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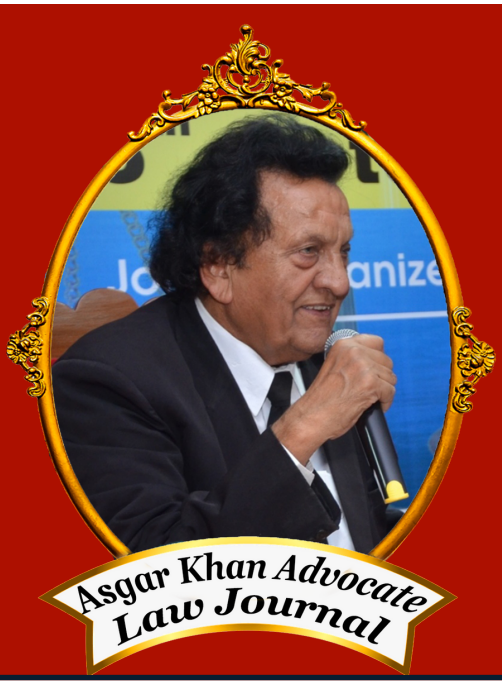

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Table of Contents

• Right to Maintenance of a Wife

By: Anyesha Chakraborty

• Role of Forensic Science and Its Evidentiary Value in Criminal Justice System

By: Bhoomika C B

• Environmental Protection through the National Green: How Far Effective- A Study

By: Ayushi Girish Patwa

• An Analysis: Hierarchy of Criminal Courts and Their Jurisdiction

By: Garima

• Fairness in Criminal Trial: Need of Reform

By: Chundelikat Alvin Jaymon

• COVID 19 and Its Impact on Elections

By: Sanjeev Naru

• Critical Appraisal of the Relevancy and Admissibility of Electronic Evidence in India

By: Mr. Ananya Choudhary

CONCEPT OF FREEDOM AND CONFLICTS OF PERSONAL LAWS: PROBLEMS AND CONFLICTS- SUCHETA SAINI

Abstract

The Indian constitution guarantees to its people the freedom of conscience and free profession, practice and propagation of religion, the freedom to manage its religious affairs under Part III i.e. the Fundamental Rights chapter of the Constitution of India. The same part III of the constitution also guarantees to its citizens the right to equality before the law or equal protection of the laws, the prohibition of discrimination on grounds of religion, caste, sex etc, the right to liberty which includes within itself the right to live with dignity and let alone to mention that even article 25 which grants the freedom of religion is also subjected to the other fundamental rights and thus is not absolute. The question which arises is how then some of personal laws being patriarchal, and on face discriminatory against the women like which moves against the fundamental rights can still exist and manage the scrutiny of fundamental rights? In this paper after establishing the current position of law, the researcher has tried to examine and scrutinize the legal reasoning and rational behind implementing these laws and further discussed the concept of freedom and conflict of personal laws and studied that the personal laws are outside the ambit of judicial scrutiny under article 13 and because of which even today, after 65 years of developed constitutional jurisprudence, some of the discriminatory personal laws continues to be in practice.

Keywords: Personal Laws, Article 13, Freedom of Religion, Constitutional Law, Triple Talaq

I. Introduction

Freedom is the most important aspect of a human life. Living in an absolute restriction is mere an animal existence. In today's world one or the other rivalry is related to freedom, one state wants to get free from the other, or people wants to get free from any arbitrary rule of their head. Fight for freedom is going on from time in memorial. Everyone wants freedom in every aspect of life be it roaming around freely in our neighbourhood, freedom to choose their representative, freedom to chose kind of food, freedom to worship, freedom to follow any religion, freedom to choose any profession or trade, etc.

India fought really hard and for a very long time for Freedom from so many empires including colonial rule of British India. This concept of freedom is so important for making of such a legislation which majorly based on freedom of every citizen or non- citizen. Our Constitution of India grants Freedom under Part III of Constitution of India.

The Personal Laws find the source and authorities in their religion say- Hindu finds sources from Hindu religion and Muslim finds sources from Muslim religion. There were a time when these people fully governed by their religion respectively such as Crime, evidence, procedure, contract, trade and commerce nowadays their applicability to such extent has been struck down but still there are some aspects which they do apply their personal laws such as marriage, divorce, adoption, succession, inheritance, guardianship etc, because there laws are unchangeable over the period of time these are long followed customs and tradition which are now made applicable with attaching legal sanctions to it. Controversy exists today whether personal laws are protected under Part III Article 25-28 of constitution of India or not. Some believe that it should be in the hands of personal laws only without any legislations involvement to it. And some believe state being a welfare state should involve and deal in any matter related to social interest.

This article deals with the concept of freedom in relation to the personal laws of different communities in India. What are the problems related to personal laws? How does these personal laws in conflict with each other.

Keywords: personal laws, freedom, constitution of India, conflict, Hindu, Muslim

II. What are Personal Laws?

Modern Indian society is a heritor of majorly three different and distinct legal systems- Hindus, Muslim.

Personal laws are laws governing personal matters relating to some religion which regulate their marriages, succession, adoption, divorces, inheritance etc, these laws are largely influenced by customs of different communities. However, they are criticized for the Gender Inequality and discriminatory attitudes. “India maintains hybrid legal system with a mixture of civil laws, common laws, customary laws, and religious laws within the legal framework from colonial era and still in existence with necessary amendments.” Indian personal laws are fairly complex as all the laws relating to different religious are different in their application.

III. Personal laws and Constitution of India

“The Constitution of India guarantees to its citizens the right to freedom of conscience and freedom to practice any religion, under Part III i.e. the fundamental rights chapter of the Indian

Constitution. The Part III of the Indian Constitution[1] also guarantees to its citizens the right to equality before the law or equal protection of the laws, the prohibition of discrimination on grounds of faith, caste, sex, etc,[2] the liberty which has within itself the correct to measure with dignity and coupled with to mention that even Article 25[3] which grants the liberty of faith is additionally subjected to the opposite fundamental rights and thus is not absolute."

IV. The barriers to personal law and Part III of the Indian Constitution

From the very beginning of constitution of India there always has been constant problems between personal laws and Fundamental rights, along with it apex court of India also faces difficulty in creating harmony between two areas: personal laws which support religious practices and Part III of Constitution of India. In connection to this issue there is an old case *The State of Bombay v. Narasu Appa Mali*[4] in this case constitutional validity of Article 14, 15 and 25 are challenged in regard to Bombay Prevention of the Hindu Bigamous Marriages Act, 1946. "Whether non-public laws of Hindus or the other community is a law within the meaning of Article 13 (3) and Article 327(3)?" And also does alteration of private law violates the equality.

The court held that "Private law wasn't included within the law as under Article 13(3), and also consider the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 is not violative of article 14 social reforms must be considered by state."

Conflict related to Hindu law

Hindu law derived its source from Dharamshastra along with other sources, though its codification started from 1995, but women still not considered unequal to men. These discriminatory provisions still survive.

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[1] https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf
[2] https://www.barandbench.com/wp-content/uploads/201
[3] https://indiankanoon.org/doc/631708/ The Constitution of India 1949
[4] https://indiankanoon.org/doc/54613/ 24 July, 1951 AIR 1952 Bom 84, (1951) 53 BOMLR 779, ILR 1951 Bom 775

- Right to adopt a child

"A woman gave birth to a child but at the same place a married women has no right to adopt a child on her own, not even with consent with her husband. In case, *Malti Ray Chowdhury v. Sudhindranath Majumda"r*[5] A married woman adopted a female child, and all the ceremonies of adoption was in presence of his husband without any objection, but court in this case held that adoption was not valid because a married women cannot adopt as per laws mentioned.

- A women's Right to dwelling the House

In a Hindu Interstate property "a female heir cannot ask for partition of the dwelling house in which the interstate's family lives until the male heirs choose to divide their respective shares. If a woman remarries to someone in that case she cannot get the maintenance from the laws from his widow's parents only she gets maintenance from her in laws."

V. Woman in Muslim Laws

- Age of Marriage

Under Muslim religion there is no age limit prescribed for marriage it depends upon the puberty of the women, which may vary. In case, *Yunusbhai Usmanbhai Shaikh v. state of Gujarat*[6] Justice Padriwala remarked-

"According to the personal law of Muslims, the girl if as soon as she attains puberty or completes her 15 years of age, whichever is earlier, is competent to get married."[7]

- Witnesses at the time of marriage

"Among the Sunnis, the proposal and acceptance should be made in presence and hearing of two adult male witnesses or one male and two female witnesses at the time of marriage. That means as per the above law a single man has an equal status to two women. A woman is half to a man which nothing but sheer discrimination is."[8]

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[5] AIR 2007 Cal 4, (2007) 1 CALLT 323 HC
[6] 25 september 2015
[7] 2008 (4) SCC 649.
[8] Abdullah v. Beepathu Kerala High Court 25 February, 2016

- Polygamy

In Islam, Polygamy is very contentious issue. A Muslim man can as many times up till four wives at a time. But on the other hand, a Muslim woman can only marry one husband, if she does marry more than one she will be liable under Section 494 of Indian Penal Code 1860 and off springs of such a marriage is illegitimate. "The logic behind such discriminating law is that during pregnancy it is better that man have another legally married wife rather than going to other women or prostitutes. This mentality is extremely shameful and disrespectful for women and an individual in general as well."

- Maintenance

"In matter of maintenance the divorce Muslim women is not required to be maintained beyond the Iddat period. In case, *Khurshid Khan v. Husnabanu Mahimood Shaikh*[9] court held that – the divorced wife is entitled to mehr and that it is in accordance with law for the duration of iddat period settlement. A widow woman is also not liable to get maintenance from the in-laws. A lady divorced by her husband, cannot remarry him, till she married another person and has a sexual intercourse with him and thereafter he divorces her."[10]

VI. Religious law: Hurdles for Women

A major issue emerges from the personal laws is that all personal laws are in some or the other ways are "Gender Unequal". In India early marriage or child marriage is a grave danger as parents don't want to use money for the education of girl child but can spend all of their savings to give dowry for their daughter's marriage. In our nation, "if a girl isn't instructed well an enough then more dowry needs to be given. Addition to that, it strengthens chances for Domestic Violence. Dowry occurred from religious personal laws and now it has become taboo in our country." Thousands of women were killed by husbands for dowry, even family members killed their daughter in law for dowry or if they are dissatisfied by dowry she brought, majorly burning accidents in kitchen. If husband divorce his wife later she became loneliness which lead to psychological harassment. With it also came another problem of maintenance. Early marriage

[9] 1967 Cr. L. J. 1584.
[10] Ibid

also affects the women's health and their morality. So overall many other social issues appear from religious personal laws along with gender Inequality.

VII. Developments in personal laws

In case, *Vineeta Sharma v. Rakesh Sharma*[11] court held that women's right as coparcener in their father's property was not recognized previously under section 6 of Hindu Succession Act, 1956 but after Amendment Act of 2005, it recognized the right of male and female coparceners equally in their father's property whether he is alive at the time of amendment or not. The provisions of such amendment under section 6 are retroactive.

Conclusion: Equal Right of a Hindu daughter in Joint Hindu Family.

In landmark case, *Mary Roy v. State of Kerala*[12] "issue regarding inheritance of interstate succession right of a Christian Women against law that earlier laid down in Travancore Succession Act 1916 that women of Christian women has no right over their father's property, it is applicable to Travancore christen of Kerala. Court held that- No personal law can be held above the Constitution of India therefore if any act applicable to a certain area will held to be unconstitutional if '*ultravires'* to the constitution of India."

Court also held that "this provision of said act is in violation of Right to equality guaranteed under Article 14 and create discriminatory rights on the basis of sex under Article 15 and held to be void and cannot be applicable to present case."

In another landmark case of *Mohammad Ahmed Khan v. Shah Bano Begum*[13] Shah Bano "filed a claim for maintenance for herself and her five children under section 125 Code of Criminal Procedure 1973, as her husband refused to pay after Iddat period according to Muslim Personal law."

Supreme Court held that section 125 of the code applies to all citizens independent of their religion, "it is applicable to Muslims as well, without any sort of discrimination. The court further stated that Section 125 overrides the personal law if there is any conflict between the two.

[11] (2020) AIR 3717 (SC)
[12] 1986 AIR 1011 SCR (1) 371
[13] AIR 1985 SC 945

Court also held that Muslim husbands are obligated to provide maintenance to his divorced wife who is incapable to maintain herself."[14]

Triple Talaq case: *Shyara Bano v. Union of India*[15] triple talaq is practice of divorce by husband of Muslim women by uttering three time 'talaq'. In this case practice of triple talaq by muslim husbands by any means without even witnesses, example if a Muslim husband pronounce talaq talaq talaq on Skype, by SMS on phone or either by telegram it is irrevocable and construed as valid divorce. Such kind of practice is held to be unconstitutional.

After looking over these developments under different religious personal laws women do get gender equality by the way of Judicial Decisions. The Courts do play a crucial role in providing Justice against unequal and male centric personal laws also strike a balance between Fundamental Rights enshrined in Part III of Constitution of India and Religious Personal Laws, and if it violates any right under part III such laws held to be void and unconstitutional.

VIII. Conclusion

There are many Religious laws governing different individuals falling under different personal laws according to need of specific religion, these laws reveled that discrimination with women from time in memorial in way to customs and usages and now in way of piece of various legislations. Although all personal laws are somewhere discriminating against women but in Muslim law situation of women is even worse as their laws are stricter in comparison of the other laws. This discrimination is there because of the extremity of patriarchy in India. Even women herself believe that she needs to rely upon men for their living. In India women are brought up in such circumstances where has reason to believe that men are superior and women are subordinated to them. These problems starts from birth a girl and such conditioning needs to be change from the starting itself, from school, from home, from mother. In a multi-religious country like India which has opted for a secular State, it is the right of every citizen to be governed by personal laws of their own so, it is the duty of the State to provide secular code of family laws.

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[14] https://blog.ipleaders.in/case-law-summary-mohd-ahmed-khan-v-shah-bano-begum-others-1985-air-945/ By-Shifa Qureshi

[15] (2017) 9 SCC 1

IX. Suggestion

Demand for Uniform Civil Code, urged need of UCC rises again in the “triple talaq judgment, as certain provisions or section arguing that the retention of Muslim Personal Law is in contravention of Constitution.” Not only Muslim law but there are some laws under Hindu and other religion which needs to be regulated and change according to the changing demand of society as a whole not just one religion. It will benefit all persons following one or the other religion today.

Human Rights and Abolition of Slavery: International Perspective especially in Asian Region- Ambuj Deshwal

ABSTRACT

Human Rights are a revolutionary concept that came about in a meaningful way after the proclamation of the Declaration of Human Rights by the United Nations General Assembly in Paris on 10th December 1948(General assembly resolution 217A). This was the first time in world history that a resolution of International legislation of this scale was passed for the acknowledgement and protection of fundamental human rights. The declaration of Human Rights is credited for inspiring the adaption of more than 70 human rights treaties across the world.

The United Nations trace the origin of Human Rights as far back as the year 539 BC. At the time when the troops of Cyrus the Great conquered Babylon, Cyrus freed the slaves, and declared that all people had the right to choose their religion, and therefore established racial equality. These and other edicts were documented on a baked-clay cylindrical device known as the Cyrus cylinder. The provisions inscribed on this cylinder served as inspiration for the first few articles of the Universal Declaration of Human Rights. Civilizations in India as well as Greece and Rome were among the firsts to expand on the concept of 'Natural Law' and 'Natural Justice'. Another cornerstone in the history of Human Rights was the Magna Carta 1215, accepted by King John of England, considered to be the document marking the start of modern democracy. Also known as the Great Charter, this document also marked an important point in the development of rights and laws relation to women and children. This document included the right of widows who owned property to choose not to remarry and established principles of equality before law in respect to women.

Human Rights are rights considered inherent to all human beings, irrespective of gender, nationality, place of birth, place of residency, race, color or any other such difference. Hence human rights are non-discriminatory rights, this means that all human beings are entitled to human rights and therefore cannot be excluded.

The Declaration of Human rights provides a variety of human rights such as equal right to life liberty and security of person, political rights such as equality before law and equal protection of

law, economic rights such as right to work, right to own property and right to receive equal pay, along with social and cultural rights such as right to education, consenting marriages, right to freely practice in cultural community and right to self determination.

Article 4 specifically prohibits slavery, stating: No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms.

Slavery:

The International Labor organization defines slavery as “any work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself”.

The definition of slavery provided by the 1926 League of Nations is a widely and most commonly accepted definition of slavery. Article 1(1) of the Slavery Convention, 1926, reads, “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Further under the Rome statute, “enslavement “is deemed a crime against humanity under article 7(1)(c), and defined at article 7(2)(c) as: “the exercise of any or all the powers attaching to the right of ownership over a person and includes the exercise of such powers in the course of trafficking in persons , in particular women and children”.

Slavery is an evil practice that came about with the start of the first civilizations. The recorded evidence of slavery dates as far back as 3500 BC. Today, despite momentous effort from human right activist organizations, slavery and slave trade still persists In certain parts of the world. The last country to have abolished slavery and slave trade is Mauritania. The practice of slavery and slave trade reportedly affects approximately 20% of the total population of Mauritania, and slavery was outlawed in the year 2007.

Slave trade and Human Trafficking infringes more than one Human Right, with specific and grave impact on the women and children entangled in such trade. The rights of the population so affected are infringed on more than one account such as the right to non-discriminatory behavior on the basis of race, sex, color, religion, language, domicile, nationality, etc. The right to life, right to liberty, property, security, the right of people to not be subjected to torture and/or cruel

and inhumane behavior, and many other such human rights are infringed in the evil practice of slave trade and human trafficking.

Human Rights, Slavery, and Asian Ties:

With a specific focus on the Asia region, there is a vast history of slavery relating to this region. Basically all parts of this continent were involved in this practice for a long period of time. Until the year 1908, there is ample evidence of the trade being heavily in practice in the Ottoman Empire. Almost all nations and empires in this region were involved in some kind of slave trade at some point in time.

In the South East Asia slavery was practiced in countries like Thailand, Burma and the Indochina region. The tribal people of the Indochina region were taken as slave by the Thai people. Vietnam and Cambodia are two nations that captured territories for the procurement of slaves. Nearly 50% of the Korean population was slaves from 1392 to 1910, under the rule of Joseon Dynast. The imperial government of China abolished slavery in the year 1906 and the law came into force in 1910. But recently the Uyghur Muslim population of China is facing immense atrocities; there have been many reports of enslavement of this population as well as internment of this population sorely resembling the internment camps of Germany during the period of 1933 to 1945. These activities are against the United Nations Charter of Declaration of Human Rights.

Delving into the history and the evil nature of slavery, The Imperial Japanese Army has been recorded to have forced as many as four hundred thousand “comfort women” into sexual slavery from Korea and elsewhere in Asia. There has been documented video evidence released by the Seoul Metropolitan Government and Seoul National University Human Rights Center, proving these crimes against humanity. While on the topic of Japan during the period of 1935 to 1945, it is of immense importance that the Nanjing massacre also known as “The Rape of Nanjing” be kept in mind in light of the sheer insurmountable number of Human Rights atrocities. Similarly sexual slavery and Human Rights Violations during the period of 1935 to 1945 were uncountable in almost all of Asia, even surpassing Europe at that time. Slavery is a persistent problem in around half of the world till date, while legal ownership of humans has been abolished a person still cannot be prosecuted and punished in a criminal court for the enslavement of another human being in 94 countries (49% of the world) to this date. Even in first world countries like Canada

has only passed a legislation criminalizing trafficking in persons in the year 2010. Bill C-268, Protection of freedom of conscience act, for the first time provided a minimum prison sentence of five years was passed on 29th June 2010. Similarly China, despite being a first world country deals in human misery on a daily basis. China is reported to be one of the last countries and the only first world country to still operate forced labor camps. The Chinese government in 2013 had officially announced that it would abolish the said labor camps where inmates are held and routinely subjected to forced labor for a period of up to four years. Although, a 2017 report by the US-China Economic and Security Review Commission alleged that China still maintains a vast network of state run detention facilities that use forced labor. We have already discussed about the state of the Uyghur Muslim population in China. There are accusations of numerous human rights violations on China and there are basically innumerable sources providing evidence on the said matter. At the same time the violation of the human rights in Hong Kong by the Chinese government and prosecution of political opposition has too much evidence to be ignored.

Delving into the history of dictatorial rule and violation of human rights, The USSR cannot be ignored. The USSR commonly referred to as the Soviet Union is infamous in history for the prosecution of its own population throughout history. The concept of Human rights in the Soviet Union was all but absent, the ideology of the Soviets being that the individual is replaceable and all importance being awarded to the state, the protection of human rights was basically absent in the Soviet Union. Some of the most commonly known to be infringed upon rights in the Soviet Union were the right against arbitrary arrest, detention or exile and the right to a fair trial and public hearing by an impartial and independent tribunal, in the determination of rights, obligations and of any criminal charge. The right of presumption of innocence until proven guilty was absent in the Soviet Union, just as it is all but absent today in China or most of other countries in Asia.

Due to the human tendency of individuals and societies in power being corrupt and oppressing lesser societies and populations, the concept of Human Rights was devised. It was so that despite any population being in the minority or being the ones removed from controlling authority of the state, there can be uniformity in the treatment of individuals in any given society on a global scale.

The modern start of human rights as we know them can be said to be the British abolition movement, which was followed by the League of Nations in 1926 adopting the Slavery Convention. From 1948 nation states were called upon to prohibit rather than just abolish slavery. As a result of this, the nation states across the world were obligated to do more than merely disallow slavery legislatively but they had to actively introduce legislation criminalizing slavery and hence desisting and dissuading the slave trade.

The lack of anti slavery legislation can be attributed to the fact that for almost 90 years, it was generally agreed that slavery, as per the traditional definition is the ownership of another person, and therefore it was assumed that it could no longer transpire as the nation states had repealed the legislations accrediting for right of property and ownership in persons. Therefore the operative consensus was that the practice of slavery had been legislated out of existence. Therefore the prevailing perspective on the topic at the time was that since slavery is no longer existent, thus there is no objective to be attained by any further anti-slavery legislation.

The prevailing perspective and the view of what entails slavery at the time as stated was due to the definition of slavery as it was first set out in 1926. The said definition described slavery as the "status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". But courts around the world over have recently come to recognize that this definition applies beyond situations where one person legally owns another person.

Human Trafficking:

Due to the singularly late concord on the definition of slavery and what the term slavery shall entail in a post-abolition world, a very limited number of specific practices related to overbearing human exploitation are presently covered under the national laws of varying nation states around the world – principally, human trafficking. And although a majority of countries have some or the other form of anti-trafficking legislation in place, still human trafficking legislation does not prohibit multiple other grim kinds and forms of human exploitation, including slavery itself.

Human trafficking is defined in international law, in a rather broad manner. In international law, human trafficking consists of three elements: the act (recruiting, transporting, transferring, harboring, or receiving the person); the use of coercion to facilitate this act; and an intention to

exploit that person. The crime of trafficking as per generally accepted international standards requires all three of its elements to be present. Prosecuting the exploitation of human trafficking itself, for instance, forced labor or slavery requires some specific domestic legislation beyond provisions addressing the act of trafficking itself. A meager number of nation states out of the 175 states that have seriously undertaken any form of legally-binding obligations to criminalize human trafficking have aptly aligned their domestic national legislature alongwith the international definition of trafficking. This is so because the nations have narrowly interpreted the definition of human trafficking and thus do not aptly understand what constitutes human trafficking, thus creating only partial criminalization of slavery. A handful of nations criminalize trafficking in children, but even so not in adults. A number of states criminalize the practice of trafficking in women or children, yet still specifically excluding victims who are men from protection. 121 states have not recognized that trafficking in children should not require coercive means, as required by the Palermo Protocol of December 2000, approved by the United Nations general assembly. 31 states do not criminalize all the relevant acts that are associated with human trafficking, and 86 nations fail to capture the full range of coercive means. A major number of states have concentrated entirely and specifically on abolishing and overcoming the practice of trafficking for the purposes of sexual exploitation or sex slavery, and have completely failed recognize and outlaw trafficking of human beings for other purposes that are adjacent to slavery, servitude, forced labor, institutions and practices similar to slavery, or organ harvesting.

Towards Abolitionism:

The First Geneva Convention in 1864, established a universal series of rules in the context of armed conflicts, then later in the 20th century the world as a collective witnessed the birth of The United Nations in 1945.This was at the time of the end of the Second World War, here fifty nation states gathered together with the stated purpose to “save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind”, as stated in the preamble to the proposed charter.

It took another three years for the Universal Declaration of Human Rights comprised of thirty articles to be presented to the world, this document acted as a recognized and internationally

accepted charter whose first article states that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

In past times, up until the dawn of the 90s, nation states were understood to be the parties responsible for the protections of Human Rights and held liable for their infringement. But in the new age and a vastly more globalised era, new kinds of violations have emerged, such as modern slavery, defined by the International Labor Organization (ILO) as “any work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself”.

This is the reason that the adherence of and the respect for Human Rights has also become a primary concern in the private sector, due to the impact generated by its activities. In this context, the Ruggie Principles were crafted in 2008 specifically with the view to end violations such as the elimination of trade-union freedom or forced labor in the business sphere.

The said principles are named after John Ruggie, who is credited as the creator of the Ruggie Principles. John Ruggie was Special Representative of the Secretary General of the United Nations, these principles are a standard which include the Guiding Principles on Business and Human Rights based on three pillars: protect, respect and remedy.

In conference to said principles, it is the duty of the state to protect communities from any detrimental effects that businesses may cause. Therefore there is need to make businesses responsible for ensuring the protection of human rights and to not use any unfair practices, least to cause the infringement of human rights. Lastly, the third pillar makes reference to remedying any damage caused.

Conclusion:

After the collective suffering of the world at the hands of tyrannical states and malevolent elements of Human nature and society, the advent of human rights as we know today was not only welcome but a necessity. Evil exists in the world and that is the natural state of the world we inhabit, but the chaos of evil cannot be consistently allowed to run rampant in our societies without any checks or balances, therefore the Ontario Commission, the United Nations, and such organizations working towards the security and availability of Human rights to each and every individual, needs to put in place some checks and balances and feasibly take hard action against nation states such as China, etc that today still are not just lax in the upholding the human rights of their own citizens but are actively infringing upon and encouraging infringement of human rights of certain sections of the populations.

REFERENCES

- "History of Slavery", Wikipedia
- Allain J.,2009 January,'The Definition of Slavery in International Law', Howard Law Journal 52:239-275
- 'History of Slavery in Asia Timeline', historyrocket.com
- Paoletti G., July 7,2017,' First-Ever Footage Reveals Japan's System Of Sex Slavery During World War II', ATI, https://allthatsinteresting.com/korean-sex-slaves-wwii
- Campbell R., 24 September 2019,' Modern Slavery Legislation in Canada: An Update', DLA Piper
- Dahir A.L., 22 August 2016,' The Last Country to Abolish Slavery is Now Jailing its Anti-Slavery Activists',QuartzAfrica

Juvenile Justice Act, 2015 – Rationalizing Inter-Country Adoptions – Banya Mahapatra

Abstract

Amid tremendous controversy, extensive discussions, and street protests, the Juvenile Justice (Care and Protection of Children) Act 2015 was adopted by India's House as well as by certain members of Parliament. This legislative note provides an outline of the circumstances that led to the passage of this Act.

Every year, around 50,000 children become penniless after being abandoned by helpless parents and unwed moms. Hundreds of them die from starvation and sickness due to the lack of clean water and sanitation. Since children constitute the human resource of our country and a vital national asset, it is the responsibility of the state and society to take effective measures to secure and safeguard their welfare, as well as to provide opportunities for them to grow and develop their personalities in a healthy environment. A moral sense of society forces us to seek a solution to abandoned children's dilemma, and the adoption of Inter-country is merely one of these alternatives.

The purpose of this article is to examine the notion of inter-country adoption as it exists now. A comparison of the same has also been made under the legal frameworks of India, the United States of America, and the United Kingdom. It has also been advocated how the current Indian adoption regulations concerning inter-country adoptions might be made more efficient within the existing legal framework. It examines the problems subsisting on inter-country adoptions and makes proposals for legislative change and better law enforcement.

Introduction

The idea of "inter-country adoption," which was previously only included in the different guidelines issued under the Juvenile Justice Act of 2000, was officially added in the Juvenile Justice Act of 2015 ("JJ Act, 2015"). Inter-country adoption is defined in Section 2(34) of the Juvenile Justice Act, 2015 as the “adoption of a child from India by a non-resident Indian, a person of Indian descent, or a foreigner.” Adoption Regulations, 2017 were subsequently notified under the JJ Act, 2015.

Inter-country adoption, in particular, has been a delicate topic in the Indian legal system. Before 2000, only concerning Hindus, Buddhists, Jains, and Sikhs was provided under the Hindu Adoption and Maintenance Act, 1956. Hindu Adoption and Maintenance Act, 1956, inter-country adoptions are unsurprisingly silent.

Adoptions under Hindu Adoption and Maintenance Act, 1956, are based on the ancient Hindu culture that only a child's biological parents or guardian(s) are in a position to assess "the best interest of the child." Hindu Adoption and Maintenance Act, 1956, specifies various requirements regarding the capability of individuals ‘giving in adoption,' ‘taking in adoption,' and ‘who may be adopted.' In addition, further requirements must be met for a legitimate adoption, as specified in Section 11 of Hindu Adoption and Maintenance Act, 1956.

Origin of Inter-Country Adoptions

Inter-country adoption arose mostly as a compassionate response to the hardship of war orphans and abandoned children of troops during World War II, the Korean War, and the Vietnam War.

Today, the United States, Canada, and the wealthier countries of Western Europe are the primary recipients. In the receiving nations, inter-country adoption was an alternative for childless couples, such as the reduction in fertility linked to marriage stalemate, the low success rate, the high expense of treating infertility, and the absence of domestic adoption alternatives.

However, the three main reasons leading to child abdication of the institutions in States of origin or sending nations are extreme poverty, the absence of contraception, and the beliefs of society towards the birth of illicit children. The paradigm of "man" child also leads to the desertion of the female child, which is a depressing truth in our nation.

Legislative Frameworks at the International and Regional Levels

The Convention on the Rights of the Child (CRC) is the worldwide treaty that currently forms the main norm for adoption. The 'Hague Convention on child protection and

cooperation concerning Inter-country Adoptions' (the 'HC'), now recognized by over 90 States, expressly regulates Inter-Country Adoption. The stance of international lawmakers on Adoption evolved around the close of the twentieth century as a result of major concerns about adoption-related abuses that were becoming more prevalent at the time.

The CRC lays a strong focus on the importance and role of parents and families as the child's primary caregivers, and states are required to support the first and foremost when they are unable to perform their obligations effectively. Only when the child is "deprived of his or her familial environment," or cannot be permitted to remain there in light of his or her best interests, does the State's commitment to "provide alternative care for the child" become operational.[1]

For many countries, the Committee on the Rights of the Child, which is the treaty body to monitor compliance with the CRC, has raised concerns about breaches of inter-country adoption standards and strongly recommends that The Hague Convention be ratified as one way of tackling the problems in all States concerned in cross-country adoption.

Ratification of the Hague Convention

In every adoption, the best interest of the child is of utmost importance. The Convention on Child Protection and Co-operation on the Adoption of Inter-country ("Hague Convention") came into force in May 1993 to protect and prevent children abducted and trafficked, with India having signed The Hague Convention in 2003. As a signatory to The Hague Convention, compliance with the requirements of The Hague Convention is mandatory on the part of Contracting States, including India. India must thus observe international conventions/treaties in that regard in addition to local adoption legislation.

To safeguard the best interests of the child, The Hague Convention requires that an adoption procedure be appropriately overseen and supported by the authorized Central Authority of the respective States, i.e. the State of Origin as well as the Receiving State. The Hague Convention further outlines the method for inter-country adoption to be adopted by the State of origin and the Receiving State. According to The Hague Convention, both nations, the State of Origin and the Receiving State, are required to guarantee that the adoption complies with The Hague Convention.

[1] UN Convention of the Rights of the Child Article 20

Therefore, it is the obligation of both the State of origin and the Receiving State to guarantee that the above Hague Convention goals are followed up by their respective Central Authorities through their respective inter-country adoption procedures including post-adoption measures. The Hague Convention calls for prospective Adoptive Parents to submit a Home Study report that takes into account a variety of factors such as their identity, eligibility, and suitability to adopt, background, family and medical history, social environment, financial status, criminal antecedents, and so on.

The State of Origin shall take a decision and shall submit a no-objection certificate based on several factors, including the eligibility and adequacy of adoptive parents, and that the child is authorized to enter and to remain permanently in the Receiving State, following Article 17 of The Hague Convention. A crucial qualification condition for inter-country adoption under The Hague Convention is that both the State of Origin and the Receiving State's Central Authorities have given their consent for the adoption to continue. The State of Origin, therefore, acts to guarantee the best interest of the child in the Receiving State in its position as '*Parens Patriae*.'

Adoptions from non-Hague Countries

Despite the increasing number of nations that have ratified it, the vast majority of inter-country adoptions continue to take place outside this framework. Those non-Hague countries that continue to have less restrictive adoption procedures could well be more open to allowing their children to take up abroad: for instance, the Ethiopian ICAs, from a few hundred per year at the start of 2009 to over 4000, has continued to grow substantially over the last 10 years.

Consequently, non-Hague nations tend to be appealing inter-country adoption partners. If this results in an ever-increasing pressure on those countries to institute or expand inter-country adoption to "compensate" for reductions in Hague-compliant counterparts, rather than genuine instigation to ratify the treaty, the true goals of adoption, including inter-country adoption, will be severely jeopardized.

The Juvenile Justice Act, 2000

The Juvenile Justice Act of 2000 ("JJ Act 2000") was the first secular legislative document to control youth issues, including adoption. Juvenile Justice Act 2000 (JJ Act, 2000).

While the Juvenile Justice Act,2000, does not include inter-country adoptions explicitly, 2006 guidelines for Indian adoption were announced following Section 41(3) of the Juvenile Justice Act, 2000 including the inter-country legislation. The 2006 notice was updated by the Guidelines for the Adoption of Children,2011, which also included a clear description of "inter-country adoption." The 2011 Guidelines were also superseded by the Guidelines Governing Child Adoption.

Passing of the Juvenile Justice Act, 2015

According to Section 56(4) of the Juvenile Justice Act, 2015, all inter-country adoptions must be conducted only in compliance with the Juvenile Justice Act, 2015 and the adoption rules made thereunder by CARA. Furthermore, Section 56(3) expressly specifies that the Juvenile Justice Act, 2015 does not apply to Hindu Adoption and Maintenance Act, 1956, adoptions. As a result, a combined interpretation of Sections 56 (3) and 56(4) of the Juvenile Justice Act, 2015 means that all inter-country adoptions (regardless of religion) must be conducted under the terms of the Juvenile Justice Act, 2015. It also means that, while a domestic adoption under Hindu Adoption and Maintenance Act, 1956, is exempt from the restrictions of the Juvenile Justice Act, 2015, an inter-country adoption done without completing the obligatory procedure under the Juvenile Justice Act, 2015 is not regarded lawful.

Laws of Adoption in India

The Convention on the Rights of the Child and The Hague Convention on the Adoption of Children in the Inter-country has been approved by India at the international level. The Hindu Adoptions and Maintenance Act, 1956, is the main law concerning the adoption of India under the Hindu system.

The Juvenile Justice Act, 2000 and the Amendment Act, 2006 ensure the rights of a child adopted as recognized by all The Hague Member States according to their international commitments. The Juvenile Justice Act did not however define "adoption" and the significance of it was only defined in the following terms through the 2006 amendment:

"Section 2(aa) 'adoption' means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship".

The amendment stressed that the passage of such a law would allow an adopted child, with the rights, benefits, and responsibility related to connection, to become the 'legitimate child of the adoptive parents. Until then, non-Hindus adoption was driven by Guardian and Wards Act 1890. This was a huge step forward. Minority castes like Christians, Muslims, and Parsis

did not accept adoption, hence adoptive parents were forced, according to the Guardians' and Ward Act of 1890, to remain guardians of their adopted children.

Adoption Under Hindu Adoption and Maintenance Act, 1956 - Limitation Vis-à-vis Inter-Country Adoption

The Hindu Adoption and Maintenance Act, 1956, adoption procedure, on the other hand, lacks any involvement, monitoring, or oversight by the state, putting the children at the discretion of the adoptive parents. Inter-country adoption refers to the placement of children outside their home country. Given such geographical constraints, it is difficult to assess the child's well-being, particularly in the lack of any post-adoption assessments mandated by Hindu Adoption and Maintenance Act, 1956. As a result, the involved governments must monitor and supervise inter-country adoptions to safeguard the child's wellbeing.

Concept of Inter-Country Adoption in India

In the well-known case In *Re Rasiklal Chhaganlal Mehta*, it was first discussed how lawful inter-country adoption is, in the Court's opinion, legally applicable under the legislation of both nations under Sec 9(4) of the Hindu Adoptions and Maintenance Act of 1956. The adoptive parents must comply with the legislation required for adoptions in their countries and must have the necessary authorization to adopt the authorities to ensure that the child does not suffer from immigration and obtain nationality in the country of the adoptive parents.

In *Laxmi Kant Pandey v. Union of India*[2], a public interest lawsuit petition, the Supreme Court of India created the guidelines for inter-country adoptions for the benefit of the Government of India. In 1989, the Government of India suggested and accordingly established a regulating authority, i.e. the Central Adoption Resource Agency, for short 'CARA.'Since then, the agency has played a crucial role in establishing substantive and procedural norms in inter and intra-country adoptions. The aforementioned norms received statutory recognition after being notified by the Central Government under Rule 33 (2) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, and are now in force throughout the country, having also been adopted and notified by several states under Rules framed by the states in the exercise of the Rule making power under Section 68 of the JJ Act, 2000.The Court held in the case of *Mr. Craig Allen Coates v. State through Indian Council for Child Welfare and Welfare Home for Children*[3] that if the adoptive parents fail to establish the motive for adopting a child from another country, the adoption process will be

barred and declared as mala fide, and that CARA should ensure stricter guidelines in this regard.The prospective adoptive parents, ideally from Indian heritage, are one of the major concerns in inter-country adoptions. In the *State Council of Karnataka for Child Welfare v. Society of Sisters of Charity St Gerosa*,[4] the Supreme Court of India had held that the reason behind finding Indian parents or Indian parents was to ensure children's wellness and to develop in the Indian environment so that they could preserve the culture and heritage of their children. The fundamental and primary priority is the best interest of the children.In the recent ruling, in the judgment of Bombay Supreme Court, *Varsha Sanjay Shinde & Anr. v. Society of Friends of Sassoon Hospital and the others*[5], it was held that the same child cannot be shown to other Indians when a supervisor has approved a child after the due procedure and that the Indian parents cannot claim the child's entitlement or priority just because they are Indian Parents and preference should be given to them over Overseas Indians and Foreign Couples. The Court concluded that although the major questions were settled, the petition remained open to guarantee compliance with the Court's instructions to deliver the kid to the Overseas Indian couple and to guarantee that the Indian Parents (Petitioners) receive a child quickly as well.

Who are adoptable for inter-country adoption?

Only three sorts of children are recognized as adoptable under CARA criteria and the Juvenile Justice (Care and Protection) Amendment Act 2006. These include orphans who are already in the care of a specialist adoption agency, abandoned children, and those who have been surrendered. If the abandoned child was less than two years old, such a statement should be made within 60 days of the date of its foundation. For an abandoned child above the age of two, such a statement must be made within four months. In the event of a relinquished child, the biological parent or parents must be allowed two months to rethink before declaring the child legally free for adoption.

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2 Lakshmi Kant Pandey v. Union of India, 1984 AIR 467

3 Mr. Craig Allen Coates v. State through Indian Council for Child Welfare and Welfare Home for Children

4 State Council of Karnataka for Child Welfare v. Society of Sisters of Charity St Gerosa

5 Varsha Sanjay Shinde & Anr. v. Society of Friends of Sassoon Hospital and the others

Problems Subsisting in Inter-Country Adoptions

Child trafficking in the guise of transnational adoption

In inter-country adoptions, the greatest hazard to the kid is being subjected to child trafficking. After the national procedures for adopting foreign adopting parents are ended, international law and international treaties are primarily concerned with caring for the child's well-being. In addition, numerous phony adoption organizations have been exploiting a lack of information on the legal requirements for adoption across countries. Children are sold overseas by providing incorrect information about them, fabricating paperwork, and exploiting gaps in the Supreme Court's adoption procedures.

Post-adoption negligence

When a child is placed for international adoption, post-adoption follow-up becomes more challenging. Even though CARA rules describe the responsibility of Indian diplomatic missions, foreign authorized agencies, and professional social workers in safeguarding a child from post-adoption mistreatment, it has had little impact.

Post-adoption domestic succession

When the testator dies after leaving the property in the name of the child given through adoption, the identification of the kid must be shown. In circumstances when the succession of other survivors is challenged, the procedure is much more difficult. If this succession becomes unlawfully invalid owing to an unlucky error, the adopted child will never be able to claim the legal rights of the property and must thus suffer from significant financial, physical, and mental suffering. Unfortunately, India has not engaged in any treaties or agreements to resolve such succession issues. In such circumstances, British law continues to govern the courts. At some point in his or her life, every adopted kid has a strong desire to learn about his or her ancestors. Such legal wrangling over biological family successions may be quite frustrating for the adoptive.

Post-adoption identity crisis

The Juvenile Justice Care and Protection (Amended) Act of 2006 states that a child can be adopted by any individual, regardless of marital status, by parents who want to adopt a child of the same sex regardless of the number of living biological sons or daughters, or by couples who have no children of their own. It has made adoption a more straightforward and universal law than previous laws. However, the legislation remains complicated in the case of inter-country adoptions since potential foreign parents must first act as guardians and bring the child to their nation. After the child is ready for adoption overseas, international law shall accept the Indian adoption procedure and the child shall be adopted under the laws of the adoptive parent's country. Unless the "guardians" become legitimate parents following the legislation of his new abode, the child becomes the ultimate suffering.

Recommendations

Adoption between countries should be taken very carefully since it often opens up floodgates for trafficking in children, child exploitation, and child sexual harassment. The proposals are as follows:

- The CARA recommendations should contain two distinct chapters covering the adoption of countries and countries.
- In the event of any failure by the agencies to comply with the rules and regulations, penal offenses shall be included.
- The adoption agencies' licensing processes should be tightened up.

- Members of the Juvenile Justice Board should collaborate with local child welfare agencies to increase their efficacy in providing safe havens for abused and neglected children.

- Awareness programs should be organized for poor, needy women and parents who wish to give up their child for adoption to ensure that they follow the proper legal processes rather than becoming victims of touts.

Specific recommendations for inter-country adoption:

- Prevent children from becoming stateless throughout the inter-country adoption process, for example, by guaranteeing that they obtain the nationality of their adopted parents.

- The Juvenile Justice Act should be aggressively implemented. Acting without willing hands is inefficient and harmful. As a result, the government should ensure that the legislation is appropriately enforced by the authorities.

- To prevent possible abuses and breaches of international responsibilities, take an especially cautious attitude during and after emergency circumstances.

- Countries that have not ratified The Hague Convention should be urged to do so.

- Professional counseling must be provided by a team of certified child psychologists, professional social workers, and legal practitioners who are familiar with the receiving country's international legislation.

To avoid child trafficking, the adoption kid's immigration procedure must be strictly followed.

- Before an adoption case is filed, the recipient country's bilateral connection with India should be investigated.

Conclusion

Section 56(4) of the Juvenile Justice Act, 2015 requires that all inter-country adoptions be conducted only in compliance with the Juvenile Justice Act, 2015 and the adoption rules promulgated by CARA thereunder. As a result, if an inter-country adoption is made under Hindu Adoption and Maintenance Act, 1956, but not carried out under The Hague Convention, the benefits and rights, including citizenship and social security, do not accrue to the adopted child in the Receiving State, which is detrimental to the child's best interests and welfare. Before the implementation of the Juvenile Justice Act, 2015, there was no requirement for inter-country adoption to be conducted entirely within the scope of the Juvenile Justice Act 2000. In the lack of such a provision, Indian courts ruled that inter-country adoptions undertaken under Hindu Adoption and Maintenance Act, 1956, were legal

and lawful, instructing CARA to issue a NOC. The passage of the Juvenile Justice Act in 2015 provided clarity and openness in the system to be used for inter-country adoptions, giving consistency to inter-country adoptions following The Hague Convention.

References

- Lakshmi Kant Pandey v. Union of India, 1984 AIR 467
- Section 2(34) of the Juvenile Justice Act, 2015
- Hindu Adoption and Maintenance Act, 1956
- Section 41(3) of the Juvenile Justice Act, 2000
- Sec 9(4) of the Hindu Adoptions and Maintenance Act of 1956
- Mr. Craig Allen Coates v. State through Indian Council for Child Welfare and Welfare Home for Children
- Hague Convention, Preamble and Article
- Convention on the Rights of the Child

AN INTERFACE BETWEEN DEMOCRACY AND ELECTION IN CHANGING SCENARIO OF INDIA- DIBYA RANJAN SWAIN

Abstract

The aim of this article is to provide an interface between democracy and election in changing scenario of India. Election process in a democratic nation is the most important part where every kind of people participate to mandate the people's will. The popular and commonly used quote by Abraham Lincoln i.e *"OF THE PEOPLE, BY THE PEOPLE AND FOR THE PEOPLE"* describes the principles and values of a democratic nation. This article aims to provide the role of legislature, executive and judiciary and how they have evolved from time to time. The Election Commission of India and its significant contribution towards democracy and the challenges faced. This article also throws some light on future of election in India and the proposed idea on future election process in the largest democracy of the world.

Understanding Democracy in the language of Indian Constitution

The Preamble declares:

"We, the People of India having solemnly resolved to constitute India into a [1]*[Sovereign Socialist Secular Democratic Republic] and to secure to all its citizens:*

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity assuring the dignity of the individual and the unity and the integrity of the Nation.

In our Constitute Assembly this twenty-sixth day of November,1949 do Hereby, Adopt, Enact and Give to Ourselves this Constitution."

The word "Democratic"-

1. Inserted by the Constitution (42nd Amendment) Act,1956.

The term DEMOCRATIC signifies that India has a responsible and parliamentary form of government which is accountable to an elected legislature. It also means India has an established form of constitution which gets its authority from the will of the people expressed in an election.

In democracy there can be an elected head or a hereditary head but the word republic in the constitution signifies that India has an elected head and the political sovereignty vests in the people of India and the elected head remains for a period of fixed term. In our constitution there is a President who is the head of the Executive and who is elected, as opposed to hereditary monarch and can hold office for a five year which is a fixed term.

The term democratic indicates that the constitution has got the power and established a form of government which ultimately gets the authority from the will of the people, the rulers are elected by the people and are responsible and accountable to them. The democratic set up are of two types; (i) Direct, and (ii) Indirect. In a direct democracy the legal and political sovereignty vests in the people, for example Switzerland. In the indirect system of Democracy, it is the representatives of the people who exercise the power of legal as well as political sovereignty. The electorate choose their representatives who carry on the Government. It is for this reason that this type of democracy is called representative democracy. The Indian Constitution have adopted indirect or representative system of democracy and every person who are above the age of 18 years have a right to vote except for some exception like convict who has been convicted for a crime and serving the jail sentence.

The term 'democracy' has a broader meaning and sense, it includes political democracy, social and economic democracy and the term 'democratic' is used in this is for the very sense in the Preamble.

Democracy will be of no use if it fails to ensure and to generate the spirit of brotherhood among all the sections of society and people. The feeling of oneness and all are the children of the same soil and of the same motherland. But it is quite a task in a country like India which consists of many races, religions, languages and of culture.[2]

According to Mahatma Gandhi The India of My Dream shall combine the ideals of political, social, economic democracy with that of equality and fraternity in the preamble.

[2] Basu- Introduction to the Constitution of India, p.23(3rd ed.1954)

Where the poorest can also feel that is their country and they also have an effective voice: an India in which all communities shall live in perfect harmony.

Understanding Election

In ordinary term the word election means to choose between two or more alternatives. In a democracy election is a procedure to choose the representative through a established process, method which is sanctioned by law and regulated by law.

RIGHT TO VOTE is a constitutional right which every Indian possess.

The struggle to win the freedom of independence of our country was full of challenges many have sacrificed their lives, ideology and integrated every effort towards the purpose of independence. The new independent derive its concept and idea of election from it only. To honour and respect our freedom struggles of past generations voting is necessary for a better India.

Structure of election

India is a democracy with having asymmetric federal government. Representatives are elected from the root levels to the high levels and to the federal level.

India has two houses of Parliament:

THE LOK SABHA- Lok Sabha is also known as the lower house of the parliament. Members of the lower house are elected through general elections. These elections take place every five years. The President of India nominates two members of the Lok Sabha. Currently the Lok Sabha has 545 members.

The RAJYA SABHA- The upper house of the Parliament is known as RAJYA SABHA. The members are elected by the elected members of the State Legislative Assemblies, and the Electoral college of the Union Territories. Therefore, the members of the Rajya Sabha are indirectly elected by the people. The Rajya Sabha has 245 members out of which 233 members are elected for 6 years term. One-third of the house retires every two years.

PRIME MINISTER- The Prime Minister is elected by the elected members of the LOK SABHA. The LOK SABHA is the lower house of parliament in India.

PRESIDENT- The President of India is elected for a 5 years term by an electoral college which consists of members of the State Legislatures and Federal Legislatures.

Process of Elections-

For conducting the elections and to ensure smooth functioning, the Election Commission of India was formed. The Election commission has the duty and responsibility related to elections which includes the superintendence, control and direction of the elections and the conduct of the elections. The following is a summary of the process of voting that you need to know.

- You first need to be registered on the Electoral Roll which is a list of eligible voters. You can apply voter id online as well as at the VRECs, at designated locations or through a Booth Level Officer.
- You will be issued a Voter ID which you need to present at the polling booth.
- The responsibility lies on the citizen to be aware of who is standing for elections.
- It is also the responsibility of the citizen to find out where the polling booth is in their respective constituency.
- You can vote on the Electronic Voting Machines.
- If you speak only English, you should familiarise yourself with the symbols of the candidates, because the names of the candidates will be listed in alphabetical order in the respective state's language.
- All you have to do is press the blue button next to your desired candidate's name and symbol. You can also vote NOTA.
- You will receive a mark of ink on your finger that signifies that you voted.
- While it helps identify if you have already voted, it is also a proud symbol you can bear.

Challenges faced in India regarding free and fair election-

Without free and fair election democracy is nothing but an indirect autocracy. The party with the best malpractices win and dominate and this not good for any democracy but it is a reality and fact that India has been suffering from this from the very beginning. Though there are strict guidelines and laws to prevent it but it seems that it is very much difficult to achieve. Although the use of muscle power to capture booths and intimidate voters belonging to vulnerable social groups has drastically come down in recent years, the percentage of candidates with criminal records still remains a matter of concern. But the bigger worry is money power. As regards the financial muscle of candidates, the survey showed that of the 521 sitting MPs, 430 (83 per cent)

were crorepatis in 2014 and they had average assets of `14.72 crore. A recent report by NEW-ADR after examining the affidavits of candidates in the fray in the first two phases of the current Lok Sabha election is also revealing. Of the 2,923 candidates, the NEW-ADR analysis of 2,856 affidavits shows that 464 have criminal records constituting 16 per cent of the total. Of them 313 candidates have serious criminal cases.

As regards the net worth of candidates, 824 of them—29 per cent—are owners of crore. and they have, on an average, assets of over `5 crore. But, this is the average of 2,856 candidates. The net worth of successful candidates will be much, much higher when you look at the amount of money being spent in each constituency.

With feudal, caste-based political families loaded with such huge, ill-gotten resources playing the game, democracy is becoming a no-entry zone for the average citizen. The EC must come face-to-face with this reality and find ways to stop the bribing of voters. Failing which, democracy will be reduced to an absolute farce.

How to attain basic consciousness to elect right that will result in healthy democracy?

It is easy to differentiate between Right and wrong but it can be opposite when human mind works in an evil mode or when there lies a tricky and confusing situation. Hence, one cannot determine what is going on in one's mind and how one reacts to certain circumstances. It is a Challenge for the society to deal with it.

But it is not impossible. It can be done with various ways. One is Meditation and it has worked for many spiritual seekers it is the oldest where one can increase their intelligence, improve mental health and decrease their tension, stress and it makes human being more compassionate and joyful. Another way is to provide education where people can be aware of the acts and their consequences. Most primarily is Introspection by doing self -introspection one can find faults within them and can work upon it to improve it as the first step towards identifying wrong in the society is to start from self.

To identify the past performance and to evaluate the same as per the requirement of the society.

To ignore the short term monetary offer or any material things that can create an undue influence upon the voting.

To judge and evaluate the representatives if they are competent enough for the post or not.

To make sure that the representatives adhere to the prescription of constitution or not.

Concluding Remarks-

Election is said to be the greatest festival of a democracy. The manner in which an election is conducted in a country reflects the value that the country holds for democracy. Therefore, paramount importance should be given to ensure the ethicality of an election. In order to ensure that, all the three arms of the government namely legislative, executive and judiciary has a role to play. Apart from that, the people of the country, who are to be governed need to be aware of their role in the democracy and act accordingly.

ANALYTICAL STUDY OF EMERGENCY PROVISIONS AND REQUIREMENT OF MEDICIAL EMERGENCY PROVISIONS IN INDIA

-Geetika Rathore*

ABSTRACT:

Sometimes, few circumstances arise in the lifetime of a country when situations become out of control and the constitutional machineries fail. Political and financial instability, war, internal and external aggressions, natural calamities and disasters are a few causes because of which such situations arise. To control and manage such situation, countries and states have added the provision of Emergency in their respective Constitutions. Imposing emergency increases the powers of the government and authorises them to make every such laws, rules and regulations which can normalise conditions in the state. Under some conditions, even Fundamental Rights can also be suspended during the proclamation of emergency. Part XVIII of the Constitution of India 1950 from Article 52 to 60 deals with the provisions for proclamation of emergency in the State. The President of India has the power to impose emergency on the grounds of war, external aggression, armed rebellion, financial instability and failure of constitutional machineries in the state. Currently, India has no Medical Emergency Provisions and, acts like, Disaster Management Act 1897 which are more than a century old and incapable to meet the current requirements of the situation are dominating and governing health of the citizens of the country. There is an urgent requirement to add medical and health provisions as grounds for imposing emergency in the State. Also, new, codified and capable laws, acts and reforms must be made to improve the health status and to fight against the spread of deadly diseases and viruses which are major hindrance in the development of the country and its citizens.

Keywords- *Constitution, Emergency, India, Provisions, Health.*

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INTRODUCTION

With reference to India, the state is called to be in a situation of emergency when for a particular period of time when the state is governed under altered constitutional setup as directed by the President of India. This situation arises when there is a serious threat to the nation from internal and external sources or from financial crisis. In such situation, the President of India with the advice of cabinet of ministers and using his powers as given in the Constitution of India 1950, can overrule the provisions of the constitution. Fundamental Rights of the citizens can be taken from them and the powers vested in federation can also be taken.

Post-Independence India has experienced emergency thrice in its history. They are as follows:

1. First emergency was declared during the Indio-China War on 26th October 1962 till 10th January 1968. During this time period there was threat to the security of India by "external aggression". The source of tension between India and China was to build infrastructure along the Line of Actual Control. India not only suffered loss of land and money during the war but around 1500 were killed, 1700 were missing, 1100 were wounded and 4000 were captured.

2. Second emergency was imposed during Indo-Pakistan War on 3rd December till 17th December 1971 on the grounds of "external aggression". A conflict had took place between India and Pakistan due to tension between East Pakistan (now known as West Bengal) and West Pakistan (now, Pakistan).

3. Third and most recent emergency was imposed on the grounds of "internal Disturbances" on 25th June 1975 till 21st March 1977. This decision of Indira Gandhi was largely criticized. But, the government then in power tried to justify it by stating political instability as the reason behind this emergency.

THE EMERGENCY PROVISIONS IN INDIA:

One of the chief characteristics of the federal Constitution of India is the way it includes the feature of Emergency Provisions in it. Part XVIII of the Constitution of India 1950 from Article 352 to 360 includes the provisions of emergency in the state.

The Constitution of India 1950 provides for three types of emergency:

1. National Emergency (Art. 352 of the Constitution of India 1950)
2. State Emergency (Art. 356 of the Constitution of India 1950)
3. Financial Emergency (Art. 360 of the Constitution of India 1950)

National Emergency- Article 352 of the Constitution of India 1950 provides if the President is satisfied there is a threat to the security of India, either by war or external aggression or *armed rebellion*[1], he may declare Emergency in respect of the whole of India or any part of India as required and mentioned in the Proclamation of Emergence. A Proclamation of Emergence can be made even before the actual occurrence of the event contemplated in Art. 352 have taken place. The emergency can only be declared on the concurrence of the Cabinet, Prime Minister and President. Emergency can be proclaimed for a time period of one month (prior to the 44th amendment it could be for two months) after which it will automatically expire. In case there is a need to extend the tenure; it has to be approved by resolutions of both the Houses of Parliament before it expires. A Proclamation of Emergency once approved by Parliament shall remain in force for a period of six months from the date of the passing the second resolution, unless it is revoked earlier. For further continuance of the emergency, beyond approval of six month, the Parliament would be required to approve the resolution again after every 6 months. If the dissolution of the Lok Sabha takes place during the period of one month or six months (as mentioned above) without approving the future extension of emergency and the Rajya Sabha has approved it, the Proclamation shall cease to operate at the expiry of 30 days after the Lok Sabha sits after fresh election unless before the expiry of the above period, it is approved by the Lok Sabha. The resolution need to be passed by the simple majority. If the Lok Sabha passes a resolution disapproving proclamation emergency or its continuance, the President shall revoke it.

[1] Inserted by the Constitution (44th amendment) Act, 1977.

The President has the power to proclaim emergency if he is satisfied that the security of India or any of its part is threatened either by war or external aggression or armed rebellion. Prior to 44th Amendment *"internal disturbances"* was one ground on which emergency could be proclaimed. The words *"internal disturbances"* were vague and gave wide discretion to the authority to declare emergency, so it was amended.

The *"satisfaction"* of the President that there is a threat and imminent danger to India's security is *"subjective satisfaction"* of the President. It cannot be challenged in a court of law on the grounds that the President had been actuated by *mala fides*. In *Minerva Mills Ltd. V. Union of India*[2], Bhagwati, J. has held that there is no bar to judicial review of the validity if a Proclamation of Emergency issued by the President of India under Article 352 (1) of the Constitution of India 1950. But the court has the power to examine whether the limitations conferred by the Constitution have been observed or not. The satisfaction of the President is a condition precedent and the exercise of the power would be constitutionally invalid if, it can be shown that there is no satisfaction of the President at all. Where the satisfaction is absurd or perverse or mala fide or based by wholly extraneous and irrelevant ground, it would be no satisfaction at all and would be liable to be challenged before of law.

It is to be noted that the word 'satisfaction' used in Article 352 of the Constitution of India 1950 does not mean the personal satisfaction of the President. It refers to the satisfaction of the Cabinet.

Art. 352 allows the President to make proclamation if emergency either "in respect of the whole of India or of such part of the territory thereof as may be specified". These words were to the Constitution of India by the 42nd amendment. This gives to authority to the President to declare emergency in a particular territory of India. If the situation becomes normal in any part of the country emergency could be revoked there, but, it may continue to operate in other parts as proclaimed.

During the Proclamation of Emergency the executive power of the Union of India extends to giving of directions to any State as to the manner in which the executive power of the State is to be exercised. The 42nd amendment made in Article 352 provides that the executive power of the Union to give direction under clause (a) and the power to make laws under clause (b) shall also extend to any State other than the State where emergency is in force. The Union is

[2] Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789.

also empowered to make laws with respect to matters stated in State List during emergency by the virtue of Article 353 (b). The State can make laws but it is subject to the overriding power of the Union Parliament. Articles 354 allow the centre to alter the distribution of revenue between the Union and the State. While the Proclamation of Emergency is in operation, the President may extend the normal life of the Lok Sabha by a year each time upto a period not exceeding beyond six months after Proclamation ceases to operate, by the virtue of Article 83(2).

Fundamental rights, as guaranteed under Part III of the Constitution of India 1950 from article 12 to 53, can be suspended during the operation of emergency by the virtue of Article 358. The Constitution (44th Amendment) Act, 1978, has made two important changes in this article. *First*, Article 19 can be suspended only when Emergency is proclaimed on the grounds of war or external aggression and not when emergency is declared on the grounds of armed rebellion. *Secondly*, it has added a new clause (2) in Article 358 which mentions that nothing in clause (1) shall apply to-(a) any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency, or (b) to any executive action taken otherwise than under a law containing such recital. This clause states that Article 358 will only protect emergency laws from being challenged in a court of law and not other laws which are not related to the emergency. The validity of even other laws, which were not related to emergency, could not be challenged under Article 358, prior to this. The Constitution (59th amendment) Act, amended Article 358 and inserted the words "or by Armed rebellion, or that the integrity of India is threatened by internal disturbance in the whole or any part of the territory of Punjab" after the words "or by external aggression". The right guaranteed by Article 19 could be suspended when emergency was on the ground of "armed rebellion or internal disturbance".

The Proclamation of Emergency does not declare a law invalid which was valid before the Proclamation of Emergency[3]. In *M. M. Pathak v. Union of India*[4], the Supreme Court held that the effect of Proclamation of Emergency on fundamental rights is that the rights guaranteed by Article 14 and 19 are suspended in their operation and not fully suspended. This means that only the validity of an attack based on Article 14 and 19 is suspended during

[3] Bennett Coleman & Co. v. Union of India, AIR 1973 SC 106.

[4] M. M. Pathak v. Union of India, AIR 1978 SC 803.

the emergency. But once this embargo is lifted Articles 14 and 19 of the Constitution, whose use was suspended, would strike down any legislation which would have been invalid.

State Emergency- Article 356 says that if the President is satisfied, on the report from Governor of that State or otherwise, that a situation has arisen in which the Government of the State cannot run according to the provisions of the Constitution, he may issue a Proclamation. During the period of Emergency the powers of State Legislature are to be exercised by Parliament as mentioned in Article 356(1). If the Lok Sabha is not in session the President may authorise expenditure from the Consolidated Fund of State, pending sanction of such expenditure by Parliament.

The President, on his *"satisfaction*[5]*",* has the power to Proclaim Emergency. The satisfaction of the President can be only challenge on two grounds-(a) it has been exercised *mala fide*, and (b) based on irrelevant and extraneous grounds, because in such case it would be no satisfaction of the President.[6]

It is mentioned under article 356 that the President acts on a report of the Governor or Otherwise, which means, the President can act even without the Governor's report. This is to make sure that the State Governments works under Constitutional provisions. Also, in order to declare emergence, resolution from both the houses shall be passed with simple majority and the tenure of emergency is two months as mention in Clause (3) of Article 356. For further continuance of emergency, approval of both the houses is essential before expiry of emergency imposed earlier. In case, any such proclamation is issued when Lok Sabha is dissolved or the dissolution takes place during the period of two months and the Proclamation is passed by the Rajya Sabha but not passed by the Lok Sabha, the Proclamation shall cease to operate at the expiry of 30 days from the date on which the new Lok Sabha cease to operate at the expiry of 30 days from the date on which the new Lok Sabha meets after the reconstruction unless before the expire of 30 days it has been also passed by the Lok Sabha. If the Proclamation is approved by the Parliament it may remain in operation of "six months". Parliament has the power to extend the duration of Proclamation for "six months" at a time

[5] The term *"satisfaction"* doesn't refer to the personal satisfaction of the Governor. It refers to the satisfaction of the Cabinet.

[6] State of Rajasthan v. Union of India, AIR 1977 SC 1361.

but no such Proclamation shall in any case remain in force for more than three years. After the expiry of the maximum period of three years, neither the Parliament nor the President shall power to continue a Proclamation and the constitutional machinery must be restored to the State. Before Constitution (44th amendment) Act, 1978, this period of "six months" was "one year". This amendment restricted the scope of Article 356 and restored its position as before 42nd Amendment. This amendment also added a new clause to the article i.e., Clause (5), which provides that a resolution for continuance of the emergency beyond one year shall not be passed by either House of Parliament unless-(a) a Proclamation of Emergency is in operation at the time of the passing of such resolution; and (b) the Election Commission certifies that the continuance in force of the Proclamation under Art. 356 during the period specified in such resolution are necessary on account of difficulties in holding general elections to Legislative Assembly of the State concerned. This Clause (5) was further amended by 48th Amendment in 1984 and provided that in case of the Proclamation issued under clause (1) on the 6th day of October, 1983 with respect to the State of Punjab, the reference in this clause to "any period beyond the expiration of one year" shall be construed as reference to "any period beyond the expiration of two years". Later, in 1990, the Article 356 was again amended by the Constitution (64th Amendment) Act. It provides for extension of the President Rule in the State of Punjab for another 6 months as the situation there was not favourable for holding Assembly election. This amendment added a new provision after clause (4) in art. 356 which substituted the words "three years and six months" for the words "three years" and also provided that the condition laid down in Clause (5) would not apply to the Proclamation issued under clause (1) on 11th May, 1987 with respect to the State of Punjab. After that, the Constitution (67th Amendment) Act, 1990, extended the period of President Rule by substituting the words "four years" from the words "three years and six months" in Clause (4) of Article 356 of Constitution.

Financial Emergency-

Article 360 provides provisions for imposing financial emergency. It empowers the President of India with the authority to declare emergency in India or any specified territory of India if he is satisfied that a situation has arisen whereby the financial stability or credit is threatened. The 44th Amendment provides that the proclamation of financial emergency shall cease to be in operation at the expiry of two months unless it has been approved by both Houses of Parliament. This proclamation may be revoked or varied by the President by a subsequent proclamation. In case the Lok Sabha is dissolved during the

Period of two months and resolution is approved by the Rajya Sabha, but not by the Lok Sabha the proclamation shall cease to operate at the expiry of 30 days from the date on which the new Lok Sabha sits unless before the expiry of 30 days a resolution approving proclamation is passed by the Lok Sabha. During the period of emergency the executives of the Union are given the authority to give directions to the State to observe such canons of financial propriety as may be specified in the directions and be deemed necessary by the President for maintaining financial stability and credit of the State. These directions may include provisions for reducing salaries and allowances of all or any class of persons serving in a State, including the Judges of Supreme Courts and High Courts. The President may ask for all Money and Financial Bills for consideration after they are passed by the Legislature of the State. The tenure of proclamation of financial emergency will be in operation for two months and unless approved by President it shall cease to operate at the expiry of two months' period.

DO WE HAVE ANY MEDICAL EMERGENCY PROVISIONS IN INDIA?

After analysing all the emergency provisions mentioned in the Constitution of India 1950 we can clearly notice that, India does not have any Medical Emergency Provision.

The provisions regarding proclamation of emergency as mentioned under the Article 352 of the Constitution of India 1950, originally mentioned that an emergency could be declared on the grounds of war, external disturbance and ***"internal disturbances".*** The term ***"internal disturbance"*** was a flexible and broad enough to include disturbances caused in the country due to an epidemic, pandemic, natural calamities, etc. But, the 44th Amendment to the Constitution of India 1950 substituted this word ***'internal disturbances'*** with the term ***'armed rebellion'.***

The Report of the ***Sarkaria Commission*** on the provisions of the Constitution had stated with reference to the Emergency provisions that[7]:

"The Constitution-framers conceived these provisions as more than a mere grant of overriding powers to the Union over the States. They regarded them as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people. They expected that these extraordinary provisions would be called into operation rarely, in extreme cases, as a last resort when all alternative correctives fail."[8]

The Report had also mentioned that the term ***'internal disturbances'*** has a broad scope and this internal disturbance may be nature-made, also. Natural calamities, such as flood, cyclone, earth-quake, epidemic, etc. may paralyse the government of the State and put the security of the state in jeopardy.

MEDICAL PROVISIONS IN INDIA:

In India, we have a few medical provisions which come into play during drastic situations. They are as follows:

1. **Epidemic Diseases Act 1897:** This aims at providing for better prevention of the spread of dangerous epidemic diseases. The Epidemic Diseases Act empowers the state governments and the central government to take measures which are necessary to control the further spread of disease. So, when the government is satisfied that there is immense danger from outbreak of certain disease and the provisions provided in the law are not sufficient, they may adopt all the measure which seems necessary to them including quarantine, inception of ships and vessels leaving or arriving at any port and for the detention of any person arriving or intending to sail, etc. Any person who disobeys any regulation or order made under this Act may be charged in violation of

[7] INDIAN LEGAL LIVE, https://www.indialegallive.com/top-news-of-the-day/news/can-pandemic-covid19-ground-declare-health-emergency/ (last visited May 5, 2021).
[8] Ibid

the provision and is liable, upon conviction, to a sentence of simple imprisonment for one month, a fine, or both. But, we can clearly observe that the Epidemic Diseases Act of 1897 is a century-old blunt act that needs a substantial overhaul to counter the rising burden of infectious diseases both new and old. Some of the provisions, under this act, that are either vague or insufficient to meet current requirements and need revisiting. The definition of epidemic disease, territorial boundaries, ethics and human rights principles, empowerment of officials and punishment are some of them.

2. **Quarantine of Visitors:** For people entering India from abroad, a health officer appointed by the central government is posted at the port of entry[9]. The health officer has the power to demand to see the aircraft journey log book, which shows the places the aircraft has visited[10]. He may also inspect the aircraft, its passengers, and its crew, and ask them for medical examinations after their arrival[11]. The officer must follow some specific precautions to prevent the spread of communicable diseases[12] that require a period of quarantine (such as yellow fever, plague, cholera, smallpox, typhus, and relapsing fever) and other infectious diseases that do not require a period of quarantine[13]. And many such similar provisions are provided under the *Indian Port Health Rules 1955*[14], pursuant to the *Indian Port Act*[15], for passenger ships, cargo ships, and cruise ships.
3. **State Laws:** In order to prevent the outbreak of diseases (like smallpox), states have enacted laws in their territories (vaccination of children under thirteen years of age in cases of smallpox)[16]. If at any stage a state government is satisfied that the state or any part or territory of it is threatened with the outbreak of any dangerous disease and that ordinary provisions of the law in force at the time are insufficient for the purpose of addressing the outbreak, it may take, require, or empower any person to take such measures and, by public notice, prescribe such temporary regulations as may be

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[9] Aircraft Act, No. 22 of 1934; Indian Aircraft (Public Health) Rules, 1954, R. 2(8).

[10] Ibid R. 6(2).

[11] Ibid R. 8(1).

[12] Ibid R. 9-29.

[13] Ibid R 30-32.

[14] Indian Port Health Rules, 1955.

[15] Indian Ports Act, No. 15 of 1908, http://www.mumbaiport.gov.in/writereaddata/linkimages/6177609667.pdf (last visited May 5, 2021).

[16] *E.g.*, Punjab Vaccination Act, No. 49 of 1953.

necessary to be observed by the public or by any person or class of persons for the prevention of the outbreak or spread of such disease[17].

4. **Cooperation with the World Health Organization (WHO):** The WHO is available to provide assistance in case of all the emergencies—for example, earthquakes, epidemics, or disasters resulting from terrorism of any sort that may create a health emergency in the country. In 1997, the WHO set up the National Polio Surveillance Project to help provide technical support for the government with surveillance of polio, mass vaccination campaigns, and routine immunizations. Taking current scenario of Covid-19 into consider, the WHO has been playing a major role in helping out the countries associated with it, along India, with technical aid.

REQUIREMENT OF MEDICAL PROVISIONS IN INDIA:

Although different acts and laws provide provisions to cope up with drastic medical situations arising in the country but since they all are either disintegrated or vague or insufficient, we need some powerful law reforms to manage medical emergencies. Covid-19 pandemic spreading its roots in the country has made this picture very clear. We not only need medical provisions but also medical provisions must be added as a ground to impose emergency in the state.

WHO in second meeting of the *International Health Regulations (2005)* Emergency Committee regarding the outbreak of novel corona virus (2019-nCoV) said "*The Committee agreed that the outbreak now meets the criteria for a Public Health Emergency of International Concern*"[18].

According to the reports of The Hindu, 'Member of Parliament from Udupi-Chikkamagalur Shobha Karandlaje has appealed to the State government to declare a health emergency. The

[17] Epidemic Diseases Act, No. 3 of 1897, § 2(2).

[18] WHO, https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov) (last visited on May 5, 2021).

MP said that it appears that the situation will go out of hand in the next fortnight. Hence, the government should take steps to manage the situation in better manner'. [19]

This shows how drastic the present situations are and also reflects the urgent requirement of emergency provision on the ground of health and medicine. With the exponential rise in the cases of corona virus the health system has already collapsed. No current law reform could control the breakdown of this deadly virus. Imposing emergency in the state can only provide the authority with all the legal power to control the spread of the virus.

CONCLUSION:

The Constitution of India 1950 provide provisions for emergency on the grounds of war, external aggression, armed rebellion, failure of constitutional machinery and financial instability in the State in Part XVIII from Article 352 to 360. The centre is empowered to regulate all the rules and regulations in emergency. Even Fundamental Rights can be suspended during the period of emergency.

There are no grounds in law of India to declare Medical Emergency in the state. Of course, there is always the **Doctrine of Necessity** which has often been used by our neighbouring state to over circumstances when an infringement of the law or the constitution is justified on grounds of necessity. This is founded on the principle "***necessitas non habet legem***[20]". Following this principle, emergency can be imposed by the Government of India. But, we still urgently need to add health and medicine as grounds to declare emergency. For the development of the country, properly codified health and medical laws, acts and reforms are needed to be made.

[19] THE HINDU, https://www.thehindu.com/news/cities/Mangalore/declare-health-emergency-mp-appeals-to-govt/article34408682.ece (last visited on May 5, 2021).

[20] "*Necessitas non habet legem*" means "necessity knows no law".

SOCIAL SECURITY OF INTERSTATE MIGRANT BUILDING & OTHER CONSTRUCTION WORKERS IN KERELA-

Aanchal Srivastava

INTRODUCTION

Kerela has always been the most attractive spot for migrant workers from all over India. It is home to about 3.5 million interstate migrant workers who have become an indispensable part of its economy. The state of Kerela offers the most lucrative wage rate than any other Indian state to migrant workers. The Government of Kerela also tirelessly works to create an inclusive and all-benefiting model for the migrant workers.

The state offers the best wage rates for workers in the unorganized sector in the country, manifold compared to most other state. The state, which registered a replacement level of fertility three decades ago, has two districts already witnessing negative population growth.Kerela acts as a safe-haven for migrant workers; with comparatively better-earning opportunities, desperate migrant workers find it best to move here. Migrant labourers from other states have become a requisite aspect of their economy. There is a need for migrant labourers in almost every economic area of Kerela that requires strenuous physical labour. Estimated to be about 3.5 million in 2018, migrant workers hail from all over India.

In 2020, to stop the spread of the Covid-19 virus, a stringent lockdown was imposed by the Central government. (at a notice of about 4 hours).All the economic activities in India had come to a halt. The most significant impact of lockdown was on migrant labour from rural areas working in urban and peri-urban areas. All the states throughout India struggled to handle the hardship of migrant workers during the national lockdown. Nevertheless, Kerala was able to provide food and shelter to migrant workers through a decentralized chain-response system. The state, which is still renowned as a remittance economy where migration from Kerala influences every household in the state directly or indirectly, is also known for measures taken for the welfare of interstate migrant workers it receives. It is the indecent attitude of carelessness that erases the expensive gift of solitude from a man's life. What can

be achieved through great struggle must have been acknowledging the astute part of the act. Ordinarily, the prejudice has been to let go the infidelity. It can be observed by the bare naked truth of times that the day was parched achieved through guidance and support like we have been working tirelessly. It's just the working of "The HSBC" has re-skilled the notary of that place. It has detonated the extra presence of the building. An American usage says, the removal of detonation impacts the working of the sector trades and devolves into a finer network which perhaps is the most suitable pre-mature condition. Another view from the European land is that the devolution penetrates to vitalize and empower shriek fighters. All kind of juggling has led to the construction of an edifice which is irrefutable. The only loss that drags the Harmon is the perennial stigmatization of wounds. By integrating secondary information, this article explores the migration of building and construction labourers to Kerala, steps taken by the Government of Kerala to improve these workers' social security, and the inclusivity of the state's reaction to workers' anguish during the raging lockdown. The only goal of this paper is to have a comprehensive understanding of the social security of migrant building and construction workers of Kerela by scrutinizing various schemes available at their by the Government of Kerela.

Plausible Reasons behind Migration to Kerela

Kerala exports its own skilled and semi-skilled labour to the outside world, improving its potential to receive more remittances from outside. That results in a surge in remittances from Keralites working in the Middle East and Europe. While simultaneously, Kerela has also evolved into state that draws migrant workers. Now, these foreign remittances received by Kerela induce the construction and building sector activities. The characteristic of the labour-market condition of Kerela was always one with an acute shortage of domestic labour. The labour market condition of Kerela traditionally has been marked by a severe scarcity of domestic workers. These laborers have an aversion to physical labour. Such coupled with continued migration to other countries, notably the Middle-East drained labourers from Kerela.

The current state of Kerala's labour market, which is defined by a scarcity of domestic labour, their aversion to physical labour, and their continued migration to other countries, notably the Middle East, needs the inclusion of migrant workers in the state's economic process. The significant difference in wages and the sustained demand in the construction sector resulted in heavy migration from Tamil Nadu. By 1990s, Kochi, the construction hub

and commercial capital of Kerala, witnessed heavy migration of labourers from Tamil Nadu. A settlement of migrant workers from Tamil Nadu evolved at Vathuruthy in Kochi.*Bhais*, as the migrant workers from outside South India are popularly called, received higher wages than what they could earn elsewhere in India and enjoyed the work and the peaceful life in Kerala. While a relatively small section of the migrants from other states are professionals and skilled workers, large majority of them are unskilled or semi-skilled workers engaged in construction, road works, pipe laying etc. (The distinction between skilled labour and unskilled labour is very important because the two groups interact with labour market differently. Skilled workers face fewer problems given their qualifications and bargaining power.

But in large scale construction as well as infrastructure works, migrant workers are largely recruited through contractors or agents who settle wages, after retaining part of their earnings from the payments received from employer. Sometimes they also play supervisory roles.

It was noticed during the survey that the Tamil labourers were ready to take up any job. For instance, even if some respondents mentioned their main occupation as 'construction work', they added "we do any job which the employers offer us". In such a situation, the respondents who work in a construction site one day will go for cleaning canals or digging wells the next day. But majority of the respondents reported that their primary employment is in the construction sector.

Significant numbers of people from drought-prone regions - including areas of Andhra Pradesh, Karnataka, and Maharashtra - migrate seasonally to work in brick making, construction, tile factories, and crop-cutting operations and crop-cutting operations.

According to a research study conducted by Gulati Institute of Finance and Taxation (Trivandrum) for the Kerala Government (2013), there are over 25 lakh domestic migrant labourers in Kerala today with an annual arrival rate of 2.35 lakhs. Most of 10 them are from West Bengal, Bihar, Assam, Uthar Pradesh and Orissa. Many of them are mobile, single males, between 18 – 35 years old. The remittances to their home states by them are over Rs. 17,500 crores. "These workers are not part of any trade union or any social security network, nor are they aware of their labour rights. ―They are only bothered about prompt payments for the work done." Sixty per cent of them work in the construction sector.

It may no longer be just anecdotal that every twelfth person in Kerala is a migrant worker from outside the State. Along with Karnataka and Tamil Nadu, Kerala is experiencing a massive influx of migrant workers into its emerging urban areas and its hinterland. High wages, and the shortage of skilled and unskilled labour due to high education levels and emigration from the State to West Asian countries, make Kerala an attractive destination for workers from north, central and north-eastern India. A large influx of outsiders does cause some worries to the local population, some of which may be valid. However, if the initiative for a new law, which is to include registration, is driven purely by suspicion of outsiders, either as a threat to law and order, or even more astonishingly, as potential disease carriers, it could only contribute to reinforcing the sense of insecurity that migrants from afar often experience. At a broader level, there should be an effort to create dialogue mechanisms between host States and the home States of migrant workers. But this too may not be enough. Given the inter-state dimensions of labour migration, it might be advisable to have a revamped Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. This law needs to take into account the new economic realities in the country. Today, Kerala legislators need to focus their efforts on creating not just another law, but one that would give substantive social inclusion to the migrant workers, and empower them to live with honour among their hosts. The southern States must put in place effective mechanisms to ensure the welfare of migrant workers, and given the possibility of many of them settling down in their adopted homes; assist them in getting integrated with the local communities. Kerala, for one, has set the ball rolling by beginning work on a piece of legislation specifically 11 focused on migrant workers. Tentatively titled the Kerala Migrant Workers (Conditions of Service and Compulsory Registration) Social Security Bill, the proposed law could turn out to be yet another model from the State for the rest of the country if handled sensitively and imaginatively.

Migrant workers started flowing to Kerala due to the heavy demand for unskilled and semiskilled labour in Kerala which occurred because of the non-availability of Malayalees to do these jobs which sustain our economy. Every entrepreneur in Kerala will definitely agree that without them they will not be able to pull on their trade or business. One of the reasons for the arousal of such a situation is the high level of education of Malayalees. With the heavy burden of higher education, an average Malayalee keeps away from the jobs in demand. The tendency is to search for white collar jobs which usually can be found away

from home. Well educated and talented Malayalees have several opportunities in various fields in the country and elsewhere out of the country, due to the current
global socio economic scenario. Individual talents are appreciated because of the presence of the social media, its accessibility and the capacity and knowledge of the Malayalees to make use of it. The problem which needs greater attention is that do these lesser educated semiskilled and unskilled migrant labour who work in Kerala, replacing the gap created by Kerala labour disappearing from the Kerala labour market due to various reasons, feel comfortable to work here. They are here because wages in Kerala are very high when 13 compared to the wages they get in their home state. This study suggests appropriate steps to be taken by appropriate authorities for tackling the problems of social integration of these in-migrant workers in Kerala.

Even though all the above problems exist, migrant workers cannot be ignored or avoided because without them our economy will be handicapped. Our youth migrated to foreign countries and remit money to their families, enabling them to pay better wages than other states. This has resulted in the growth of our economy, especially in construction and small scale industries.

An equally important factor was the low wages for unskilled labour in the villages. According to the respondents, they get less than ₹200 a day for the work in their villages. As mentioned earlier, the young people who are presently working in Kerala were pushed out of their villages in West Bengal, Odisha or Assam due to lack of employment opportunities and low wages in their villages. But they had other options such as moving to the urban areas in the same state or moving to metro cities in the country such as Delhi, Mumbai, Bengaluru or Chennai. None of the five cities in Kerala are million plus cities. Then why did they come to Kerala? We tried to get a feedback from the migrant workers in Kerala. A Bengali worker employed in the construction sector told us “If I work here properly, I would be able to earn around ₹ 15000 per month, whereas even in Kolkata I can earn only

₹ 6000. Regularity of work is also a problem there”. Another worker agreed with him saying that “if I earn ₹ 6000 in Kolkata, I have to spend ₹ 3000 for expenses. Here I can earn ₹ 10000-15000 without much difference in working hours and cost of living”. “In villages also, we need at least ₹ 4000 for my family 6 consisting of father, mother, myself, wife and one child”. The other workers who participated in the FGD also agreed with him. Another worker

from Odisha told us “anyone who has come like it here because they get work….they don’t want to go back because there they won’t get this kind of money”. Similar opinions were aired by many others during the depth interviews.

The high wage rates and opportunities for year round employment in Kerala are the obvious primary pull factors. The wage rates in Kerala are significantly higher than not only the states of origin but also the potential destinations of the LDIMs. One reason for strong presence of pull factors in Kerala is the fast economic growth taking place in the state. The long tradition of out migration to other states and emigration to other countries, decline in the young domestic workforce (caused due to demographic transition), higher educational attainment of Kerala population have resulted in a shortage of unskilled labour within the state. The structural change in the economy in favour of tertiary sector and construction sector also created a pull for non-agriculture labour. Apart from the above factors, the fast pace of urbanisation and the rural-urban continuum attracted people to Kerala.

Apart from its importance in the economic development of Kerala, inter-state migrant flow facilitated retaining the demographic balance in the state which has the highest proportion of aged population and where a good proportion of the population in the working age group have migrated out of the state.

Right to Maintenance of a Wife- Anyesha Chakraborty

The Hindu Marriage Act and the Hindu Adoption and maintenance act are rather progressive acts. It is a need of the time in the present day when women are suffering through so much that nothing seems sufficient enough to stop these oppressions. But the honble courts by their judgements time and again has instilled our faith in the fact that the society is moving forward in the right direction and if not very soon but definitely sometime or the other we will be able to make this world a better place for the womankind. This research paper aims to study the position of maintenance under the Hindu Marriage Act and the Hindu Adoption and Maintenance Act. How the Act has affected and changed the lives of the women over time the relationship of husband and wife is considered to be one of the most sacred relationships according to the Hindu philosophy. The Hindu religion worships the wife's eternal devotion to her husband and in turn considers it to be the husband's duty to look after the wife and her needs. The Hindu Adoption and Maintenance Act throws light on the above. It highly commendable how Hindu families around the world has been following this trend throughout the world. Not just Hindu families in this regard but various other sects around the world also have this philosophy that along with the sacred act of marriage comes these responsibilities. Marriage is a very sacred institution and various cultures around the world believe the same too. In the early days marriage was considered to be a very divine act and it was considered to be god made. The various Hindu epics also speak of the same the Mahab harata considers the wife to the"Ardhangini" the wife acts as a source of dharma artha kama and moksha the last level of self-enlightenment. Even the Ramayana considers marriage to be a very sacred ritual in the sense it says that the wife is the friend of the husband and the grihini "the one who look after the household". The Hindu law thus aims at protecting the right of women in the best way possible. Women have suffered thrpugh ages of suppression and therefore it is the need of the hour that by the means of these laws we protect them and give them the necessary legal rights to build themselves men and women are both the wheels of the chariot called society the society will only be able to move forward if both men and women grow together and also help each other grow. Sometimes it so happens that the wife is not able to sustain herself because the husband for whatsoever reason refuses to provide for her these

laws ensure that men are not able to cause such distress to women. That is what this act aims at, It aims to continue the age old tradition of marriage and preserve the dignity of the people involved and at the same time ensure no one is affected as a result of anyone's action.

The Hindu Adoption and Maintenance Act has been successful in this regard and the provisions contained in the act give us a clear look of the same. By means of this provision it can be clearly understood that marriage is a two way street and both the husband and wife need to play their respective part to fulfil a marriage and make the marriage a success.

The section 18 of the Hindu Adoption and Maintenance Act provides us an insight into the provisions of this particular act relating the maintenance of a Hindu Wife and also the separate residential arrangements for the wife as well. According to the Act a Hindu wife, who may be married before or after the commencement of the present act is entitled to a certain amount of maintenance. This provision is applicable irrespective of the fact whether the women is an earning member of the family too or not. It is a duty on the part of the husband to provide a certain amount of money for the welfare of the wife and also for the wife to spend that money for her day to day activities or her daily life. When we talk about the word maintenance it is important to understand what this maintenance received from the husband actually consists of. Maintenance according to the Hindu law means the amount payable by the husband to her wife for her conduct of day to day lives during marriage separation or divorce.

The definition of maintenance is maintenance is right to get all the necessities that are reasonable. Now what is reasonable has to be understood according to the facts and circumstances of each case. Maintenance according to the act includes food, shelter, clothing, medical attention etc to be provided.

In the case of State of Haryana v Smt Santra it was decided that maintenance depends on the jural relationship between the parties.

Maintenance of a wife The HAMA act has even put in a provision that a Hindu wife has the authority to get maintenance even when she is not living with her husband that is she is living separately. There are several grounds on which she can get the maintenance if she is living separately from her husband they are the following:

- If he has treated her with cruelty now what is cruelty has to be determined according to the facts and circumstances of the case because cruelty is something that is very

perceptive and various on several factor each case of cruelty is different it can be mental cruelty, physical cruelty etc.

- If he is guilty of desertion , that means the husband has left her or deserted her for whatsoever reason.
- If the man already has a wife and the marriage was conducted before the present Hindu Marriage Act
- If he keeps a concubine in the same house that the wife is living and that would also be considered to be mental cruelty because the wife would definitely be affected by such behaviour of the husband and she would be entitled to maintenance.
- If he ceases to be Hindu because of his conversion to another religion the wife would be entitled to maintenance.
- If there is any other possible proper cause for the wife to live separately.
- Any of these reasons would entitle a wife to maintenance.

The section 154 of CRPC also provides the provision to the wife for recovery of maintenance during the pendency of a suit. This type of maintenance is called Interim maintenance.

In the case of Puroshottam Makhaud the Supreme Court held that the right to maintenance is considered to be a substantive right under article 18 of the constitution.

Another kind of maintenance which is also called Maintenance pendente lite ; Under section 24 of the Hindu marriage Act it says that if either husband or the wife in the wedding does not have enough income to sustain himself then the petitioner has to and should pay a certain level of maintenance to the wife. If the court believes that the wife will not be able to sustain herself during the pendency of the proceedings then in that case the court will ask the husband to pay her sufficient amount to continue with her livelihood so that she can sustain herself properly .

Under section 25 it states that the maintenance can be paid in stages or by the means of gross income. The fact whether a person is entitled to maintenance or not has to be determined by the facts and circumstances of each case.

This also makes the wife a dependent and thus she is entitled to maintenance. If the husband has deserted his wife and children who are raised by his wife then in that case to the wife would be entitled to maintenance. If the husband has forced the wife out of the house this is again a form of cruelty she will be entitled to proper

maintenance by the husband in this case as well. The court also holds it very openly that a wife would not be entitled to maintenance if the wife is unchaste or ceases to be a Hindu and in this case she would not be provided with a separate place to live either or entitled to maintenance.

It is needless to point the importance of maintenance in the Hindu Joint Families over the ages it has had a profound influence on the rights and duties of the husbands and wives over the ages and it is something to think about. Joint family is also one of the only institutions that can only be seen in India and not elsewhere. Even by the means of the Hindu law if a spouse dies it is the duty of the father in law to look after the widow of his son. It is an age old tradition of the Karta of the family to look after the members of the joint family and provide for their maintenance.

This was held by the quote in the case of Raj Kishore Mishra v Smt Leena Mishra.

Court held that the obligation of father-in-law shall not be enforceable if he has no means to maintain his daughter-in-law from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share. The object of this Section is to make it clear that the widowed daughter-in-law can claim maintenance from her father-in-law only where she is unable to maintain herself out of her own property or from the estate of her husband, father, mother, son or daughter. It is also provided that the father-in-law shall be under no obligation to maintain his daughter-in-law except in cases where there is some ancestral property in his possession from which the daughter-in-law has not obtained any share.

Thus we can clearly see from the above provisions that the court has time and again reiterated the fact and also it can be clearly understood by a normal person that the act and its provisions have time and tried to prevent any kind of oppression held to women in any form and it tries to curb that in any possible way. This is something that can be understood from the judgements the Hon’ble courts have passed over the years. This can be seen as a stepping stone for the society too.

ROLE OF FORENSIC SCIENCE AND ITS EVIDENTIARY VALUE IN CRIMINAL JUSTICE SYSTEM-

Bhoomika C B

Abstract

Due to the development in criminal justice system, there has been a remarkable perception in crime investigation techniques as far as technological development and infusion is concerned as observed in the previous decade. The use of scientific tools and techniques in crime discovery by police officials which results in identification of alleged criminals or offenders helps in establishing a central link between the police force and judiciary. Further, they take an account of the physical evidences collected and keep a track on them that are reliable and determine precisely the accuracy of innocence or guilt in the criminal or the offender. Forensic science is a discipline that works within the parameters of the legal system which means, there are legal provisions which supports and restricts forensic science. The investigation with the help of forensic science has remarkable contribution in supporting justice in crime investigation and other heinous violence. The main purpose of this is to provide guidance to those conducting criminal investigation by identification and recovery of evidences at crime scenes which helps them to gain precise information upon which they can rely in solving civil and criminal disputes. The crime include homicide, rapes, murder, incidents related to accidents, undisclosed bodies, misplaced persons, cases related to fraud and cases related forgery. In India, the statements and witnesses are given great importance and are used as a source of evidences and those who are proved guilty are then prosecuted in the court. Hence, Forensic science services and investigations involving forensic science might be the most significant for solving a crime.

The present paper will understand the importance of forensic science in Criminal justice system and what key role it plays. What are the legislations supporting or restricting the usage of forensic evidence. What impact it has on the field of crimes. How forensic science investigation is recognized internationally in USA and UK criminal justice systems.

Key words- Crime, evidence, Forensic, investigation, justice,

Introduction:

Justice does not come with a blink to everybody. It takes several moves, starting from police investigation to court proceedings and finally judgments. Legitimacy has always been considered as assurance of the justice system. Criminal justice system encompasses a specific division or the set of processes, bodies and institutions that plan to protect or refurbish the mechanism of social control. An effective criminal justice system guarantees a safe and peaceful society. In reality, the complete existence of an organized society depends upon good and effective criminal justice system. In the last few decades, the advancement of technology in crime investigation has been a major development in the process of improvement of criminal justice. Forensic science is one among them.

Forensic Science is defined as "The application of science to those criminal and civil laws that are enforced by the police agencies in a criminal justice system". Forensic evidence is considered as secondary evidence, documents being the first. Forensic evidence is physical evidence that is found in a crime scene. The shreds of evidence found at a place of crime play a principal role for promising fair justice. The primary evidence is integrated with secondary evidence and is submitted in the court of law. They play a major role in understanding the facts and delivering judgment. Forensic science involves usage of method and technology of different sciences like chemistry, physics, biology etc. For example, when the offence of rape takes place, the forensic biologists examine blood, skin cells on clothing, semen, fingernail scrapings, sweat stains and other to support the investigation which results in speedy delivery of justice. [1]

Research methodology

The methodology used here in this research article is Doctrinal method that is the method of theoretical or analytical study. Internet sources and relevant websites are used to gather the information. The study topic is elaborated using existing information and personal views.

Forensic science in crime investigation

[1] Dr. Sonia Kauli Shah, Applicability of Forensic Science in Criminal Justice System in India with emphasis on Crime scene investigation file:///C:/Users/HP/Downloads/SSRN-id3220169.pdf

Criminal investigation is a pragmatic science that includes the study of facts, used to classify, uncover and exhibit the culpability of an alleged criminal. A complete criminal investigation can include consultations and probing, cross-examinations, evidence collection, preservation and other various methods of investigation. Fundamentally, forensic science involved with physical and scientific clues that are found in a crime scene during investigation. It plays a very important role in criminal justice system. When a crime takes place, the investigating officer collects as many evidence possible from site of the crime. They investigate in detail because even a minuscule proof can reverse the case. Forensic science has significant contribution in solving crimes and other odious violence. To understand this better let's take an example of arson. The forensic fires investigators will examine the site and collect evidences found and submit it to the court. The court will link the fragments of evidences and deliver a judgment. When it is about the level of investigation no matter what will be the level of sternness of the case nothing can prove more profitable to the crime investigator than the use and application of the principles of forensic science. Therefore, the role of forensic science in criminal justice and the legal system is very critical in nature. [2]

Forensic science elucidates the distinctiveness of the suspect and the evidence clarifies nature of the crime committed. The circumstantial evidence also tells how or at what time the crime was committed. The forensic evidence found in a crime scene also proves the location of crime. Finally, they find reason behind it and forensic investigators recreate the individuality of criminal and the victim. It plays a crucial role in identifying the culprit by proving scientifically through physical evidence. Due to the emergence of advance DNA technology it enables forensic investigators to identify criminal purely on the basis of scientific evidence he left on the crime scene. On the other hand, if all the evidences like fingerprints do not match the accused then it proves the innocence of the accused. [3]

There are a lot of cybercrimes that take place. For this there exists cyber forensics. Cyber experts provide several forensic services which includes forensic expert opinions under Section 45 of

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[2] Reema Bhattacharya, Applicability of forensic science in criminal justice system (June 2019) https://www.researchgate.net/publication/342335305_Title_of_Abstract_APPLICABILITY_OF_FORENSIC_SCIENCE_IN_CRIMINAL_JUSTICE_SYSTEM_INDIA

[3] Forensic Sciences, National Institute of Justice, Office of Justice Programs, http://www.nij.gov/topics/forensics/pages/welcome.aspx

Indian Evidence Act which talks about questioned document and handwriting analysis. It also includes forged electronic documents, frauds relating to digital documents, spoofed emails and disguised documents, fake content, fake profiles, porn clips, vulgar emails, cyber defamation, cyber bullying, lottery emails, online gambling etc. cyber forensic experts search for the media that is to be seized and search for unallocated clusters. They examine data existing and also search for deleted files. They recover the data which can be used as evidence and analyze the same. They later preserve the suspect media which can be presented to the court. [4]

Legal provisions supporting and limiting forensic science in criminal investigation

The Justice system has an enormous belief and confidence in forensic science and has trusted on them since ages for delivering judgment. Forensic reports are regarded as the bible for many judges and have been considered to be a belief submitted by experts. But courts are not certain of the reports then they can rely on other evidence. No doubt forensic science has made remarkable contribution to criminal justice system but the limitation of law cannot be ignored. Few questions arose by many legal professionals if the forensic evidences are admissible to the court? How far these forensic techniques are legitimate?

According to Article 20 (3) of Indian Constitution, "no person accused of any offence will be compelled to be witness against himself." This Article is drawn by the presumption of law that the accused person is innocent until proven guilty. This article exists as a guard to the accused from the mental harassment they suffer during the police investigation. It was found that police would brutally beat the accused and force them to be a witness against themselves just to close the case. As per this right, no one is under obligation or compulsion to answer any question or produce any document which can act against them in the court of law.[5]

A lot of people felt that taking fingerprints and DNA analysis as evidence and for verification. This act defeats the provision of Article 20 (3). They contended that forcing the accused to give

[4] Srikrishna, What is forensic science? Scope of forensic science and different methods used in forensic analysis... http://www.legalservicesindia.com/article/601/Forensic-Science.html

[5] Justice U.C. Shrivastava, Immunity from Self-Incrimination under Art. 20(3) of the Constitution of India, JJTRI, U.P., http://ijtr.nic.in/articles/art19.pdf

fingerprints is equal to the accused giving evidence against themselves. But the Supreme Court in the case ***State of Bombay v. Kathi Kalu Ogad and Anr*** held that compelling a person to give any of forensic evidence like blood, semen, hair, and fingerprints does not violate the provision given under Article 20 (3)[6]. The same is even mentioned in Section 73 of the Indian Evidence Act. This Section points out that any person can be asked to give fingerprints or DNA examination. Even to the accused.[7]

There was another question regarding Narco-analysis and its validity. Narco-analysis is the new advance in the field of criminal investigation. But the question is if the evidence by Narco-analysis admissible in the court of law. In this method of Narco-analysis, the investigating officer tries to obtain some sort of statements from a semi-conscious person which can be used as the evidence. This process holds several questions about law and ethics. It is said that it is violating the provision of Article 20 of the Indian Constitution against self-incrimination. Earlier in the case Ramachandra Reddy v. The State of Maharashtra, The court upheld the constitutional validity of the use of Narco-analysis and lie detector to obtain evidence. But in the case Selvi v. State of Karnataka, the court held that the person giving statements in Narco-analysis test is the semi-conscious state and therefore they cannot be considered definite and thus it cannot be made a part of the compulsory investigation procedure.[8]

Section 53 of the Criminal Procedure Code, 1976, says that any person accused of any crime can be asked to take or undergo medical examination if the investigating officers feel that the examination can provide some important and crucial evidence to the crime. Certain amendments were made in Criminal Procedure in the year 2005 to include the examination relating to blood stain, semen test, DNA profiling, swab test etc., but this was limited only to rape cases. Moreover, Section 164A of Criminal Procedure Code authorizes the medical inspector to examine the victim of the rape case within twenty four hours. Here the question arises if all the practitioners are proficient enough for the collection of samples of DNA. This is because of the

[6] AIR 1961 SC 1808, 1962 SCR (3) 10
[7] Indian Evidence Act 1872
[8] Narco analysis test and law in India, https://madhavuniversity.edu.in/nacro-analysis-test.html

well-known fact that the collected sample must not be contaminated as it would be of no further use in the investigation. [9]

Restrictive use of Forensic science in Indian criminal justice system

The most significant function of forensic investigation is to convert doubt into reasonable certainty of either guilt or innocence. However, till today, the courts had to depend greatly on the non-scientific evidence as there is no proper availability of technologies required. A study was conducted by Supreme Court and High court in 2011 that shows only in 47 cases; DNA has played an important role. Out of which, 23.4% decisions were delivered by Delhi High Court alone. Furthermore, DNA evidence had been used only in 4.7% murder cases and 2.3% rape and murder cases. [10]

The Court's reluctance to use forensic evidence for criminal investigation has several reasons. It starts from improper collection by the investigators to its preservation. Sometimes non-collection of the same also becomes an issue. In many cases, the court found out that the evidence collected from the sites was not properly conserved because of which the reports showed the result which was misguided. The DNA samples get tainted and become ineffectual and useless. It was also noted that the evidence was always sent late to the lab. The delay in the examination of serological and biological evidence causes the breakdown of such evidence which tends to release a high amount of alcohol. Therefore, in cases like determining the drunkenness of the body, the negative result can show positive which makes it difficult for the court to depend on the result.

The very motive of forensic analysis is to determine the reason for the crime. It should be engaged in active examination of the crime site. Therefore, it is vital to handle the evidence and organize the documents to make it admissible and valid in court of law. Forensic evidence has

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[9] Diganth Raj Sehgal Forensic science in Criminal Justice system https://blog.ipleaders.in/forensic-science-criminal-justice

[10] Applicability of Forensic Science in Criminal Justice System in India with special emphasis on Crime Scene Investigation https://legaldesire.com/applicability-of-forensic-science-in-criminal-justice-system-in-india-with-special-emphasis-on-crime-scene-investigation/#:~:text=On%20the%20other%20hand%2C%20the,to%20complaint%20cases%5B19%5D.

massive potential in various affairs. To make this more effective and efficient the only step needed is, to be incorporated in the investigation and analyze process efficiently. [11]

Role of forensic science and evidence in International criminal justice systems

Forensic testimony is commonly used across the world for both convicting and absolving suspects. Thus, forensic science labs have been growing across the globe over the past few decades. In addition, Special Acts have been passed to improve the delivery of forensic services in the US, UK and Australia. This ensures greater certainty in the finding of crimes, and consequently, rates of conviction may increase. Such Acts place great importance on timely and high-quality crime scene management.[12]

In USA forensic science plays a very critical element in criminal justice system. The Department of Justice maintains forensic laboratories at the Bureau of Tobacco, Alcohol, Firearms, Explosives, Firearms, the Drug Enforcement Administration, and the Federal Bureau of Investigation. Even though the department is not National Institute of Justice, it is a sponsor of pioneering research. The labs play an important role and serve as a model for government forensic agencies at the federal, state and local levels. The Department endeavors to set the global standard for brilliance in forensic science and to advance the practice and use of forensic science by the wider community. They mainly focus on increasing the dimensions of forensic service providers so that evidence can be produced quickly and investigations can be settled without delay. They have been successful in improving the consistency of forensic analysis to allow examiners to report results with increased certainty and more accuracy.[13]

In England, the use of forensic DNA technology is widely recognized as having the most effective and efficient approach in the world. Since the founding of the National DNA Database (NDNAD) on April 10, 1995, England has become a world leader in discovering groundbreaking ways to use DNA in finding suspects, protecting the innocent and to convicting the guilty. The

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[11] Gowsia Farooq Khan , Sheeba Ahad, ROLE OF FORENSIC SCIENCE IN CRIMINAL INVESTIGATION: ADMISSIBILITY IN INDIAN LEGAL SYSTEM AND FUTURE PERSPECTIVE
http://www.ijarse.com/images/fullpdf/1523436914_JK1433IJARSE.pdf

[12] Diganth Raj Segal, Forensic science in Criminal justice system https://blog.ipleaders.in/forensic-science-criminal-law/

[13] R M Morgan, Forensic science and its importance in theory and practice
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7219159/

basis of DNA focused investigations in England is its extensive DNA database. However, many factors play an important role in contributing to the success of the UK's approach to forensic DNA applications.[14]

Conclusion

It is an obvious fact that the role of forensic science and evidence has extensive importance in the justice system. Forensic science plays an integral role in the criminal justice system. Well-trained forensic scientists and medical examiners can be the determining factor in the ability of evidence to sufficiently represent the facts of a case. Forensic science can be used in investigating almost any criminal case. However, investigations of homicide, rape, murder and arson are those crimes that benefit the most from forensic science investigation. Huge thanks to the advancement in science and technology which contributed to the development and usage of scientific tools that resulted in rapid development in forensic science as well. But after all this also in countries like India, there has been less dependency on the scientific methodologies. In India, the more importance is given on the incorporation of technologies in the field of investigation. Several commissions' reports proposed that if courts consider the scientific methods of forensic science in delivering the judgments then it can bring justice, fairness and equity which are the guarantee of democracy. But courts have been unwilling to merge forensic science in their system, majorly because of the experience of the forged results and contaminating evidences. Though several amendments are made promoting forensic technologies, there exists flaw in the system which is to be addressed.

The impact of forensic science is huge in solving crimes. There can be an issue of mishandling or misleading evidences that make devastating impact on goals of criminal justice system that is why experts with required skills are necessary in this field to handle such matters. At the same time, it is important for us to ensure that the investigating communities and law enforcement recognize and use forensic science technology properly and contribute to the criminal justice system. The prominent reports from the forensic scientists shall undoubtedly fulfill the hope of the society from the forensic professionals. At present time because of the fact that criminals are embracing and adopting new modern refined techniques in committing the crimes. Therefore, it

[14] Christopher. H. Asplen, The application of forensic evidence in England and wales https://www.ojp.gov/pdffiles1/nij/grants/203971.pdf

is not possible to solve the crime without applying the new scientific technique. Thus the importance of forensic science is fast growing in the present time and with the help of forensic science and its new techniques the mystery of any crime can be easily solved.

ENVIRONMENTAL PROTECTION THROUGH THE NATIONAL GREEN: HOW FAR EFFECTIVE- A STUDY-

Ayushi Girish Patwa

ENVIRONMENT PROTECTION THROUGH THE NATIONAL GREEN

ABSTRACT:

"Earth provides enough to satisfy every man's needs, but not every man's greed" ----Mahatma Gandhi,

Currently human society is experiencing unknown abnormalities in the nature and its functioning in governing the global sustenance. The post 2010 period has witnessed the worst hit natural calamities which results in the death and disablement of millions of people and loss of billions worth of properties throughout the world. Even the global warming is in an increasing trend. In India, we face a crisis in agriculture because of resources like land energy and water are becoming scarce. The heavy use of chemical fertilizers and toxic pesticides has ravaged our soil and contaminated our food chain and water supply. The prolonged and unprotected handling of toxic chemicals is also exposing out farmers to multiple health problems. There is a need for paying universal attention for bringing back, the adversely affected environment to its natural existence at any cost. It is to be noted that after the establishment of National Green Tribunal, it has settled amount of environmental issues, and has got overwhelm response from different corners. As it has been noted, almost all nations, including developing ones, have basic environmental protection laws in place, but an huge gap exists between the letter of the law and what is actually happening on the ground. Therefore, in this paper, an attempt has been made to highlight diverse assertions of the Green Tribunal in protecting the natural atmosphere.

Keywords: NGT, Environmental Protection, Governance, laws.

TABLE OF CONTENT

INTRODUCTION:

Environment is the greatest gift by god to man and other living being. It is very important factor for development to all kinds of animals, plants and others. There are abiotic(non-countable) and biotic(countable)components. Abiotic components includes air, water, light, etc. biotic components includes animals, plants and human beings, etc. environment is important factor for everything and it is also responsible for survivorship and continuance of life on this earth.

In India the higher judiciary is loaded with excessive weight with a large backlog of cases. It may be appreciated that in order to have effective prevention of environmental pollution and environmental complaints should be decided in an efficient manner which is not possible in the present context of judicial administration. Therefore urgent need was felt for an alternative forum so that environmental cases were resolved without much delay. India's Environmental Court as a result of the need repeatedly express by the Constitutional Courts on the need to have a specialized judicial bodies to deal with complex environment questions. The trigger for setting up of Environmental Courts was through the Supreme Court of India which in its judgment highlighted the difficulties faced by Judges in adjudicating on Environment.

THE NATIONAL GREEN TRIBUNAL ACT, 2010

Under Article 21 of the Indian constitution national green tribunal was established in 2010. This act guarantees the citizens of India the right to healthy environment. After Australia and New Zealand, India is the third country to have such system. The Tribunal is a quasi-judicial body. National green tribunal court is not a new concept. Various courts in the country advised to establish this courts for environment protection.

In M.C Mehta vs. Union of India case in 1986, Supreme Court observed that environmental cases involve assessment of scientific data. Setting up of environmental courts on regional basis would require professional judge and experts, keeping in view the expertise required for such adjudication. The Supreme Court of India in its judgment referred the needs for establishment of environmental court which would have the benefit of expert advice from environmental scientist and technically qualified persons as a part of judicial process, after an elaborate discussion of the views of jurists in various countries.6 The Supreme Court has also opined that as environment cases involve assessment of scientific data it would be desirable to have the setting up of "environmental courts on a regional basic with a professional judge and two experts keeping in view the expertise required for such adjudication.

In another judgement 'Indian Council for Enviro-Legal Action vs. Union of India, 1996 the Supreme Court observed that Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner. In Charanlal Sahu v. Union of India the court opined that "under the existing civil law damages are determined by the civil Courts, after a long drawn litigation, which destroys the very purpose of awarding damages so in order to meet the situation, to avoid delay and to ensure immediate relief to the victims, the law should provide for constitution of tribunal regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to this Court on the limited ground of questions of law only after depositing the amount determined by the tribunal."

Law commission was guided by the model of environmental court established in New Zealand and the Land and Environmental Court of New South Wales and also the observations of the Supreme Court in four judgments, namely, M.C. Mehta v. Union of India, Indian Council for Environmental – Legal Action v. Union of India, A.P. Pollution Control Board v. Nayudu.

ESTABLISHMENT OF THE TRIBUNAL:

The tribunal shall consist of a full time chairperson, judicial members and expert members. The minimum number of judicial and expert member prescribed is ten in each category and maximum number is twenty in each category. Another important provision included in the law is that the chairperson, if find necessary, may invite any person or more person having specialized knowledge and experience in a particular

A judge of the Supreme Court of India or Chief Justice of High Court are eligible to be Chairperson or judicial member of the Tribunal. Even existing or retired judge of High Court is qualified to be appointed as a Judicial Member. A person is qualified to be an expert member if he has Master of Science with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experiences in the field of environment and forests in a reputed National level institutions. Anyone who has administrative experience of fifteen years including experience of five years in dealing with environment matters in the Central Government or a State Government or in National or State level institution is also eligible to be an expert member.

PROCEDURE FOR FILING AN APPEAL:

The National Green Tribunal has a simple procedure to file an application seeking compensation for environmental damage. If the party is not satisfied with the decision can file an application before tribunal against an appeal, an order or any decision of the Government. If no claim for compensation is involved in an application / appeal, a fee of Rs. 1000/- is to be paid. In case where compensation is being claimed, the fee will be one percent of the amount of compensation subject to a minimum of Rs. 1000/-. A claim for Compensation can be made for:

1. Relief / compensation to the victims of pollution and other environmental damage including accidents including accidents involving hazardous substances;

2. Restitution of property damaged;

3. Restitution of the environment for such areas as determined by the National Green Tribunal. No application for grant of any compensation or relief or restitution of property or environment shall be entertained unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.

JURISDICTION OF THE NATIONAL GREEN TRIBUNAL

The national green tribunal plays a significance role for resolving disputes relating to environment. They use and manage the natural resources through their powerful competing claims and counter claims. Under schedule I of the National green tribunal act, they have the power to hear all civil cases issues related to environment and implement of laws. The Tribunal has the right to declare illegal and invalid any administrative action that contravenes environmental laws. It is empowered to pass all the orders under environment protection law, which includes forests, water, air and wildlife.

According to Sec.15(1) of the Act, 2010, the tribunal may by order provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I and also for restitution of the property damaged and for restitution of the environment of such area. It is the relief and compensation and restitution of the property and environment shall be in addition to the relief paid or payable under the Public Liability Insurance Act. No application for grant of any compensation or relief or restitution of property or environment under the section shall be entertained by the Tribunal unless it is made within five years from the date on which the cause for such compensation or relief first arose, provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

As per Sec. 16(1) of the Act, any person aggrieved by an order or decision made on or after commencement of the Act, by the appellate authority under the seven enactments under the jurisdiction can appeal to it within thirty days. Under the Act, the proceedings before the Tribunal shall be deemed to be judicial proceedings. It is to be noted that the Act provides for no fault liability in case of claims involving an accident by authorizing the tribunal apply the principle of no fault. The Act also provides for an expeditious relief. It requires the Tribunal to deal with the applications, or as the case may be, an appeal finally within six months from the date of the filing the application, or as the case may be, the appeal after providing the parties an opportunity to be heard.

STRUCTURE

Following the enactment of the said law, Main Bench of the NGT has been established in the National Capital – New Delhi, with provincial benches in Pune (Western Zone Bench), Bhopal (Central Zone Bench), Chennai (Southern Bench) and Kolkata (Eastern Bench). Each Bench has a specified geographical jurisdiction covering several States in a region. There is also a mechanism for circuit benches. For example, the Southern Zone bench, which is based in Chennai, can decide to have sittings in other places like Bangalore or Hyderabad.

The Chairperson of the NGT is a retired Judge of the Supreme Court, Head Housed in Delhi. Other Judicial members are retired Judges of High Courts. Each bench of the NGT will comprise of at least one Judicial Member and one Expert Member. Expert members should have a professional qualification and a minimum of 15 years' experience in the field of environment/forest conservation and related subjects.

HOW NATIONAL GREEN TRIBUNAL IS EFFECTIVE FOR ENVIRONMENTAL PROTECTION

The NGT was established on October 18, 2010 under the National Green Tribunal Act 2010, passed by the Central Government. The stated objective of the Central Government was to provide a specialized forum for effective and speedy disposal of cases pertaining to environment protection, conservation of forests and for seeking compensation for damages caused to people or property due to violation of environmental laws or conditions specified while granting permissions.

Powers of the Tribunal: This means that any violations pertaining only to these laws, or any order / decision taken by the Government under these laws can be challenged before the NATIONAL GREEN TRIBUNAL.

The National Green Tribunal has not been vested with powers to hear any matter relating to

• Wildlife (Protection) Act, 1972,

• The Indian Forest Act, 1927

• Laws enacted by States relating to Forests, Tree Preservation etc.

Therefore, specific and substantial issues related to these laws cannot be raised before the National Green Tribunal. You will have to approach the State High Court or the Supreme Court through a Writ Petition (PIL) or file on Original Suit before an appropriate Civil Judge of the Taluka where the project that you intend to challenge is located. High court v. National green tribunal: Before National Green Tribunal, High Courts in different states used to take up important environmental cases, including suomotu ones through 'Green Benches'. While some, in Tamil Nadu, West Bengal and Karnataka, remain active, others are slowly dying down, as environmental matters now go to National Green Tribunal. According to environmentalist Subhash Dutta, the Green Bench is likely to become non-functional in the near future. However, conflicts are brewing between National Green Tribunal and the high courts. As per the National Green Tribunal Act, appeals from National Green Tribunal can only go to the Supreme Court, thus by-passing the high courts. But the Madras High Court has disagreed with this provision. It has stressed that the bar imposed on lower courts by the Act, excluding them from deliberating on environmental cases, does not extend to the high courts. This is because the jurisdiction of a high court under Article 226/227 of the Indian Constitution is part of the Constitution's basic structure. In other words, the court stressed that environment

appeals from National Green Tribunal had to go to the high court first before going to the apex court.

‘National Green Tribunal must have suo motu powers Justice Swatanter Kumar has been chairing the National Green Tribunal (National Green Tribunal) for nearly two years now. In an interview to Down To Earth, he said about some basic issues confronting the tribunal. Delhi recorded the seventh-highest number of environment related crimes in the country in 2014. Although it had only 41 cases, as against the worst performers Rajasthan (2,666) and Uttar Pradesh (1,442). The number of cases received since the establishment of National Green Tribunal till January 31 this year is 7,768, Lok Sabha was informed today. In the written response to a question in the Lok Sabha, Minister of State for Environment, Forest and Climate Change Mr. Prakash Javadekar said the number of cases disposed till January 31 is 5,167 and the number of cases pending is 2,601.14

CONCLUSION

National Green Tribunal makes one more innovation by providing strict penalty for non-observation of the order of the tribunal. This will allow implementation of the order of the tribunal. Coming to dark side of the Act, the rules relating to constitution and composition of selection committee tilts the balance of power in favour of Central Government. Keeping in view the repeat of the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 by the present Act, it is submitted that legislation should become operational in letter and spirit to provide much needed relief against offences/complaints for degradation of environment. The present legislation provides interference and control by the central Government in the affairs and processes of the tribunal which should be avoided to give tribunal an unrestricted hand to decide the inherent matter as proceedings

AN ANALYSIS: HIERARCHY OF CRIMINAL COURTS AND THEIR JURISDICTION- Garima

JUDICIARY:

According to "The law.com dictionary" That branch of government Invested with the judicial power; the system of courts in a country; the body of judges; the bench, basically we can say part of constitution which makes judgement, which interpreted by the judiciary which only can help to solve the disputes and help to get justice.

In world there are many countries, each follows different pattern judiciary like in America there is 2 court system i.e., state court and federal court.

INDIA JUDICIARY

As viewed India is a single constitution country. As judiciary acts as a person who is taking responsibility to protect our Indian constitution and our fundamental rights. Indian judicial system in the oldest form of the legal system in world. Its follow by an integrated and pyramidal system which basically start with topmost i.e., supreme court and high court and then in lower court i.e., other subordinate courts. As our legal system is influence or made by our religious and customs. Adversary system is followed by Indian constitution which means both parties can represent themselves with the help of representer i.e., lawyer. Our Indian judiciary system influence by common law which followed by England. Judgements deliver by law are known as precedents. In our constitution there is another feature also" judicial review" which provides the power to judiciary to determine validity of law. Article 137 of the constitution states the review jurisdiction of supreme court in India. Judge of supreme court and high court can review any law or declare void. As our courts are also called "**watch dog of democracy**"

Our constitution also provides the power to judges as they are free review any law and provided that other organs do not interfere with the decisions or judgements and grants right to all citizen to ensure surety, equality and safety from any partial judgements. The origin of judiciary is protecting every citizen by not giving partial judgement there must be fare in giving judgements.

JUDICIARY FUNCTIONS

As we all know judiciary plays an important role in modern democratic state. Its functions are:

- Interpretation of statute:

  The first and foremost work on the judiciary is to interpretation the law. Judiciary work is to go through the case facts and then analyze the outcomes and if require they can apply principle of equality, morality and justice.
- Guardian the constitution:

  Constitution gives some fundamental rights as a safeguard to all citizens. As these rights help us to safe from any unfair trade practices and if any unfair trade practices is done then we have courts which always protect these rights and give judgement on that. As there is also judicial review power is given to both supreme court and high court if we did not satisfy with the solution of any court we can apply to higher court.
- Custodian of civil liberties:

  As article 32 states every person have right to apply in supreme and demand for justice i.e., known as “soul and heart of Indian constitution.”
- Solve the disputes of jurisdiction:

  As power between state and central is divided so there is a chance of conflict may arise on some issue so government have established a federal structure.
- Functions:
  - Advisory function:

    Article 143 empowers the supreme court to advice the president on legal aspects.
  - Administrative function:

    High court and Supreme Court have jurisdiction to appoint their staff (local officials and subordinate staff)

HIERARCHY OF CRIMINAL COURTS AND THEIR JURISDICTION

The Supreme Court is powers and function are provided by constitution only and the high court of respective state and the criminal court by code of criminal procedure which also known as criminal procedure.

India courts:

- Supreme courts
- High courts
- Civil courts
- District court and additional district courts
- Criminal courts
- Session courts

SUPREME COURTS

Supreme courts are the main and higher-level courts, we can say final or last appeal courts. It is also called apex court or court of records because no one can challenge the judgements of supreme courts it is always have evidentiary value and these judgements later becomes precedents. It is established by constitution under part IV and V of constitution which covers the articles between 124 to 147 of the constitution. Supreme court have advisory as well as appellate jurisdiction.

Article 124(1) of the Indian constitution says that there must be a supreme court in India which constituting chief justice of India and judges. In earlier time there is only 7 judges in supreme court which includes the chief justice of India and all hearing handle by them only as cases increases legal aspect area increases supreme court judges demand for more judges than parliament started increasing judges and as the increase in judges, they started sitting in 2 or 3 benches higher can be 5 benches only now there are 34 judges in supreme court which includes chief justice of India. If requires parliament can increase or decrease supreme court judges.

Article 127(!) of the Indian constitution deals with appointment of judges with “ad hoc” system which basically means appointment for some purposes. Chief justice can appoint higher court

judge as ad hoc judge by taking concern from high court chief justice. They appoint ad hoc judges only when supreme court is holding the session or not available to continue.

Appointment of supreme court judges done by president of India and they have to discuss/consult from chief justice and the existing supreme court judges. Appointment of judge in supreme courts:

- Must be an Indian citizen.
- Working as judge in high court or any successional court from last 5 year.
- Advocate of high court from last 10 years.

Supreme courts judges retire while gaining the age of 65 years.
According to article 124(4) of the constitution of India tells the procedure to remove the chief justice of India. As president appoint the judges, he/she can remove also but by proven incapable or misbehavior of them. As Judiciary is an independent from other organs of government i.e., legislative and executive.

Article 129 of the Indian constitution states supreme court has the power to punish the contempt of court.

Article 314 provides the power to withdraw the cases from high court. The supreme court have given the power to transfer any case related to civil or criminal from one state high court to any other state high court or any subordinate high court. the supreme court may withdraw a case or cases pending in high court or more than one high court or if the supreme court satisfied that the case or cases involving the same question of law which are also pending before it and have substantial importance then supreme court may withdrawal that case or cases from high court or high courts and dispose or solve by himself. Supreme court also initiated by appointing international commercial arbitration under the arbitration and conciliation act, 1996.

High courts

High court basically topmost court of state administrative. People those are not satisfy with judgment of below court can appeal in high court or they can direct appeal in high court.

Article 124 of Indian constitution say that there must be a high court in each respective state of India which constituting chief justice and high court judges. Presently there are 25 high courts in

India. Biggest high court in India is Allahabad high court whereas Goa, Arunachal Pradesh, Mizoram and Nagaland does not have own high court and newly constituted high court is Telangana and Andhra Pradesh high court established in 2019.

High courts consist of:

- District courts
- District massif courts
- Courts of judicial magistrates of first class
- Courts of judicial magistrate of second class.

Appointment of a high court judge:

- High court chief justice is appointed by president and chief justice of supreme court.
- Judges are appointing by president, chief justice of high court and governor.
- There must be citizen of India.
- Must be advocate in more than one high courts in India.
- Must be judge of subordinate courts in India from last 10 years.

Retirement age of high court judge is 60 but according to 15^{th} amendment it was raised 62.

Removal of judge

- Judge may resign by himself by giving letter of resigning to president.
- High court judges can also remove by president, but they have to declare her incapable or misbehavior or if parliament passed motion with $2/3^{rd}$ majority of members present and vote.

Salary of high court is judge 250,000/-(two lakh fifty thousand) per month and salary of chief justice of high court is 280,000/-(two lakh eighty thousand) per month.

Functions performed by high court:

- High courts can issue writs to enforcement fundamental rights.
- High court have power to check and regulate all courts under his regional or tribunals.
- High court can transfer case to supreme court.
- High court have control over their subordinate courts in territory.

- High court with consult by the governor can appoint district judges.

Criminal Courts

Criminal courts are those who basically deals with crime related matters which related to state. Criminal word basically origin from word crime. Criminal wrong means something wrong done with whole society not only with the victim.

Criminal courts are constituted according to Cr.P.C (code of criminal procedure), 1973. The hierarchy of criminal court is given under section 6 of criminal procedure code (Cr.P.C). (indian kanoon, n.d.)

Besides the supreme court and high court following classes of criminal courts are:

- Session court
- Judicial magistrate of the first class
- Judicial magistrate of second class
- Executive magistrate

SESSION COURT:

In the hierarchy of criminal court these are lowest court to appeal. In session court session judge firstly conducted a trial. Session judges are appointed by high court. In session court there is 2 subdivision i.e., additional session court and assistant session court in these 2 subdivision judges are appointed by the high court. matters which these courts deal is: dacoity, theft, murder etc. these courts have power to entitle fine for criminal offence or sentence of death. In case of any vacancy due to some reason the high court can fulfil the vacant seat by appoint session judge one division to be an additional session judge of another division. In case any urgent matter is pending then the additional session court judge and assistant session court judge have jurisdiction to overview on that case. In case no additional session judge or assistant session judge available then chief judicial magistrate can deal in it.

SUBORDINATE JUDGE CLASS 1

Under section 11 of code of criminal procedure states that by consulting the high court state government can establish the judicial magistrate of the first class in district. Under section 15 of code of criminal procedure judicial magistrate is the subordinate to the chief judicial magistrate. Under section 29 of code of criminal procedure states the penalty judicial magistrate of first class can give sentence of imprisonment up to 3 year or can impose fine not more than 10 thousand rupees.

SUBORDINATE JUDGE CLASS II

Under section 11 of code of criminal procedure states that by consulting the high court state government can establish the judicial magistrate of the second class in district. Under section 29(3) of the code of criminal procedure states the penalty judicial magistrate of second class can give sentence of imprisonment up to 1 year or can impose fine not more than five thousand rupees or both.

EXECUTIVE MAGISTRATE

Under section 20 of code of criminal procedure state executive magistrate is appointed by state government in every metropolitan city or district and have the authority to appoint district magistrate from the executive magistrate or can appoint as additional district magistrate also and that additional district magistrate will enjoy the same power, as power of district magistrate. District magistrate also called district collector or deputy commissioner. In Kolkata district there is no district magistrate.

Power and function of district magistrate:

- Maintain and follow law and order.
- Coordinate with police, junior or seniors.
- Supervision of subordinates
- Conduct magisterial inquiries.
- Supervision of jails.
- Granting arms under arms act.
- Regularly check on child Labor or labor related matters.

- Disaster management.
- Collect of stamp, revenue and registration.

In case if there is any vacancy or any office vacant of district magistrate then executive administration will exercise the duty of district magistrate according to code of criminal procedure. State government have power to sub divisional executive magistrate which is known as sub divisional magistrate.

Conclusion

From this article I get to know constitution plays an important role in making rules regulations and laws which need to check or renew from time to time and these rules regulation and laws strength the judiciary of our country time to time. In India there is require three layers judicial system for proper maintain the judiciary in such a big country. New cases or problem arises daily to deal from them their must be a proper knowledge of court hierarchy so we can, without wasting our time, directly go over there and appeal and demand for justice. Previous cases also help us to know more about laws.

FAIRNESS IN CRIMINAL TRIAL:NEED OF REFORM

Chundelikat Alvin Jaymon

Abstract:

A court's responsibility includes not only doing justice but also ensuring that justice is served. Every respectable country's criminal justice governance should have a certain commonality: the right to a fair trial for every convicted citizen, regardless of their background. Judicial proceedings begins with the assumption of impeccability, and culpability must be proven beyond a probable suspicion according to the legal system, which is similar in many other nations as well. This research article will examine various aspects of fair trial requirements in the Indian criminal justice system, as well as the role of defense lawyers in the context of attaining administration of justice, as he is the desolated defendant's only representative in whom he can place his faith. Many aspects of the law are now informed and energized by the concept of fair trial. Dozens of rules and procedures illustrate this. It is a continuous, continuing improvement mechanism that is constantly updated to new evolving situations, and imperatives of the situation, sometimes unique and linked to the nature of the activity, parties involved directly or indirectly, social effects and community wishes and ever so many influential coordinating variables that can stand in the way of criminal justice management. Incorporation of machine learning in an effort to eliminate prejudice and provide quick justice, as well as the value of legal aid has been highlighted as well. The paper also addresses various methods or changes that the government should enact to increase the effectiveness of Indian courts and aid in the provision of a fair trial.

Keywords: Fair trial, Indian court, criminal justice system, machine learning, legal aid.

Introduction:

Everybody deserves a reasonable legal framework. A discriminatory criminal justice system is a flawed system of justice, regardless of one's beliefs, party leanings or philosophy. It should go without mentioning that the law enforcement system's integrity is vital to its efficient working. Evaluating the court trial demonstrates this. The jury trial is used to determine whether or not the perpetrator performed an offence that warrants prosecution. It is also said that statutory criminal process provisions reflect a need for greater consistency in criminal decisions, since laws that favour the accused are much more inclined to minimize mistaken positives on aggregate. And it's also correct that processing isn't the sole, or even the most important, purpose of the proceedings that comprise up a criminal case. [1]Criminal justice, for instance, should ensure that a person is handled with humility and professionalism in ways that reflect "general societal normative expectations reflected in its progressive rules, traditions, religions, and philosophies, as well as the appropriate connection here between citizen and the state," according to Peter Arenella. Just system standards are often marketed as moral prerequisites that should be followed in and of itself, independent of their importance in minimizing outcomes error. Pertinently, even if the method is unrelated to the goal of precise filtering, equal method guidelines may still result in instrumental advantages. Another clear upside is general optimism in the enforcement system. When the majority feel that the criminal justice system is handled correctly, they are far more effective to assist and engage in it, as well as the men who control it. [2]Customarily, criminal law has been characterized as aiming its court orders solely at real or suspected offenders. It is rationally unwarranted because providing effective defense and administering it fairly necessitates the criminal justice system addressing its injunctive relief to both victims and offenders. It's verbosely deceptive since, contrary to popular belief, criminal law theories is also used to influence the actions of future criminality victims.

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[1] Meares, T. L. (2005). Everything Old Is New Again: Fundamental Fairness and the Legitimacy of Criminal Justice. Ohio St. J. Crim. L., 3, 105.

[2] Harel, A. (1994). Efficiency and fairness in criminal law: the case for a criminal law principle of comparative fault. Cal L. Rev., 82, 1181.

Definition of a Fair Trial

[3]The word "fair trial" is often used, but its interpretation is unclear. It is often used to define both functional and administrative law recommendations in a culture built on the legal system. It's been referred to as a component of "due process." The theory of 'due process' is defined as an outgrowth of the Magna Carta tradition, which was adopted in American judicial decisions and was then compared by National judiciary as they mapped out the outlines of Article 21 of the Constitution. The Supreme Court has read the principles of "due process" and just, equitable, and rational statues into the protections within Articles fourteen and twenty-one of our Constitution. There's no systematic, all-encompassing, or detailed description of the idea of a fair hearing, and it will have to be decided in an almost indefinite number of real-life contexts with the final objective in mind whether anything performed or stated prior or during the trial degraded the level of fairness to the point that a travesty of justice occurred. It would not be accurate to assume that only the defendant must be treated equally. Denying the suspect a fair trial is as much an insult to the complainant and community as it is to the defendant. A fair trial should clearly imply a hearing before an unbiased judge, a fair counsel, and a judicially balanced environment. This definition of fair trial may have multiple meanings depending on the region, the period in years, the location, the judicial structure in order, the form of regime in control, the religious and other customs appropriate in a community, and so forth, to the point that any approach to understanding it may be meaningless. For instance, jury trial is a part of fair trial in certain nations but not in others. If we look back over time, even the idea of a jury trial has evolved. Due procedure of statute as recognised around the world, includes not only the privilege to a just court hearing but also the maintenance of community integrity in the judicial system. Not only must justice be carried out, but it must also be observed to be carried out. This maintains credibility in the rule of law, which is a precondition for any fair and appropriate scheme.

[3] Singh, R. (1998). Law Delays and Litigation Crisis in India: Mechanics of Injustice. Kerala University Journal of Legal Studies, 1, 169-173.

Right to a Fair Trial

[4]Any initiative aimed at reducing appellants' injury while also improving the quality of their testimony must not jeopardize the accused's constitutional opportunity to a proper hearing. The right to a fair trial is a collection of principles guaranteed by human rights instrument, including the right to question or have questions asked of testimony opposing him, as well as the right to even have observers testify on his account under the same circumstances as testimonies towards him. Cross-examination of participants is also a part of the reasonable trial. A fair trial is a basic legal system right as well as a globally renowned foundational right. Numerous well-established statutory and inferential concepts can be used to control prosecutorial independence, the creation of the criminal law, and the understanding of statutes. [5]They considered the characteristics of a fair hearing in Dietrich v The Queen, taking into account humanitarian law and judicial decisions. In the sense of felonious proceedings, the right to a fair trial has been formulated as a defendant centric benefit, with the objective of protecting the defendant's equality. [6]The fundamental concepts of natural law underpin the idea of a fair trial. Though the type and application of natural justice concepts which differ from one structure to the next depending on the circumstances of the socio-cultural context. In terms of the Indian courts, the universal guarantee of a fair trial is expressed in both its constitutional provision and statutory provisions. The Indian legal system has also emphasized the importance of just trial in numerous cases. The Indian Supreme court examined the changing perspectives of fair hearing in [7]Zahira Habibullah Sheikh v. State of Gujarat, stating that the idea of fair trial now guides and energizes many pieces of legislation.

[4] Bowden et.al (2014). Balancing fairness to victims, society and defendants in the cross-examination of vulnerable witnesses: An impossible triangulation?. Melbourne University Law Review, 37(2), 539-584.
[5] Dietrich v The Queen (1992) 177 CLR 292, 335.
[6] Tiwari, N. (2010). Fair trial vis-à-vis criminal justice administration: A critical study of the Indian criminal justice system. Journal of Law and Conflict Resolution, 2(4), 66-73.

[7] Zahira Habibullah Sheikh v. State of Gujarat MANU/SC/1344/2006.

Justice or Efficiency?

[8]At the broadest level of fairness values progressives should expect to be notified regularly about the need to increase system productivity without jeopardizing its honesty and usefulness. Some analysts claim that the drive for court productivity contributes to changes that aim to minimize disruptions, but that these changes which eventually prioritize efficiencies over the public in general, claimants', and defendants' priorities. The pace and effectiveness of the criminal justice system, on the other hand, may not have to be at odds with the standard of justice'. Efforts to increase performance must not jeopardize the system's efficacy or the standard of justice it provides. A boost in productivity does not have to mean a reduction in accuracy; in fact, the opposite is true. The issue of punctuality and its essential significance in the justice system from the perspectives of productivity, equity, human dignity, and equality is a strong example of the evident relation between the search of effectiveness and that of justice. The right of a detainee to a speedy trial is a fundamental human right recognized by the [9]Universal Covenant on Civil and Political Rights, the [10]European Convention on Human Rights, and most nations' constitutional principles. When it comes to determining the usefulness of the criminal justice system, there are conflicting visions of what the system's function should be. Today, there is a strong dispute between at least 2 competing conceptions of that intent: one motivated by a desire for harmony and public security and focusing on crime prevention, dispute resolution, and issue management in broad, and another centered on the assertion of different legal protections and dependence on a structured, adversarial adjudication method. [11]A variety of efforts to build more successful issue solving courts can be found at the convergence of these contrasting concepts. Some problem-solving court have been established to cope with persistent complicated cases and the evident incompetency of the judicial system in addressing their fundamental reasons (Family courts).

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[8] A. Flynn, Sentence Indications for Indictable Offences: Increasing Court Efficiency at the Expense of Justice? A Response to the Victorian Legislation' (2009) 42(2) Australian and New Zealand Journal of Criminology 224, 244.
[9] International Covenant on Civil and Political Rights, (1976) 999 UNTS 171, Article 9 (3).
[10] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended), (1953) 213 UNTS 222, Article 6(1).
[11] See: P.M. Casey & D. B. Rottman, Problem-Solving Courts: Models and Trends' (2005) 26(1) Justice System Journal 35. Also: P. M. Casey & D. B. Rottman, Problem Solving Courts: Models and Trends (National Centre for State Courts, 2005).

Enhancing the procedural fairness of courts

1. Written communication to defendants

[12]The most logical component of procedural fairness is checking that people comprehend what is occurring to them: how can people going to courts be required to arrive on schedule, know what is demanded of them, and cooperate with legal provisions if they do not recognize the simple details conveyed to them? Despite this, we understand that people who are interested in the judicial system are frequently let down when it comes to receiving regular reports about their trial. After the primary contact with the police, several individuals do not know anything more. Victims are often expressly assured that they will be posted regularly, only to discover that they are not. The courts have a vested purpose in making sure that folks realize how the legal system works. For instance, much of the written material used in courts – forms, reminders, and other documents – is prepared with the legal program's specifications in mind, not the individuals who will be getting it. These written correspondence also provide critical details about what is anticipated of people who appear in court, and they can help ensure that cases move forward quickly.

2. Knowledge of the accusation

One of the characteristics of a fair hearing is that the defendant is given an equal chance to defend oneself. However, if the convicted person is not aware of the charges leveled against him, this benefit will be meaningless. However, the Code of Criminal Procedure (CrPC) recognizes the importance of this item and specifies, among other things, that when an alleged perpetrator is presented in front of a court for trial, the details of the crime of which he is accused should be reported to him. In the event of significant offences, the court must draught a detailed complaint in writing, which must then be read and explained to the defendant.

[12] Johnson, D. R. (2018). Perceptions and Perspectives Regarding Procedural Fairness in Louisiana Trial Courts (Doctoral dissertation).

3. High-speed trial

To obtain the general public's trust in the judiciary, a quick trial is required. Lag in trial also destroys the aim of re-socialization of criminals. Unwarranted abuse occurs as a result of deferred justice. Section 309(1) directs the courts to expedite proceedings and adjudicate cases as quickly as possible. Though this aspect is acknowledged as a component of a proper trial, the real challenge is putting it into practice in a world where tons of proceedings are awaiting resolution in courts. The court ruled in [13]Hussainara Khatoon v. State of Bihar that quick trial is an important component of the 'sensible just and equitable' process conferred by article 21, and that it is the government's constitutional duty to set up a methodology that guarantees speedy trial to the defendant. By claiming economic or bureaucratic insufficiency, the system cannot escape its constitutional responsibility. As the protector of the folk's fundamental human rights, it is this judiciary's statutory duty to give required directions to the State so that it can carry out its constitutional responsibility. The Supreme Court clarified the purpose and importance of speedy trials in [14]Motilal Saraf v. State of J&K, stating that the principle of rapid trial is an essential component of Article 21. The entitlement to a prompt trial starts with the initial restriction imposed by detention and subsequent imprisonment, and extends throughout the process so that any potential bias resulting from an impressible and preventable lag from the time of the crime until its eventual disposition can be avoided.

4. Legal aid

In law trials, attorneys are requirements, not extras. The right to a proper hearing entails 2 factors: a) the suspect's right to choose his own lawyer, and b) the state's obligation to offer representation to the defendant under such circumstances. The privilege is regarded because, in most cases, an alleged offender lacks the relevant expertise and specialized ability necessary to assist him in a criminal court where the trial is handled by a trained and skilled lawyer. In India, an accused person's right to representation is considered as a necessary right through article 22(1), which states, among other things, that "no man shall be deprived the right to request and be assisted by a licensed professional of his choosing." This legislative obligation is manifested in Sections 303 and 304 of the Code. The right of an underprivileged person to be entrusted with

[13] Hussainara Khatoon v. State of Bihar (1980) 1 SCC 98 at 107.
[14] Motilal Saraf v. State of J&K (2007) 1 SCC (Cri) 180.

an attorney at the nation's expenditure is an important component of article 21, according to [15]Maneka Gandhi v. Union of India, since no action can be just and equitable if legal aid are not made accessible to an alleged perpetrator who is unable to pay for one. A distinction amongst Art.21 and section 304 of the CrPC should be observed in this instance. Throughout every criminal proceeding against an impoverished suspect, whether the court hearing is before a Magistrate or a Sessions Judge, as perceived by the Supreme Court in [16]Khatri v. State of Bihar, the compulsory requirement to offer free legal services arises. The essential obligation occurs only if the hearing is before the Sessions Court, according to section 304 of the Code, and only if the State Government issues a notice to that extent in lawsuits before the Magistrate.

5. Role of defense counsel

In the opinions of several, the criminal defense attorney expresses all that is good about the legal industry; in the eyes of everyone else, he or she embodies everything that is bad. The defense is the suspected accuser's last line of protection against the tragedy of false prosecution, or we might conclude that the lawyer is the arrested individual's only remaining friend in the universe. He's also the suspect's main tool for thwarting prosecution and avoiding punishment. It may sound absurd or contradictory, but it is true that the protector is both the necessary prerequisite for justice and the adversary of justice. In the course of his work, an attorney knows only one entity in the whole universe, and that individual is his employer. His only responsibility is to save the individual by all measures and expedients, at all risks and expenses to other people, including oneself. Our Code's judicial system sets prosecution against defense and necessitates unwavering partisan politics. The prosecution will represent the state's case, while the defense must focus solely on the perpetrator's case and make it as compelling as conceivable. However, the extent of attorney's involvement in the pre-trial phase, especially prior to the start of legal evaluations, is a source of contention. The tension over personal liberty and society's need for protection, which criminal law system seeks to overcome, is more evident more than at any point in the justice procedure. Unlike some of the other periods of the prosecution proceedings, this time between the initiation of the phase against a defendant and his presentation before a legal authority is characterized by the exclusion of a neutral third party to guarantee procedural

[15] Maneka Gandhi v. Union of India AIR (1978) SC 597.
[16] Khatri v. State of Bihar AIR (1981) SC 928.

fairness, equality, and neutrality in judgment. One of the most important safeguards for the charged against unfair and coercive behavior is the delegation of judgment authority to a neutral judge who holds sway over and oversees the proceedings. However, at this point, the triangular scenario is noticeably absent. The investigative agents, who are under significant strain to "solve" offenses and "bring criminals to justice," and whose objectivity is therefore placed under the most strain. A defense lawyer has a legal obligation to provide all humanely permissible claims on behalf of the defendant in order to guarantee that the accused is prosecuted only if the prosecution can prove guilt. Effective intervention by counsel during the trial phase could help decrease the decline in the rate of sentences between the start of the case and the end of the trial. He will avoid a hurried and unreasonable implementation of the judicial procedure against a honest individual saving him from the discomfort, embarrassment, and cost that a long and drawn-out trial would bring. Throughout the trial phase, attorneys must ascertain that the complainant provides complete transparency; that all proof relevant to the suspect's lawsuit is revealed or generated; that all legalities relevant to the defendant's crime are adequately realized and reasonably litigated; that, in general, all information issued by the prosecutor was obtained in compliance with procedural guidelines and that all legal matters relevant to the suspect's scenario are genuinely addressed and thoroughly fully investigated.

6. Implementation of Machine Learning

[17]Identifying that judges have perceptual impairment and preconceived notions, many have advocated for risk evaluations to increase the consistency and comparability of probation and penalty judgments. Many types of prejudice and inequality are caused by legislation and systems that disproportionately favour one community over others; this is certainly relevant in the judicial system. Thus, if aided by fair machine learning to ensure that these algorithms do not reproduce the biases that plagued these decisions in the past. Although well-intentioned, this analysis of how to render the judicial system fair and equitable is restricted by its strict scope of prejudice as the product of individuals behaving in biased ways.

[17] Green, B. (2018). 'Fair' Risk Assessments: A Precarious Approach for Criminal Justice Reform. In 5th Workshop on fairness, accountability, and transparency in machine learning.

Conclusion

[18]Fair judgments are the only method to escape judicial miscarriages and are a necessary component of a rational community. A fair trial procedure should decide the wrongdoing or purity of those convicted of an offense. However, it isn't just about safeguarding offenders and claimants. It also enables communities more secure and resilient. Without speedy court hearing survivors will lose faith in the system and the legal system, and credibility in the state and the state of law will erode. The opportunity to a reasonable trial has long been acknowledged as a fundamental human principle by the global society. Notwithstanding this, it is a privilege that is routinely violated in nations around the world, with disastrous social and human implications. As a result, the state should concentrate even more on ensuring that everyone receives a fair trial.

[18] Vitkauskas, D., & Dikov, G. (2012). Protecting the right to a fair trial under the European Convention on Human Rights. Council of Europe.

COVID 19 AND ITS IMPACT ON ELECTIONS – Sanjeev Naru

INTRODUCTION

The sudden global spread of the Covid-19 pandemic has wreaked havoc on all aspects of public life. More importantly, the virus's threat is unlikely to fade anytime soon, as new cases continue to emerge in many parts of the world, and confirmation of a reliable vaccine remains elusive. In such circumstances, with the restoration of economic and other essential services, public life is gradually returning to the "new normal," in which daily activities are resumed. However, as the threat of the virus looms large, the process of restoring "normalcy" is being done largely by following precautionary measures.Elections in democracies around the world are an example of a routine activity. By their very nature, democratic elections are extremely difficult to hold while an infectious disease like Covid-19 is spreading. Because elections necessitate extensive public interaction and mass communication, there is concern that precautionary norms such as social distancing and avoiding crowded gatherings will obstruct the smooth running of elections.By their very nature, democratic elections are extremely difficult to hold while an infectious disease like Covid-19 is spreading.The difficulties of conducting elections in a democracy like India, which has the world's largest electorate, are numerous. However, as the pandemic worsens, putting elections on hold, which are the most visible hallmark of a healthy, functioning democracy, is counterproductive to the accountable governance that democracy seeks to establish.

HOW ELECTIONS ARE HELD IN INDIA

(i) Voters' List: Once the constituencies have been determined, the next stage is to determine who is eligible to vote and who is not. This is not a decision that can be left until the last minute. In a democratic election, a list of persons who are entitled to vote is created and distributed to everyone well in advance of the election.

(ii) Candidate Nomination: Anyone who desires to run for office must submit a nomination form by the deadline set by the Election Commission. Along with the nomination form, each candidate must submit a monetary security deposit.

(iii) Election Campaign: Election campaigns last two weeks, beginning with the announcement of the final list of candidates and ending with the date of voting. During this time, candidates contact their supporters, political leaders speak at election rallies, and

political parties mobilise their supporters.

(iv) Vote Polling and Counting: The day when voters cast or poll their vote is the final stage of an election. That day is commonly referred to as election day. Everyone whose name appears on the voter list is eligible to vote at a polling location near them. When a voter enters the voting booth, election officials identify him or her, place a mark on his or her finger, and allow him or her to vote. Electronic voting machines (EVMs) are used to record votes. The machine displays the names of the candidates as well as the party symbols. The voter must simply press the button next to the name of the candidate for whom he or she wishes to vote.

When the polling is finished, all of the EVMs are sealed and moved to a secure location. A few days later, on a predetermined date, all EVMs from a constituency are opened and the votes secured by each candidate are counted. The candidate with the most votes in a constituency is declared elected.

COVID 19 AND SITUATION OF INDIA DURING THIS PANDEMIC

The coronavirus disease 19 (COVID-19) is a highly contagious and pathogenic viral infection caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) that first appeared in Wuhan, China and spread throughout the world. SARS-CoV-2 is phylogenetically related to severe acute respiratory syndrome-like (SARS-like) bat viruses, suggesting that bats could be the primary reservoir. On December 31, 2019, WHO received notification of cases of pneumonia of unknown cause in Wuhan City, China. Chinese authorities identified a novel corona virus as the cause on January 7, 2020, and named it "2019-nCoV" for the time being. Authorities were not able to stop that virus from spreading to other countries and first death reported out side China was from Philippines. On 11th March 2020 it was declared a global pandemic by the WHO. Dr. Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization, stated at a press conference that the number of cases outside of China has increased 13-fold in the last two weeks, and the number of countries with cases has increased threefold. More increases are on the way. In just three months, the virus had spread to 210 countries, resulting in 10 million cases and 300,000 deaths.. Entire world was under lockdown.

Situation of India:- With over 14 million cases of covid-19, India has surpassed the United States as the world's second worst affected country. According to the most recent report,

cases were increasing in all 28 states and 8 union territories across the country. Maharashtra remained the state with the highest number of cases, accounting for nearly a quarter of all cases in the country. The virus has had the most devastating effect in the country's south. Maharashtra, Kerala, Karnataka, Tamil Nadu, and Andhra Pradesh are four of the five worst-affected states in India. On 30th of January first confirmed case of COVID -19 of India was from Kerala. Since then, the number of confirmed cases has risen steadily, reaching 1000 on March 28th. In less than two months, the number of reported cases increased from a thousand to one lakh. It took 323 days after the first case on January 30th to reach 10 million cases on December 18th.The total number of daily cases was decreasing at the time, but three months later, in March, a second wave hit India, which was even worse than the first, and India surpassed the 3 lakh case daily mark.The number of deaths per day has also risen.New and more potent Corona virus variants began to emerge.

Guidelines Issued by Election Commission for Elections

The Indian Election Commission has issued guidelines for general and by-election elections during the coronavirus outbreak (Covid-19). These guidelines are of the for holding elections amid the coronavirus pandemic.

- Door-to-door campaigns with only five people
- During election-related activities, everyone must wear a face mask.
- At the entrance to the hall/room/premises used for election purposes, thermal screening will be conducted. Sanitizer, soap, and water will be available as well.
- Social distance must be maintained in accordance with the state government's and Ministry of Home Affairs' existing Covid-19 guidelines.
- Large halls should be identified and used as much as possible to ensure social distancing norms.
- To ensure compliance with Covid-19 guidelines, an adequate number of vehicles must be mobilised for the movement of polling personnel and security personnel.

- The entire nomination process can be completed online; however, only two people can accompany the candidate when filing the nomination in person.

- To sign the voter register and use the EVM, all voters will be given gloves.

- Those with a high temperature, as well as those who are Covid positive, will be able to vote in the final hour of the poll.

- Roadshows will be limited to 5 vehicles, and public rallies will be held on pre-determined grounds by the district election officer.

- To oversee the implementation of Covid-19 safety measures, a nodal officer will be appointed for each state, district, and assembly constituency.

- The Returning Officer will keep a reserve pool of polling, counting, and other staff on hand to replace election workers who show signs of coronavirus infection.

- When a candidate goes to the election office to file papers, only two people and two vehicles are allowed to accompany them.

- The Returning Officer's chamber should be large enough to handle nominations, scrutiny, and symbol distribution while adhering to social distancing norms. The Returning Officer should give prospective candidates staggered time in advance.

PROBLEMS FACED IN CONDUCTING ELECTION DURING PANDEMIC

Limitation on Campaigning:-Election campaigns cannot be conducted as they used to be due to the physical distancing requirements imposed by the pandemic**.** Virtual rallies and online political communication between leaders and voters, as well as extensive use of social media, are encouraged during the campaign.But there's a catch: a large percentage of voters aren't on social media. Many villages have inadequate internet access. On the other hand, there is another disadvantage in that election campaigns are not conducted normally, which

means that candidates who do not have a large following on social media will be unable to promote their ideology and promises. In comparison to other candidates, that candidate's reach will remain limited. The Election Commission has directed that public participation be limited and that the number of vehicles be limited, with proper social distancing measures and adequate intervals, even for mass rallies and roadshows. It has also been ordered to conduct door-to-door campaigns with limited political cadres and to have the election nomination process for candidates with a smaller number of people. However, these rules are frequently broken, and ensuring that these rules are followed is difficult.

Limitation on Voter Access:- Given their need to be isolated, COVID-19 patients' ability to vote is naturally limited by their fear of spreading the disease through the voting process. Indeed, voters who are healthy but vulnerable, such as those aged 65 and up, as well as those on the lower rungs of the social ladder, are in grave danger.Many people will be against of voting in the current situation of pandemic. Even if they are in perfect health, there are chances that they will be infected or will become a carrier of this virus.Another issue is for citizens living abroad. Because of the restrictions in place across countries, it is extremely difficult for them to travel during the pandemic and return to India to vote. However, regardless of the difficulties in casting votes of overseas citizens, they should not be denied their basic civil and political rights.

Impediments on Transparency

Elections are traditionally monitored by domestic and international observer groups to ensure that the processes are legal and meet the requirements for a fair election. The situation may be different for the COVID-19 elections. International travel restrictions have made it impossible to conduct full-scale election observation missions. Because of the limited media coverage that elections normally receive during a pandemic, if people are unable to vote freely in some areas, or if electorate manipulation or vote buying is taking place. The need for physical distance for domestic observers is an unavoidable impediment to closely following voting and counting processes. If the government imposes some limitations for the safety of senior citizens or people who are more susceptible to this disease, such as reserving some time period for them to vote, it will also have the effect that they'll only get a portion of the time that others are getting to vote, however there is a chance that all of them will not make it to the polling booth on time.

Added Financial and Administrative Pressures:- The costs of organizing elections during the pandemic are significantly higher. Gloves, face shields, hand sanitizers, and disinfectants were not on standard lists of electoral materials; at least, not significantly. Adding more booths to reduce crowd results in an increase in costs. Organizing these measures also adds to the administrative burden on electoral management bodies (EMBs). More equipment must be purchased and distributed. More polling officials must be recruited and trained if more polling stations are to be established. To handle the increased number of polling booths, the Election Commission will require more police officers. Transporting all of the Electronic Voting Machines from these booths will also be a concern. Because of the security measures, the time required to conduct the election will also increase..One novel idea was to encourage voters to vote during specific time slots throughout the day.

Misinformed Choices:-Furthermore, due to India's massive digital divide, such disproportionate use of social media and other virtual modes of communication for political campaigns may be lopsided. Because of the disparities in resources and outreach capacity among political parties during the pandemic, a significant portion of the electorate may be unaware of the assurances and promises made by certain political parties. This may result in an uneven distribution of information to voters, and they may be influenced unevenly by the constant political communication of parties that are able to virtually reach them more than parties that are unable to do so.Voters are expected to make informed decisions based on their understanding of the electoral promises made by all of the major political parties. However, the asymmetry of political messaging may have a negative impact on the level playing field that fair elections are supposed to provide.Political parties will have an easier time violating the Model Code of Conduct during election campaigns through virtual interactions.Furthermore, tracking and monitoring all political interaction and electoral campaign in the virtual space, where multiple activities can take place simultaneously on multiple platforms, will undoubtedly be more difficult for the Election Commission. As a result, political parties will have an easier time violating the Model Code of Conduct during election campaigns through virtual interactions.Former Chief Election Commissioner Quraishi also warned that the threat of fake news and inflammatory hate propaganda, which already polarises social media, could worsen during such a virtual political campaign.In the upcoming elections, the Election Commission will face a major challenge in controlling and regulating social media content that goes against the ethos of free, fair, and peaceful elections.

CRITICAL APPRAISAL OF THE RELEVANCY AND ADMISSIBILITY OF ELECTRONIC EVIDNECE IN INDIA

By: Mr. Ananya Choudhary[1]

Abstract

The advent of Information and Communication Technology brought some major changes to all the aspects of the human life. It would not be out of place to state here that even the Indian legal system is not foreign to the use of as well as reliance on such technological advancements.

With the cyber space now becoming integral part of almost every human on the planet, it has become a means as well as victim of crime. Therefore, for effective adjudication of the cases, the Indian legal system felt the need to incorporate laws in relation to the admission and relevance of evidence in electronic form.

Therefore, the Indian legislature analyzed the advent of ICT, and in regards to the this, IT Act, 2000 was enacted. And it also amended the Indian Evidence Act, 2000 and allowed for the admissibility of digital/electronic evidence before the Indian Courts.

This paper aims at dealing with legal aspect of electronic evidence. In this paper some important sections, case laws and judgments in relation to legality of electronic evidences are discussed. Apart from that some drawbacks and dichotomies in the Indian model has been discussed and in furtherance of same, some suggestions are also provided by the author.

Keywords: Information and Communication Technology, Cyber Space, Electronic Evidence, Admission, Relevance.

Introduction

The 21st Century, also known as the age of technology had brough a technological revolution all around the globe, and India is not any exception. The advent of Information and Communication Technology (ICT) had impact on every system, every sector and every aspect of human life. With just a swipe of finger, ICT had allowed most of the human activities to be done with an ease. In no time, it became quite popular and resulted in exponential growth of its use. And one of the major branches born out of ICT was cyberspace, that allows users with internet connection to access any information, data storage, analyse etc. Even though ICT provides millions of benefits, but at the same time it poses certain threats also. And with the ever-increasing use and reliance on technology there arises the need for transforming of law in relation to IT. And with growth in the use of ICT there was also an evolution of how the evidence were brought before court. With the increased popularity and use of ICT, electronic evidences were being brought before the court. Therefore, in this direction, to deal with the

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advent of ICT, the government of India enacted The Information Technology (IT) Act 2000[2] and it was made in consonance with the United Nations Commission on International Trade Law (UNCITRAL). And through the same act, Indian Evidence act, 1872[3] was also amended. And one of the major attractions of this amendment was that, it allowed for admissibility of digital/electronic evidence in the Indian courts.

Electronic Evidence

As per section 2(t)[4] of IT Act, 2000 "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer-generated micro fiche.

So, the electronic evidence or digital evidence basically refers to the probative value that is either stored or transferred in binary form. But this evidence is not only limited to the ones stored on computers but also includes the information on multimedia and/or telecommunication devices. Examples of some of the device that come under its purview are wireless telecommunications network or systems, smart phones, telephones, telephone system, etc. And these evidences can also be found in form of email, in text documents, backups, fax, navigation systems etc.

But there is a major problem associated with the electronic evidence, that it is easy to manipulate electron/ digital evidence. And the reason for the same is that it can be easily copied, altered, made, destroyed and is also easily transferrable. This is the major reason why reliability and acceptability of electronic evidence is questioned.

Electronic evidence and the Indian evidence act 1872

With the IT Act, 2000, some amendments were also brought in the Indian Evidence Act, 1872 which allowed for acceptability of electronic evidences to be adduced before the court.

Evidence considered under Indian Evidence act 1872 are generally categorized in two categories under section 3[5] of the act:

- the evidence of witness i.e. oral evidence
- documentary evidence which includes electronic record produced for the inspection of the court

But by the virtue of Section 92[6] of the IT Act 2000, section 3 of the Indian Evidence Act 1872 was further amended and the phrase "All documents produced for the inspection of the Court"

[2] The Information Technology Act, 2000, No 21, Acts of Parliament, 2000
[3] The Indian Evidence Act, 1872, No. 1, Acts of parliament, 1872
[4] The Information Technology Act, 2000, § 2, No 21, Acts of Parliament, 2000
[5] The Information Technology Act, 2000, § 3, No 21, Acts of Parliament, 2000
[6] The Information Technology Act, 2000, § 92, No 21, Acts of Parliament, 2000

was substituted by "All documents including electronic records produced for the inspection of the Court"

Section 59[7] of the Indian Evidence Act,1872 dealt with the Proof of facts by oral evidence. But this section was also amended. And the phrase "Content of documents" contained in this section was substituted with the words "Content of documents or electronic records".

And further to that, section 65A[8] and Section 65B were also added to the Indian Evidence Act. All the debate in respect to electronic evidence circles around Section 65B.

The sole purpose of Section 65A is just that it aims to refer section 65B and thus, just provides for how admissibility of electronic evidence is to be proved in accordance with section 65B.

Section 65 B provides for the grounds and procedure to be followed for the purpose of the admissibility of the electronic evidence. With growth in use of the ICT, very soon many of the evidences were also brought in electronic form before the court. And since electronic evidences can easily be manipulated, therefore the section 65B deals with providing detailed conditions and procedure for the acceptability of such evidences. This section aims at ensuring that the evidence brought before the court are reliable and authenticated. Because altered or false evidence could lead to grave injustice.

The non-obstante clause as inserted by the legislature allows these two sections to enjoy an overriding power over the rest of the act in relation to electronic evidence.

Section 65B

Section 65B is one of the most important section as in regards to Electronic evidence. And with ever growing use of ICT, this section is making its presence be felt in Indian courts. Section 65B basically elaborately deals with the aspect of procedure and grounds for acceptability of electronic evidences.

Section 65 B (1): As opposed to the general principle of law, that forbids secondary document to be presented before the court whenever original evidence or documents are available, this subsection is quite an exception. Section 65B (1) allows evidence to be presented before the court which may be contained in an electronic record that is transferred onto computer output. For example, CDs or pen drives, etc. Thus, it would not be necessary for the parties to bring the original evidence, which may be in form of server or computer, etc. Because it would make the task quite difficult or impossible to bring such output in the court. Therefore, Section 65B (1) allows electronic evidence to be presented in secondary form and not necessarily original form.

Even though section 65 B (1) provides some freedoms/laxity to the parties, but at the same time section 65B (2) provides for some conditions of acceptability. It provides for a detailed procedure to be followed in order to ensure acceptability of electronic evidence by the courts. This section just aims to ensure that all the information is used lawfully and none of the electronic evidences are altered.

[7] The Indian Evidence Act, 1872, § 59, No. 1, Acts of parliament, 1872
[8] The Information Technology Act, 2000, § 65, No 21, Acts of Parliament, 2000

The first condition it provides for is that the evidence/output being produced by the computer, must have been produced between the time duration when it was in regular use, and that too by a person having lawful control over it. The second condition requires that the kind of information which is of subject matter to the evidence must have be fed in the computer on regular basis. The third condition requires that the computer being used for the purpose must have been working properly. This condition is put into the act so as to ensure that due to any technical reason, the accuracy of the electronic records is maintained. The fourth and the last condition provides that the duplicate copy must be derived from the original record.

All the aforesaid conditions are joined by "and" as conjunction and not "or". Therefore, all these conditions are required to be necessarily fulfilled in order to ensure accuracy of the electronic evidence.

One of the other key sub-section of the IT act 2002 in relation to electronic evidence is sub-section 4, which provides for some conditions under which the statements in relation to the electronic evidence are permissible. It further provides for the key requirements that must be fulfilled by the certificate, which ii required for the admissibility of the evidence

Judicial Trend on Admissibility of Electronic Evidence

One of the landmark judgments that served the purpose of giving a clear interpretation of the law and clearing the clouds of doubts and controversies in relation to electronic evidence was Anvar P.V. v. P.K. Basheer[9]. The key issue being considered in this case was regarding the admissibility standards of electronic evidences. The facts revolved around the Assembly election in Kerala. As per the facts, after losing the election, the appellant knocked the door of the high court claiming that corrupt practices were used in the election. However, after losing the appeal, the appellant brought the appeal before the supreme court. And of the major evidence considered by the court were electronic evidence. The honourable supreme court in relation to the electronic evidence identified some important sections of the IEA, which were Sections 3, 22A, 45A, Section 59, Section 65A & Section 65B. And section 65B being the most important.

The supreme court in this case refers to its previous judgment of Information and Communication Technology. The supreme court found the dictum of the judgment to be flawed as the dictum allowed for the application of §§61-65 of the Evidence in case the conditions as mentioned under §65B were not satisfied. But the supreme court in the Anvar case adopted a different view. Applying the principle of Generalia specialibus non derogant, Supreme court in this case held that for the purpose adducing any electronic evidence, only section 65 B is applicable.

In dictum of the case supreme court focused more on the sub-sections (2) and (4) of §65 of the Indian evidence act,1872. Further the SC made all the conditions under sub-section (2) compulsory, in order. And also, in relation to section 65B (4), the court held that all the conditions are required to be mandatorily fulfilled. Apart from that the SC in this case paraphrased sub-section (4) and held that a certificate under this section must also be presented for the purpose of authentication and thus making it the fifth condition apart from sub-section

[9] Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473

(2) which needs to be fulfilled. And if the certificate is not presented as per the terms stipulated under sub-section 4 then the evidence won't be adduced. And further the honourable court also interpreted all the other clauses of sub-section 4 as compulsory requirements for the certificate rather than considering them just to be optional. And one of the other major conclusions of the judgment was that contemporaneity is required in the production of certificate. Court made this also a compulsory condition. And based on this condition only, the court didn't adduce the evidence in the case, as it failed to fulfil the contemporaneity requirement. This condition requires that the certificate needs to produce at same time when the computer output is generated. And if this condition is not fulfilled than the evidence will be held to be inadmissible.

But still in this landmark case, the supreme court has missed to look over some other aspects of the section. They overlooked the aspect of as to the computer producing the output. Supreme court also left the ambiguity over the aspect of person signing the certificate. The court also didn't discuss over the time period within which the certificates needs to be produced. Thus, it leads to some ambiguity in respect to these matters.

But this judgment cleared many of the doubts as in regards to the interpretation of sections in relation to electronic evidence. Acting like a precedent, the interpretation of this law, is being followed by the Indian courts in the upcoming cases. And they are referring the dicta of the case.

In the case of Jagdeo Singh v. State[10], the Delhi high court gave the credit to the supreme court for making the applicability of law over electronic evidence clear thorough its Anvar verdict. In this case also the court held that certificate need to be mandatorily presented along with the evidence as under section 65, for ensuring acceptability of the evidence. In the same case the parties didn't succeeded in acceding to all the conditions as under section 65. Thus, was held to be admissible.

And further many judgements were delivered in light of the Anvar judgment. For example, Sanjay Singh Ram Rao Chavan v. Dattatray Gulab Rao Phalke[11], Sanjay Singh Ram Rao Chavan v. Dattatray Gulab Rao Phalke[12].

Difficulties and Drawbacks

Several conditions as set under Anwar judgement, and especially the requirement of certificate gives birth to some difficulties and drawbacks.

Many times, situations may arise where the evidence presented before the court may not necessarily be obtained in a legal manner. This may happen in a situation where many times evidence are presented by investigation agencies through their secret or unapproved searches, whistleblower, accomplice, etc. Even though they might be obtained in an illegal manner, but still the court accepts them. But in case, electronic evidence are presented in this manner, it would be impossible to get it certified as under section 65 of the Indian Evidence Act. Therefore, it leads to a situation where if non-electronic evidence is even acquired by illegal

[10] Jagdeo Singh v. State, 2015 SCC OnLine Del 7229
[11] Sanjay Singh Ram Rao Chavan v. Dattatray Gulab Rao Phalke, (2015) 3 SCC 123
[12] Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123

manner, they would be accepted. But if electronic evidence is received in this manner, then they won't be accepted.

One of the other difficulties that may arise is in relation to India judicial system. It is a well-versed situation that the Indian Judicial system is slow and delays are quite common here. Cases are delayed for a long time in India. And in this case maintaining such electronic evidence is quite difficult. Because electronic evidences could easily be tampered or manipulated with.

One other dichotomy that may arise is on relation to certificate-based authentication. It is quite prone to fraud or manipulation. Firstly, the statement in certificate is merely presented by the party desirous of producing the evidenced submitted. Secondly, as opposite to the safeguards ensured in oral evidence, the certificate for electronic evidence is not subjected to the oath, cross-examination and observation of demeanour. And this reduces reliability. Further it is quite difficult to ensure that the parties have not engaged in any case of perjury. The conditions under section 65B could still be satisfied even if the lawful owner of alters the evidence in due ordinary course of business. Thus, there are some dichotomies or difficulties which may be faced and thus, hinder the process of justice.

Provisions in USA.

In US also, the issue of electronic evidence is an issue of great significance. Rules in relation to electronic evidence in US are quite similar to that of India. But in US a more exhaustive and a better model is adopted. In USA laws in regards to electronic evidence is governed by Federal Rules of Evidence,2015. And what purpose Anwar case fulfils in India, is done by Lorraine v. Markel American Insurance Co.[13] in USA. This case played an Important role in clearing the position of law over admissibility of Electronic evidence in USA. But the method and scope of law in relation to electronic evidence is quite different in USA as compared to India. In this case the court extended the purview and applicability of §§901 and 902 of the Federal Rules of Evidence, 2015. A non-exhaustive list of authentication methods was laid down in this case through these sections by the court. This judgment helped in better interpretation of law. And it didn't bound the parties by a single method of authentication. It brought a more flexible and a broad framework which allowed the parties to get their electronic evidences adduced by multiple methods of authentication.

[13] Lorraine v. Markel American Insurance Co., 241 FRD 534 (D. Md. 2007)

Suggestions

As earlier in the article we have seen that how, the Indian model lacks at some place. And as a result of which the justice may not be delivered fairy. There is need for bringing some modifications in the Indian model to make it more comprehensive and to widened the scope. And also, to ensure reliability of authentication methods and to reduce the cases of tampering.

Firstly, the Indian legislature must enact a completely new law over electronic evidence, covering all the aspects of the electronic evidence, and detailed procedure to be followed, proper guidelines, etc.

Secondly the scope of Section 65B (2) must be widened and more conditions should be added to the same. Efforts should be made to devise such ways as to prevent the deliberate alteration with the electronic evidences.

Further, Indian should also adopt the US model of law in relation to acceptability of electronic evidence. Just like the way, US had adopted a more comprehensive and a broad mechanism, similarly India should also adopt the same. Instead of just a single method of certification, Indian law should provide the parties with more and more alternative methods.

Fourthly, India should allow for additional authentication and also cross questioning as done in case of oral evidences. And mechanism must be set up, so as to ensure that whenever the court or the parties have a valid reason, a proper and a full additional authentication of the evidences should be allowed.

And lastly, some exemptions must be allowed for the evidences obtained in an illegal method. The issue in relation to the illegal evidences has been already discussed in the paper. Therefore, some exceptions should be framed in the sections so as to allow illegally obtained evidences without a need for certification.

Conclusion

With the development of technology, there also has been an evolution in as to the way, evidences are brought before the court. With the increased popularity and use of ICT, evidences were brought before the court in electronic form. Therefore, to deal with the situation IT Act, 2000 was drafted by the legislature and in addition to that some amendments were made to Indian Evidence Act, 1872. Amendment were brought keeping in minds the electronic evidence. And the most importation section in relation to the same was Section65 B. It provided for detailed procedure and grounds for adducing electronic evidence before the court. But still there were clouds of doubt over the interpretation of these sections. But through Anwar case, the Supreme Court successfully gave a clear understanding over the applicability of law in regards to electronic evidences. This case served as a guidance for the Indian court to deal with such matter in the future. And this served the purpose, and the same was adopted by the court after that. But still, this case lagged at some places and this case brought some rigidity over authentication of evidences. And in addition to that there were some drawbacks as in relation to Indian law over the electronic evidence. Therefore, there are need for some modifications to be brought in the law. And some of the suggestions have been discussed in this article.