parlance means a person in proper mental state and every person wishes to be mentally stable to perform their functions normally. However due to loss of stability in differentiating what is correct and what is wrong, lawyers have been bending them towards becoming an unsound lawyer.

So only by becoming expert in knowledge of laws and winning all cases by any means are not the qualities of the sound lawyer. From the pages of our old age Indian texts of Yogasutras by Patanjali dating back to 2nd century BCE and from Kautilya Arthashstra a manual on statecraft by Chanakya who was a teacher, philosopher, economist, jurist and royal advisor in 4th century BCE, one can understand that to be a sound lawyer he should have self-control and should not fall for the temptations of the senses. The greatest enemies of a lawyer are not others, but are these six vices - lust, anger, greed, conceit, arrogance and foolhardiness.

Learning from Kautilya Arthashastra I believe that there are primarily four categories of qualities of a sound lawyer. They are –

1. Qualities of Approachable – comprising of not being dilatory, not taking advice of mean seniors, not breaking his promise, is full of great energy, intelligence and spirit, resolute, liberal, truthful in speech, desirous in training, grateful, given to seeing elders and pious.

2. Qualities of Intellect – including skills of desire to learn, thorough understanding, listening, learning, retention, rejecting false views, reflecting and focus on truth

3. Qualities of Energy – consisting of bravery, dexterity, quickness and resentment.

4. Qualities of Personal excellence – encompassing endowed with memory, eloquent, free from vices, possessed of sense of shame, able to take suitable actions in calamities and normal conditions, seeing long and far, conduct confirming to the advice of elders, not laughing in an undignified manner, intellect and strength, bold, able to requite obligations and injury in prescribed manner, trained in arts, with a glance which is straight and without a frown, well guarded, exalted, able to discriminate between peace and fighting, giving and withholding and observance of conditions & striking at the enemy's weak point, sweet in speech, speaking with smile and with dignity, attaching prominence to undertakings at the proper place and time and with appropriate human endeavour, able to lead people, devoid of passion, anger, greed, stiffness, fickleness, troublesomeness and slanderousness and easy to manage.

Apart from this he should follow certain steps of Ashtanga yoga as prescribed by Patanjali. Of these he must practice at least first five steps i.e., Yama, Niyama, Asana, Pranayama and Pratyahara leaving out Dharna, Dhyana and Samadhi.

Yama and Niyama are do's and don'ts which are simple code of conducts and ethics of humanity i.e., Personal and social values that make for authenticity in every human being. Practicing these will make lawyers authentic and inspiring

(1) Yama – consists of basic five social values that any person on the journey to self growth must work upon.

(i) Satya – Truthfulness

It implies that one should be truthful to oneself more than to anyone else and not be manipulative thereby bringing a sense of self belief and self worth.

(ii) Ahimsa – Non Violence

One should not harm any other being with their words, deeds or thoughts. It has been observed that in order to reach out to things before anyone else can, one follows different ways to pull down others, instead of working on self development and betterment. Working for 12 to 16

hours, neglecting health, drinking, smoking, drugs are all forms of ahimsa.

(iii) Asteya – Non stealing

It would support the concept of taking or using only that much, that is required for a comfortable living, however anything over, is taking what is others. Many times we also take the credit for other people's idea's and claim them as our own.

(iv) Aparigraha – Non covetousness / greed / possessiveness

We keep accumulating wealth and then spend our lives in managing that wealth even if that means that it's at the cost of our health and time with near and dear ones. As lawyers we should not use others unethically to fill our own pockets.

(v) Brahamacharya- Abstinence/ restraining sexual / sensory craving

If we look at our own lives, we will realize how our focus or concentration on our own health or growth has been often de-routed due to our inability to control our sensual desires.

Yoga gives these basic five social values that any person on the journey to self growth must work upon. As a lawyer if one is truthful and honest it will bring authenticity, if one is practicing Ahimsa it will bring empathy, Asteya will bring credibility, Aparigraha will bring simplicity and Brahamacharya will bring ability to stay focused on vision.

(2) Niyama – comprises of Personal codes which every person should follow and they are –

(a) Saucha – Self hygiene

A lawyer should not only follow cleanliness of body but also mind by cleaning our minds off negative thoughts. This practice will help a lawyer to remain positive even in most critical situations.

(b) Santosh – Contentment

When there is no limit to our satisfaction, we begin to eye what belongs to others, we want to collect more and more even at the cost of taking away what belongs to others and stealing. This will help to acquire only that what is needed for every one's sustenance and managing well that is acquired.

(c)Tapa – Art of restraining or control

It is only through this personal value that any lawyer can stay focused or concentrated. Sensory pleasures that distract can be controlled; all desires to acquire more than the need can be restrained. Unwanted thoughts can be avoided and even one can stay on the path of self growth and realization. This will help to stay focused or concentrated thereby disengaging from the distractions and get back on our desired path.

(d) Swadhyay – Study, Introspection

Swadhyay is about developing an attitude of learning of the inner and the outer working, of learning from the vast wisdom which has been given to us as legacy. Reading, Introspection and Reflection will help to make informed choices. This will also help in inner alignment of outer and the inner worlds bringing wisdom and maturity.

(e) Ishvarpranidhana – Faith / belief in something beyond - more supreme than me.

It relates to having faith in the larger working of the universe or the cosmos energy. Having faith in positivity and good will. For non-atheist it is having faith in God.

By following Niyama through Saucha a lawyer will have a positive life, Santosh will lead to an aura of simplicity and calmness in the lawyer and in the masses, Tapa will bring strength and objectivity, Swadhyay will enable introspection and Ishvarpranidhan will bring enlightenment.

(3) Asana – Posture movements with ikagrata and attitude or correct Bhava.

Regular practice of asana will help the lawyer to maintain a routine keeping a healthy body and a healthy mind. This brings flexibility of all parts of the body, increases strength and stillness.

(4) Pranayama – control /regulation of the prana (life energy).

Breathing is to body what fuel is to vehicle and beyond. It can help lawyer to stay calm and relaxed, thereby increasing the quality of life.

(5) Pratyahara – withdrawal of the senses (external to internal)

When one is regularly practicing Yama, Niyama, Asana and Pranayama, we are ready for more intense practice of concentration. We are able to withdraw our senses inward from the outer world to begin the practice of concentration. A beautiful example is of the tortoise that withdraws all limbs inward and sits in a still no-movement position when it senses danger/discomfort. As a lawyer this practice can make it easier to move in and out of our inner and outer worlds as needed for progress and management of our responsibility for all and self.

In conclusion I believe that a lawyer should develop the four aforesaid skills in order to be an expert in his work and along with it if he follows at least first five paths of Yogasutra, then he will not only be a sound lawyer but also a sound and peaceful human being.

SUBMISSIONS AS POEMS

KHUSHBOO DEORA, S.Y.LL.M (BUSINESS LAW)

VAISHNAVI RAJIV TALEKAR, T.Y.B.L.S/LL.B

PURVA NARVEKAR, STUDENT HEAD & STUDENT T.Y.B.L.S/LL.B.

ANKITA JANGID, T.Y.LL.B.

APARNA ACHARY, FOURTH Y.B.L.S/LL.B.

SHUBHAM KHARVA, S.Y.B.L.S/LL.B.

MANSI GUGALE, S.Y.B.L.S/LL.B

BELIEVE IN YOURSELF

BY KHUSHBOO DEORA,
S.Y.LL.M (BUSINESS LAW)

Believe in Yourself……
Garbage
Oh! Garbage,
Why you instinct too much?
Laugh for a second, and politely answer with smile,

Yes, my friend, I instinct…
But, I do have good qualities.

And this makes me different,
My waste products recycle for benefits of others.

Oh! Garbage,
Then, why people call others so?
Smiles……my dear friend!
When people call Garbage,
Never react to it,
Life has lot to do……
Think of the olden times,
When you have been
Made useful things from the waste material.

I'm too essential in other's life,
But, I never mind when
People call me
Garbage.

Let other think, what they want
To think…….
Never ever treat yourself as
Garbage,

People will ruin you, make you
Fall apart,

But, Don't forget, you too are
Important.

My dear Friend,
Keep hope in
Yourself,
Make your life fulfills,

Let other think what
they want too…
You must praise
Them…

Garbage does have indispensable
Character in own self,

Everyday its waste products get
recycle.

Simultaneously, recycling your thoughts may change your life outlook.

Live you life
fullest …….!

Change for
betterment of yours as
well as for others,

Give yourself a
Meaningful Life.
My friend,
Everyone is for reason here,
And, Hence, they have power to
convert their materialistic life into beautiful fragrance like flowers.

A DREAM

BY VAISHNAVI RAJIV TALEKAR,
T.Y.B.L.S/LL.B.

I am dreaming for a better tomorrow excluding all those awful sorrows.

Where there would be no place for dejection and no ecosystem here would ever face rejection.

It's the untold tale of the gorgeous flora, who is suffering the human's polluted aura.

It's the unspoken words of the innocent animals, who are burnt to death for our human carnivals.

I am dreaming for a better tomorrow excluding all those awful sorrows.

It's the life pattern of all the labourers, whose limit of being exploited is uncertain.

It's the orthodox caste, that decides the value of people as it is the core element of their generational past.

These modern days of acrimony, have turned humanity into dire greed for money.

It's about someone, who leaves their parents once they are old, but fails to recognize that they are letting go of life's precious gold.

It's the cruel heart, which does not believe that the daughter they abandon is god's art.

It's the time when a woman is raped, they fail to understand that they have committed a dreadful sin more than a crime.

I am dreaming for a better tomorrow excluding all those awful sorrows.

These are the sorrows that make me feel uncomfortable, as it puts on our nation an unpleasant label.

So let's gather some courage, for a beautiful tomorrow, giving up all the outrage.

It is never too late we still have a chance, to change our nation with a positive glance.

I am dreaming for a better tomorrow excluding all those awful sorrows

न्याय।

BY PURVA NARVEKAR,
STUDENT HEAD T.Y.B.L.S./LL.B.

जब न्याय की गुहार लगाता है तू,
सारा जहां बहरा लगता है।
लगे यह पुकार व्यर्थ है,
यह रास्ता बेगाना लगता है।

उनसे दया की भिख मांग रहा तू,
निर्दयता जिनका है गहना।
निडर सजग संभलकर चलना,
न्याय मिलेगा यकीन रखना।

साहस तुझे दिखाना होगा,
आंखेंखुली रख सोना होगा।
पग पथ पर है बिछी चुनौती,
प्रतिकार उनको देना होगा।

बुलंद आवाज उठाना तू,
तभी तो तु लढ़ पाएगा।
गम ना करना अपनी हालत का,
तभी तो तू जीत जाएगा।

मिल जाए बुरा कोई,
सारे ना होंगे वैसे ही ।
हिम्मत करना आगे बढ़ना,
राह में थक ना जाना तूम।

दौड़ लगाकर पहुंच जाना,
सारे दरवाजों के पार ।
खून बहे पसीना बहे,
रुक ना जाना तुम इस बार।

लक्ष्य तेरा जब पास ही होगा,
आत्मविश्वास बढ़ना तूम।
बाधाएं भी खूब आएंगी,
डटकर उन्हें भगाना तुम।

खोल लेना आखिरी दरवाजा,
आएगा जब वह खुशनुमा दिन।
जाँचकर अंतिम बात को तेरी,
जीत सत्य की होगी उस दिन।

झूम लेना फिर खुशी से,
बहने देना आसुओंको।
सत्य कभी मरता नही,
यह याद दिलाना सभीको।

आँधीयां जितनीभी तेज हो,
गिर ना जाना तुम।
न्याय होगा जरूर होगा,
बस सब्र करना तुम।

-कवयित्री पुर्वा नार्वेकर।

WE GOT IT FOR FREE!

BY ANKITA JANGID,
T.Y.LL.B.

Our Mother Earth
That gave us birth
Still caring for us,
Is it really worth?

COVID-19 helped you heal
We wouldn't know how you feel
Another pandemic is what you need
To heal you from what we did

We can't hide in the houses we built
Your wrath is going to prove our guilt
Should have cared for you a little earlier
Because we are not getting any worthier

The sands of time ought to turn
Now it's our turn to burn
Chemicals in the air is not at all fair
This is not what you should bear

Flying cars in 2020 were our expectations
But we are going in another direction
You made sure we know
By putting on a great show

We need to protect what we got for free
All the waters, air, land and tree
Cause if it's gone we dare not say
Mother Earth, you could have warned us that day.

POEM ON EARTH

BY SHUBHAM KHARVA,
S.Y.B.L.S/LL.B.

This mother Earth
Who gives us life;
This mother Earth,
Heart filled with strife,

We love her not,
Through love we should;
Her death we plot,
For life's "own good"

She gave us air, and food, and home,
That's not enough we humans scream;
With greedy lust, our mouths do foam,
Will evil hopes, our eyes do gleam;

Her air we fill
With smoke and death;
Ourselves we kill,
For lack of breath;

The sea once clean;
Now chocked with waste;
To drink we fear,
Will death make haste;

The soil once pure
And full of life,
Now barren stand
Of farmer's strife;

No longer she
Can stand our love
Now we must flee
Like scattered dove,

She gave us 'ALL'
Up to the end;
Now we appalled,
Our lives defend.

Save mother Earth!

एक सवाल आपसे...

BY MANSI GUGALE,
S.Y.B.L.S/LL.B.

एक सवाल आपसे...
एक सवाल आपसे...

आज़ादी के इतने वर्षों बाद भी
मेरा वतन जंजीरों में बंधा हुआ हैं

मुल्क़ में इतने युवा होकर भी
मेरा देश तरक्क़ी के लिए तरसा हुआ हैं

देढ़सो साल मेरी भूमी पर राज करके भी
आज विलायत केलिए प्यार उमड़ रहा हैं

आप वहाँ पढ़ने ज़रूर जाओ...
पर उनकी वक़ालत का ये कौनसा ज़िम्मा उठाया है ?

क्या ये आबादी वतन फ़रोश नहीं ?
क्या ये आवाम खुदगर्ज़ नहीं ?

क्यों ये भारतीय अपने धरती के शाक़िर नहीं ?
क्यों ये नौजवान अपने वतन के शागिर्द नहीं ?

इस देश का विकास क्या आपकी ख़्वाईश नहीं ?
इस मातृभूमि की स्वच्छता आपकी चाहत नहीं ?

अपने वतन की प्रगती क्या आपका कर्तव्य नहीं ?
अपने देश की शिक्षा आपका सपना नहीं?

इस देश का राष्ट्रगान क्या आपको प्रिय नहीं?
वतन से बतसुलुखी इस रूह की तौहीन नहीं ?

अपने स्वतंत्रसेनानियोंका त्याग आपको याद नहीं ?
अपने शहीदोंकी शहादत आपका ग़ुरूर नहीं ?

ये मेरी जिम्मेवारी हैं कि,
मैं देश को आगे बढ़ा सकूँ।

ये मेरा ख़्वाब हैं कि,
मेरे देश का नाम रोशन कर सकूँ।

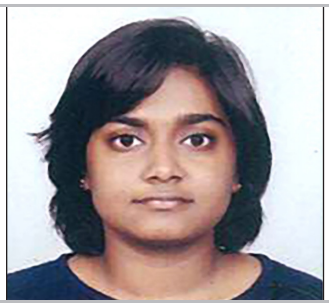
ये मेरी काबिलियत हैं कि ,
देश की शिक्षा में सुधार कर सकूँ।

ये मैंने बीड़ा उठाया हैं कि,
इस देश का सम्मान लौटा सकूँ।

इसलिए,
इस ही वक़्त से,
इस देश की युवा सोचती हूँ...

कुछ ऐसा जीना हैं कि,
अपने आप को पसंद आ सकूँ।

कुछ ऐसा मरना हैं कि,
अपने वतन की पसंद पा सकूँ।



BY APARNA ACHARY,
STUDENT IV Y.B.L.S/LL.B.

Looking around it doesn't seem,
for everyone to be redeemed.
Walking, talking as if though,
the work long gone obsolete.
Searching for things facile.
Breaking down as things compile.
Shackles! Shackles!

On the colour green.
We regret some but the others come clean.
Horizons get narrowed as we speak.
Oh! We don't welcome the unknown who peek.
No, no, we want it for ourselves to breathe.
Go on and scatter to where ye breed,
no matter what ye have done for the creed.
It was all a show because!
Because! Because!

For ye to learn how we huff and puff.
Do ye own paper shields and concrete?
Well, don't just wait at the back of the meat!
Axes! Axes!

For our inglorious arses.
Should we wait for the others to catch up?
Oh, hush! They'll just batch up.

We want! We want! We want!
To build things on the grave of grief.
Maybe, just maybe,
forget the yellow, the brown, the blue, the black,
and opt for the green?
We make, we make, we make,
till the living starts to mutate.
The cosmos will be the judge,
of all that fall off the rudge.

WHAT LIFE AT TRCL IS LIKE!

VISIT TO MAHARASHTRA STATE LEGISLATURE

A visit to the Maharashtra State Legislature was arranged for our students where they witnessed the live session of Legislative Assembly where the issue of water, farmers' challenges, disbursement of loans, were on discussion. The students also visited the Legislative Council. It was a firsthand experience for the students regarding the functioning of the State Legislature.

THIRD ASIAN PARLIAMENTARY DEBATE AND MOCK PARLIAMENT

We regularly engage our students in parliamentary debates by holding debate competitions and also provide mock parliament training to our students.

Flag Hosting on Independence Day by

Hindi Bhasha Divas celebration at TRCL

Box Cricket Tournament

Lex Communique 2020

National Legal Aid Services Day 2019

Marathi Bhasha Gaurav Divas was celebrated to commemorate the birthday of the famous Marathi poet 'Kusumagraj'

National Law Day Celebrations

Garbha Night at TRCL

SUBMISSION AS ARTICLES

VEDANG DESHPANDE (MEMBER AND STUDENT, S.Y.LL.B.)

JUI KONDKAR (MEMBER AND STUDENT, S.Y.LL.B.)

SONAM GUPTA (MEMBER AND STUDENT, S.Y.LL.B.)

ADV. ASHA PANDEY, S.Y.LL.M (BUSINESS LAW)

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SANVI MEHTA (S.Y.LL.B.)

PRACHITI SHINDE (S.Y.B.L.S./LL.B.)

SMRITI PAL (T.Y.LL.B.)

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SIDDHANT SINGH (S.Y.B.L.S./LL.B.)

UMESH MAURYA, OMKAR SHANBAG & SHUBHAM VELHANKAR (S.Y.LLB.)

MUMBAI GAG ORDER: CRITICISING THE STATE A CRIME?

BY VEDANG DESHPANDE, MEMBER S.Y.LL.B.

INTRODUCTION

It is candidly said by George Washington, "If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter." In India, we have observed numerous occasions on which people have exercised their Right to Speech and Expression ensured by the Indian Constitution. But contrary to that, antagonistic orders were established by the Mumbai Police on 23rd May, 2020 to be lasted till 8th June, 2020 under their jurisdiction.

The Gag Order has listed several issues faced by the state including dissemination of fake news, incorrect information and other objectionable content on various social media platforms. Along with the prohibitions on social media usage, the order, issued under Section 144 of the Criminal Procedure Code (CrPC), has specifically directed legal action against those Criticizing the state and its functioning in the times of COVID-19.

What are Gag Orders?

Gag orders typically forbid individuals from talking about, publishing, or disseminating specified information. They will be imposed on parties to litigation to prevent them from talking to the press, or on the press itself to prevent it from publishing certain information.

In the literal meaning of it; a gag order is an order, typically a legal order by a court or government, restricting information or comment from being made public or passed onto any unauthorized third party.

Causes and reasons to impose a Gag Order

The whole intention to issue a Gag Order by the Mumbai Police was to put an end to the circulation of fake news and to diminish slowly, the panicking amongst the common people.

Often common people are not a part of apprehending specified information which is limited to the officials working for the State. And hence this paves the way for inception of fake news where its cooked by the people unaware of the real facts.

I recall the childhood group game of "Chinese Whisper" where the information at the initial stages seem perfect but has an existential crisis while it reaches the end because obviously, too many cooks spoil the broth.

Hence to cease the false information rolling out, relating to the repercussions of the "Chinese Virus", the Mumbai Police had to put an end to the endless "Chinese Whisper" amongst the residents under their jurisdiction.

Additionally, the prohibitory orders under S.144 of CrPC also claim to take legal actions against those who criticize the State and S.188 of Indian Penal Code

S.144 (CrPC) : Power to issue order in urgent cases of nuisance of apprehended danger.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

Legal Action prescribed for those who err the Order

S.188(IPC)

Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a

riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It's sufficient that he knows of the order which he disobeys, which his disobedience produces.

The Section provides that any person who has the knowledge of an order passed by a competent public servant, by which he is directed to abstain from doing any act or a certain direction with respect to property possessed or held by him, disobeys such direction, he shall be liable to be punished under Section 188 of the Indian Penal Code

Notably, mens rea or a guilty mind is not an essential requirement for commission of an offence under this section. What is required is knowledge of the order so contravene, and that such contravention may result in or is likely to result in actual harm.

The Indian Constitution's Word of Honour

In Part III of the Indian Constitution, we have been guaranteed Right to Speech and Expression under Article 19(1)(a).

Article 19(1) (a) of the Constitution of India states that, all citizens shall have the right to freedom of speech and expression.

The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizen, liberty of thought and expression.

The freedom of speech under Article 19(1) (a) includes the right to express one's views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc.

This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.

The exercise of this right is, however, subject to reasonable restrictions for certain purposes being imposed under Article 19(2) of the Constitution of India. Likewise, the Gag Order was imposed under the reasonable restriction in interest of the sovereignty and integrity of India

Ironically, failure on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of Article 19(1) (a).

Every Coin Has It's Two Sides

Befittingly it is said, that criticism is the essence of democracy. But understanding the situation brought in by the invisible enemy, the citizens shall identify this time of crisis and unpreparedness of the entire world. After all, we all are in the same boat. The State unquestionably wouldn't function in mediocrity with the invasion of the 'virus' unalarmed.

Some special actions have to be discharged for the welfare of the citizens. The strength of the civil society needs to be administered in such crisis. Along with the nation bound issues, the State also deals with the bigger fish in the ocean. I strongly believe that raising a voice against the incompetency of the Government functioning will neither awaken the cogent attribute of the State, nor will fetch any solutions to the issues of common man in this crux.

In lieu of this catastrophe, the civil society indefensibly, should fixate on way for contributing to the State. Other than reprehending by the validity of our Rights like laid off people, we should rack our brains to rather help or fellow citizens in need.

No doubt, we shan't forget about the attributes of a democracy. But mischievously utilizing one's right only to criticize the ineptness of functions of the State in the middle of an unforeseen dilemma would only be interminable.

I would agree on scathing the incompetency of the State if it were functioning in a cliché environment. We need to amplify that voice to ensure that the most vulnerable get the most support, and those who are affluent only get something if it helps the most vulnerable.

And in this evolving era, the only thing having the epitome significance is much more than just the Right to Freedom of Speech and Expression; it's one's health, because its appropriately quoted by Arthur Schopenhauer, "The greatest of follies is to sacrifice health for any other kind of happiness"

A HEALTHY ENVIRONMENT MAKES A HEALTHY MAN

BY ADV. ASHA PANDEY, S.Y.LL.M (BUSINESS LAW)

INTRODUCTION- NEED FOR ENVIRONMENT PROTECTION:

While framing the Constitution of India, there was no mention of specific provisions relating to the protection of the environment or conservation of nature. The problems were prevalent in the earlier times also but they were very acute as the living of the people was simple and there were not many industries, transport facilities, etc. but now with the advancement in technology and sciences, the problems have become grave. In India, around 70% of the population directly depends on the land-based occupations, forests, wetlands, and marine habitats, for basic subsistence requirements with regards to water, food, fuel, housing, fodder and medicines as also for ecological livelihoods and cultural sustenance.

The first milestone reflecting an international consensus on the nature and scope of the environmental challenge confronting the world community was the Stockholm Conference To proceed further it was necessary to present the picture of Article 21 and environment in general. Environment and life are interrelated and the existence of life on earth depends on the harmonious relationship between ecosystem and environment. Every individual, from the moment of his birth, acquires certain rights. One such right is the right to live in a clean environment.

RIGHT TO CLEAN ENVIRONMENT:

The Constitution of India is the main source of incorporating the right to a clean environment. Though the other important work of legislation is the Environment (Protection) Act, 1986 which provides a framework of coordination of activities between the Central government and the State government to prevent and control environmental pollution and degradation. The following are the two major development:

The first development took place when the Constitution (42nd Amendment) Act, 1976, was adopted. Part IV: Directive Principles of State Policy (Article 48 A) provides for protection and improvement and safeguarding of forests and wildlife: The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Part IV-A: Fundamental duties (article 51-A): It shall be the duty of every citizen of India – (g) to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures. Seventh Schedule (Article 24) List III – Concurrent List Item no. 17 Prevention of cruelty to animals, Item no. 17 A Forests, Item no. 17 B Protection of wild animals and birds.

The second major development related to Article 21 of the Constitution of India dealing with 'the right to life'. The concept of the right to life has been broadened through judicial pronouncements. While resolving cases relating to the environment, the judiciary considered the right to clean or the good environment as fundamental to life and upheld as a fundamental right."

The evolution of the right to health under Article 21 is invariably linked with the right to a clean environment. Earlier, there was a time when people thought of the environment, they thought of its beauty, they used to maintain greenery, and most of the time they used to spend in the fresh air, in a sense, there was an interaction between the environment and the men. But with the growth of civilised society, man has become more and more materialistic and, in his endeavour, to conquer the earth and establish his supremacy, unfortunately, he lost sight of the need to protect and conserve the natural resources." In the whole process, some of the people do not understand the adverse effects of their harmful activities and as a result of those few, innocent people have to suffer. They are being deprived of their right to life. Although the problem of pollution is not a new one but the only difference is that it was not that acute problem as it is now and therefore, it is much recognized now. Pollution has a direct impact on one's health, thereby, degrading one's life.

COURT OBSERVATION:

In the case of Virender Gaur vs. the State of Haryana, there has been a great discussion about the environment within its ambit of "hygienic atmosphere and ecological balance". The observation by the Court was that:

"Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to a violation of Article 21. Therefore, a hygienic environment is an integral facet of the right to a healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment."

CONCLUSION

Earlier Article 21 of the Constitution had a bit narrow scope but with time, the concept of Article 21 has been broadened. The Judiciary has played a vital role in interpreting Article 21 of the Indian Constitution. The scope of Article 21 of the Constitution has been considerably expanded by the Indian Supreme Court, which has interpreted the right of life to mean the right to live a civilized life and it also includes the right to a clean environment

Earlier in ancient times, the hazards of the environment were not that recognized but now with the advanced technology and increasing population the adverse effects are recognised. Industries contribute to environmental pollution which proves to be very harmful to the health of the citizens, thereby, degrade g their right to life nonetheless, without concern for the loss of private profit, the preference has to be given to public health and the clean environment. The ultimate responsibility lies on the Courts to deal with these cases efficiently and with great caution.

Such type of environmental issues can be handled properly if people are educated and are aware of their activities. Also, the government has to take strict measures with proper care against hazardous industries. Each individual shall have the opportunity to access the information concerning the environment. States shall facilitate and encourage public awareness and participation by making information widely available.

A healthy environment is an absolute necessity for the well-being of all organisms. But then again is it possible to make the environment completely pollution-free environment so that it doesn't remain an illusory concept in mind of all citizens rather some strict steps should be taken by the government to promote and protect the life of everyone staying in a good and a healthy environment.

DE - CRIMINALIZING THE OFFENCE OF CHEQUE BOUNCE: DO ALL COMMERCIAL PROBLEMS CALL FOR A COMMERCIAL SOLUTION?

BY ADV. RASHDA AINAPORE, S.Y.LL.M (BUSINESS LAW)

Creditor, n. From the Latin for "believer"; someone who lent money to a borrower and believes the loan will be repaid in full. That belief turns out to be true – most of the time (Devil's Financial Dictionary – Jason Zweig) Introduction: **Makwana Mangaldas Tulsidas vs State of Gujarat 2020 (4) SCC 695,** is a case that may go down in history as the case that paved the way for the return of the Debtor's paradise, i.e., decriminalization of a very popular offence under section 138 of the Negotiable Instruments Act, 1881 (the NI Act), more commonly known as a cheque bounce case. On 8th June 2020, the Ministry of Finance released a press statement which (aside from proposing to decriminalize several economic offences listed under 39 sections of 19 different acts,) invited comments from the public to a note proposing the decriminalization of cheque bounce offences. The government's rationale is simple - As part of the government's post - Covid response strategy, decriminalizing a few minor and insignificant offences will do wonders to revive the economic growth and restore trust in doing business in India. It goes without saying that the Government, through the Ministry of Finance, has initiated such an attempt to enable businesses to tide over the mayhem brought about by the pandemic. Their expectations though stretch even further in their belief that the country's already overburdened courts will, as a consequence, be left to deal with more pressing matters; a belief that may require to be reconsidered. The Ministry of Finance has suggested certain principles though, that must be borne in mind while relooking the said provisions and reclassifying them as, namely (a) compoundable offences which are merely procedural in nature; and (b) have no effect on national security or public interest at all. These principles were suggested bearing in mind the increase in the burden on the businesses that are a direct result of non - compliance and minor lapses in criminal proceedings. So what are these principles? For starters, you have Mens rea, i.e., the mala fide or criminal intent that plays a role in imposing a criminal liability; like the case of fraud versus negligence. This principle, being the most important of the three, would require that the nature of non - compliance be critically evaluated Then you have the habitual nature of non-compliance which is self - explanatory in it; and lastly, to decrease the burden on businesses and inspire confidence amongst the investors. Before we understand the effect such decriminalizing is likely to have, we must understand the law itself and the circumstances and intent behind criminalizing the offence of cheque bounce in the first place. The law as it stands today and the circumstances that led to it: A cheque that is returned due to reasons of insufficiency of funds in a bank account (not due to any other technical default on the part of the drawer), is an offence under section 138 of the Act for which the law provides for imprisonment for a term which may extend up to 2 years or with fine which may extend to twice the amount of the cheque amount, or with both. The dishonor of a cheque, being a civil wrong which has been criminalized, there are two sections in the Indian Penal Code (the IPC) under which the drawer can be prosecuted for, namely: (i) section 406 for criminal breach of trust; and (ii) section 420 for cheating. In Sangeetaben Mahendrabhai Patel v. the State of Gujarat (2012) 7 SCC 621, it was held by the apex court that an aggrieved party has the option of initiating criminal proceedings under both, the IPC and the NI Act. One may wonder what led to the criminalization of an offence that is clearly a civil one in nature. In the late 1970s, a committee led by Dr. Rajamannar suggested in 1975 that there was a need to penalize the act of issuing a cheque without sufficient funds in the bank account. This need stemmed from a widespread demand from trade associations and various other industries alike that faced a recurrent issue of cheques getting dishonored in transactions involving the purchase of material not involving cash. There was also a need to tackle the issue of a deliberate attempt by individuals and business entities, who were looking to buy more time, to delay the process of payments by handing over cheques despite their knowledge of there being no funds in their bank accounts to clear the said cheques. This mistrust in the use of cheques as an

acceptable mode of payment began to cause major problems in cash flows as cash transactions began to be encouraged which gave way to even more serious crimes such as counterfeiting, not to mention the additional cost of storing and moving cash. The result was the introduction of the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 which amended a 100-year-old British law and provided for the imposition of criminal liability for the dishonor of cheques under the NI Act. The intent behind this amendment was very clear – to preserve the sanctity of the banking and financial system by enhancing credibility in transacting business through cheques and to popularize the acceptance of cheques as a payment instrument. The idea was to create a sense of fear of being booked to deter borrowers or persons from issuing false cheques that led to a failure in honoring their contractual obligation. Since then, the law has seen its share of further amendments to address real and unforeseen circumstances that have cropped after the amendment of 1988. It would not be out of place to say that these amendments were a result of a journey that has sought to enrich the underlying jurisprudence; such enrichment though, not coming without its fair share of problems. It's one thing to criminalize an act that leads to the said offence, it's altogether another thing to criminalize the procedural lapses and minor non - compliances that put a burden on not just the courts but the business's environment in general. In this sense, the government's step to relook the provisions which are merely procedural in nature and that do not impact national security or the public at large may be seen as a welcome move that inspires confidence. As Mr. Pavan Kumar, founder of Corporate Professionals states and rightly so, that: "The law needs to differentiate between going after the management and recovering dues from them versus going after the business". There is indeed a need to assess the nature of non - compliance that differentiates between a habitual one from an inadvertent omission. It would be safe to say that securing the credibility of payments made by way of cheque, continues to throw challenges despite criminalizing dishonour of cheques more than 30 years ago. For Decriminalization: Those arguing against decriminalization state that it will prove to be a major blow to banks, suppliers, and other financial institutions and individuals who are owed money and who, otherwise, are involved in the business of lending as it will affect the recovery process. This will, in turn, give unscrupulous persons a free hand to defer making payments at the whims and fancy of themselves. The fact that civil courts will get even more clogged with cases (if they aren't already) taking years to resolve, is another discussion altogether and one that beats the purpose for the government to initiate this step in the first place. The action put forward by the government is self-contradictory. Even though this step will definitely attract many investors, provide relief to those who considered this criminal liability as a big concern, and will help in reviving the economic growth post-COVID 19 but this could also lead to a situation where there would be fear of criminal litigation and imprisonment in the minds of the perpetrators committing such offences. While on the one hand, the government has sought to make the NI Act more operative in its redressal mechanism by inserting sections 143 and 148, to name a few, on the other hand, it is seeking to dilute the very same Act through decriminalization. Either way, it is of paramount importance that the focus continues to remain on economic growth and revival of the country while simultaneously safeguarding the public interest and national security of its citizens. Against Decriminalization: Those who argue in favour of decriminalization of cheque bounce opine that a commercial problem needs a commercial solution. Having said that, under the present circumstances of the law, police or law enforcement agencies have no role to play, whatsoever, in investigation, inquiry, or prosecution of a seemingly criminal offence which, in it of itself, makes it very clear that cheque bounce is not a public wrong per se. Add to this the provisions of the International Covenant on Civil and Political Rights of 1966, which also forms a part of the UN's International Bill on Human Rights that India has ratified, and you have a further responsibility to protect the right to liberty which includes the prohibition of imprisonment as punishment for breach of contract, presumably extending to cases of cheque bounce! Do bankers really want to see a defaulter behind bars? Maybe not. In fact, they couldn't care less. From their perspective, it appears that their concern is mainly (and probably only), the recovery of their dues and to secure their interests by enforcement of the underlying contract. We are living in times that offer various solutions that provide traders and other business entities alike with options for instant payment, such as IMPS, NEFT, RTGS, etc. The robust banking system governed by the RBI as it stands today makes redundant the use of cheques and the concern, if at all, is in cases of post-dated cheques. What also strengthens this system is an ever-evolving credit profiling system that maintains information through bureaus, of the loan repayment history, payment of utility bills, and other such information that

enables the banks and other such institutions to gauge the credibility of an individual or entity borrower. The benefits of data aggregation, if extendable to not just banks and NBFCs, but also to individuals seeking information of the same before accepting a cheque, may go a long way in calibrating the growth of the economy. While everyone's favourite reason for wanting to continue with the criminalization of the offence of cheque bounce is the safeguards it gives to bankers and NBFCs, it did pave the way for consumer finance to grow and flourish in India. Yes, there is an overwhelming number of pending cases that are waiting to see the end of day and it is indeed becoming impossible for the courts to dispose of these matters within a stated time - frame. However, most of the circumstances that have led to this situation can be attributed to semantics alone. To begin with, a complainant has to file a separate complaint about each and every dishonoured cheque in question. As such, the data about the total of pending cases may not be a true reflection of the actual scope of litigation that is being made out to be the case. The other issue is in respect of the accused. As per a recent study, more than half of the pending cases, i.e., more than 18 Lakh cheque bounce cases were pending in courts today due to the absence of the accused. As such, it would not be an exaggeration to state that the time taken to dispose of a cheque bounce case is directly proportional to the status of the presence of the accused in court on the relevant dates. There seems to be an urgent need for a consensus on how the trials and in turn the cases can be expedited that takes into consideration the intention of the lawmakers in ensuring faith in the efficacy of banking operations and the credibility of cheques for transacting business. According to the 213th Law Commission Report, as of date, there were about 40 lakh cheque bounce cases pending across the board. While some experts have suggested conducting summary trials for cheque bounce cases pending before various courts across India, inadvertently, that would call for, if not necessitate, a solution that looks into a backlog of at least 30 years, if not more. Also, given the current state of affairs in respect of the pandemic, it would be futile, if not cruel, to put any additional burden on the already overworked and understaffed police machinery as a plausible resource. Pre-litigation settlement can be looked at as a solution to factor in a scheme for settlement of disputes at the pre-litigation stage itself. The Legal Services Authorities Act, 1987 (the LSA Act) provides for a statutory mechanism for disposal of cases by the Lok Adalat at the pre-litigation stage under sections 19 and 20 of the LSA Act. An Award passed at the pre-litigation or the pre – cognizance stage shall have an effect of a civil decree. Also, there are no bar to utilizing the Alternative Dispute Resolution (ADR) mechanisms, including arbitration, conciliation, and mediation for the purposes of resolving disputes which are the subject matter for offences covered under section 320 of the Code of Criminal Procedure, 1973 (CrPC). The Delhi Court in the case of **Dayawati v. Yogesh Kumar Gosain 243 (2017) Delhi Law Times 117 (DB),** held that it is legal to refer a criminal compoundable case as one under section 138 of the NI Act to Mediation. The Delhi Court also framed the Mediation and Conciliation Rules 2004 in the exercise of the rulemaking power under Part X of the Code of Civil Procedure, 1908 (CPC) and section 89(2)(d) of the CPC. The Rules cover all the proceedings which are pending before the Delhi High Court or any other subordinate court. As far as the nature of the proceedings is concerned, they are quasi - civil in nature, and the criminal courts follow the principle used by the civil courts to adjudicate the same. The Ministry of Finance, in justifying its stance for decriminalizing cheque bounce cases stated that "The risk of imprisonment for actions or omissions that aren't necessarily fraudulent or the outcome of mala fide intent is a big hurdle in attracting investments. The ensuing uncertainty in legal processes and the time taken for resolution in the courts hurt ease of doing business." Be that as it may, not everyone seems to be convinced that decriminalizing the offence of cheque bounce will prove a prudent move on the part of the government. Just the thought of doing time is a good deterrent in it that adds to the safety net banks and other financial institutions get from using post-dated cheques. Such a step on the part of the Government warrants that the Courts be made very efficient in every respect; else the purpose behind decriminalizing an offence of cheque bounce stands defeated, leaving the banking system more vulnerable. Finally, and an economist and senior fellow at The Takshashila Institution, Mr. Ajay Ranade summarized: "A bounced cheque is equivalent to paying in fake currency, a much more serious crime. It also amounts to cheating, since the receiver is under the false impression that there are sufficient funds in the issuer's bank. Hence, cheque bouncing cannot be equated with minor noncompliance or a procedural lapse. It should remain a criminal offence."

EDUCATION: A POWERFUL WEAPON TO CHANGE THE WORLD

BY MANSI SHAH, S.Y.LL.M (BUSINESS LAW)

"The roots of education are bitter, but the fruit is sweet" -Aristotle

INTRODUCTION

Education is a fundamental value of life; it is the way to bridge the gap between rich and poor. An educated person not only has a better livelihood but education also brings rationality in the thoughts of the individual and a rational person certainly brings change in the society, nation and the world at large. Many children were deprived of education because of their financial status and constraints but the amendment in 2002 in the Indian Constitution on which a law was passed in the year 2010 has brought right to education as one of the fundamental rights and states that the state shall provide free elementary education to all up to the age of 6- 14 years.

In this article, the author elucidates on the basic right of education, rights associated with education, the Indian New Education Policy-2020 (NEP-20), the judicial approach of the court with respect to free and compulsory education.

RIGHT TO EDUCATION IN INDIA

Right to education was initially not included in the fundamental rights in the constitution of India and our founding fathers have included education as a Directive Principle of State Policy under part IV of the constitution of India. The Constitution (Eighty- Sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all the children in the age group of six to fourteen years of age as a fundamental right in such a manner as the state by law determine.

Article 21-A and the RTE Act came into effect on 1st April 2010.The title of RTE Act incorporates the words "Free and Compulsory". 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriated Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. 'Compulsory Education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all the children in the 6-14 age group.

86th CONSITUTIONAL AMENDMENT ACT

86th constitutional amendment act, 2002 brings three new changes in our constitution, for the better functioning, and to facilitate a better understanding of the right to free and compulsory education to the children age group between six to fourteen (6-14). These are:

1. Insertion of new Article i.e, 21A in Part III of the Indian constitution, which provides that every child has the right to free and compulsory education of equitable quality and subject to some norms and standards.

2. Bring alteration and modification in Article 45 and substituted as the State shall endeavour to assure early childhood care and free and compulsory education for all children until they complete the age of six years.

3. Adding the new clause, (K) under Article 51A, the result of this new fundamental duty is added which states that whosoever is a parent or guardian has a duty to furnish opportunities for education to his child or, as the case may be, ward between the age group of six to fourteen years.

JUDICIAL APPROACHES

The Right to education is now become the fundamental right and included in part III of the Indian constitution under article 21-A. This was done in the case of Mohini Jain v. State of Karnataka . The Supreme Court division bench Justice comprising of Hon'ble Kuldip Singh and Hon'ble R.M Sahai held that: "Right to education is the essence of the right to life and directly flow and interlinked with it, and life living with dignity can only be assured when there is a significant role of education".

The Court observed that capitalization fee is nothing but a price of selling education and this would amount to commercialisation of education. The Court further said that "Restricting admission belonging to the rich section of society and denying the same to the poor meritorious is wholly arbitrary, against the constitutional scheme and such cannot be legally permitted". This is violative of Article 14.

The Supreme Court observed the validity of the verdict given by the court in Mohini Jain in the case of J.P. Unnikrishnan vs. State of Andhra Pradesh . The bench of five Judges by 3-2 majority partially agreed with the Mohini case decision and held that right to education is a fundamental right under Article 21 of the Constitution as it directly flows from "right to life". As considered, the court partially overruled the Mohini Jain's decision and observed that the right to free and compulsory education is available only to children until they complete the age of 14 years, after that the responsibility of the State to provide education is subject to the limits of its economic capacity. "Thus, it is well observed by the decisions of this Court that the provisions of Part III and Part IV are complementary and supplementary in nature to each other and fundamental right means to achieve the goal inculcate in Part IV of Indian constitution, It is also observed that the fundamental rights should be established in the light of the directive principles".

INDIAN NEW EDUCATION POLICY

Measures to overcome these loopholes in the education system were due for a long period. Finally, the union cabinet on 29th July, launched the new National Education Policy (NEP 2020) which aims to address many growing and developmental changes that are important for the country. The new policy proposes revising the decades old educational policy of India and revamp each and every aspect of the currently prevalent educational structure including its regulating and governing procedure, and to build a structure which is rightly in tune with the aspiring goals of the 21st century education system while keeping India's traditions as well as its value systems in consideration. It is first such policy in Thirty-four years since the last changes in the education system were made in 1986. The Government claims that these changes will help transform India into a "Global knowledge Superpower". The Government is aiming to introduce the new system in the upcoming session. It will be in the format of 5+3+3+4.

1. PRE-PREIMARY SCHOOLING (5+):

It divides the foundational stage into two parts (age of 3-8), 3 years of preschool (Anganwadi) and two years of primary classes 1-2. Now students can start their education at age of 3.

2. PRIMARY SCHOOLING (3+):

After primary education, students will enter primary education in the age group of 8-11 years, where they will study in classes 3-5. Teachers will put more emphasis on the students; health, analytical skills, mathematical approach, reasoning, logical thinking and creative thinking. Classes will be more engaging and pedantic than book-based learning.

3. SECONDARY SCHOOLING (3+):

From class 6th (age of 11-14 years) onward additional vocational programs will be added. There will provide deeper and particle knowledge in subjects like sciences, mathematics, arts, social sciences, and humanities, etc.

4. SENIOR SECONDARY SCHOOLING (4):

After completing class 8th, the students will join senior secondary school between 14-18 years. This phase comprises two stages: in the first stage, students will study in classes, 9-10 and 11-12 in the second stage.

CONCLUSION

Parliament of India through an 86th constitutional amendment made the right to education as a fundamental right under Article 21-A and for better formulation of the educational framework also enacted an act that is right to the education act. Which provide free and compulsory education to children age group 6-14. And have some features which mandate state and local bodies to provide a right to education to every child of this country and if not, they all are accountable for that. The rate of literacy is still under construction so in order to make this rate on increasing then there should be more act and ordinance of right to education will be accompanied. Then only India can transform into a developing nation, and will never set back as the citizens are educated.

The flaws in the education system vary from generation to generation and with the vintage of a person one asks. Some of the common complaints in the system are that degrees do not fetch one jobs, therefore, half of the population of people are tagged as 'Unemployed educated youth', India's study pattern is more of rote learning and less of practical knowledge, most of the study is irrelevant in real lives, examination system is to exam-centric and so on. Now is the time to fix India's discouraging degree exam disaster. Therefore, the Government of India introduced the new policy which includes various amendments in the present pattern.

CUSTODIAL DEATHS AND TORTURE BY POLICE

BY NAUSHEEN SHAIKH, S.Y.LL.B.

INTRODUCTION

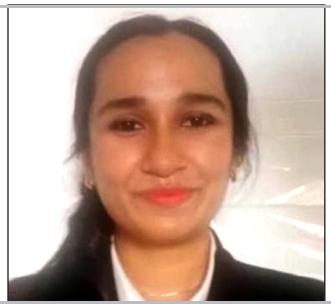
Our Constitution, propagates equality before law i.e., the State shall not deny to any person equality before the law or the equal protection of the law within the territory of India. If the functionaries of the law become the law-breakers, it is bound to breed contempt for the law and encourage lawlessness. Article 14 of the Constitution does not discriminate equality among its member, even when a person has committed a crime or murder, he or she is bound to be protected and treated equally. They shall not be deprived of their rights even when they, steal, commit a murder, theft or etc. If police personnel engage in action that is contrary to the law by punishing the criminals by themselves, this would basically lead to "anarchism". The police is no doubt, under a duty to arrest a wrong-doer and interrogate them; but the law does not allow the use of third degree methods to torture the accused while in police custody with a view to solve the crime.

Article 21 of Indian Constitution protects life and personal liberty by providing that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." And hence, it also includes right to live with human dignity and a guarantee against torture and assault by the state. This means, police personnel ought not to use their arbitrary power to suppress or use their torture tactics upon the criminals to solve their cases. Usage of inhumane method and technique is strictly condemned by the Constitution. Every individual living in a country is entitled to human rights. Hence, these rights have an absolute power to protect any person under any circumstances, even if he is a prisoner. They must also be treated with dignity. But it is seen that custodial torture is a naked violation of human dignity which destroys the individual completely. In such cases the victims of such torture cannot even complain to their family due to the fear of furthermore agony. The real concern in such cases is not the infliction of bodily pain, but also the mental agony which follows grief. The suffering which a person undergoes within the four walls of the lock-up or police station is impeccable.

There's a very prominent case of, "D.K Basu v. State of West Bengal" . The case dealt with custodial deaths and various forms of custodial torture. The police were being questioned in accordance with the cruel, inhuman and degrading treatment of prisoners. Furthermore, they were also questioned regarding deaths of prisoners in police custody and lock-ups. After this grave issue of 'custodial deaths', the Supreme Court laid down various guidelines to be followed while arresting the accused, keeping them in police custody & hence, the jail. Article 22 of the Constitution cites provisions for protection against arrest and detention in certain cases. Arbitrarily, the police in certain cases have oppressed an innocent to plead guilty, just for the sake of a better reputation and growth in career. There exist numerous instances of encounters executed by the police of with the detailed information has existential crisis. One such recent incident was reported from Tamil Nadu where both father and his son were beaten to death. Another prominent incident from Hyderabad includes a Veterinarian Doctor, who was raped by four men. After the investigation, the police arrested all four of them. Additionally, these criminals accepted their crime. But amidst all this, the police wanted to re-create the crime scenario in which they took the criminals to the crime scene and shot these rapists to death; claiming that those four accused were trying to escape. Extra- judicial 'murder' by police only makes the country more dangerous for women, children and the marginalized people. Serving speedy justice is important in such cases but the medium through which the justice is served has been misleading. Giving the police the freedom to use force arbitrarily and kill at its will is makes up one's own funeral; considering instances of reports wherein numerous of these officers are found to be corrupt. If we normalize the encounter killing and custodial deaths, it will be the most marginalized groups who will have to bear the burnt in the future. Our country is required to make our judiciary system more efficient and speedier so as to deal with such cases.

CONCLUSION

Police are the ones who should follow the law & procedure instead of stepping a foot over it. The legal system exists for a reason. If the protector of the Law, itself becomes the destructive of the rules, there will definitely be contempt, rage, disappointment, misery among the citizens towards the police. Custodial killings don't make me feel any safer, it tells me that the police are above the law. That they are no different than the mob that lynch. The Supreme Court has cited that the word "torture" is, synonymous to the darker side of human civilization. In spite of all these provisions, morning newspapers carry, almost every day, reports of dehumanizing torture, assault, rape and deaths in police custody. There's a saying of Supreme Court that, 'Society's cry for justice becomes louder'.



IMPACT OF CORONAVIRUS ON FUNDAMENTAL RIGHTS

BY RAVISHA VERMA, S.Y LLM (Business Law)

INTRODUCTION:

The pandemic situation has resulted in a global lockdown induced crisis like never before. It is sort of a regime where various forms of total lockdown are being practiced globally. As we all know, for a while, nothing may stop the spread of the novel Coronavirus. India ranks second after United States, apart from being the world's second most populous country, in posting the highest single day caseload since the beginning of August. Apart from making our lives stagnant, this virus has played a very prevalent role in fracturing our economy. Leaving that aside this virus is now hindering fundamental rights which are enshrined in Part III of the Constitution of India. Taking into consideration the most basic fundamental rights like such as the right to health, right to privacy, right to access justice, right to education, right to food and even freedom of religion are all under a state of dubiety. This is probably the first time in the history of India where an infectious disease is testing itself in Constitutional waters.

Right to Health:

The rudimentary prerequisite for every living beings' endurance is right to health which is the dominant element of Article 21 dealing with the Right to Life and also taking into consideration Article 47 in the Directive Principles for State Policy laying down directions for the State to improve the standard of public health so that every citizen can have access to quality treatment. There are several issues arising out in such challenging times which require significant amount of attention. India lags far behind when it comes to conducting corona tests per million population. There is a shortage of Personal Protective Equipment (PPE) kits which is to be provided to the health care workers, they are not only risking their life for the sake for livelihood but to fight against Corona. Our medical and health infrastructure may not be equipped to deal with such level of outbreak with the population being so large. Issues like the volume of testing, flawed testing strategies are somewhere down the line related to the privatisation of health care sector with the grasp of State having the sole power of the testing facilities. Ingression to free testing in the Covid-19 is a part of our fundamental rights and also universal access to testing is another part of the same.

We human beings are not only affected physically but also mentally and emotionally due to this Virus. It has taken a toll on all of our daily functioning with anxiety, depression and stress playing a detrimental role to hamper our life. There is a state of relatedness between domestic violence and the lockdown with an increase in domestic violence cases are being observed.

Right to Livelihood:

Article 21 of the Indian Constitution also guarantee us right to life and right to living along livelihood work conjointly. It can be inferred from the judgment of Olga Tellis v. Bombay Municipal Corporation. Corona has brought in everything to dead stop; all kinds of occupations are at standstill barring a few essential services. Due to the shutdown of almost all economic activities, over 122 million Indian citizens lost their jobs. The lockdown has displaced near about lakhs of migrants. It is high time that we admit the fact that it is not the workers who are dependent on the country, but the country in total that is dependent on its workers. The plight of the migrant workers was heart breaking with workplaces being shut down millions of migrant workers had to deal with the loss of income, food shortages and uncertainty about their future.

Freedom of Movement:

Our constitution has bestowed upon us Article 19(1)(d) which says that every citizen has the right to move freely throughout the territory of India which accompaniment Article 21 clause of right to life and personal liberty. The Government has inducted social distancing measures which are obligatory for the entire nation to follow. An official permit is made mandatory for any kind of movement in the public sphere. The curtailment of freedom to move is a protective measure taking into account the gravity of pandemic.

Right to Environment:

Article 21 of our Constitution says

that – 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' The Supreme Court expounded that the right to life and personal liberty includes the right to a clean environment. One can say due to Corona, changes like never before in India have taken place and can definitely say that Earth is healing. With the Air Quality Index level decreasing and the pollution level being at its lowest. The endangered species of birds and animals could be captured thorough the naked eye. Water quality being increased because of the less pollution and making the rivers cleaner than never before.

Conclusion:

Measures that are been taken by the government to fight against Corona are admirable. The Government should make it a point that the state of the exception does not become the state of normalcy i.e., the law enforced by Government shall not infringe with the basic human rights guaranteed to the people in the critical times of pandemic and even after that.

The Fundamental Rights are the rights which cannot be repudiated at any cost. The existing state of circumstances poses a new trial on a day-to-day basis for the executive and the judiciary. Here the executive test is to enforce the law of the land along with Fundamental Rights assured to every citizen of India. Judiciary is prone to uphold those rights which are rebuffed by the State. Since the status quo of the nation puts both the executive and the judiciary in a diploid position.

It becomes essential to explore how in the times of pandemic the various measures adopted by the government are in contradiction with our fundamental rights, and why is it important for us to ensure that such restrictions must conform to our existing legal safeguards and their impact on fundamental rights must be appropriately taken care of. The urgency of the restoration of internet in Kashmir, wages for workers during lockdown, emergency housing and subsistence for ousted workers, the right to a decent burial, PPE and adequate safeguards for sanitation workers, price control for Covid-19 testing, nationalisation of healthcare. This seems to be the outline plan of Government to fight against Covid-19.

With the pandemic spreading like a forest fire, the state's increasing attempt to flatten the curve appears to be ineffective. Therefore, I would like to conclude this article by quoting the statement from World Health Organisation, which highlights that in the middle of an outbreak like this Virus, safeguarding human rights is of utmost importance, and responses to this pandemic must be founded on their protection.

The Third Gender
"Ever Existing Never Acknowledged,-The Grey Identity"

BY NEHA SRIVASTAVA, S.Y.LL.M. (BUSINESS LAW)

The golden thread of Indian Constitution through the essence of equality under Article 14,15,16,19 & 21) summarizes as "enjoyment of life by all citizens and an equal opportunity to grow as human beings irrespective of their race, caste, religion, community, social status and gender"

After centuries of non-recognition of third gender resulting in systematic denial of equal protection of law and social economic discrimination, the Hon'ble Supreme Court of India in its order in the case National Legal Service Authority /s Union of India also called as Nalsa Judgement, declared transgender individuals distinct from binary gender, as the 'Third Gender" under the Indian constitution. The Indian parliament recently enacted the Transgender Persons (Protection of rights) Act, 2019.

'Transgender' as defined in the Act, refers to and includes all individuals whose gender does not conform or match with the gender assigned to them at birth and includes trans-man and trans-woman (whether or not they have undergone sex reassignment surgery ('SRS') and individuals with socio-cultural identities such as 'kinner', 'hijra', 'aravani' and 'jogta'.

To provide for protection of rights of transgender persons and their welfare, the Act emphasized the following rights in its Chapter II to VII.

Chapter II

Prohibition of discrimination against Transgender individuals

Discrimination includes denial or discontinuation of access to or enjoyment of, or unfair treatment in:

- Educational establishments;
- Employment;
- Healthcare services;
- Any goods, accommodation, service, facility meant for public use;
- Right of movement;
- Right to purchase, rent or otherwise occupy property;
- Opportunity to stand for or hold public office; and government or private establishment in whose care or custody a transgender person is.

Chapter III

Recognition of identity

Recognition of transgender individuals' identity and conferring the right and entitlement to obtain a "certificate of identity" as proof of recognition from the state authorities i.e. District State Magistrate.

Chapter IV

Welfare measures

Government's obligation to formulate and enact for welfare measures, schemes, education programs, inclusion in society, social security and facilitate their access to welfare schemes framed & healthcare.

Chapter V

Obligations on Establishments and other persons

- No discrimination against transgender individuals and must provide for an adequate grievance redressal mechanism to deal with complaints relating to violations of the Act and in the workplace.
- No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child.
- Every transgender person shall have a right :
  - (a) to reside in the household where parent or immediate family members reside;
  - (b) to enjoy and use the facilities of such household in a non-discriminatory manner.
  - (c) not to be excluded from such household or any part thereof;
- Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.

CHAPTER VI

EDUCATION, SOCIAL

SECURITY AND HEALTH OF TRANSGENDER PERSONS

• Every educational institution shall provide education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

• The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood including their vocational training and self-employment.

• The appropriate Government shall take the following measures in relation to transgender persons, namely:—

(a) to set up separate human immunodeficiency virus Sero-surveillance Centers to conduct Sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organization;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) before and after sex reassignment surgery and hormonal therapy counseling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to transgender persons in hospitals and other healthcare institutions and centers;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

Chapter VII

National Council for Transgender Persons

The National Council will perform the functions assigned to it under the Act, advising concerned Stakeholders on formulation of policies, programmes, legislations and welfare measures, monitoring and evaluating the impact to ensure participation of Transgenders and ensuring redressal of grievances of Transgender Persons.

Chapter VIII

Offences and penalties

Anyone who:

• compels or entices a transgender individual into forced or bonded labour.

• denies a transgender person the right of public passage or use of public places;

• forcefully removes a transgender person from a household, village or other place of residence;

• commits an act or intends to do an act causing physical, sexual, verbal, emotional or economic harm and/or abuse against a transgender person shall be punished with imprisonment which may vary between six months to two years, with a fine.

• Constitutional challenge to the Act under Part III (Fundamental Rights) of the Indian Constitution.

• There is no provision for any accommodative measures such as gender-neutral washrooms.

• Section 4 of the Act recognizes the right to self-perceived gender identity of all transgender persons. Whereas Section 5 states that for a transgender person to identify themselves as per their perceived gender identity, they must make an application to the District Magistrate, comply with a prescribed procedure and obtain a 'certificate of identity'.

• Article 15 of the Indian Constitution prohibits discrimination by the State against any person on the ground of sex. Sections 4 and 5 of the Act directly discriminate against transgender persons. They require the transgender community to obtain a certificate of identity to legally recognize them. In contrast, no cis-gender individual is ever required to follow any such procedure. The Act explicitly discriminates against transgender persons and therein fails Article 15 of the Constitution.

• The Act rests on an assumption that a gender binary is a norm. A transgender person finds no place within this binary, and therefore requires certification for legal recognition of identity.

• The Act breaches Article 15(1) by mandating government certification for a sex-reassignment surgery. A person born into the biological sex need no such certification for hormonal therapy or a mastectomy. It is the transgender community alone that needs such authorization from a Chief Medical Officer.

• The Act also creates a chilling effect on the free expression of identity by transgender individuals. Article 19(1)(a) of the Constitution state that all citizens of India shall have the right to freedom of speech and expression.

• A transgender person visiting a government office risks high chances of being treated with subtle hostility which transcends into outright harassment at the hands of government officers. They are often denied what is due to them. This is because of the social prejudices and

stigma that has attached itself to the transgender identity. By prescribing the procedures, Sections 4 through 7 effectively compel the transgender community to engage with this biased bureaucracy.

• This procedure attaches a cost to the basic expression of one's identity and may have a deterrent effect on individuals seeking self-identity. A transgender individual may avoid the certification process altogether rather than subject themselves to the stigma involved therein. These sections of the Act create a chilling effect and thus, are in stark violation of Article 19(1)(a).

• Sections 4 through 7 curb free expression of identity. In response, the State may defend these provisions as reasonable restrictions under Article 19(2). However, Article 19(2) only identifies specific grounds such as 'national security', decency', 'morality' and the like for the measure to count as a reasonable restriction on free speech.

• These provisions also intrude upon a notion of dignity and a zone of privacy that is now constitutionally protected under Article 21, Through this Act, the State is extending its reach to a decision that is inherently intimate. It is mandatorily compelling individuals to expose themselves to red-tapism, to claim something as personal as one's gender identity. This infringes their right to privacy and decisional autonomy. The privacy breach is only one facet of the violation. The process also potentially strips individuals of their dignity by having them petition the State for their intrinsic identity.

Conclusion

The Act may therefore be reconstructed considering constitutional challenges. This leaves a large proportion of discrimination and inequity persisting in society unaddressed. In such cases, Parliament bears the burden of enacting an effective anti-discrimination law to protect minorities like the transgender community. Unfortunately, the Act by no means effectively guarantees the community protections from harassment and inequality. It's a critical reminder that even though Indian constitutional rights jurisprudence has progressed over the years, the judiciary alone cannot shoulder the burden of protecting citizens. Progressive legislation cognizant of the conditions of minorities is equally important in a democracy.

FUNDAMENTAL RIGHTS AND RIGHT TO PRIVACY

BY ADV. NIMESH MEHTA, S.Y.LL.M (BUSINESS LAW)

INTRODUCTION:

Fundamental Rights protect the liberties and freedom of the citizens against any invasion by the state, prevent the establishment of the authoritarian and dictatorial rule in the country. They are very essential for the all-round development of the individuals and the country. These Fundamental Rights are considered as basic human rights of all citizens, irrespective of their gender, caste, religion or creed. etc.

Human beings have a natural need to autonomy or control over confidential part of their life. This need is inherent in human behaviour and now this has been recognized as fundamental right to privacy. It is not a right against physical restrains but it is a right against psychological restrain or encroachment of right. USA, UK, India, and at International level Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Civil and Political Rights have alls recognized this right as fundamental right.

Article 17 of the International Covenant on Civil and Political Rights states about the right to privacy. It states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation". Whereas Article 12 of the Universal Declaration of Human Rights 1948, states "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". Both instruments provide the right to privacy to the citizen, and the states, who are signatory to it, are expected to fulfil these rights.

Lord Denning also found its necessity in modern life and also tried to trace out the root of right to privacy in the common law and argued as,

"English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So, a body of case-law will be established."

The jurisprudence has evolved ever since and the right to privacy was read into 'Article 21' of our Constitution by the Supreme Court as an integral part of 'personal liberty'.

Judicial Development of Right to Privacy:

In M.P. Sharma v Satish Chandra (here in after M.P. Sharma Case) were Supreme Court on the issue of 'power of search and seizure' held that the provision for the search warrant under the first alternative of a. 96(1) of the Code of Criminal Procedure does not offend art. 19(1)(f) of the Constitution. A search and seizure are only a temporary interference with the right to hold the property searched and the articles seized. Statutory recognition in this behalf is a necessary and reasonable restriction and cannot per se be considered to be unconstitutional.

Further in the case of K.R. Suraj v The Excise Inspector Parappananqadi and in State Rep. by Inspector of Police v N.M.T. Joy Immaculate refresh the point that in India right to privacy cannot used against the power of search seizure.

In 1963, Kharak Singh V/s State of U.P. , the Hon'ble Supreme Court while dealing with the issue of whether surveillance, defined under Regulation 236 of the U.P. Police Regulations is amount to infringement of fundamental right and whether right of privacy is come under the purview of fundamental right. The Court repelled the argument of infringement of freedom guaranteed under Article 19(1)(d) of the Constitution, and the attempt to ascertain the movements of an individual was held not to be an infringement of any fundamental right. The minority judgment,

however, emphasized the need for recognition of such a right as it was an essential ingredient of personal liberty.

The next case was the Govind v State of MP , where the right to privacy was discussed in detailed. The issue was quite similar to the Kharak Singh v State of U.P. , but this time the approach of judgment was rather different. They upheld the validity of Madhya Pradesh Police Regulations, 855 and 856, made under Section 46(2) (c) of Police Act, 1961, under the reasonable restriction. Judges were unable of deciding that whether the Right to Privacy is a fundamental right or not and they pass on the burden to the next cases through saying that the "The right to privacy in any event will necessarily have to go through a process of a case-by-case development" .

This case gave the very vague idea of the recognition of right to privacy. What they actually did was that they interpreted the objective of makers of Constitution of India and then broaden the scope of Article 21, so that the right to privacy can fall into it.

R. Rajagopal alias R. R. Gopal v State of Tamil Nadu , the Hon'ble Supreme Court went through the entire jurisprudence of right to privacy, its evolution and scope; and this helps to fulfils gaps of Govind Case. The Court held that the right to privacy is implicit in the right to life and liberty guaranteed by Article 21. In conclusion, that right to privacy no longer subsists in case of matter of public record.

In the case of People's Union for Civil Liberties (PUCL) v Union of India , is related to phone tapping and it discussed that whether telephone tapping is an infringement of right to privacy under Article 21. The Hon'ble Supreme Court argued that conversations on the telephone are often of an intimate and confidential character and telephone-conversation is a part of modern man's life. The Hon'ble Supreme Court also said that whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. Further, Supreme Court upheld the validity of various provisions of the Prevention of Terrorism Act, 2002 and said that Right to privacy is subservient to that of security of State; and referring to the Sharda v Dharmpal they said that holding information which is necessary for the security of state cannot be the subject to security of state.

Landmark Judgement: Puttuswamy v. Union of India

A nine-judge bench of the Supreme Court has declared that the right to privacy is a fundamental right protected under Part III of the Constitution of India. While primarily focused on the individual's right against the State for violations of their privacy, this landmark judgement will have repercussions across both State and non-State actors and will likely result in the enactment of a comprehensive law on privacy.

The tough task before the nine-judge bench in the present case was to settle the law once and for all. They did so emphatically - over-ruling both MP Singh and Kharak Singh (reference as mentioned above) to the extent that those decisions had held that there was no fundamental right to privacy.

The Hon'ble Supreme Court further held that similar to the right to life and personal liberty, the right to privacy may be limited by a procedure established by law. The invasion of privacy must be through a fair, reasonable and just procedure.

Conclusion:

The immediate impact of this judgement on businesses is likely to be limited. The decision was issued in order to set at rest an unsettled position in law that had a bearing on a number of cases currently before various courts of the land. In the near future, we are likely to receive a series of judgements on a wide range of matters that have a bearing on different aspects of privacy which will offer greater clarity on the manner in which courts will look at these issues.

It is also clear, given the express directions of the Supreme Court in this regard, that the government is likely to enact a comprehensive privacy law based on the recommendations of the Justice Srikrishna committee.

RIGHT TO EDUCATION

BY RANJIT KOTIAN, S.Y.LL.M (BUSINESS LAW)

The right to education is identified as a human right and is understood to establish an entitlement to free for all also compulsory primary education for all children. An obligation to the secondary education accessible to all children as well as access to higher education. The right to education is one of the most fundamental rights but is also human right. The right to education comprises the need to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality of education. Education is directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. Human rights also play an important role in promoting understanding and friendship among all nations, religious or racial groups and shall further the activities of the United Nations for the maintenance of peace.

What is right to education?

Education is the most important thing in man's life, it makes sense, it has effects on the growth of mind and also change the character of a person. The right to education is an inherent, inalienable right. It is the right which deals with the right to know and right to change one's life, ways of life and life style. Various aspects of the right to education include primary education, secondary education, vocational education and higher education. Every child has the right to primary education. Even the Indian Constitution provides that, "everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

Education and the 4 A's:

Education offered should be meaningful and as such the right to education, to be exercised effectively, must be available, accessible, acceptable and adaptable. Every person shall be able to get the benefit from educational knowledge which is desire to get their basic learning and knowledge. The 4 A's of the right to education include the following components:

- **Availability:**

Education, at least primary education, should be available for all and without any cost barriers, especially at the fundamental level. The governments should be able to make it available for all their respective citizens. Moreover, governments are also under an obligation make sure availability of appropriate infrastructure such as school, education centres, etc.

- **Accessibility:**

All of the educational institutes including schools, should be accessible to everybody. Nobody should be discriminated against on the basis of race, sex, colour, religious, economic status, language and immigration status or disability. Not just this but schools should also provide a safe and secure learning environment for all. To ensure accessibility, schools should be at reasonable distance from the premises occupied by the concerned communities.

- **Acceptability:**

The education learning method of school should be acceptable to the parents for their children and they should be fulfilling the national norms set by the governments. The method of education should be easy and acceptable to all.

- **Adaptability:**

Adaptability means the education offered must be flexible and easy. Adaptability promotes equitable outcomes for learners across all disciplines. Education should be adaptable for children and youth and also for those students pursuing higher education and those wanting to be life-long learners.

Human Rights Education and Human Right:

Every child, youth, man and woman, has the human right to education, training and information. Other fundamental rights depend upon realization of human rights and hence, human rights education is an important concept too.

Human rights education concerns providing and creating information amongst people about the need and

importance of human rights. As the Universal Declaration of Human Rights, 1948 reads, "All human beings are born free and equal in dignity and rights".

Women's Human Right to Education

The purpose of human rights of women to education is to develop the law to protect women's human right to education. Another purpose is to improvement of human rights and women's human rights. Some of the purposes are to develop women's economic rights, improve women's communications skills, encourage participation of women in politics and decision making.

Who Needs Human Rights Education?

Human rights are important part of any curriculum of education. Some groups of people have a particular need for human rights education, some group of people have to know human rights education because of their official purposes and responsibility. Some of these core groups include administrators, lawyers, judges and prosecutors, law enforcement officers such as police and security forces, non-governmental organisations, trade unions, etc. But even apart from these groups, it is important for all people top be made aware of their most basic human rights, including the right to education, for the progressive growth and development up of a society.

International Legal Setting for Right to Education:

While the right to education has been recognized in many international human rights treaties, the formulations used and the nature of the resulting obligations undertaken by States tend to vary significantly. Many countries recognize the right to education through the 1948 Universal Declaration of Human Rights, through which the States make primary education is compulsory and available free for all. "

The new challenge of education and human rights:

In the 21st Century, the main challenge is ensuring education for all. In the African and Asian regions, millions of children living in poverty and suffering from many challenges, are deprived of their human rights including the right to education and right health. Another important challenge is in ensuring availability and accessibility of education to all, without any ground of discrimination. Many of the developing countries do not give education high priority in their national budgets, and the same may become a grave challenge in improving infrastructure and for vulnerable groups to send their children to schools. Thus, it is important for nations to increase their will and take appropriate measures for ensuring realisation of the right to education.

Development of the Human rights education:

Education is one of the most important human rights. We need to develop this right and also need to think about the education trainer or teacher for quality education. We have to proper implementation on human rights treaties and convention to effectively serve the right to education. Today, encouraging and providing education is an important function of every state along with the need to develop human rights education, to respect to human rights and fundamental freedom and to improve the self-respect and respect for other. As has been observed internationally, education is to be directed to the full development of the human personality and to strengthen respect for all human rights and fundamental freedoms. Article 13 of the 1966 International Covenant on Economic, Social and Cultural Rights establishes right to education so that everyone accordingly receives a suitable education consistent with the needs of the society in which it is provided. Individually, the benefits of human rights education help develop human personality, help build a good society and peaceful environment. Benefits of good quality of learning opportunities are building a better future.

Conclusion:

Thus, human right to education is of fundamental importance and so is human rights education. The two are the deepest foundation of the modern human rights jurisprudence. The right to education influences and is indispensable for other economic, social and cultural rights. The fulfilment of the right to education (along with its four important features, namely, availability, accessibility, acceptability and adaptability) ought to be realised. Quality teaching materials and trainers should be made available and there must be equitable access for all.

BIOTERRORISM: THE SENTIMENT OF IMPUISSANCE

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The global events of the last two decades show that the threat of biological warfare is not a myth, but a harsh reality to the life and security of the people. Previous terror incidences, dense population and congenial climatic conditions in India make it too vulnerable to bioterrorism attacks.

Bioterrorism may have a different effect on societies than would weapons such as explosives as it may not always be noticed immediately. The goal of bioterrorism is usually to create fear and/or intimidate governments or societies for the purpose of gaining political, economic, religious, or ideological goals or to create destruction on the mass level. Religious groups like Osho Rajneesh in USA and Aum Shinrikyo in Japan were charged for deliberately spreading bio-terrorism.

Bioterrorism is not only harmful to human beings but also for animals, plants and the country or society at large. In it, the virulence and the ability of the virus known as agents are increased by a chemical process and hence can be mutated easily, are made in such a way that the available medicines could not be able the cure the people suffering from it.

When a human being is infected, they became the carriers of these agents, whoever they meet they transmit these agents to other people's body which leads to a point where a mass of the population is infected by a virus. The problem with these kinds of agents is that for days people do not show any symptoms of falling ill. When plants, air or water are infected by these agents they not only affect them or organisms living in them but

it indirectly affects people because they consume them. The end result is one. That it is a human population which is being targeted.

It is not easy to counter these attacks because it is difficult to trace as to from where this virus has emerged and what medicines to be used is not known and to make a vaccine could take up to months if not years.

The country suffers economically because these attacks may require taking strict actions like countrywide lockdown, which would drastically affect the economy. Even since the mortality rate is high there are chances that it is the youth or the working population who is the most affected than even in that way it is a big setback for any country.

It affects man physically because the person suffers as these agents try to break the immune system of the person. A person would always be in fear of contracting it and would try to socially distance himself which would lead to emotional trauma. Economically as to if a person is affected then he cannot go to work and all his savings would be utilized to get medical help. Chances of a huge mass of the population being wiped out or contradicting such a disease that they could not overcome from and they have a long-lasting psychological impact like horror, panic, anger towards terrorists, government or both, demoralization, etc. Sometimes, bio warfare agents have direct impact on the central nervous system and even long-term cognitive impairment.

In Subhash Kumar vs State of Bihar - (1991) 1 SCC 598, the Supreme Court held that right to life is a fundamental right under Article 21 of the Constitution and it include the right to enjoyment of pollution free water and air for full enjoyment of life . Hence it is the duty of the governments to safeguard these rights of its citizens.

Preparedness will focus on risk analysis of biological weapons, medical and public health consequences, medical countermeasures and long-term strategies to combat and prevent future threats.

The responsibility of dealing with such a disaster rests with the state government. There are a number of legislations that control and govern the nation's health which can be enforced to contain the spread of disease. Some of the commonly used legal instruments are:

Epidemic Diseases Act is a colonial act to provide for the 'better prevention and spread of dangerous epidemic diseases . It provides the states to authorize any of its officers or agency to take such measures for prevention and control of epidemics. Relevant provisions under the Civil Procedure Code and Criminal Procedure Code can be invoked to detain and question persons involved in criminal acts which in its ambit includes bio-terrorism .

Water Act of 1974: This act provides for the prevention and control of water pollution and the maintenance or restoring of wholesomeness of water. It provides for creation of central and state boards or joint boards for prevention and control of water pollution and for such purpose empowers them to obtain information, inspect any site, take samples for analysis and take punitive action against the polluter .

The Air Act of 1981: This Act provides for the prevention, control and abatement of air pollution and establishing boards for such purpose and assigning powers and functions to them relating to air pollution .

Disaster Management Act of 2005: It is the most important legal measure to deal with bio-defence. It provides for an institutional and operational framework at all levels for disaster prevention, mitigation, preparedness, response, recovery and rehabilitation . It empowers the district authorities to requisition by order any officer or any Department at the district level or any local authority to take such measures for the prevention or mitigation of disaster, or to effectively respond to it, as may be necessary, and such officer or department will be bound to carry out such order . For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster , the District Authority is also empowered to give directions for the release and use of resources available with any Department of the Government and the local authority in the district ; control and restrict vehicular traffic to, from and within, the vulnerable or affected area ; control and restrict the entry of any individual into, his movement within and departure from, a vulnerable or affected area ; procure exclusive or preferential use of amenities from any authority or person. These provisions imply that for biological disasters that the quarantine measures could be legally instituted and the private sector health facilities fully engaged for patient care .

There are international treaties/ undertakings which India has signed and adopted like International Health Regulations and Biological Weapons Convention.

The Ministry of Health and Family Welfare is one of the main ministries that deal with epidemics MOHFW is vested with framing the national health sector guidelines, provides guidance and technical support for capacity development

for surveillance, early detection of the outbreak and supports the states during outbreaks in terms of outbreak investigations, deployment of Rapid Response Team's, manpower and logistic support for case management etc .

Ministry of Home Affairs is the nodal ministry for bio terrorism and partners with MOHFW in its management . Similarly ministries like The Ministry of Environment, Forests and Climate Change, The Ministry of Agriculture, Urban or Rural Development Ministry and Department of Drinking Water Supply are also key supporting ministries.

NDMA is responsible for laying down policies on management, approving plans of different ministries or departments of GoI in accordance with the national plan and preparing guidelines to be followed by the authorities of different states to prevent any disaster . It also works for the further improvement of development plans and projects and accomplishment of disaster management. NDRF also provides training to the SDRF personnel, police and civil defence home guards in the field of disaster response.

International Health Regulations: Due to the rapid increase in international travel and trade, and occurrence and re-emergence of international disease threats and other health risks, 196 countries including all the Member States of World Health Organization, have agreed to implement the IHR, 2005. These regulations encourage countries to work together to save lives and livelihoods which are affected by the outbreak of infectious diseases and other health problems .

Preparedness against any biological disaster will be possible with the implementation of these guidelines. The goal of biodefense should be to integrate the efforts of the national and state level medical services, public health, intelligence, and law enforcement communities of the country to provide layered defences against any possible biological weapons attacks. Authorities hope that disaster planning and therefore the devising of effective medical countermeasures for biological attacks will both minimize the impact of any such attack and also act as deterrent to those who might consider such an attack .

ARTICLE 21: THE ESSENCE OF FUNDAMENTAL RIGHTS

BY PRINCE GEORGE , S.Y.LL.B

INTRODUCTION:

The great poet Alfred Lord Tennyson wrote in his famous dramatic monologue Ulysses about the futility of an inactive life in these beautiful words.

"As tho' to breathe were life! Life piled on life Were all too little, and of one to me little remains."

These profound lines elucidate that life has more to it than, merely, one's biological necessity and ability to inhale and exhale. There is something more important than eating, drinking, sleeping and procreating. The right enshrined in Article 21 of the Constitution of India is undoubtedly the progenitor of all Fundamental Rights. There cannot be a right as innately inherent and indispensable as the right to life and personal liberty. If the spirit of this Article was understood and practised by the society in its true sense many of the other rights prescribed in the Constitution could have been easily administered.

Meaning of Life:

Life in its varied and variegated allusions and connotations, includes not just physical health but also mental, emotional and spiritual well-being. For a man to lead a life of fulfillment need to have the freedom to cater to all these four facets of life. Philosophers and Social scientists have always appreciated this all-encompassing meaning of life. Today even courts, through their erudite and illuminating judgements, continue to expand the meaning of "life" under Article 21. They have clarified that right to life extends, inter alia to,

1. right to livelihood,
2. dignified living,
3. social security,
4. health,
5. clean environment

Marcus Aurelius the famous stoic philosopher and Roman emperor once said, "Life doesn't simply mean being alive but being well". This dictum is absolutely applicable in the interpretation of the stipulations related to Article 21.

Analysis of Article 21:

This article is an attempt to explore how the interpretation of Article 21 is interspersed with the understanding of concept of life and personal liberty in various branches of Social Sciences. Unlike many other terms used in a statute the interpretation of these terms cannot be restricted to their dictionary meanings and lexical references. In fact the courts have never shied away from knocking the doors of other branches of science and humanities in order to decipher and deliver the mysteries of human existence and ensure that all the faculties by which man enjoys life are well. That's why Article 21 has received the widest possible interpretation in the Indian Constitution. And the principle of natural justice has been at the heart of all rulings.

Article 21 encapsulates 2 key elements that have been interpreted by the Courts to sustain the essence of the provision,

1. Life
2. Personal Liberty

We shall herewith now see how different connotations of Article 21 have emerged from judicial pronouncements.

Right to Live with Human Dignity:

The term Human Dignity has deep philosophical roots. The great philosopher of the 18th century, Emanuel Kant, who is considered as the source of contemporary concept of human dignity, propounded the principle of Categorical Imperative which crudely suggests doing only such things to your fellow humans that you would be fine if done to you. In fact, digging deep in to the psyche of a person who commits suicide we will invariably find a battered and shattered dignity. That's how important human dignity is enshrined in the Jain philosophy of "Jiyo aur Jeene Dou" (live and let live).

The term gained global attention only after the Second World War when the need for protecting the civilians from the atrocities of the administration was considered of cardinal importance. Global leaders realized that human dignity is at the core of human happiness. The United Nations adopted Universal

Declaration of Human Rights on 10th December, 1948. The UN via UDHR declared, inter alia, that all human beings are born with equality in dignity and rights.

Legal interpretations are often a result of socio-political developments. In 1981, the Apex Court in the case of Francis Coralie Mullin penned a landmark judgement incorporating human dignity as an indispensable element of right to life. To appreciate the magnitude of the judgement it's important to discuss in brief the facts of the case. Mrs. Francis Coralie Mullin was a British national who was detained in Tihar Central Jail, u/s 3 of the COFEPOSA (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act), on charges of smuggling hashish in to the country. She was allowed, u/s 3(b)(i), to meet her tender aged daughter only once a month. She challenged these provisions as violative of Article 14 and 21. The Court analysed the meaning of Life and held the provisions unconstitutional. The Court's enlightening views were, that Life is not restricted to mere animal existence but is more than just physical survival. It considered even partial damage to a limb or faculty as deprivation of life. It's immaterial whether it's permanent or temporary. It includes human dignity and to carry on such functions and activities as constituting bare minimum expression of the human self. The right to protect against torture, or cruel, inhuman, or degrading treatment which is articulated in the Universal Declaration of Human Rights is implicit in the expanded interpretation of this judgement.

Right to Travel Abroad:

Article 21 forbids deprivation of "personal liberty". Personal Liberty means the liberty to do his or her will circumscribed by statutes and code of conduct of the society. Physical movements and transportation are essential elements of personal liberty. Genetically humans are nomadic or wanderers. Inquisitiveness is inherent to human race and has led them to travel, explore and discover new places. Such basic instincts cannot be curbed or limited to measurable distances.

Maneka Gandhi vs Union of India, 1978 was a breakthrough case and changed the very scenario of interpretation of the Constitution of India. The Supreme Court's judgement in this case expanded the ambit of Article 21 exponentially. While there were many aspect of Article 21 that the Apex court commented on and clarified I restrict to its suggestion on whether or not right to travel abroad resides in Article 21. Maneka Gandhi, the petitioner, was a journalist whose passport was impounded restricting her from travelling abroad. She challenged the action as ultra-vires Article 21. The Court held that travelling abroad is within the right to life and personal liberty. Personal liberty cannot be construed in narrow and stricter sense rather a broader and liberal sense has to be applied to it. The judgement said "travel makes liberty worthwhile". Thus, no person can be deprived of his right to travel abroad.

Right Against Sexual Harassment at Workplace:

Sexual harassment at workplace or even otherwise is the worst form of sexual discrimination. It is indicative of the general ethos and mindset of the society where it occurs. Often it has a tacit sanction of the society. Sexual harassment includes use of explicit or implicit sexual overtones, inappropriate gestures etc. Basically, all such actions that can make the opposite sex uncomfortable owing to their gender can fall within the meaning of sexual harassment. Thus it need not appear always in its extreme form like rape or sexual violence. Even an unwelcomed gesture or act of misdemeanour can mean sexual harassment.

At the workplace it's common against the subordinates by their opposite sex superiors. While at the root of such behaviour lies, possibly, genetic and social factors. However, its pervasive at the workplace because of the sheer ability of the superiors to dominate the will of the subordinates. The evil is uncontrolled because the victims are extremely vulnerable and keep silence out of fear of losing jobs or impairing their careers. Such feeling of helplessness, psychologists suggests, creates serious long term psychosomatic disorders. This depreciates the quality of life forcing the victim to lead a life that lacks dignity and self- respect.

The behaviour is so prevalent and omnipresent that in the year 1997 a writ petition was filed with the Supreme Court by certain social activists and NGOs, in Vishaka & Others vs State of Rajasthan and Others, for the enforcement of fundamental rights of the women at workforce under Articles 14, 19 and 21. The court held that, right to life means life with dignity. And such behaviour indeed deprives the victim of his/her life and personal liberty. The Court cast upon the employers the obligation to ensure that the fundamental right under Article 21 is not compromised. As a consequence of this case, the constitution of committees at workplace was made mandatory. These committees were assigned the job to formulate rules and to communicate incidence of sexual harassment and effective redressal mechanism to tackle the menace.

CONCLUSION

Article 21 enshrines the essence of the inviolable principle laid down in the preamble of the Constitution. This article which ensures life and personal liberty has been considered as the averment of the judicial creativity and integrity in a democratic system. Article 21 consolidates the justifiable feature of fundamental rights. The Article bears significance in the context of growing sensitivity of the government towards human rights, basic human needs, social accountability and awareness about the sanctity of human life. The words of Dr. Ambedkar is relevant in this context- "If all men are equal then all men are of same essence and the common essence entitles them of the same fundamental rights".

CASTE - A CERTIFICATE OF PERSON'S VALUE

BY VAISHNAVI TALEKAR
T.Y.B.L.S/LL.B

"Caste; a short-form of coercion, abandonment, stratum, torture and self-esteem. It is true that the existing laws, have been a priceless favour on those who are in dire need to be set free from these shackles of unequal treatment of each caste, yet it is not just the responsibility of the law makers to vacant the place of discrimination from the heart of the nation / world but it is also a duty which must be followed by the common public."- Vaishnavi R. Talekar.

INTRODUCTION:

- Caste is the division of the societies / hierarchal social classes on the basis of various rituals, status, privileges, wealth, occupation allotted to certain group of people.
- Caste has become the most eminent qualification for a person to survive in this country.
- Even though various laws are framed for protection of SC/ST a person belonging to a socially backward class is compulsorily restricted, harassed, and deprived of his rights by the society to such a great extent that they are brutally killed in the daylight.

- Recently,' Viraj Jagtap' one such youth who belonged to the Dalit community was killed amid on the roads of Pune.
- He was attacked by a few members of the girl's family with who he had an affair.
- This murder took place because Viraj dared to love a girl belonging to the so called Upper Caste.

What was Viraj Jagtap's Fault?

- Viraj Vilas Jagtap was a 20 year youth belonging to a Dalit family in Pune.
- He had a relationship with a girl belonging to the upper caste family.
- Vilas visited the girl's house whom he had an affair with , as her family had called him on 7th June around 9 pm , in order to talk with him regarding their relation , when he reached at the said place , he was abused by the girl's family members and had to face derogatory remarks of him being a Dalit
- Later as soon as he left from their residence he was hit by a rash tempo by the girl's relatives. As soon as he fell down and struggled to get up he was attacked by 6 members of her family who hit him with iron rods and huge stones.
- While he was taken to the hospital he narrated all this to his brother.
- The 6 accused were caught out of which 2 were minor therefore were sent to a children's remand home and the rest were held guilty under IPC sec.302 , 143 , 147 , 148 , 149.
- Of course his murderers are arrested and punished, but in true

sense he has not received justice because it is impossible to get his life back or undo the brutal sufferings he had to face. He was discriminated on the basis of his caste by the family and also deprived of his right to life and liberty family and also deprived of his right to life and liberty

Caste System In India

This caste system suppressed the Shudra and Dalit to a great extent where they were restricted over many things. These subjected to restriction of the children from acquiring education if in case they belonged to the specific caste, entering temples, roaming around a person belonging to other upper castes became a crime. People followed endogamy and did not believe in inter-caste marriages. Not only this, but they were called as a bad omen in the society and were denied to be respected which lead to the untouchability of the Dalit's and their exploitation. Bhimrao Ambedkar who was an Indian jurist campaigned against social discrimination for the upliftment of the Dalit samaj from the discrimination of untouchables. In 1948, Negative Discrimination on the basis of caste was banned by the laws, and further, it was seen in the Indian Constitution.

Laws Governing Caste System In India

- The constitution of India framed certain articles under the fundamental rights which in order also protect the rights of the socially backward groups in India.

- 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 of discrimination on grounds of religion, race, caste, sex or place of birth.

- Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

- Article 16: There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

- Article 17: Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

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

Scheduled Caste and Tribes (Prevention of Atrocities) Act 1989

This act is also known as the SC/ ST Act 1989, Prevention of Atrocities Act (POA), or just the Atrocities Act. The preamble of this act states: "To prevent the commission of offenses of atrocities against the members of Scheduled caste and tribes, to provide for special courts for the trial of such offenses and for the relief and rehabilitation of the victims of such offenses and for matters connected therewith or incidental thereto." This act was enacted because the provisions of the existing laws were inadequate to deal with the crimes against the SC/ST. The increasing crimes against them had no end and people at large continued ill-treating the Dalit's

Paradox Within India Today

In India, there are a number of laws regulated for the betterment of the nation but somehow the citizens

here have failed to recognize the real need for laws. The increasing number of laws framed is still less than the number of crimes against the SC and ST emerged. Even though the government encourages the society as a whole to unite and start abolishing all negative restrictions on the suppressed classes but yet the citizens here deny to respect people from other castes. Each one protests that there should be equality amongst all the citizens but the next moment some end up abusing the socially backward class members for belonging to their particular caste. The rigidity of criticizing someone on basis of caste within the people is more rigid than that of any law in India. Despite having stringent laws people ignore the severity of the crime committed.

CONCLUSION:

The most dangerous virus amongst the citizens of India prevailing for a very long time is the cruel caste system that people follow. Citizens of India have adapted many modern areas of development but failed to enhance the sense of humanity amongst each other. It is said that people of India are more sympathetic it is true for the people belonging to the backward classes as they are always suppressed and abused but yet continue to do menial works for the country which none who belonging to an upper caste would ever do because of never-ending prides. It's high time, by now the society needs to throw out their orthodox casteism from their minds and treat each one equally and support the laws made.

ROLE OF INDIAN JUDICIARY IN PROMOTING ENVIRONMENTAL PROTECTION

BY SANVI NARENDRA MEHTA, S.Y.LL.B.

INTRODUCTION

The Indian Judiciary has performed a notable role in protecting and safeguarding our human rights along with promoting the cause of environmental justice and escalating the environmental awareness among its citizens. The evolution of environmental jurisprudence in India has been prodigious within the last three decades. As we know, right to live in a clean and healthy environment under Article 21 is not a recent invention and we have been enjoying this right from a long-time but not as constitutionally guaranteed fundamental right. It has been enforced and recognized by courts under different laws like Law of Torts, Code of Criminal Procedure, Indian Penal Code, Code of Civil Procedure, etc. As we know after the tragic incident of Bhopal Gas Tragedy, Environment protection became our first concern. The author has endeavoured to tell its readers that homo-sapiens have the power to metamorphose the environment and if it is done in the right manner it will enhance the quality of the life but if done in an iniquitous way, the same power can do inestimable distress to its human beings and environment.

EXIGENCY FOR ENVIRONMENTAL LAWS

As we know, India is a developing nation so the development of our nation predominantly depends upon the industrialization i.e., the backbone of our economy. In order to perform such industrial activities for the development of a nation, we need to escapade and exploit our natural resources haphazardly or new innovations like, thermal and atomic power plant pose a threat and the aftermath results in issues like acid rain, global warming, pollution, etc. Therefore, this gives rise to a requirement where the Indian legislature is supposed to perform a comprehensive analysis and point out the inconsistencies and ambiguities.

SOME PHENOMENAL DOCTRINES AND PRINCIPLES EVOLVED BY THE COURTS

Doctrines evolved by the courts are some phenomenal contribution to the Environmental jurisprudence and are momentous milestones in the avenue of environmental law in India. Be it the doctrine of absolute liability in the case of the Bhopal Gas Tragedy, where the enterprise is obliged to repay everyone for the mishap without any exemption like in the case of strict liability.

Recently in an unavoidable tragedy known as Vizag Gas Leak, it was very reminiscent and it recalled the old memories of the Bhopal gas tragedy and reportedly killed 11 people and more than 1000 people were affected. This incident though attracted the doctrine of Absolute liability but was found prima facie liable under strict liability for 50 crores. While investigating, it was also observed that the LG Polymers didn't even have the Environmental Impact Assessment clearance.

Then the Polluter Pays Principle which has been now widely accepted by most countries states that the polluter not only compensates the victims but also pays the cost for restoring the damage caused to the environment. There have been many landmark cases where this principle has been applied like the Bichhri Case, the Span Motel Case, etc

In Vellore Citizens' Welfare Forum v. Union of India, the Supreme court observed that this principle is an essential feature of sustainable development. Likewise, in the Oleum gas leak case, Mr. M.C Mehta, an advocate filed a PIL where the Supreme Court had to examine the true ambit of Articles 21 and 32 of our constitution. He also filed a PIL in order for closure of such factory as it was producing hazardous substances and then the oleum gas leaked and the owner of Shri ram fertilizers had to pay the compensation. Though, he was alone and single he had fought a valiant battle against this massive enterprise with substantial success. When this incident occurred, the Supreme court held that right to live in a pollution free environment is a facet of Article 21 of the Indian Constitution.

Another doctrine evolved by our courts was the Public Trust Doctrine and it rests primarily on the natural resources like air, sea, water forests, etc can never be the subject matter

of private ownership. In the well renowned case of Span Motel Case, Supreme Court held that this doctrine is part of Indian law and property must not only be used for public purpose but also be made available for general public

Then there was the Precautionary principle, it was broadly discussed in the Vellore Citizens Welfare Forum's case. It means one should take measures in anticipation of environmental harm, rather than seek to cure when such harm is inflicted.

JUDICIAL REMEDIES EVOLVED BY OUR INDIAN JUDICIARY

Environmental protection can be done through the following tortuous remedies like negligence, nuisance, strict liability, injunction, etc.

Recently the mishap of gas leak which occurred in Assam's Tinsukia district which triggered a massive fire was due to the negligence. In order to maintain the situation and prevent it from spreading more, there was a water umbrella continuously spraying water over the area.

The National Green Tribunal has the authority to hear all the cases related to environmental issues and there are different laws implemented for each issue like The Water Act, The Environment Protection Act, The Wildlife Protection Act, The Forest Act, etc. After the 42nd Amendment of the Constitution in 1976, a new dimension was added to the Article 51A dealing with fundamental duties and it was added as a clause (g) that dealt with the protection of the environment and it was evolved in the case of L.K Koolwal v. State of Rajasthan.

And a new Directive Principle, Article 48A, was introduced for the protection of the environment in the 42nd Amendment in the Sachidanand Pandey's case.

CONCLUSION

The author has tried to jot down all the possible leading cases and has thus examined that the Supreme Court has extended various legal provisions for protection of environment. The author has also suggested that the Indian Judiciary should make sure that there are separate environmental courts for environmental related issues in order to provide easy and speedy judgements. The author is inspired by the famous Advocate, Mr M. C Mehta as no other single individual has contributed as much as he did to the body of environmental jurisprudence, whether it be cleaning of Ganga, Span Motel, Taj Trapezium Case, etc.

टू फिंगर टेस्ट : सत्य पडताळणी

टू फिंगर टेस्ट : सत्य पडताळणी

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भारतीय संविधानाने प्रत्येक नागरिकाला मूलभूत अधिकार बहाल केलेले आहेत. भारतीय संविधानात मानवी हक्कांचा यथोचित आदर व सन्मान केलेला आहे. याच मूलभूत हक्कांची पायमल्ली करण्यासाठी अनेक तरतूदी केलेल्या आहेत. त्याचप्रमाणे राष्ट्रीय मानवी हक्क आयोगही या मानवी हक्कांचे रक्षण व संवर्धन करण्यासाठी कार्यरत आहे. सध्या समाजात या मूलभूत अधिकारांचे उल्लंघन होताना सहज पाहायला मिळते. प्रत्येक व्यक्तीला सन्मानाने व निडरपणे जगता यावे, हा या मूलभूत अधिकारां मागचा मुख्य उद्धेश होय. हे हक्क सर्वांना जन्मजात नैसर्गिकरित्या मिळालेले असतात. याच अधिकारांचे उल्लंघन करणे हा एक गुन्हा आहे.

आपल्या देशात स्त्रियांच्या मूलभूत अधिकारांचे उल्लंघन मोठ्या प्रमाणात होत आहे. स्त्रियांच्या मूलभूत अधिकारांचे हनन व लैंगिक शोषण या घटना सर्रास पाहायला मिळतात जे अतिशय लांछनास्पद आहे. नॅशनल क्राइम रेकॉर्ड ब्युरो (एनसीआरबी) च्या म्हणण्यानुसार महिलांनी २०१८ मध्ये जवळपास ३२६३२ बलात्कारांची नोंद केली. त्यापैकी प्रत्येक चौथा पीडित हा अल्पवयीन होता तर ५0 टक्यापेक्षा जास्त १८ ते ३० वर्षे वयोगटातील आहेत. ही आकडेवारी आपल्याला अतिशय भयानक वास्तवाची जाणीव करून देते मागील चार वर्षांची आकडेवारी दाखवणारा तक्ता खालील प्रमाणे :

वर्ष	बलात्काराच्या तक्रारींची नोंद
२०१५	३४६५१
२०१६	३८९४७
२०१७	३२५५९
२०१८	३२६३२

बलात्कार किंवा लैगिंक शोषण झालेल्या पीडितेला त्या निर्घृण कृत्यानंतर वादग्रस्त 'टू फिंगर टेस्ट' ला सामोरे जावे लागत होते. बलात्कारासारख्या कृत्यानंतर त्या पीडित स्त्रीचे व तिच्या हक्कांच्ये रक्षण करून त्या खचलेल्या पीडितेच सबलीकरण केले पाहिजे .परंतु या 'टू फिंगर टेस्ट' मुळे पीडितेच्या पुनर्वसनाचा व रक्षणाचा मुद्दा तर दूरच राहतो आणि याउलट पीडित स्त्रियांच्या गोपनीयतेचा अधिकार भंग होतो. या ठिकाणी अनेक प्रश्न उपस्थित होतात. जसे की टू फिंगर टेस्ट म्हणजे काय? या चाचणीची वैज्ञानिक आणि कायदेशीर दृष्ट्या वैधता काय ? या चाचणीचा आणि पीडितेच्या मूलभूत अधिकारांचा संबंध काय ? याची उत्तरे या लेखात आपण जाणून घेऊया .

टू फिंगर टेस्ट म्हणजे काय ?

जेव्हा बलात्कार किंवा लैगिंक शोषणाच्या घटनांची नोंद होते आणि एफआयआर नोंदविला जातो त्यानंतर कायद्याने पीडितेची त्वरित वैद्यकीय तपासणी करण्याची तरतूद केली आहे. दाव्यांची सत्यता पडताळण्यासाठी काही चाचण्या करण्यात येतात तेव्हा ही 'टू-फिंगर टेस्ट' चित्रात येते. टू-फिंगर टेस्ट या चाचणीला'पीव्ही एक्सामिनॅशन'किंवा 'व्हर्जिनिटी टेस्ट' असे ही म्हणतात. टू-फिंगर टेस्टमध्ये , एक स्त्री व्हर्जिन आहे की नाही हे निर्धारित करण्यासाठी बहुतेक वेळा हायमेनची उपस्थिती वापरली जाते. ह्या चाचणीसाठी डॉक्टर पीडितेच्या योनीत दोन बोटे घालून ही चाचणी करतात ही चाचणी पीडितेची लैंगिक क्रिया निश्चित करण्यात मदत करते अर्थात पीडित लैंगिक क्रियाशील आहे की नाही हे समजते . ही चाचणी हायमेन उपस्तिथ आहे की नाही याची पडताळणी करण्यात मदत करते. परंतु हायमेन तुटण्याची कारणं ही विविध असू शकतात जसं कि घोडेस्वारी, जिम्नॅस्टिक किंवा मासिक पाळीच्या वेळी टॅम्पॉनचा वापर करणे. त्यामुळे ही चाचणी अवैज्ञानिक आहे आणि आधारहीन आहे.

बंदी आणि कायदेशीर दृष्टिकोन

या चाचणीवर बंदी घालण्यात आली आहे कारण ती केवळ अवैज्ञानिकच नसून ती पीडित स्त्रीच्या गोपनीयतेच्या अधिकाराचे उल्लंघन देखील करते. ही पूर्ण प्रक्रिया महिलांसाठी अन्यायकारक आहे आणि नैतिकदृष्ट्या देखील चुकीची आहे.

अनेक याचिका आणि तक्रारी नंतर वादग्रस्त टू फिंगर टेस्ट २०१४ साली यावर बंदी घालण्यात आली. लिलू @ राजेश आणि अं. विरुद्ध हरियाणा राज्य या खटल्याच्या बाबतीत सुप्रीम कोर्टाने असा निर्णय दिला की टू फिंगर टेस्ट असंवैधानिक आहे. हे बलात्कारातून वाचलेल्या पीडितेच्या गोपनीयतेच्या, शारीरिक आणि मानसिक अखंडतेच्या आणि सन्मानाच्या अधिकारांचे उल्लंघन करते. गुजरात राज्य वि. रमेशचंद्र रामभाई पांचाल, या खटल्यातगुजरात उच्चकोर्टाने असेही म्हटले आहे की टू फिंगर टेस्ट ही लैंगिक अत्याचाराच्या संदर्भात वापरली जाणारी एक अत्यंत अवैज्ञानिक पद्धत आहे आणि त्याचे कोणतेही फॉरेन्सिक मूल्य नाही. ह्या चाचणी वर बंदी घालण्याची करणे पुढील प्रमाणे :

· टू फिंगर टेस्ट हि अवैद्यानिक आहे .

· ह्या चाचणीमुळे पीडित स्त्रीच्या मूलभूत अधिकाराचे उल्लंघन होते.

· ह्या चाचणीच्या नवाखाली स्त्री चा लैगिंक हिंसा केली जातो.

· या टेस्टच्या अहवालाचा वकील गैरवापर करतात.

भारतीय साक्षीपुरावा अधिनियम अंतर्गत कलम १५५ नुसार एखाद्या पीडितेच्या लैंगिक इतिहासास संरक्षण म्हणून वापरण्याची परवानगी आरोपीला दिली होती. टू फिंगर टेस्टचा अहवाल वकिल त्यांच्या आशिल्याच्या बचावासाठी पुरावा म्हणून उपयोग केला जायचा. परिणामी, वैद्यकीय अहवाल हे खटल्याच्या वेळी पीडितेची बदनामी करण्यासाठी वापरले जात होते .२००२ साली कलम १५५ हे भारतीय साक्षीपुरावा अधिनियम, २००२ मधून वगळण्यात आला. भारतीय पुरावा कायद्याचा कलम १५५, बलात्कार पीडित मुलीच्या विश्वासार्हतेस तडजोड करण्यास कधीच परवानगी देत नाही.

आरोग्य मंत्रालयाने उचलेली प्रागतिक पाऊले

मार्च २०१४ साली मध्ये केंद्रीय आरोग्य मंत्रालयाने बलात्कार पीडितांवर उपचार करण्यासाठी नवीन मार्गदर्शक तत्त्वे आणली. श्री केशव देसीराजू, सचिव यांच्या अध्यक्षतेखाली एक समिती स्थापन करण्यात आली (एच आणि एफडब्ल्यू), तसेच न्यायमूर्ती वर्मा यांच्या समितीच्या आहवलाच्या मदतीने , विशेषत: वैद्यकीय तपासणीमध्ये प्रमाणबद्धता आण्यासाठी प्रोटोकॉलस तयार केले. हे प्रोटोकॅल्स सर्व केंद्रशासित प्रदेश आणि राज्यांमध्ये लागू आहेत. अश्या घटनांमध्ये पोलीस आणि डॉक्टर यांच्या महत्वाच्या भूमिका बजाबतात. आरोग्य कर्मचार्यांसाठी असलेल्या या मार्गदर्शक सूचनांचे उद्दीष्ट लैंगिक हिंसा आणि लैंगिक हिंसाचारापासून वाचलेल्यांचे हक्क आणि आरोग्याचे रक्षण करणे हे आहे. त्याचप्रमाणे हे प्रोटोकॅल्स वैद्यकीय आणि न्यायवैद्यकीय जबाबदाऱ्या अधोरेखित करतात.

'राईट टू प्रायव्हसी' आणि टू फिंगर टेस्ट

मानवी जीवनाची गोपनीयता आणि मानमर्यादा नेहमीच मानवाचे मूलभूत अधिकार मानले जाते.सर्वोच्च न्यायालयानं व्यक्तिगत गोपनीयतेच्या मुद्द्यावर अत्यंत महत्त्वपूर्ण निकाल दिला. " भारतीय राज्यघटनेनुसार व्यक्तिगत गोपनीयता हा मूलभूत अधिकार आहे ". इतकंच नव्हे तर, घटनेतील अनुच्छेद २१ मध्ये नमूद करण्यात आलेल्या जगण्याच्या व व्यक्तिस्वातंत्र्याच्या अधिकारांचाएक अविभाज्य भाग आहे, असानिर्णय सर्वोच्च न्यायालयाच्या तब्बल नऊ न्यायमूर्तीच्या घटनापीठानं दिला आहे.लैंगिक भेदभाव आणि अत्याचार असलेल्या आपल्या देशात, टू फिंगर टेस्ट सारखी वैद्यकीय तपासणी, जी स्त्रीच्या संमतीविना घेतली जाते आणि अवैज्ञानिक आणि कायदेशीरदृष्ट्या कमकुवत आहे, त्याचप्रमाणे ही चाचणी एखाद्या व्यक्तीच्या गोपनीयता आणि सन्मानाच्या अधिकाराचे उल्लंघन करते. सर्वोच्च न्यायालयाने असे म्हटले आहे की या टू फिंगर टेस्टचा निकाल बलात्कार पीडितांविरूद्ध वापरता येणार नाही. तिला लैंगिक संभोग करण्याची सवय आहे की नाही, हे असंबद्ध आहे, तसेच वाचलेल्या महिलेच्या प्रतिष्ठेमध्ये व तिच्या खाजगी जीवनात बेकायदेशीर हस्तक्षेप करते. त्यामुळे हि चाचणी राईट टू प्रायव्हसी या अधिकाराचे हनन करते.

बंदी असली तरी वापर

या चाचणीवर बंदी घालण्यात आली असली तरी या चाचणीचा वापर अजून ही होतो. ह्यूमन राइट्स वॉचच्या निदर्शनास आले आहे की, डॉक्टर अपमानजनक आणि अमानुष चाचणी करत असतात. त्याची कारणे पुढील प्रमाणे :

· बदललेल्या सूचनांची आणि तरतुदींची माहिती नसणे

· नवीन लागू उपाययोजनांची माहिती नसणे.

· जनजागृतीचा अभाव.

· डॉक्टर आणि आरोग्य कर्मचाऱ्यांना पीडितेची कशी तपासणी करावी या बाबत योग्य प्रशिक्षण नसणे

· तरतुदींती योग्य रीतीने अंमलबजावणी करण्यात कमी राहणे

आरोग्य आणि कुटुंब कल्याण मंत्रालयाने जागतिक आरोग्य संघटनेच्या सहकार्याने मार्गदर्शक तत्त्वांची अंमलबजावणीस प्रोत्साहित करण्यासाठी काही कार्यशाळा आयोजित केल्या होत्या . तथापि, २०१७ पर्यंत केवळ नऊ राज्यांनी मार्गदर्शक तत्त्वे स्वीकारली होती . बलात्कार पीडितांवर वैद्यकीय उपचार करण्यास नकार देणे ही भारतीय दंड संहितेच्या कलम १६६ बी अन्वये एक वर्षाची शिक्षा असू शकते . ह्यूमन राइट्स वॉचमध्ये असेही आढळले आहे की डॉक्टर फॉरेन्सिक पुरावे संकलनास वारंवार प्राधान्य देतात आणि आवश्यक उपचारात्मक काळजी घेण्यास थोडासा विलंब लावतात . २०१४ च्या मार्गदर्शक तत्वांमध्ये असे वाचण्यात आले आहे की आरोग्य व्यावसायिकांनी प्रथम वाचलेल्या व्यक्तीला सुरक्षित वातावरण आणि योग्य उपचार दिले पाहिजेत. वैद्यकीय व्यावसायिक अश्यावेळी दुहेरी भूमिका बजावतात. खटल्यासाठी फॉरेन्सिक पुरावे गोळा करण्याव्यतिरिक्त, त्यांनी वाचलेल्यांना त्यांच्या मानसिक व शारीरिक आरोग्याच्या समस्यांकडे लक्ष देण्यासह उपचार काळजी प्रदान करणे आवश्यक आहे. भारतात नुकत्याच झालेल्या २१ बलात्कार आणि लैंगिक छळाच्या घटनांमध्ये ह्यूमन राइट्स वॉचच्या तपासणीतून असे दिसून आले आहे की उपचार देण्याऐवजी बलात्काराचा अहवाल देण्यासाठी टू फिंगर टेस्ट घेतात.

उत्तर प्रदेश , मध्य प्रदेश , राजस्थान तसेच गुजरात सारख्या राज्यानंमध्ये अनेक घटना समोर आल्या आहेत. त्यातील काही घटनांचा आढावा आपण घेणार आहोत.

· गायत्री (बदलेले नाव) ,एप्रिल २०१६ मध्ये जेव्हा तिच्या वडिलांनी तिच्यावर बलात्कार केल्याची घटना घडली , तेव्हा मध्य प्रदेशातील गायत्री 17 वर्षांची होती. त्यांनी बलात्कार केल्याची माहिती दिल्यानंतर, डॉक्टरांनी नोंद केली की ती कदाचित गर्भवती आहे, परंतु तरीही "टू फिंगर

टेस्ट" घेण्यात आली.

· हर्षिता (बदलेले नाव) राजस्थानमधील चित्तोडगढ येथील ३० वर्षीय विवाहित महिला हर्षिता, जुलै २०१६ मध्ये एका नातेवाईकाने दीड वर्षासाठी वारंवार बलात्कार केल्याची घटना घडली आहे. तिची तपासणी करणासाठी डॉक्टरांनी "टू फिंगर टेस्ट" केली.

· उत्तर प्रदेशातील लखनौमध्ये अश्या घटना आढळून आल्या. जनसाहस या सामाजिक विकास संस्थेने २०० सामूहिक बलात्कार चाचण्यांच्या नोंदींचा अभ्यास केला आणि असे आढळले की ह्या चाचणीचा उपयोग बलात्कार निश्चित करण्यासाठी त्यांच्यावर टू फिंगर टेस्ट घेतली होती .

· त्याचप्रमाणे टाइम्स ऑफ इंडियाने दिलेल्या वृत्तानुसार सुरतमध्ये देखील अश्या घटना आढळल्या. जवळपास १०० महिलांना टू फिंगर टेस्टला सामोरे जावे लागले.

निष्कर्ष

या चाचणीवर बंदी घालण्यात आली असली तरी या चाचणीचा वापर अजूनही केला जातो, ही वस्तुस्थिती आहे. कायद्याची आणि कायद्याने केलेल्या तरतुदींची अंमलबजावणी करणार्यांनी यावर कठोर पाऊले उचलली पाहिजे. लैंगिक हिंसाचाराच्या खटल्यांच्या अहवालात वाढ होत असताना, अशा गुन्ह्यांना रोखण्यासाठी राज्याने प्रयत्न करणे आवश्यक आहे. त्याचप्रमाणे अशा प्रकारच्या गुन्ह्यांमधून वाचलेल्यांना प्रभावी आणि सन्माननीय वैद्यकीय सेवा पुरविणे देखील महत्वाचे आहे. पीडित महिलेचे पुनर्वसन केले पाहिजे त्याचप्रमाणे त्यांच्या अधिकारांचे रक्षण केले पाहिजे. लैंगिक हिंसाचाराच्या आणि असमान, वाईट वागणुकीपासून वाचण्यासाठी स्त्री खंभीर आहेच कारण "बांगड्यांचे वजन पेलणारे मनगट वेळ आलीच तर समशेरही पेलू शकतात". परंतु स्वतःच्या व इतरांच्यामूलभूत आधिकारचे रक्षण करणे ही समजतील प्रत्येकाची जबाबदारी आहे. त्यामुळे प्रत्येकाने आपली ही जबाबदारी नीट पार पाडली पाहिजे तरच अश्या घटना घडण्यापासून आपण रोखू शकतो.

Adv. Kunal Kumbhat, Partner, AZB& Partners, enlightened our students on "Career Goals"

Adv. Farahana Shah delivering a lecture on "Free Speech and Social Media"

TRCL takes immense pride in organizing Faculty Development Programmes from time to time. One such event was hosted by Adv. Abhijeet Rohi on "Research Methodology"

Shailesh Gandhi, former RTI Commissioner addressing students on RTI Act, 2005

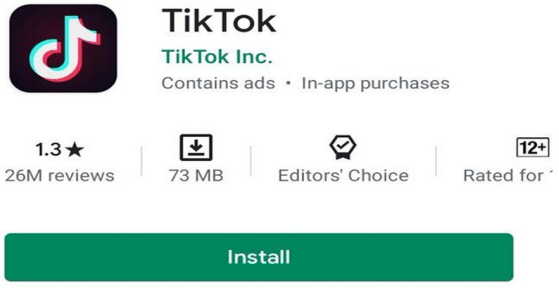
THE COMMUNICATOR

Communication Skills, irrespective of field, is an essential tool for effective leadership and relationship building with individuals at Professional, social and personal levels. The students of TRCL participated in a competition, The Communicator, to compete and showcase their skills with an experiential learning towards way of success. The Event was organized in collaboration with Mr. Krishna Mohan, Head, Crafting Images and judged by Adv. Anees Kazi and Mr. Abhishek Vidyabhanu – National Sales Head (Corporate Sales), Skoda India. The winner of the Competition was Ms. Kritika Kotnis, student T.Y.B.L.S.

TIKTOK RATINGS FALLS AS NETIZEN CALLS FOR BAN

BY PRACHITI SHINDE, S.Y.B.L.S/LL.B.

What started as an argument earlier in May on video application YouTube/ TikTok has now snowballed into a controversy Internet users across India called for the ban of Tiktok. "YouTube vs TikTok" Following this trend, YouTuber Carryminati who is known for making funny videos and roasting people on his channel created a spoof video to roast Amir Siddiqui and other TikTokers. This video was a reply to Amir Siddique's video. The video eventually became the fastest 2M-liked video on YouTube. However, the streaming application had to delete the video due to many reports of defaming an individual.

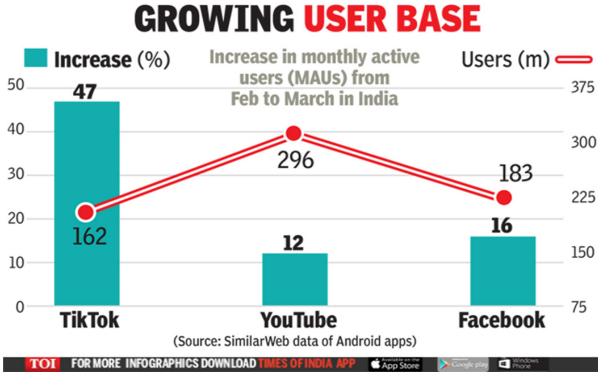


This enraged many fans of CarryMinati aka Ajey Nagar which started a trend called "#JusticeForCarry." In this quest, many people started reviewing TikTok which led to the downgrading of the application to 1.3 stars.

Another issue came up when Faizal Siddique (brother of Amir Siddique) posted a video on his TikTok handle. The video in question had appeared to show Mr Siddiqui threatening a woman who had decided to leave him.

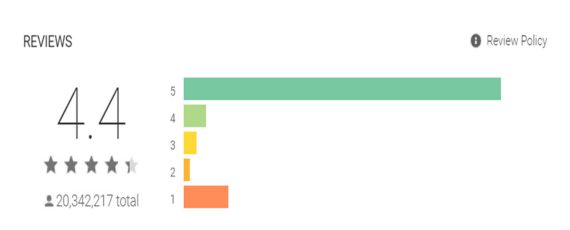
In the clip, he threw liquid at the woman's face. It was water, but the next scene showed the woman's face covered in make-up that resembled the scars and bruising that acid might cause. To which "As per the policy, we do not allow content that risks the safety of others, promotes physical harm, or glorifies violence against women," a spokesman for TikTok said. "The behaviour in question violates our guidelines and we have taken down content, suspended the account, and are working with law enforcement agencies as appropriate." was another statement made by him. Similarly, many videos of such kind went viral and the NCW Chief Rekha Sharma decided to ask the government to ban the social platform in India for "promoting unproductivity" in the country.

Users unearthed and shared numerous recent TikTok videos on Twitter that appeared to promote domestic violence, animal cruelty, racism, child abuse and objectification of women.



Tiktok Lite, a version that works on lower end smartphone has seen rating clash to 1.1 stars. India is the fastest growing and the largest market for Tiktok where it has 200 million of monthly active users. While TikTok saw 107 million downloads in April 2020 globally, this has 2.5 x increases from the previous year near 22% of those came from India. Tiktok faced controversies past in India as well as it was banned by madras high court for three months in April 2019 after being accused of promoting pornographic and exposing children to predators.

How did the TikTok rating increase and why did Google delete the reviews?



Google decided to remove fake reviews from fake Google accounts; Google had to delete TikTok reviews as the app's rating started falling down eventually in a

short amount of time. To save the social media platform from failing due to fake reviews, Google decided to delete fake reviews. The rating has increased to 4.4 stars (as of writing this article). Many users of this short video social media platform are finding relief that app's rating is coming up. This was the justification given by google, however it says that accounts were fake, which cannot be decided as there can be multiple accounts created on one phone number/Gmail id and google just took easy way out of it by saying it were fake reviews, where no one can judge the authenticity of a review it is obviously a personal view point.

Is it justified google removing millions of review isn't it interference with freedom of expression?

Let's analyse the situation first; according to YouTube community guidelines policy for violation states that we may allow content that includes harassment if the primary purpose is educational, documentary, scientific, or artistic in nature in some of examples included there was this example Scripted performances: Insults made in the context of an artistic medium such as scripted satire, stand-up comedy, or music

Carryminati's video was taken down due to report for cyberbullying which was not his intention (he made another video justifying it) as it was purely staged which in fact comes under some of the exceptions in the policy. Maneka Sanjay Gandhi, an Indian politician, claimed that TikTok — as well as the executive who sees the app's operation in India — has not listened to the feedback and refused to take down derogatory videos and hold people who posted those clips accountable despite her reports. Many genuine reviews were also deleted after mass deletion of reviews which shows dual standard of google as it operates YouTube and Ajey's video was removed but in spite of reporting many other videos about the issues related to animal cruelty or objectifying women uploaded on TikTok, the app wasn't taken down instead reviews were deleted. This is not the first time it happened last year when pornographic videos were published on the app which exposed children towards predators.

Vijayashankar (Naavi), chairman at the Foundation of Data Protection Professionals in India (FDPPI) and a senior lawyer from Chennai mentioned, "SC in the past has taken many consistent stands on freedom of expression. Earlier, they have gone ahead and said that the freedom of expression is the most sacrosanct thing and they had banned section 66A of IT Act and now I think they are caught in these contradictions. Presently they have just postponed the problem."

But freedom of expression in the Indian context comes with some conditions. Just because Freedom of Expression is a fundamental right, it does not mean that social media websites can do anything, especially with respect to pornographic content and its potential of exposing children to sexual predators.

Duggal further added, "Till now, these websites had been hiding behind the Supreme Court judgment of Shreya Singhal vs Union of India, where they claimed that they are mute spectators and cannot remove any content till such a time that they are presented with a court order or an order from a governmental agency. I think that approach has to give way to more proactive approaches on the application at the website level. They have to comply with the IT Act and rules made thereunder. Whether they are physically operating in India or not, so long as their services are made available in computer systems physically available in India, they have to abide by the law of land. India is a big market and service providers have to be sensitive to the needs of the government and also towards the expectations of the users. Self-regulation is important if they do not want government intervention."

Google violated fundamental right i.e. article 19(1) of constitution of India which states "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." As said in the article people are free to express their views and it cannot be removed just because Byte Dance's TikTok app, suffered losses and google wants to earn money from it or maintain friendly relationship. In the article, it also includes Right to criticise: In S.Rangaranjan vs P. Jagjivan Ram , It was observed that everyone has fundamental right to form an opinion on any issue of general concern. Intolerances is as much dangerous to democracy as to person himself. The answer to the question that is it justified; it is not and it is definitely inference with fundamental rights of the user and the audiences.

ONLINE SALE OF LIQUOR AND CORONAVIRUS

BY ROSHNI RAJESHKUMAR YADAV, S.Y.B.L.S/ LL.B.

To stay away from a domino impact of expanding trouble on medicinal services foundation, each administration choice must be made cautiously. The Confederation of Indian Alcoholic Beverage Companies (CIABC), the peak assemblage of driving alcohol firms as of late kept in touch with the Ministry of Commerce, Ministry of Health just as to different state governments to permit online offer of alcohol while the lockdown proceeds.

While CIABC presents a monetary and livelihood arguments to help their interest, which may seem persuading to states considering exhausting state exchequer, a few general wellbeing concerns encompassing the online offer of mixed drinks require consideration in the COVID-19 setting.

Liquor and wellbeing

As per WHO, liquor utilization adds to more than 3 million deaths (5% of all deaths) every year comprehensively.

According to the Global Burden of Diseases, there has been a consistent ascent in the quantity of deaths ascribed to the utilization of liquor in the course of the most recent two decades with the all-out number of deaths expanded (in outright numbers) by over 5% somewhere in the range of 2010 and 2016 alone.

Liquor has been connected with roughly 230 sicknesses, including 40 diseases that would not win without liquor.

It has been credited to deaths that have happened because of irresistible sicknesses, purposeful and unexpected wounds, stomach related infections, Non-Communicable Diseases (NCDs), and suicides. In 2016, it was the seventh driving danger factor for both passing and inability balanced life years.

What position's identity is' evident that any liquor use is related with some measure of hazard, and from a general wellbeing viewpoint and at the population level there are no degrees of utilization at which no risks are involved.

In India, about 32% of grown-ups are current liquor purchasers, the greater part of whom are perilous consumers. This is simultaneous with the finding that while consumers comprise a minority, substantial liquor use is the mark drinking design with a solid inclination for high-quality refreshments, for example, spirits.

An overall examination of substantial episodic drinking among current consumers (15+ years) places India in the 30-44.9% prevalence classification.

Liquor and COVID-19

In the current COVID-19 emergency, liquor as a basic hazard factor, identified with a few NCDs requests considerations. India is as of now seeing the connection of COVID-19 with NCDs including hypertension, cardiovascular ailments, diabetes, interminable respiratory infections, kidney diseases and a variety of cancers.

Non-Communicable Diseases (NCDs) incline influenced people to contaminations and increment the danger of serious disease and death among the infected. NCDs add to around 60% of all deaths in India. When the nation is getting ready to help its social insurance framework to battle the eccentric worldwide pandemic, it is important to address the hazard factors basic NCDs and lessen the predictable burden on the human services foundation.

WHO has suggested a solid way of life for better substantial capacities, including boosting insusceptibility, in the hours of the COVID-19 emergency. The proposed solid practices incorporate among different practices, maintaining a strategic distance from liquor intake and quitting tobacco.

Allowing the online offer of alcohol as proposed by CIABC will expand access to liquor and increase overwhelming drinking by people, under lockdown because of absence of work, segregation, and stress initiated from vulnerabilities encompassing the present worldwide emergency.

In addition, liquor inferable damages are frequently thought little of, particularly for ladies and youngsters. Liquor adds to abusive behaviour at home executed against ladies and individuals under 15 years old, who

don't consume liquor yet who are in danger of wounds from brutality brought about by the alcohol user. The impact of the current lockdown in India and expanding dangers of abusive behaviour at home is as of now surfacing in news reports.

Lawful Obligations and Commitments

In February 2020, a consistent choice was embraced at the WHO Executive Board (EB) meeting that recognized the worldwide liquor trouble as a "general wellbeing need" and mentioned "quickened activity" on liquor hurt.

The EB featured the general burden of disease and wounds inferable from liquor utilization that remained unsuitably high and underscored on the adequacy of proof for the cancer-causing nature of liquor.

During this meeting, an alliance of nations drove by Thailand won the endorsement to build up another worldwide activity intend to diminish liquor hurt. India was among the 10 member States that proposed the draft choice, thinking about the administration's responsibility to advancing general wellbeing.

The Indian government is additionally limited by other national and global responsibilities that order the legislature to regard, ensure, and satisfy the privilege to wellbeing of its residents. Article 25 of the Universal Declaration of Human Rights (UDHR), Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 3 of the International Health Regulations (IHR) are of significance to worldwide wellbeing and articulates the conclusive plan of the privilege to wellbeing.

Liquor likewise discovers notice in the worldwide plan of Sustainable Development Goals (SDGs) as it is connected with destitution annihilation, sexual orientation fairness, and decreasing brutality against ladies.

The Indian government has likewise embraced a National Target of accomplishing 10% relative decrease in the prevalence of Alcohol use by 2025.

The national lockdown, which is planned for controlling the spread of the coronavirus, gives a fantastic chance to increase de-addiction administrations and help individuals in quitting liquor by lessening accessibility and access.

The Supreme Court has interpreted Article 21 of the Indian constitution to incorporate the essential right to wellbeing and throws a commitment on the Government to save life and accommodate satisfactory nourishment. By expanding access to liquor during the present worldwide and national wellbeing emergencies, the administration may not exclusively be infringing upon Article 21 yet may likewise be in struggle with Article 47, a Directive Principle that forces on the State an essential obligation to raise the degree of nourishment, the way of life and improve general wellbeing, and achieve disallowance of inebriating beverages and medications which are damaging to wellbeing.

Of the ten systems prescribed in the WHO's Global Strategy to Reduce the Harmful Use of Alcohol (2010), one of the centre mediations is to establish and uphold limitations on the physical accessibility of alcoholic beverages.

Thinking about the cost-viability of this intervention, it likewise includes as one of WHO's best purchases.

Expanding accessibility and improving access by allowing on the web deal and home conveyance of alcoholic beverages (a non-essential commodity) will be counterproductive to the national endeavours of the Government of India embraced to control the spread of the Corona infection and might render purposeless all the penances made by the basic man and the brunt borne by the national economy.

To keep away from a domino impact of expanding trouble on the medicinal services foundation, each administration choice must be made with a general wellbeing focal point that tends to hidden hazard variables of other transferable and non-transmittable illnesses.

SELF-DEFENCE TRAINING-A STEP TOWARDS PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IN INDIA

BY PRASHANT CHATURVEDI, T.Y.LL.B.

BRIEF BACKGROUND HISTORY SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IN INDIA

In Vishaka & Others v. State of Rajasthan & Others AIR 1997 S.C. 3011 also known as Sexual Harassment Case wherein Bhanwari Devi a social activist/worker in one of the village in Rajasthan's working under a social development program at rural level initiated by the Rajasthan's state government in an attempt to stop the marriage of the Ramkaran Gujjars (thakurs) daughter, who was merely less than one year old was brutally gang raped by Ramkaran Gujjar and his five friends in front of her husband in September 1992 and were acquitted by Trail Court for not been guilty however the Rajasthan High Court later held that it was a case of gang rape which was conducted out of revengeful situation.

All the above incidents led to nationwide protest in country and filing of Public Interest Litigation (PIL) writ petition in Supreme Court under Article 32 of the Constitution of India by Vishaka, an NGO working for protection of women rights along with others w.r.t violation of fundamental rights of women and Issue of Compulsory Preventive Guidelines for the prevention of sexual harassment of women at workplace.

SUPREME COURT DECISION & ISSUE OF GUIDELINES IN VISHAKA CASE DATED 13/08/1997

The court observed that the fundamental rights under Article 14[2], 19[3](1)(g) and 21[4] of Constitution of India provides that, every profession, trade or occupation should provide safe working environment at workplace to all its employees specifically women employees. And that women have fundamental right towards the freedom against sexual harassment at workplace. It also put forward various important guidelines for the employees to follow them and avoid sexual harassment of women at workplace.

The court also suggested to have proper techniques for the implementation of cases where there is sexual harassment at workplace as the main aim/objective of the Supreme Court was to ensure gender equality among people and also to ensure that there should be no discrimination towards women at there workplace. The Supreme Court under its guidelines made the term Sexual harassment well defined, accordingly any physical touch or conduct, showing of pornography, any unpleasant taunt or misbehavior, or any sexual desire towards women, sexual favor will come under the ambit of sexual harassment.

ENACTMENT OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Supreme Court of India vide its decision dated 13/08/1997 in Vishaka Case above not only issued Mandatory Preventive Guidelines to prevent Sexual Harassment of Women at Workplace but also directed the Central Government to enact a specific legislation in this regard. However, its rather disappointing and quite regretful that after almost 16 years of passing of above landmark decision and almost 21 years after this horrifying event took place the Parliament of India finally passed The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 dated 22/04/2013 which was enforced in India dated 09/12/2013 to supersede the above guidelines issued in Vishaka Case containing detail provisions in this regard.

POST-ENACTMENT SEXUAL HARASSMENT OF WOMEN AT WORKPLACE CASES IN INDIA

There has been a rise of 54% in number of Registered cases of sexual harassment at Indian workplaces as the cases reported was 371 in 2014 and in 2017 the number of reported cases went up to 570 as per government data tabled in the Lok Sabha (lower house of parliament) by the Ministry Of Women And Child Development Government of India on July 27, 2018 and December 15, 2017. Overall, 2,535 such cases were registered over the four years ending July 27, 2018 Sexual Harassment Of Women At Work Place in India--that is nearly two cases reported

every day--as per government data tabled in the Lok Sabha (lower house of parliament) by the Ministry Of Women And Child Development Government of India on July 27, 2018 and December 15, 2017 during the Question & Answer Session in the Parliament wherein questions were asked member of opposition to concern minister of Women And Child Development.

State-wise Number of Cases in India during 2014-2018 on above Govt Data-

Uttar Pradesh--the country's most populous state--reported the most cases 726 over 2014-18, followed by Delhi (369), Haryana (171), Madhya Pradesh (154), and Maharashtra (147), as per the data presented in Lok Sabha by Women and Child Development Government of India on July 27, 2018. From analyzing the above data it can be clearly seen that the number of cases of Sexual Harassment Of Women At Work Place in India has been on constant rise and the above legislation has not really proven to be an effective & efficient mechanism to prevent & reduce various forms of sexual harassment against women at workplaces in the Country providing justice not only in letters but also in true spirit.

SUGGESTED ALTERNATE MEASURES TO PREVENT SEXUAL HARASSMENT OF WOMEN AT WORKPLACE-

In my opinion after critically analyzing the above scenario in India the above issue cannot only be resolved by enacting of a legislation by government but rather there shall be combination of legal and non-legal measures shall be used stated as under-

Recommendation 1-Imparting of Compulsory Self-Defense Training by Employer to Women Employees: All women working in any institution whether Govt or Non-Govt at every level whether Official or Clerical shall be imparted compulsory Self-Defense Training by the employer either through a Self-Defense Expert or an Organization Specialized in Self-Defense Training to teach women various Self-Defense techniques to raise their moral physically and mentally.

Recommendation 2-Constitution of Women Self-Defense (WSD) Committee in Institutions:

Instead of Constituting a Committee on Sexual Harassment Of Women At Workplace in an institution a Women Self-Defense (WSD) Committee shall be constituted in its place to replace the former committee having structure of 3 members namely 1 women representing Senior Management 1 women representing women employees and 1 women representing Self-Defense Expert or Self-Defense Organization.

Recommendation 3-Suitable Amendments in Income-Tax Act 1961 and Companies Act 2013 by Central Govt:

The Central Govt shall make suitable amendments to the Income-Tax Act 1961 to incorporate self-defense training expenses incurred by employer on imparting self-defense training to women employees under the category of allowable deductions and to incorporate self-defense training expenses incurred by employer on imparting self-defense training to women employees to claim benefits under CSR provisions of Companies Act 2013.

Recommendation 4-Establishment of Women Grievance Redressal Forum at District State and National Level by Central Govt:

The Central Govt shall by enacting suitable legislation Constitute an Women Grievance Redressal Forum to specifically dealt with Issues relating to women in a time-bound manner by adopting a 3-Tire Structure namely District Women Grievance Redressal Forum at District Level, State Women Grievance Redressal Forum at State Level and National Women Grievance Redressal Forum at National Level having appropriate structure consisting women in majority with right to appeal directly to Supreme Court on Question of Law similar to Consumer Redressal Forum at District State and National Level under Consumer Protection Act 1986.

CONCLUSION

On the basis of above analysis and recommendations I would like to conclude my article stating specifically that there are a plethora of laws enacted by both Central and State Governments in India for the Protection & Prevention of women against various kinds of offences however the implementation of such laws by the administrative authorities in India has rather been very disappointing and the lack of transparency in judicial processes has further led to use of delaying tactics by the offenders causing undue delay in advancement of justice to the aggrieved women.

Further in order to advance justice to women of India in its true letter and spirit a combination of legal and non-legal methods shall be adopted by the Government, Administrative Authorities and the Judiciary and such methods shall be given adequate promotion by above authorities in the country to create awareness among women at all levels in the Country to be vigilant among the rights and prevent their undue exploitation by the male dominated society in India.

A BRIEF ON THE CITIZZENSHIP AMENDMENT ACT

BY ANUBHA SINGH, T.Y.LL.B.

After its enactment, on 12th December, 2019, the Citizenship Amendment Act ("CAA") has become the most controversial Acts in recent decade. The whole nation is discussing and debating on the CAA. Thousands of PILs have been filed against it and there are demands of stay on the CAA.

The amended law seeks to grant citizenship to the migrants who belong to the Hindu, Sikh, Buddhist, Christian, Jain, and Parsi communities and arrived in the country from Pakistan, Bangladesh, and Afghanistan on or before December 31, 2014. These communities are minorities in their original countries and were being persecuted for their different religious belief by the majority of the country.

Nationwide protest against or in support of CAA has started and finally, led to communal riots. Clamour of left-liberals, so called seculars and some intellectuals are at crest. Opposition, political parties and communists are doing every bit to polarize it. They all are criticizing and claiming it to be Pro Hindu.

The loudest criticism is that, the CAA is ultra vires and against the virtue of Secularism implicit in the Indian Constitution. India has age-old history of providing shelter to people facing religious persecution, even before we framed our secular democratic Constitution. India provided shelter to Parsis and Jews when they were persecuted world over. Most of them were being forced to convert due to abuse and discrimination inflicted upon them by followers of Islam. They found respectability and right to religious freedom on our soil. Continuing the same tendency, once again, India stepped forward to provide shelter to the migrants, most of whom belongs from India. If India can open its heart and land for communities belonging from other countries, why can't they do it for their own people? Indian Citizenship is dire necessity for these communities who were forced to leave by majority.

One more Controversy on CAA is-expulsion of Muslims. It is absolutely reasonable; Afghanistan, Bangladesh and Pakistan are Islamic countries, Muslim, being majority in these countries cannot be persecuted for their religious belief. Religious persecution is the rationale of CAA. For Hindu, Sikh, Buddhist, Jain and Parsis, no country would be safer rather than India because the utmost of these communities is staying in India.

The biggest debate is that the proposed amendments violate Article 14 of the Indian Constitution.

Article 14 provides that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The Article does not provide universal application of the law and the State grasp the power of making reasonable classification. The classification is based on intelligible differentia which distinguishes persons or things that are grouped together, are different. The law shall be equal among equals. Only Like should be treated alike and not the unlike should be treated alike. The condition of the minorities in Afghanistan, Bangladesh and Pakistan is not equal, hence, they cannot be treated equally.

Amended law is only related to grant of citizenship to illegal migrants, and has nothing to do with citizen of India. It's wrongly promulgated against Muslims; this allege is a sham and misleading. It's sad to see people debating, protesting and rioting against the law, without even reading and understanding completely. No State is obligated to provide Citizenship to all it's illegal migrants, Being the 2nd most populated country of the world, India has a core issue of overpopulation and State can be selective in terms of citizenship. In light of the above, the author therefor believes that the CAA neither violates the right to equality nor snatch away the citizenship of a single Indian.



MOB LYNCHING: CRIME OR JUSTICE

BY UMESH MAURYA, OMKAR SHANBAG AND SHUBHAM VELHANKAR, S.Y.LL.B.

INTRODUCTION:

The origins of the word "lynch" are obscure, but it likely originated during the American Revolution. The verb comes from the phrase "Lynch Law", a term for a punishment without trial. Two Americans during this era are generally credited for coining the phrase: Charles Lynch (1736–1796) and William Lynch (1742–1820), who both lived in Virginia in the 1780s. Charles Lynch is more likely to have coined the phrase, as he was known to have used the term in 1782, while William Lynch is not known to have used the term until much later.

A Lynching is an unlawful murder by an angry mob of persons. In history majorities or dominant groups have used Lynching as weapon to control minorities. Many innocent people have been tortured very cruelty and some of them lost their lives for no reason. There are many reasons for mob-lynching such as rape, beef issue, anti-nationalist, robbery, political reasons. When people take law in their hands and decide to punish the suspected the result is unfortunate Lynching. People losing their trust on law and order therefore they are taking laws in their hand. In India people are very emotional for religion it is easy to influence mob for Lynching. Mob-Lynching has not been mention in IPC so there is no rule of law or punishment available for Lynching.

Mob-Lynching is not new concept in India, In 1857 Mobs attacked on British, in 1947 while Partition people attacked on families, Villages, even Mob burned houses of people who belong from different religion. There are some communal violence such as in 1984 (Sikhs), in 2009 (Christian riots), in 1992 (Bombay Muslim riots), in 2002 (Gujarat), most recently 2018 (Muzaffarapur).

MOB LYNCHING IN INDIA:

Cow vigilante violence involves mob attacks in the name of "Gau Rakshak" targeting mostly illegal cow meat smugglers, but in some cases even licensed cow traders, has swelled since 2014.There is a question on whether there has actually been any change in the number of such incidences, as Government Data points out to reduced communal tensions post 2014.Cattle slaughter is banned in most states of India Recently emerged cow vigilante groups, claiming to be protecting cattle, have been violent leading to a number of deaths. Gau-rakshak groups see themselves as preventing theft, protecting the cow or upholding the law in an Indian state which bans cow slaughter. According to the report, a total of 63 cow vigilante attacks had occurred in India between 2010 and mid of 2017, in these attacks between 2010 and June 2017, "28 Indians – 24 of them Muslims – were killed and 124 injured", states the report.

A mob lynch is an angry crowd of people which gather with an intention to kill people or to kill someone without a trial, because they believe that person has committed a crime. It is referred to a group of people if they are very angry with someone because they believe that person has something bad or wrong. It is a group of people who criticize someone severely and try to bring about the persons downfall. According to report a total of 63 cow vigilante attacks has occurred in India Between 2010 to 2017. Lynching refers to premeditated extrajudicial killing by a group it is most often to use characterize informal public executions by a mob in order to publish an alleged transgender, to punish a convicted transgressor or intimidate group. It can also be an extreme form of informal social control and it is often conducted with the display of public spectacle. Instances of lynching's and similar mob violence can be found in every society.

REASONS OF MOB LYNCHING:

(a) Some people used this incident to settle their personal enmity

Mob lynching can be caused by one person imposing its motive and intention to the public, which those people to believe in him and accordingly. Which someone trying to settle their personal enmity by taking advantage of the mob.

Such like mind people believe it and take it as their own agenda, which make them think that they are doing it right and also have believe that he won't alone be held responsible for the incidents caused and can get away Scott free without any fear of law. No action taken against few mob lynching case, leads to the motivation to other person with personal enmity that they can act willingly and won't be caught. As in such cases the main influencer only influence the mob and let them act. Because of no action taken against such people, it empowers them and also other individuals with same intentions to cause mob lynching easily.

(b) Mob lynching due to people losing faith in law

The most basic and essential feature of democracy is to protect the life and liberty of the people, but today India being the largest democracy is turning to mobocracy. Due to malice politics, the life and liberty of the people are being infringed upon.

Whereas mob lynching raises an important question: are people losing faith in law?

There has been demand for anti-lynching law. But there are enough provision in IPC e.g. Sec 302, 304, 307, 34, and also many guidelines have been given by the Supreme Court in the case of Tehseen S. Poonawalla vs Union of India . Rumours have become one of the source of mob lynching. Where people think they can hide in the crowd and also because of less strictness of laws and rules and regulations, they can get away scott free without any fear of law. As there was a bogus investigation done in Pehlu Khan's case, which made people to lose faith in law. If the integrity is missing in implementing laws then nothing is of any use.

(c) Hatred speech of Politicians

India being the democratic country, where freedom of speech and expression is a right, where people can put their views, and can not only criticize the government put express their political views as well. Though having law to restrict the hate speech and defamation but their implementation being zero, leads to the people to act for freely with their views. Political blame game, makes people to believe and act to cause lynching, hate speech becoming one the leading source for fuelling the mob attacks and taking away many lives, less stricter laws had empowered the mob lynching, where few political agenda and few groups getting their personal intent to be fulfilled. Causing disturbance in peace and security of the nation.

Indian Case studies: State of Assam vs Shaukat Ali

In this case a Muslim man named Shaukat Ali was harassed, humiliated, insulted and beaten by the mobs over beef. He was 68 years old Muslim man. He was attacked by a mob in the Biswanath district of Assam and allegedly forced to consume pork. Ali was accused of selling beef. The Assam cattle preservation act 1950 allows the slaughter of cattle over 14 years of age of the animal out of injury or deformity, is incapacitated for life. The Mob surrounding him for a barrage of questions at him in Assamese such as:, why did you sell meat here? Do you have license? Who gave you License? Are you Bangladeshi? Ali tried to respond but was cut short by other voices. The mob didn't listen to Ali. It did not matter what Ali wanted to say. Ali was allegedly handed a piece of pork meat and was forced to eat it. There are threatening his fingers egging him on to consume the religion forbids. Ali's humiliation at the Assamese mob is an indicator of how territoriality dehumanises the human condition. The mob represents the legitimate gang of the nation. The mob resorted to moral, religious, and political bullying to ascertain the language the nations gang will unleash on minorities as it patrols the nations boundaries. Ali was reduced to bare life. The man was forced to be beaten and was held liable for an offensive act.

Foreign Case Study: Vadim Norzhich and Yossi Avrahami vs El-Bireh police (Palestinian)

On 12th October 2000, the infamous and brutal Ramallah lynching took place. This happened at el – Bireh Police station where a Palestinian crowd killed and mutilated the bodies of two Israel defence forces reservists Vadim Norzhich and Yosef Avrahami who had accidentally entered the Palestinian Authority controlled city of Ramallah in the west bank and were taken into custody by Palestinian Authority policemen. The Israeli reservists were beaten and stabbed. At this point a Palestinian appeared the window displaying his blood soaked hands to the crowd which erupted into cheers. The crowd clapped and cheered as one of the soldiers bodies were thrown out of the window and stamped and beaten by frighten crowd. One of the two was shot set on fire and his head beaten to a pulp. Soon after the crowd dragged the two mutilated bodies to AL-Manara square city enter and began an impromptu victory celebration. Police then tried officers proceeded to try and confiscate footage from reporters.

PREVENTIVE MEASURES:

In the case of Tehseen Poonawala vs Union of India, Supreme Court observed lynching as a "horrendous act of mobocracy". The Hon'ble Court directed the centre as well as state governments to frame laws specifically for mob lynching and also laid down some guidelines such as setting up of fast track trials, compensations for victims and disciplinary actions against lax law-enforcers. The Hon'ble Court stated that for every district, there must be a Nodal Officer not below rank of Superintendent of Police who shall deal with the cases related to mob violence and lynching. A special task force should also be appointed to get reports about incidents, victims and persons who spread hate speech and fake news.

The Hon'ble Court pointed that "It shall be the duty of every police personnel to cause a mob to disperse, by using his power under section 129 of CrPC, has tendency to cause violence of lynching in the disguise of vigilantism or otherwise." The Home Ministry of India should take initiative to implement the constitutional goals of social justice and rule of law. The broadcast of such incidents on radio or television including the official website of Home Ministry must take place. The police shall cause to register FIR under section 153A of the Indian Penal Code, 1860, against those disseminate irresponsible and fake message and videos having which can cause incident such as mob lynching.

CONCLUSION:

A mob without having any knowledge agreeing to kill someone shows behaviour formed on account of lack of education and awareness. It is fact that in the case of mob lynching, victims could be male, children, poor, those belonging to vulnerable communities and shows that these are the crimes which are against the marginalized community. It is clear violation of human rights, fundamental rights; not just legal rights but also moral rights. It is sad to know that people resorting to mob lynching consider themselves more important or rather above the law. Such situations create panic in society, which affects the growth as well as development of society.

To solve such problems, it is important that government should make a law and create awareness regarding issues related to mob lynching.

"A society with lynch culture needs a big zoo, not for the animals definitely, but for the very people themselves!" -Mehmet Murat ildan

IS CASTE BASED RESERVATION (IN EDUCATION SECTOR) NECESSARY IN 21st CENTURY?

BY SMRITI PAL, T.Y.LL.B.

Reservation system was introduced with the intention for upliftment of certain classes of the society such as (Scheduled Castes (SC), Scheduled Tribes (ST), Backward classes (OBC), etc.) so that everyone can prosper economically and socially, but day by day it turns to be something different from what it was expected to be, I would like to explain this by an example:

2 friends appeared for an entrance exam one scored 62% and another one 92% both of them belong to equal level income families, but during admission process one with 62% got admission in very good college but the other one with 92% did not and the reason being reservation in education institution. So, ultimately the conclusion is the seats are for reserved and not for deserved.

Earlier they were deprived from the education system but now the conditions are different. In 21st century it is not necessary that all the people belonging to the reserved category are poor nor are the people belonging in the general category are rich. People are manipulating this article and are misusing it in the name of caste. It has been seen that; it is always the poor who are suffered no matter to which category they belong to. So, this system of reservation of seats in education and job sector needs to end and it should be on the basis of economic condition of the families rather than caste.

So, basically, the people who are economically weaker should be given benefit but not by providing reservation of seats in entrance exams or competitive exams the reservation should be given in Schools /Private Coaching Classes / Educational Institution by giving them discount in fees to make them better competitors for future or should pay for the bright students education and let the merits and efficiency be the sole consideration for admissions in institutes.

A BRIEF ON REVOLUTIONS

BY RUCHI TIWARI, T.Y.L.L.B

History of the word revolution has first used by Ancient Greek philosopher Aristotle (384–322 BC) and after that, this word became so popular that it has since been used in the fight against everything. This means that the word is used each time people of society are not happy or do not agree with what is happening around them, irrespective of how small or big that matter may be. The word revolution is always known and used in the context of bringing about or igniting a 'change in the world' to introduce some form of reform in the society. Sometimes, this change or transformation may be something that has been long wanted and needed, because as humans, we are constantly evolving and have the natural urge for a change in our lives. This change helps break away from rigidity and enable a more flexible approach to life and society. Many other times, although people need change, owing to inherent human vulnerabilities and fears, people wait for others to take the initiative and bring about the change in the society and this brings the real scenario of our system which ultimately leads all of us to blame most of the time, the leaders in our community for braving such a transformation.

While the world has witnessed many revolutions, the naming ceremony of these revolutions is given based on the reason for a revolution. Successes of these revolutions are because of the people involved, people joining the movement for change, and on many occasions, many of these revolutions have liberalised countries and attained independence. But there are still many issues in which no revolution has yet been started. As has been rightly observed by Paulo Freire "Revolution is born as a social entity within the oppressor society".

The most important thing is that revolutions can be of anything in nature, many accrue for taking power from one hand and being bestowed to another in the name of democracy; while others accrue due to failure in the part of administration imposing heavy taxes to people but the most common thing is that revolutions are largely on account of dissatisfaction among the human beings and the need for constant change. It remains important in the modern era that revolutions should continue to be viewed as catalyst for bringing about change and help add flexibility to all facets of life.

ARTICLE 23 AND ARTICLE 24 OF THE INDIAN CONSTITUTION: FREEDOM AGAINST EXPLOITATION

BY JUI KONDKAR, MEMBER SYLL.B.

INTRODUCTION

India is the largest democracy in the world. India has been a great victim of slavery for Centuries. It took a lot of years to get India free from slavery and finally after the enactment of the Indian penal code, 1860. Slavery was completely abolished in India. The Constitution framers through articles 23 and 24 removed such practices. Our Constitution guarantees liberty and dignity to every individual, exploitation means the misuse of services rendered by others with the help of force.

The practice of exploitation violates the basic concepts of the Indian Constitution. According to this right, no person has a right to exploit any other person in any manner.

Article 23 - prohibition of 'traffic in human beings' and forced labour.

Article 23 of the Indian Constitution prohibits human trafficking, forced labour, and other similar things. It also looks into that any violation of this provision will be considered as an offense and a person contravening such laws will be punishable.

Features of Article 23

- Rights against exploitation is the fundamental right of an individual given under Article 23 of the Constitution.
- It protects individual against the state as well as private citizens
- It protects citizens as well as non-citizens against **exploitation.**

PROHIBITED PRACTICES BY ARTICLE 23

Article 23 prohibits certain practices as in: -

- Bonded labour /Debt bondage: article 23 prohibits bonded labours because they are a type of forced labour as per the article. A person is forced to pay off his debt under this practice. Often these debts are passed to the next generation. Therefore, it is one type of forced labour.

HUMAN TRAFFICKING: - That means selling off and buying human organ-like products and includes immoral trafficking of women and children. Although, slavery is not mentioned in this article it comes under the scope of traffic in human beings. There are various laws passed for punishing human trafficking such as parliament has passed Suppression of immoral Traffic in women and girls Act, 1956.

LANDMARK JUDGEMENTS

SANJIT ROY Vs STATE OF RAJASTHAN

The state employed people for certain work under the famine relief Act. The people were badly hit by famine, thus the state employed them However, these people were paid even below minimum wages. On the ground that the money is given to help them in meeting the famine situation.

Article 24-Prohibition of employment of children in factories, etc.

No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This article ensures the welfare of children and safety for children.

However, this article does not prohibit the employment of children in harmless jobs or works, etc.

LANDMARK JUDGEMENT

PEOPLE'S UNION FOR DEMOCRATIC RIGHTS Vs UNION OF INDIA

Some people including children below the age of 14 were employed in the construction works of the said project in Delhi. It was contended that the employment of children Act, 1938 was not applicable in the case of children employed in construction work since construction industries were not specified in the schedule of the children Act.

CONCLUSION

Since the beginning, the stronger has always dominated and exploited the weaker person. In such a situation, it was needed to protect the weaker from such exploitation and provide them equal rights. However, child labour is a crime that is still prevailing in our society. It is one of the reasons for our country is still developing and not developed. Healthy children lead to a bright future for the country. Hence proper laws are a dire need.

LEAD, FOLLOW OR GET OUT OF THE WAY

BY PRINCE GEORGE, S.Y.LL.B.

Civilizations have advanced because every generation had some who dared to think differently, attempted to venture into unchartered waters and had the courage to bear the risk of failure. These were the league of extraordinary gentlemen. These were Leaders.

A leader is someone who knows the way, shows the same, and importantly walks the way. He doesn't shy away from the unknown and un-attempted. Rather, he gets a sense of thrill and adventure in thinking out of box and doing things never done before. He sees opportunity in what others perceive as threat. He is the hero – he is the THALIVA (Tamil for Leader. No other language uses the term Leader as passionately and stylishly as Tamil).

Every species in this planet is led by a leader. And nature ensures that only the fittest for the task lead. Hence, we see that in a pride of Lions the smartest of the female lions lead the strategy and execution of a hunt. As they are proven hunters. While the male Lions lead the migration of the pride and come in front to thwart any attack on the pride. Because they are physically stronger. The Lion example gives a very important lesson to mankind too. In today's complex work-structure we need to identify the need of the hour and accordingly choose the leader.

Like every individual I too had learned valuable lessons on leadership through experience and observing others lead. In fact the journey of learning involved a lot of unlearning and re-learning. And even today I am intrigued by the mysteries of leadership. There is no one style of leadership that appears to be befitting all situations. My first lesson on leadership takes be back to my hostel days in YMCA. There was a plaque mounted on the entrance door of our warden's office saying "lead, follow, or get out of the way"- this struck me so hard that it remained the ultimate guide to leadership for the following, almost a, decade.

Most of the problems of this world has its genesis in the fact that we have few leaders and a lot of useless but aspiring leaders. So, if we divide any political/ social/ or corporate group it will invariably have three sub-groups- Leaders- desperate to be leaders- and followers. Whereas ideally it should only have leaders and followers. Unfortunately, the proportion of "desperate to be leaders" is surprisingly very high. It is these unworthy bunch that causes discord in any system. They are the ones who negate all constructive decision making and execution. They insist the group to follow their path irrespective of how treacherous the route is. It is for such troublemakers that wise men of yore had advised to follow the decision of the leader or move out of the pack but not to jeopardize advancement of the group. This was a mantra for me and I always considered the word of the leader as final even if there were serious disagreements or the decision of the leader was detrimental to the group or my position. Such attitude in followers alone, I thought, can bring harmony in the group. Else ten minds can create as many leaders and the whole system will come to a standstill. Though I understood that leaders are not infallibles but I also knew that neither can there be a perfect approach, method, decision. Every idea is deficient and is only as good as its execution. So it's important that the decisions of the leader should be blindly followed in true spirit. His intellect and intension should not be questioned as there could be nuances that the followers may not be aware of. Humble societies have become great civilizations not because they had great leaders but because they had great followers. Similarly, great civilization have collapsed because they had desperate "wanting to be leaders" in the garb of followers. Many great Indian Empires have fallen prey to schemes of sedition of such delinquents who neither had the audacity to lead nor the humility to follow. I always held a leader at a very high esteem and his decisions sacrosanct. So that was how unshakable my belief in my first lesson on leadership was.

We also often hear stories of selfless sacrifices of men on a mere gesture of their leader. Many years later I realized such leaders are a rarity. It is gross stupidity to place every leader in the league of extraordinary men. We live in a very complex world. And often we mistake designations

with leaders. This is especially true in the corporate world. Where everyone comes to earn a living and has a vested interest. Where people at the realm need not always be well-wisher of the organization or its people. Large corporate groups do not belong to any one person. Everyone here comes for self-gain. Every decision is made wearing glasses of self-interest. Every now and then we hear of cases of plausible deniability and making escape goats of innocent subordinates by the higher-ups. At the root of all such incidents lie blind obedience of some follower to the dictates of the leader. Often such decisions are detrimental to the interest of the organization or the follower. Does this mean he should unquestionably follow the instruction? Well never! He should try to correct the leader. But what if there are ulterior motives of the leader? The follower is in a catch 22 situation. Neither can he lead nor follow. Should he get out of the way- meaning leave the organization? If the follower chooses that option then he will end up being a corporate nomad- only shifting organizations. He needs to be more practical and protect himself rather than running away from the situation. This was my biggest unlearning of my first lesson on leadership. Never to mistake designations with leaders. There can be situations in the real world where discords are created in an otherwise harmonious system because of your disobedience. And there is an impasse because your position doesn't allow you to lead and its detrimental to the organization and risk to your own fate to follow. Now I believe - so long as disobedience is for a larger good there is nothing unethical about disregarding the leader.

Thus, today my revised learning is, "Either lead or follow or shout for a change". However, this is not an end. As learning never stops.

"CONSTITUTIONALITY OF INTERNET SHUTDOWN"

BY BHAVESH AMETHA, T.Y.B.L.S./LL.B

ZIG ZIGLAR, an American author and motivational speaker once said 'All one needs to do is read - books, magazines, research the Internet - and pay attention to the influencers in their lives to discover the myriad people of strong moral character who have and still are making positive, meaningful contributions and differences in our world."

The reason to quote this beautiful line is, we should explore the internet and take the good out of it with the positivity and differences in our life. The use of internet or say access to internet or freedom to connect with people or expressing our views/ opinions is our Fundamental Right. Internet is rapidly becoming an integral part of our lives and a place to exercise one's freedom of speech and expression. However, recently, it has been subjected to indiscriminate shutdown by the State. India is currently leading the world in internet shutdowns, with 106 internet shutdowns in the year 2019 alone.

Before coming to the legality of Internet shutdown, we should understand what is internet shut down and what are the types;

Internet shutdowns are absolute restrictions put in place by the government to prevent people from accessing internet services. The shutdown may be limited to a specific place, specific period and on the type of transmission services. Sometimes in extraordinary situations, it can even extend indefinitely. Internet shutdown is sometimes also referred to as "internet kill switch" or "digital curfews".

National internet shutdown: When the internet services are snapped across the nation.

Sub-national internet shutdown: When the shutdown is limited to a specific state or a region.

National mobile internet shutdown: When access to the internet on mobile devices is blocked throughout the nation.

Sub-national mobile internet shutdown: When access to mobile internet is blocked in a specific state or a region.

National app/service shutdown: When access to a mobile application or mobile service like SMS is blocked across the nation.

Sub-national app/service shutdown: When access to a mobile application or mobile services is blocked in a specific state or a region.

The legality of internet access is seen in many cases but the legality of internet shut down is still not been witnessed. There is no dispute that freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial, as was seen in the case of Secretary, Ministry of Information & Broadcasting Government of India v. Cricket Association of Bengal, (1995) 2 SCC 161.

The landmark case of Shreya Singhal v Union of India (2015) 5 SCC 1 played a very important role in the Indian legal system. The case revolves around the fundamental right of freedom of speech and expression under Article 19(1) (a) of the Constitution of India, which challenged the constitutional validity of section 66A and led to the striking down of section 66A of the Information Technology Act 2000. Section 66A provides for the punishment for sending offensive messages through communication services.

In yet another landmark judgment of, Shirin R.K v. State of Kerala, of September 2019, the Hon'ble single judge bench of Justice PV Asha said, "the enforcement of discipline shall not be by blocking the ways and means of the students to acquire knowledge. They should be left to choose the time for using mobile phones. The only restriction that can be imposed should not cause any disturbance to other students." The Hon'ble Court, while discussing the benefits of internet access using mobile phones stated that, apart from the facilities to read e-news, e-books, etc. one can undergo online courses also sitting at home or hostel. While acknowledging the importance of technology, the Hon'ble Court expressed, "... it is pertinent to note that rules

and regulations require reforms to cope up with the advancement of technology and the importance of modem technology in day-to-day life and it should be left to the students to choose the time for using mobile phone." Furthermore, it was also observed that "We intervened in the case because it was about protecting digital freedom, free speech and against censorship. I am glad that the court ruled in favour of the student and thus upheld the right to use the Internet as a fundamental right."

The development of the jurisprudence in protecting the medium for expression can be traced to the case of Indian Express v. Union of India, (1985) 1 SCC 641, wherein the Hon'ble Court had declared that the freedom of print medium is covered under the freedom of speech and expression. In Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana, (1988) 3 SCC 410, it was held that the right of citizens to exhibit films on Doordarshan, subject to the terms and conditions to be imposed by the Doordarshan, is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India, which can be curtailed only under circumstances set out under Article 19(2) under the Indian Constitution.

In this context and reading the above judgments, we may note that in a catena of judgments, the Hon'ble Courts have recognized free speech as a fundamental right, and, as technology has evolved, has recognized the freedom of speech and expression over different media of expression. Expression through the internet has gained contemporary relevance and is one of the major means of information diffusion. Therefore, the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution.

The validity of internet access as fundamental right is laid down in Article 19(1) which is embodied under Part III of the Constitution of India with the help of above landmark judgments.

However, there are some laws which justify shutdown of internet facility and application of the same as being legally valid.

I. Constitutional validity-

After the explanation of the nature of fundamental rights and the utility of internet under Article 19 of the Constitution, we need to concern ourselves with respect to limitations provided under the same article of Constitution on these rights. With respect to the freedom of speech and expression, restrictions are provided under Article 19(2) of the Constitution. Article 19(1) comes with certain exceptions under the same article or we can say in the second clause itself that is article 19(2) this exception is impose for the reasonable restrictions, the ingredients for the same are:

(a) The action must be sanctioned by law;

(b) The proposed action must be a reasonable restriction;

(c) Such restriction must be in furtherance of interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Explanation to the above restriction of constitution it states with reasonable restriction the state can make and impose the law for the interest of country, sovereignty, integrity, etc. hence the nation will be kept first before any of the individual's fundamental right.

II. Section 144 of Code of Criminal Procedure-

As we all know the messages, videos, images, etc. are becoming "viral" through the use of the Internet very fast. To avoid any kind of riots, affray, harming public tranquillity, the order for internet shutdown can be given by District Magistrates or Police Officials under section 144 of the Code of Criminal procedure, which empowers the District Magistrate to issue directions to maintain public order in areas falling under their jurisdiction. Section 144, which has gained notoriety for its indiscriminate use to suppress various protests including anti-CAA protests, gives wide discretionary power to the State to freeze civil liberties. Section 144(4) gives power to extend the decision up to six months looking after the situation of the area and locality.

III. Other laws-

The government notified the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules under the Indian Telegraph Act, 2017, which lays down the procedure to put the restrictions on internet access.

CONCLUSION

The whole idea behind the legality of internet shutdown will be when it is imposed at the time of national security and to preserve the same. If the internet ban is imposed in certain areas as given in the types above will have other effects, as we seen in the landmark judgments. But, as the case comes where some action that can cause harm to public tranquillity,

riots, affray, then with the help of reasonable restrictions and reasonable classifications, shutting down the internet may be required as we have seen in Article19(2) of the Constitution of India. Along with Article 19(2), section 144 of the Code of Criminal Procedure also becomes applicable and valid for the reason of safety of people at large. For any government, preserving the interests of the nation and the country is of paramount consideration coupled with the rights of individual people. Hence, in the end, it is concluded that the shutdown of internet is legal if it is for the welfare of people as the welfare of the people is the first and most important agenda of democratic country and government.

RIGHT TO EDUCATION

BY SONAM GUPTA, MEMBER, S.Y.LL.B.

The right to education has been recognized as a human right in a number of international conventions, including the International Covenant on Economic, Social and Cultural Rights which recognizes a right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all, on particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education, ideally by the progressive introduction of free higher education. Today, almost 75 million children across the world are prevented from going to school each day. As of 2015, 164 states were parties to the Covenant.

The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education from the school and college levels. In addition to these access to education provisions, the right to education encompasses the obligations of the students to avoid discrimination at all levels of the educational system, to set minimum standards of education and to improve the quality of education.

Education in all its forms (informal, non-formal, and formal) is crucial to ensure human dignity of all individuals. The aims of education, as set out in the International human rights law (IHRL), are therefore all directed to the realization of the individual's rights and dignity. These include, among others, ensuring human dignity and the full and holistic development of the human personality; fostering physical and cognitive development; allowing for the acquisition of knowledge, skills, and talents; contributing to the realization of the full potential of the individual; enhancing self-esteem and increasing confidence; encouraging respect for human rights; shaping a person's sense of identity and affiliation with others; enabling socialization and meaningful interaction with others; enabling a person to shape the world around them enables their participation in community life; contributing to a full and satisfying life within society; and empowering and allowing for the increased enjoyment of other human rights. The rights of all children from early childhood stem from the 1948 Universal Declaration of Human Rights. The declaration proclaimed in article 1: 'All human beings are born free and equal in dignity and rights'. The declaration states that human rights begin at birth and that childhood is a period demanding special care and assistance [art. 25 (2)]. The 1959 Declaration of the Rights of the Child affirmed that: 'mankind owes to the child the best it has to give', including education. This was amplified by the International Covenant on Economic, Social and Cultural Rights of 1966 which states that: 'education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. [art. 13 (1)]

ON FUNDAMENTAL RIGHTS

BY SIDDHANT SINGH, S.Y.B.L.S/LL.B.

Introduction and background of fundamental right

The Fundamental Rights in India enshrined in the Part III of the Constitution of India guarantee civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, Colour or sex. They are enforceable by the courts, subject to certain restrictions. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

Need for granting fundamental rights

It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part III of the Constitution does confer fundamental rights and confirms their existence and gives them protection. The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. These fundamental rights guarantee civil freedom to all the citizens of India to allow them to live in peace and harmony. These are the basic rights that every Indian citizen has the right to enjoy, irrespective of their caste, creed and religion, place of birth, race, colour or gender.

Types of fundamental rights

These fundamental rights include:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and educational rights
6. Right to constitutional remedies

Right to Equality (Articles 14 – 18)

Right to equality guarantees equal rights for everyone irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

Right to Freedom (Articles 19 – 22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees the freedom to citizens. The freedom right includes many rights such as:

Freedom of speech

Freedom of expression

Freedom of assembly without arms

Freedom of association

Freedom to practise any profession

Freedom to reside in any part of the country

Some of these rights are subject to certain conditions of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

Right against Exploitation (Articles 23 – 24)

This right implies the prohibition of traffic in human beings, begar, and other forms of forced labour. It also implies the prohibition of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

Right to Freedom of Religion (Articles 25 – 28)

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

Cultural and Educational Rights (Articles 29 – 30)

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture.

Educational rights are for ensuring education for everyone without any discrimination.

Right to Constitutional Remedies (32 – 35)

The Constitution guarantees remedies if citizens' fundamental rights are violated. The government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme court which can issue writs for enforcing fundamental rights.

Powers to amend fundamental rights

Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution. Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.

Landmark judgements leading to amendment of fundamental right

To get over the decision of the Supreme court in Golaknath's case the Constitution 24th Amendment Act was passed in 1971 in which changes to articles 13 and 368 was made. The Supreme Court reviewed the decision in Golaknath v. The state of Punjab and considered the validity of the 24th, 25th, 26th and 29th Amendments.

CONCLUSION

That every human being in this universe has some liberty which cannot be restraint by anyone. This is why fundamental rights have been written and given to enjoy to the people in this world. If these have not been framed then no one could have lived freely in this world.

We people are brought here with the consent of God and it is only he who can take away any kind of rights from us unless it is hurting others. Thus, it has always been necessary to frame these fundamental rights for a dignified life of a human being.

The fundamental Rights has a different importance, that is why it can directly be filed in the higher Court i.e., the Supreme Court.

Thanks to our ideals who have brought these into books and made compulsory to be followed.

THREATS TO WILDLIDE

BY ZAIBUNNISA SHAIKH, S.Y.LL.B.

Today, India's biodiversity is in jeopardy. Wildlife is under threat due to various activities of human beings, directly or indirectly destroying the habitat and spreading various diseases. Each new threat put stress to the wildlife and ecosystem. Today with various human activities like population explosion, more and more use of land is being cleared for agriculture, habitation and other developmental projects etc. There are few points which are becoming the threats to the wildlife. They are:

CLIMATE CHANGE:

Climate change is becoming a biggest threat to the survival of wildlife throughout the country. It is not only affecting the future generation but also to the wildlife. Changes in our climate are across the planet and people, animal, birds and plants are already feeling the heat. The warming signal is also found in areas like oceanic areas, glaciers, polar and in ice caps. The most striking evidence of climate change in recent past years is due to the rise in temperature i.e. global warming. Global sea level has also increased roughly over the past century. Climate change causes sea level rise in two ways: Ocean water is expanding as it warms and the land based ice glaciers are melting. Declining of sea ice is also one of the most visible sign which is affecting the climate. Human impact is also affecting the climate. Due to various activities of human there is a climate change. Even the scientists have proved that due to burning of coal, oil, wood and gas. The atmospheric greenhouse effect naturally keeps our planet warm. Human activities like burning of fossil fuels cause more gasses to the atmosphere. Fossil fuels such as oil, coal and natural gas are high in carbon and when it burns it produces more of carbon- di –oxide.

POLLUTION

The contamination of air, water or soil by substances that are harmful to living organisms is called pollution. Humans are also affected by pollution, as seen by disease like asthma or cancer - but animals are victim to its effects too. Many species have experienced pollution events that have caused death or a threat to their habitat. Some species have been pushed to extinction. Every day the byproducts which we use in our daily lives – sewage, exhaust, trash, agricultural and lawn chemicals, industrial and power plant emissions and much more make their way through air and water into natural environment and become pollutant. As big as our planet, it's not big enough to dilute or absorb all the waste, chemicals and nutrients that many people are producing. Toxic metals are present in oil and coal, and metal-contaminated particles are released into the atmosphere by combustion of these fuels. Toxic metals are also released into the atmosphere by were emitted. Different species differ in their sensitivity to pollution. Sources of pollution can have major impacts but it is hard to measure because it comes from all across the landscape. When the rain falls and washes our road clean for example; it washes the car, road, metals and sediments etc and it carries and drown in the sea, stream or rivers. It washes fertilizers, pesticides from our lawn and give up soil, nutrient and chemicals too. Another is noise pollution which causes harm not only to the humans but also to the animals and marine lives. Whales are being disrupted by the heavy noise of ship which causes fatal injury within the structure of the ear.

DEFORESTATION

Forest is more than just a collection of trees, shrubs and herbs – they are integrated with ecosystem and home to some of the most diverse life on the earth. They are also the part of the carbon and water cycles that make our life possible. When forests are degraded, their destruction set off a series of changes that affect life around the world. Forest cover 30% of the land but day by day it is disappearing. Deforestation is used for agricultural land, making buildings, parking lots, malls for construction and for manufacturing. The forest area can provide food, medicine and fuel for more than a billion people. The trees absorb carbon dioxide and clear the air for the people. It makes air pure and fresh. Plants can be regenerated by planting trees in other areas instead of cutting them. Deforestation also affects the greenhouse effect. The loss of trees and other vegetation can cause climatic change, desertification, soil erosion, fewer crops, flooding increased greenhouses gases in the atmosphere and lots of problem for indigenous people.

OVEREXPLOITATION

Overexploitation means harvesting species from wild rates faster than natural population. Overfishing and overhunting are both types of overexploitation. Overexploitation can lead to the destruction of resources. People also hunt animals for the additional value of their meat, hides, organs or other types of body parts. People use to do trading of animals/ mammals such

as apes, rhinoceros, elephant and it has also been sold in the black market. Fish on the other hand are been used for trading. Overfishing causes extinction of marine life and people are also good at fishing. The overexploitation of fisheries is an example of a tragedy of the common. People take more and more common resources until it is no longer available.

POACHING :

Illegal trapping, poaching and other demand for wildlife are a huge problem throughout the world. Many species are sought for their skins, elephants for their ivory tusks and birds for their feathers. Wildlife trafficking is one of the most illegal trade in the world which is practise widely. These animals were used for sport hunting but now they are protected under the Wildlife Protection Act of India. The population of wildlife are decreasing because of the poaching of their ivory, horn, teeth and skin. Not all wildlife trade is illegal. Wild animals from tens of thousands of species are caught or harvested from the wild and then sold legitimately as food, pets, ornaments, leathers and medicine.

In SANSAR V. STATE under section 49 and 57 of this act, court did not grant relief to the notorious poacher of wild animals.

HUMAN- WILDLIFE CONFLICT :

Human- wildlife conflict is a global issue present in urban and rural landscapes. The cause of this conflict is due to the growth of the population, expansion of habitat, increase in degradation and fragmentation are some of the example of human- wildlife conflict. We can avoid these conflicts by feeding the pet animals and not by hunting and avoiding attractive unanted visitors. Humans are also resonsible for causing change in the environment that hurt the animals and plants. By destroying their habitat we are disturbing the peace of wildlife. Due to the various activities of human it destroys the habitat of plants and animals which they need to survive. It leads to a great impact on both. Human- wildlife conflict has a significant consequences on human health. They directly or indirectly attack, gore, claw or bite to the humans, which directly affects the safety,biodiversity and ecosystem of the society. Conflict with wildlife can alsocause damage to the crops, farms, livestock and property. Human- Wildlife Conflict can also include marine conflict including the attacks, bites, collision as well as pollution, removal of natural habitat and tourism, fishing gear and other activities. Shark attacks on human are rare but it is the source of media attention.

HABITAT LOSS :

Humans are the main cause of loss of habitat. Wildlife which use to live they are either killed or displaced which leads to the cause for the loss of species from extinction. The effects of this can be devastating.

Major kind of habitat loss :

a. Habitat destruction : Humans are destroying the habitat directly. It includes dredging reivers, moving fields and cutting down trees.

b. Habitat Fragmentation :

Terristrial wildlife habitat has been cut up into fragments by roads and other development. Acquatic species have been fragmented by dams and water diversions. The migrated species find difficult in residing such areas as there is no proper place to live and have food.

c. Habitat Degradation :

Due to pollution and disruption of ecosystem are some of the ways where habitat can be degraded.

Main causes of habitat loss :

i. Agriculture : As the forest has been cutted down for agriculture purpose in order to grow crops. There is an increase in the redevelopment of conservational lands for high priced crops.

ii. Land conversion for development : At times there was a coversion of land for wildlife habitat. But nowadays it has been replaced with the roads, parks, malls, buildings, flyover, parking lots and industrial sites.

iii. Water development : Dams and other water diversions are made for the purpose of living beings.

iv. Pollution : Fresh water wildlife are most affected by pollution. Pollutants such as untreated sewage, mining waste, acidrain, fertilizers and pesticides which is drown in river, lakes and wetlands. These pollutants affect not only to the animals but also to the marine life.

v. Climate change : It is also the main cause for the threat of wildlife.

OTHER ADDITIONAL THREATS ARE :

a. Accidental deaths: Due to accidents of wildlife animals many species are getting extinct. They either barge on the road or they enter into the house in order to protect himself people either shoot them or kill them.

b. Invasive species: Invasive species are among the leading threats to native wildlife. An invasive species can be of any kind of living organism – plant, fungus, bacteria, or even organisms seed or eggs. They can harm the environment, the economy and even human health. Invasive species are wildly spread by the

human activities. People and the gods which we carry or travel from one place to another are the uninvited species which carry along with us. They are direct or indirect threats as well. They change the food web in an ecosystem or replace the native food source.

c. Encroachment : As the population is increasing, people are making homes by cutting down the forest. This leads to reduction of the habitat, increased human-wildlife conflict, migration of animals, dying and killing of animals etc.

CONCLUSION :

As humans wants peace in their surrounding even wildlife and acquatic animals do need peace to live. The construction and manufacturing of houses, buildings, industries has occupied the place. There is fewer place for animal to live and breed. We should prevent deforestation so that animals could live in peace and they should not barge on the road and met with an accidental deaths. Preventing deforestation also leads to the clearance of air and it helps to maintain ecosystem. We should not pollute the environment as it not only affects us but also to the animals which are living in our surrounding. We can make sanctuaries to prevent natural habitat. Planting trees shall make new home to the animals to live and have food. Illegal poaching should be avoided and the government should take strict actions against the illegal poachers. Overhunting and overfishing should stop as it leads to extinction of marine life as well as of wildlife. Some species have become extinct due to human activities. Various human activites affects the life of wildlife. The progress of man has been beneficial for man but not for the animals. Inventions of many industry, factories and companies leads to extract waste and dwell into the rivers and streams which affects the marine life and wild animals. Pollution is also the main cause which affects the biodiversity and leads to degradation of wildlife. Due to pollution, there is a change in the climate which affects the humans and other species. It is necessary to take precautions for the usage of byproducts and dumping them in a safe place which will not affect the other species. There should be proper guideliness that should be followed by every individual in order to protect the environment. We as a layman can come together and solve the problems then, we can step forward to save the environment and the species living in it. We should stop animals from extincting as there is less number of species nowadays. We should stop noise pollution also as it affects the marine life and eventually causes death. We can save our environment not by deteriorating but by helping the species.

INSTANT TRIPLE TALAQ

BY MS. ZAIBUNNISA SHAIKH, S.Y.LL.B.

WHAT IS TALAQ?

Triple Talaq is also known as Muslim Women (Protection of Rights on Marriage) Bill, 2019, which was passed by the Indian Parliament as a law on 30 July, 2019 to make Instant Triple Talaq as a criminal offence. Triple Talaq is a form of divorce that is practiced in Islam by Muslim people wherein, a Man could legally divorce his wife. Talaq is an Arabic word which is pronounces three times by the man. The pronouncement can be oral, written, or delivered by electronic means such as media, SMS or by mail. There is no concept of three divorce in Islam. The concept of three divorce does not exist in the Quran. The Quranic passage says that the act of divorce has to happen on three separate occasions. According to Uthman, Ibn Mas'ud, Zayd ibn Thabit and others said that both the parties has the right to recontract marriage by mutual consent.

TYPES OF TALAQ: A husband has the authority to divorce his wife by following means:

TALAQ-E-SUNNAT: Sunnat means something which has been performed traditionally. This type of talaq is recognized both by Sunni's as well as by Shia's. Talaq-e-Sunnat may be pronounced either in AHSAN or HASAN form.

TALAQ-E-AHSAN: In this, husband pronounces talaq one time and attend the period of 90 days which is called period of Iddat. If in 90 days, the dispute is settled through arbitration or through reconciliation then this talaq can be revoked and the marriage can be still valid. This form of talaq is approved form of talaq.

TALAQ-E-HASAN: In this the husband pronounces three times but not at a single time but in a three successive times means in one month he pronounces talaq than same in second and third month; this form of talaq also contain 90 days. If in the third month both the husband and wife has settled their dispute through reconciliation or through arbitration then the marriage will be valid. In both the form, both husband & wife have ample of scope wherein they can decide & settle their disputes.

TALAQ-E-BIDDAT: It means innovative. It has been added afterwards. It is also known as Triple Talaq; wherein a man can pronounce talaq in one time i.e. talaq (I divorce you), talaq (I divorce you) and talaq (I divorce you). And then the marriage can be dissolve. In this form of talaq the party has not given the period of 90 days. And there is no choice of reconciliation, settlement and arbitration. In this husband can give talaq through email, whatsapp, SMS or any other means of social media. And the marriage can be dissolved; this is disapproved form of talaq.

In talaq-e-sunnat both the parties were getting a period of 90 days to settle & to decide the matter. In heat of the argument, it cannot be decided that the marriage can be revoked. But in talaq-e-biddat arbitration and reconciliation is absent which is pre-requisite.

In Rahmat Ullah v. State of U.P. The Allahabad High Court clearly stated that an irrevocable talaq (talaq –e-biddat) is unlawful because this kind of talaq is against the dictates of the Holy Quran and is also against the provisions of the Constitution of India .

OTHER FORMS OF DIVORCE:

KHULA:

The separation of the wife in return for a payment whether it's Mehr or amount less than that. And it is not lawful to take anything which you have given her unless both fear that they will not be able to keep the limits of Allah. But if you fear than there is no blame upon them for what the wife might give away of her property to become release from the marriage.

LIAN:

It involves the husband accusing his wife of committing adultery.

ZIHAR:

In this the husband compares his wife with a woman within his prohibited relationship. After such comparison the husband does not cohabit with his wife for a period of four months.

MUBARAT:

Mubarat means release. It involves divorce by mutual consent of both parties. Either party may make the offer of divorce or once an offer has been accepted by the other party it becomes irrevocable.

ILA:

I the husband swear not to have sexual intercourse with his wife for a period of atleast four month. After expiry of such period, the marriage is treated as irrevocably dissolved. The husband may revoke his oath before the expiry of four month by resuming sexual intercourse.

SHAYRA BANO V/S UNION OF INDIA:

Shayra Bano was married for 15 days. In 2016, her husband divorced her through talaq-e-biddat. Shayra Bano has filed a writ petition in the court which challenges instant triple talaq,

nikah halala (the practice where a man wants to marry her wife again then the women has to perform a 2nd marriage & divorce him in order to remarry his 1st husband.) and polygamy (which means in Muslim law a man can have more than one wife). She has challenged these three things. In February 2017, in this matter there were 5 judges. The Petitioner was Shayra Bano and the Respondent was his husband, Union of India and others. The Supreme Court has asked a written statement from the judges. All India Personal Law said all these practice is a part of Muslim religion and Supreme Court should not interfere in the Muslim matters, these are outside the jurisdiction of Supreme Court. The Supreme Court has made 2 issues: (a) whether Instant Triple Talaq is an essential religious practice of Islam. (b) Whether the practice of triple talaq is violative of Fundamental Rights. According to the judgment, triple talaq is a part of Muslim Personal law & through Article 25 states that everyone can practice any religion, & this practice is protected under Article 25. So, the Supreme Court cannot interfere in it. Law is enacted before or after the constitution, all law should be consistent with Fundamental Rights. Art13 doesn't interfere in personal law; through Article13 we cannot challenge Personal law. But the practice of ITT was not challenged in Art13; it was challenged in Article14, 15, 21, 25. Article14 says, if anything violates F.R. then S.C. has the power to declare unconstitutional. It means ITT practice is arbitrary because it violates the Fundamental Rights of women. . Hence, the Supreme Court has declared Instant Triple Talaq as illegal.

IMPORTANT PROVISIONS OF BILL:

(a) OFFENCE & PENALTY:

(i) It declares triple talaq as void and illegal.

(ii) The act makes triple talaq a cognizable offence with imprisonment of 3 yrs including fine.

(b) WHO CAN FILE A COMPLAIN:

(i) Only the wife against whom talaq has been declared or any other person related by blood.

(c) BAIL: It can be granted by magistrate only after hearing the women.

(d) ALLOWANCE AND CUSTODY: The women entitled for Allowance for herself and dependent children and also the custody of minor children.

I personally feel that talaq -e- biddat i.e. Triple Talaq degrades and violates the fundamental right of a woman. The relationship of marriage, i.e. Husband and wife are explained in the Holy book as they are each other's clothes and mirror for one another. The case of Shayra Bano vs. Union of India is one of the best example. Law is for everyone and each one of us has equal rights to equal opportunity. I also support the Bill which was enacted by the government in 2019. But in some parts, I do disagree with the bill. If triple talaq is not declared then why the husband will be punished for the offence which he has not created only. If the husband is sent to jail for giving talaq -e- biddat, then who will take care of the family, who will feed them and protect them. As the law has declared triple talaq illegal, I agree to the fact but why it has considered as criminalization. In Islam marriage is a contract, if a husband gives divorce to his wife and after a period of time if he wants that relation again or he has to settle the disputes between them, he has the right to recontract the marriage by mutual consent as it is also mentioned in the Quran. The heat of argument or little dispute cannot decide whether the marriage can be dissolved or not. The bill should not consider the husband as a criminal and put him behind the bars. If he was considered as criminal and after completing the punishment he has to get back to his wife as talaq was not taken place, then he will torture her for the punishment which he got because of her. If he is considered as decriminalize or given a waiting period to resolve the disputes through arbitration or reconciliation then the marriage cannot be revoked and still there is a contract between them. So, I partially agree with the bill and partially not.

"All views and opinions expressed in the Magazine are purely those of the authors and in no way reflect the views of the editors nor of the establishment."

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