Online ISSN 2582-6476

ASGAR KHAN ADVOCATE LAW JOURNAL

Volume 2, Issue 4

October 2021

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Role of Police in Criminal Justice Administration

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Abstract:

Role play by police in criminal justice process they work as a backbone of justice process function of police handling any crime. What powers are given to police and are they using it in correct manner in providing justice to the victim. Fair investigation process followed by police during investigation without giving preference to anyone. Acts talks about police activities under which act they got powers what are their activity and till what level their no punishment to them. What reforms are there in police powers with passage of time. Crimes happen that totally change the way of looking of police functioning. Supreme court find need to change the system functioning after criminal cases filled.

Key Words: Police, investigation, crime, reform, criminal justice system

Introduction:

As a part of law enforcement agency, the Police have many basic responsibilities towards the public and the society in general to uphold and enforce the law impartially, and to protect life of people , to protect human rights of everyone, and dignity of the members of the public, to promote and preserve public order that everything which is made for people at large are need to be fulfill by everyone; to protect internal security, to prevent breaches of communal harmony, to protect militant activities and other situations affecting the Internal Security of State, police is an important part of our criminal justice system they act as a backbone of criminal justice system , they investigate the crime fairly When it comes to the crime against the women in India, the Police is more responsible to take action, prevention and fair investigation towards the justice to the victim they act as an investigation agency. Without police action it is impossible to have free and fair investigation, they provide protection to victim as well as they act as a satisfactory figure which provide a sense of protection to victim's family. They arrest the accused person after all the measures are satisfied under section 41 of the CrPC,

Summons is an order given to accused to attend court at a date in the future. If a person not turn up to court on that day, the court can issue a warrant for the person's arrest, arrest means that a person is taken into custody straight away in order to face the court the next day this work is done by police with all proper measures and with a free mind without any preference and under anyone's influence. If a person alleged offender is a minor (under 18 years of age), police may refer the matter to a restorative justice process. The police have obligations to victims of crime under the governing principles of the Victims of Crime Act 1994 which give different rules which police used to follow.

What we understand by term police ?

Term 'police' originated from the French and from the Greek word 'politeia' which means government or civil administration. It was generated in France in the eighteenth century. In France, it was also called by the name constabulary and later constables who were an effigy of police officers. Police are a constituted body of persons those who are given duty by a state, with the aim to enforce the law, to ensure the safety to everyone, health and possessions of citizens, and to prevent crime and to remove all of the civil disorder prevail in state. Police forces are often defined as they are separate from the military and other organizations they are engaged in the defense of the state against foreign aggressors. in every there are unit of people who are engaged in protecting people of state, maintain harmony peace and they are police, as it come under the basic requirement of every state it is one of the main essentials of state. Law enforcement is one of the feature of police function as people are somehow have a feeling of fear because of so much power associated with this word police so state has authorized them that the work to protect and enforce the law that nobody should break the law. Law enforcement systems was also present in the various kingdoms of ancient India. Dharma says that kings are the one who appoint officers and subordinates in the towns and villages to protect their subjects from crime and to have a crime free city. Many inscriptions and literature text from ancient India give idea that a variety of roles existed for law enforcement many officers were appointed such as those of a constable, thief catcher, watchman, and detective etc.

What police administration exists in different countries and their way of working in criminal justice system:

There are three practical reasons we should compare systems and issues in criminal justice.

•Get benefit from experience of others • It broaden our understanding of different cultures and approaches about the problem. • It help us to deal with the many transnational crime problems that our world faces today. In every country police has given powers and some law, some act had control over their activities, they are not totally free as they are also humans their hands are also tied by different laws and act which eventually help to the peoples that police don't become autocratic or start taking advantage of local people.

The first law enforcement body was established by London in 1663 when it hired a watchman to patrol the streets at night from this place this system thinking starts. After that the Glasgow police Act was enacted in 1800 and established the city police for Scotland where the role of police starts is of protecting the state its people, its territory. Following this instance, in 1829 the British Parliament passed the Metropolitan Police Act and formed London Metropolitan Police metropolitan police is one who provide all general police service to the citizen and state and this became a model for many countries, many counties has taken idea from that and following this model the New York City of the United States established their first organized police force a unit of organized police in 1845. There are two levels of police forces in Australia and Brazil, federal police force these are the special force responsible for protecting border, railway and state police force that is totally under the authority of state. But Canada has three levels of police as municipal they are the police force which are totally under control of local authorities, provincial they are unit of police engaged in traffic police service and maintaining law order at local level and federal. In France there are two types of police, administrative police they are under the control of central government and judicial police. Because here the term 'police' not only mean to the forces but also refers to the policing in general sense of 'maintenance of law and order in state'. Administrative police force remains under the law enforcing body or under union government on the other hand judicial police remains under the authority of Judge works under them. In India, the police system was introduced during the Mughal period Mughals were the first to start using police in their territory. But in 1858, when British get their rule in India directly the responsibility of India by British Crown the police system was reorganized. To prevent and reduce crime the British rulers they introduced some codes like Indian Penal Code in 1860, the Criminal Procedure Code in 1861 and the Police Code in 1861. Around more than 150 years have gone but still Indian police organization follows these Codes and they are the laws which still prevail in India and India police are still get administered by them as they are complete provide all duties to the police. It is written and

is a disciplined force within the meaning of Article 355 of Constitution of India. Although there are certain amendments in the prescribed codes till now, but the structure is still very old and needs to continuous reformation and these reforms are taking place as per their need is seen.

Role of police in criminal justice system:

The Police have important role to investigate the crime fairly towards criminal justice system as they are the one on whom the party who has faced the loss, victim believe and whole community have that sense of believing on them. The function of Police in India is governed by the Indian Police Act, 1861 where an established principles of organization for police forces in India are given and, with some reforms, continues in effect. Although state police forces are separate from the police force works under union and may differ in quality of equipment they have and resources, but their patterns of organization and operation are similar as their work is same, and the investigation of crime is governed by the criminal procedure code, 1973 as amended up to date. It is the duty of Police to take action an immediately when they get information regarding any crimes of sexual offences against women and to help the victim and then investigate about the said crime properly and fairly. In the state case, a fair justice system which is for the satisfaction of the victim is depend upon the fair investigation and collection of concrete evidence and the burden of proof lies on the shoulders of Police as they are the one to whom everyone contact first if there is any case of crime, where Police is responsible to prove their case without reasonable doubt against the accused of the crime they are not in under anyone's pressure. Many concepts in criminal justice system are there, sometime it is retributive, sometime may be deterrent, or corrective and sometime reformative in nature. But as said the nature of justice depends upon the nature of crime if the crime is not heinous then not justice also is of that kind or vice versa and finding of it in investigation. In grave cases of heinous crime, the policy of public at large that is for all people the offenders is shown the 'Iron fist of law" which in turn acts as deterrent to other potential offenders so that others will fear to do this type of crime again, thereby reduction of commission of such type of offences. Therefore, in any diabolical crime like in Nirbhaya gang rape case, the courts have to render swift the justice by conducting the trials in a fast track court they were created to take trials of long pending cases and give judgements on them. Since this was a rarest of rare case, it required capital punishment as the crime committed was of so heinous nature. The punishment should act as a deterrent to other criminals and set an example. But the duty of the courts is not only to punish the guilty but also a major to protect the innocent not to give any inconveniency to them and to give justice to the victims of the crime to cover their loses as much as possible.

The law is both corrective and retributive but swift justice is also a requirement in rarest of rare cases, where there is no scope for reformation is seen by court. It is the duty of Police to prevent crime, to decrease the crime, to control it, to preserve peace for all, to maintain and enforce public order that everyone should follow them.

Contribution of Police in the criminal justice system:

Police have various types of functions in the criminal justice system and played a very important part in the justice system. A country can't think the operation of its judicial system without a stable police force as if there is not stable police we can't think of getting a fair justice and their functions. (1) Police arrests suspected criminal who has done some crime and law violators no matter who is he/she. To prevent misdeeds of any criminal police takes them under custody as soon as they caught them and brings them before a criminal court. Police tries their best to stop on criminal activities through this process of them.

(2) Another function of the police is to investigate criminal activities any going around. Police can exercise their power under various sections of the Code of Criminal Procedure, 1973 to investigate any criminal case. After completion of full investigation, police submit a charge-sheet for prosecution or final report for release of the accused person or party.

Power of Police to investigate any matter:

The power of investigation by police may start:

(1) FIR is given under section 154 Cr.Pc.; in Lalita Kumari v. Govt. of U.P [W.P.(Crl) No; 68/2008] Constitution Bench of the Supreme Court held following that the registration of First Information Report is mandatory for all cases under Section 154 of the Code of Criminal Procedure,1973 if the information is discloses to the commission of a cognizable offence and their no preliminary inquiry is permissible in any such type of situation happens. As the information received does not disclose any cognizable offence but indicates that their is necessity for an inquiry that it is essential, a preliminary inquiry which is very basis has to be conducted only when to ascertain that the cognizable offence is disclosed or not disclosed. The Supreme Court issued Guidelines regarding the registration of FIR that how FIR is to be filed or done.

(2) Here the police officer has any reason to suspect the commission of a cognizable offence Under Sec. 156(1) & 157(1) of Cr.Pc.

(3)Here a competent Magistrate orders the police Under Sec. 156(3) Cr.Pc. without taking cognizance of the offence on a complaint under Sec. 200 Cr.Pc.

(4) After taking cognizance of the offence on a complaint for the purpose of deciding as to the issue of process against the accused under Sec. 202(1) & 203 Cr.Pc

Investigate in cases of non-cognizable offences; under Sec.155 (2) Cr.Pc. A Magistrate under certain circumstances can also order a Police officer in charge of Police station to investigate a cognizable or even non-cognizable case it depend on the matter understand by the magistrate. Here a Magistrate under Sec.155(2) Cr.Pc. gives an order to a Police Officer to investigate a non-cognizable offence, the police officer receiving such order he/she may exercise the powers in respect of the investigation except to the power to arrest anyone without warrant which he does in a cognizable offence cases.

Investigate in case of a cognizable offence; Sec.156 Cr.Pc. In case of a cognizable offence, the investigation is started by first giving of information under sec.154 Cr.pc. to a police officer in charge of the respected police station. Police officer's power is to investigate in a cognizable offence is given under sec 156 cr.pc . Any Police officer without order of a Magistrate can investigate any cognizable offence case. This is given under section 156(3) Cr.Pc, any Magistrate is empowered under sec.190 cr.pc. he/she can order a police officer in charge of a police station to investigate any cognizable offence. Section 190 give power to any Magistrate to take cognizance upon receiving any complaint or upon police report (challan) or upon information received from any person other than police officer who is having knowledge that such offence is committed is given a due respect and they got a chance to speak. In case of Tula Ram Vs. Kishore Singh Magistrate can order investigation under section 156(3) cr.pc. only at the pre-cognizance stage seen.

Other powers of police under Cr.Pc.: (1) Medical examination of the victim of rape undersec. 164A Cr.pc. (2) Search by police officer under sec. 165 Cr.pc. (3) Police can seeks police custody under sec. 167 cr.pc. when investigation is not fully completed within 24 hours Police custody is given maximum up to 15 days to complete that this is known as Police custody. (4) The Magistrate can give an order for the detention of the accused person than putting in the custody of Police beyond the period of 15 days, if magistrate is satisfied that adequate grounds are present but the detention should not exceed more than 90 days where the investigation relates to an offence is punishable with punishments like death, life imprisonment, or 10 years imprisonment and detention should also not exceed 60 days in case of any other offences. (5)

On the expiry of given period of 90 days or 60 days the accused shall be released on bail if he is prepared to do so and does furnish bail by any person related to the accused or by himself only. Provided further that in case of a woman (minor) under eighteen years of age, the detention shall be authorized to be in the custody of the remand home or to the recognized social institution as in Rakesh Kumar Paul Vs. State of Assam , The hon'ble Supreme Court in this case by having a majority of 2:1 held that any case in which the punishment is given with imprisonment extending for more than 10 years shall for the purpose of "default bail" fall within section-167 (a) (ii) of the code and any such type of case, if charge-sheet is not filled within 60 days of it, the accused shall be entitled to be released on bail itself. (6) Police can release the accused when the evidence is deficient not that much to satisfy as per section 169 Cr.pc. (7) Police has power to inquire about the same and report on suicide case is given under sec. 174 Cr.pc.

Limitation of Police under different laws of India: Police can't function that much smoothly due to some provisions of the Code of Criminal Procedure and the Evidence Act which are necessary also. Police officer takes any statement of incident from any person in the course of investigation then that statement can't be used as evidence at any inquiry or trial of the court it can't be treated as a proof. Because such statement has no very evidentiary value in eyes of law, the police officer only expresses a contradictory picture due to very limited evidentiary value of the statements. Under the evidence Act when a confession is given by anyone to the police officer in not presence of Magistrate this confession is not admissible as evidence in a court under sec. 25 & 26 of Indian evidence act, 1872. It only creates an unnecessary hardship to the police with their activities in the criminal justice system. In sexual offences like rape cases, under section 114A of Indian Evidence Act, 1872 as amendment takes place up to date; Presumption as to absence of consent in certain prosecution for rape are taken as fac: In a prosecution for rape under clause (a),(b), (c),(d), (e), (f),(g),(h), (i), (j),(k),(l), (m),(n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where it is given that sexual intercourse by the accused is proved and the question arises that sexual intercourse takes place whether it was without the consent of the woman alleged to have been raped and such woman has to states in her evidence before the court that she did not consent for the same , the court shall presume that she did not consent for it. Explanations In this section given as following , "sexual intercourse" means that any of the acts which are done are mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).

Corruption and abuse of power by police: Although the police department contributes a lot through its activities in the criminal justice system of India but it has been stigmatized as corrupt also and has abused their power in different circumstances when they get chance to do same. Several times police department has been identified by Anti-corruption Bureau and Transparency International (these are agency that keep a check over these department) as the most corrupt department among all the departments exists of the Indian government. According to the Indian Corruption survey 2019 conducted by Local Circles with the help with Transparency International India, as compared to last year i.e.2018, the cases of Police corruption have drastically increased from 13% to 33% in the year of survey i.e.2019. There are many complaints were filed against the police officers in their stations by general public about police for indiscriminate arrest of innocent persons in false cases just to get promotion to have a green mark on their report card. Sometimes victims are get remanded to the custody of the police under section 167 of the same code and subjected to third degree methods in order to extract confession they have not done that but because of police pressure they confess. In considering the matter the Supreme Court of India issued certain guidelines for the police as to exercise their powers over matter. The Supreme Court thinks that these guidelines which they issue will reduce the abusive power of the police which they use over general public i.e. Arrest must be made after satisfying necessary parameters as mentioned under section 41 of the Cr.PC if not then no arrest. Many times, it has been seen that the Police implicate the innocent person falsely without his/her fault, which is also one cause of burden on overburdened judiciary in the court as judiciary itself don't have time whereas such corrupt activity done by police increase their burden.

Lacking in Crime Investigation: A most important function of the state police forces and some central police agencies like the CBI (Central Bureau of Investigation) is crime investigation. Once a crime occurs, then police officers are very much required to record the complaint soonest, secure the evidence properly, identify the culprit properly, frame the charges against accused, and assist with his prosecution in court so that a conviction may be secured fast. In India, crime rate has increased by 28% over the last decade, and the nature of crimes is also becoming more complex and are totally different from which existed earlier(e.g., with emergence of various kinds of cybercrimes and economic fraud). Conviction rates however have been very low. In 2015, the conviction rate for crimes which are recorded under the Indian Penal Code, 1860 was 47%. The Law Commission has observed that one of the reasons behind this is the poor quality of investigations done no proper investigation is taking

place. Police mostly failed to investigate the case properly, prosecute the crime and find out the truth of the crime, because they are dependent on the version of story narrated by the complainant who narrate it by their way of seeing, while on the other side there is a blank shot on the version of accused which is totally a poles apart. Sometime the accused is actual offender, but the theory derived by the investigation officer is different from the actual as the story they know are different from the real one, which is proved to be weak to prosecute the accused who is actual offender and resultantly the acquittal of the actual offender is there. To prosecute any such case, there is settled law that burden of proof lies on the prosecution to prove their case beyond reasonable doubt which give a little bit clear cut picture.

Conclusion: Police and their functions are very important in criminal justice system. Because it is the principal duty of the police to arrest criminals and to provide justice to victim and conduct accused until the conclusion of trial for preventing crime is theirs. Police got this authority to use force over accused person and other means of coercion to execute public and social order. The basic knowledge of crime and criminology which are essential is must for every police official and that's why almost in every country every police administration of the world it has a criminology division for police is necessary. And police are manually trained for the knowledge of criminology and this training is very essential for them. It is true that an honest, sincere and effective police force can ensure a happy and peaceful society in every mean. Although it is not possible for the police to reduce crime from society completely but it can be controlled and retained in a satisfactory stage if they try to do that. Otherwise, trick, corrupted, unlettered and disingenuous police force can give facilities to the criminals take money from the accused party and make the life of the general citizens miserable. The structure of Indian police is within which they are working was established by the British rulers as stated in above paragraphs. After the establishment of India, we got a readymade police force and government kept same the previous structure of police. To reform the police structure, the government of India has taken different initiatives several times but no implementation has been done for establishing a professional police force in the country. The whole machinery of the government is well aware of the corruption, illegal arrest, torture, manipulation and other malpractice of police what they do and how they cover that. Despite that they are functioning with these deviated police force as no option is there this only can be removed by police themselves. The activities done by police are negatively practiced against the opposition party citizens by the ruling party but when they come in the power, they defend the same police force and use them for narrow party purpose as police help them in achieving that. So lastly it may

be said that government, local authorities, voluntary organizations, individual citizens and the police all can play an important role to establish a civil society where there will be no crime and common people will not fall in cruel torture of them and a crimefree or crimeless society can be achieved.

PLEA BARGAINING: INDIAN SCENARIO

- Nidhi Bajaj

Abstract

Plea Bargaining, as it exists in India, is a modification of the Plea bargaining system prevalent in the U.S. The concept of plea bargaining was introduced in the Indian criminal jurisprudence by the Criminal law(Amendment) Act, 2005 which incorporated a Chapter on Plea Bargaining in the Code of Criminal Procedure 1973. In this research article, I have attempted to analyse the position and usefulness of plea bargaining in the Indian context. The paper also deals with the vision of the lawmakers behind inclusion of Plea Bargaining in the criminal law and how it can prove beneficial for the accused and the victim. The following questions have been answered in the article:

- What is meant by Plea Bargaining?
- What are the various types of Plea Bargaining?
- How can Plea Bargaining prove useful in reducing the burden of courts?
- What are the various provisions in CrPC dealing with Plea Bargaining?
- How is Plea Bargaining carried out, What are the various steps involved?
- What is the attitude of the judiciary towards Plea Bargaining?

(Keywords: Plea Bargaining, Chapter XXIA of Criminal Procedure Code, Charge Bargaining, concept of plea bargaining)

"I am pleading guilty your honor but I am doing it because I think it would be a waste of money to have a trial over 5 dollars worth of crack. What I really need is a drug program because I want to turn my life around and the only reason I was doing what I was doing on the street was to support my habit[1]."

[1] SERGIO DE LAVA PAVA, A NAKED SINGULARITY

Introduction

Traditionally, Plea Bargaining was not a part of Indian criminal jurisprudence. Before getting legally recognized in 2005, the concept of plea bargaining was widely criticized by various legal experts and courts including the Supreme Court of India. Plea bargaining is an arrangement entered into between the accused and prosecution wherein the accused is given certain concessions such as lesser punishment in exchange for a guilty plea. The concept has been in vogue in the US for a long time now. It was recognized as a constitutionally valid procedure for resolving criminal cases in the case of *Brady v. United States*[2] in 1970. Thus, it can be said that India inherited plea bargaining from America with certain modifications.

Definition of Plea Bargaining

The concept of plea bargaining is based on the principle 'Nolo contendere' which means 'I do not wish to contest'.

The black's Law Dictionary(8th edition) defines Plea Bargaining as:

"A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of the multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges.

The 142nd Law Commission of India Report(1991) defined Plea Bargaining as "any agreement by the accused to plead guilty in return for the prosecutor's agreeing to take or refrain from taking a particular course of action".

Types of Plea Bargaining

There are mainly three types of plea bargaining

1. **Charge Bargaining**: In this type of bargain, the accused agrees to plead guilty to a lesser charge in exchange for dismissal of a greater charge. Or in case of multiple charges, the accused agrees to plead guilty for less grave charges in exchange for dropping grave ones.

[2] Brady v. United States,397 U.S. 742(1970)

2. **Sentence bargain**: In a sentence bargain, the accused agrees to plead guilty in return for a lesser punishment or sentence.
3. **Fact Bargain:** This involves a case wherein the accused agrees to admit certain facts and in return, the prosecution agrees not to bring certain other facts in evidence.

Legal Position

The Law Commission of India in its various reports has favored the inclusion of plea bargaining in the Indian legal system:-

- **142nd Law Commission of India Report (1991)** The Law Commission recommended the incorporation of plea bargaining in the Indian Legal System and provided a detailed structure for the same. Due to long delays in trials, the under-trials have to spend more time in jails than they would have to if they were found guilty. The Commission was of the view that Plea Bargaining will help in reducing the huge delays in disposal of cases. The Commission gave the following reasons for the introduction of the scheme of Plea bargaining in India[3]:

1. It is not fair that an accused who feels remorse for his acts, is willing to make amends, and is honest enough to plead guilty hoping that the community will allow him to pay the penalty with a degree of compassion should be treated at par with an accused who claims to be tried at a considerable cost to the community both in terms of money and time.
2. It will bring to life the reformative provisions of Section 360 of CrPC and the provisions of the Probation of offenders Act.
3. It will be helpful for those accused who have to spend longer periods in jails as under-trials in obtaining a speedy trial and other benefits such as saving the litigation cost and end of uncertainty etc.
4. It will reduce the burden of courts without any detriment to the public interest.
5. It will reduce congestion in the jails.

- **154th Law Commission of India Report (1996):** The 154th Law Commission of India report gave the following recommendations:

[3] lawcommissionofindia.nic.in/101-169/Report142.pdf

1. Plea bargaining should be made applicable as an experiment for offences punishable with less than 7 years of imprisonment or for offences provided in Section 320.
2. The accused can opt for Plea Bargaining after filing of chargesheet in a Police case and after the cognizance stage in a complaint case.
3. A separate chapter in CrPC dealing with plea bargaining to be incorporated.

- **177th Law Commission Report (2001)** It was recommended that suggestions given under 154th Law Commission Report should be incorporated at an early date.

'Malimath Committee on Reform of Criminal Justice System' (2001-03) also listed the various benefits of plea bargaining such as the community interest it serves due to early resolution of cases thereby reducing the burden of cases on courts.

Chapter XXIA of Criminal Procedure Code, 1973

Chapter XXIA of the CrPC, 1973 dealing with plea bargaining was introduced by Criminal Law(Amendment) Act, 2005 which came into force on 5 July 2006. The Chapter consists of 11 sections(Section 265A- 265L)dealing with the following aspects:

Application of the chapter

Section 265A of CrPC provides that Plea Bargaining can be initiated at the following stages:

1. The Report under Section 173 has been forwarded by the officer in charge of the police station alleging commission of an offence by the accused.
2. The magistrate has taken cognizance of an offence on the complaint and has issued the process under Section 204 after examination of complainant and witnesses under Section 200.

The Chapter on plea bargaining shall not apply in case of:

I. An offence punishable with death, life imprisonment, or imprisonment exceeding 7 years.
II. Offences affecting the socio-economic condition of the country
III. The offence has been committed against a woman or a child below 14 years of age.

The Central Government, in exercise of its power under Section 265(2) has notified[4] the laws offences under which shall be considered as 'offences affecting socio-economic condition of the country'. These laws include the Dowry Prohibition Act, The Protection of Women from Domestic Violence Act, Protection of Civil Rights Act, the Army act, and the Explosives Act, etc.

Who can file an application for plea bargaining and where?

Section 265B deals with the application for plea bargaining. Section 265B provides that an application for plea bargaining is to be filed by a person accused of an offence in the court in which such offence is pending for trial.

The application must contain a brief description of the case including the offence committed. It has to be accompanied by an affidavit sworn by the accused stating that he has voluntarily preferred plea bargaining after understanding the nature and extent of punishment provided for the offence and that he has not previously been convicted by a court in a case in which he had been charged with the same offence.

What happens after the filing of an application for plea bargaining by the accused?

The court after receiving the application issues notice to the public prosecutor or the complainant, as the case may be, and to the accused to appear on the date fixed for the case.

On the appearance of parties on the date fixed, the court shall examine the accused in-camera(where the other party shall not be present) to satisfy itself about his voluntariness to file the application.

If the Court is satisfied that the accused has voluntarily filed the application, it shall provide time to the accused and to the prosecutor or complainant of the case to arrive at a mutually satisfactory disposition including payment of compensation and other expenses to the victim. Thereafter, a date shall be fixed for the hearing.

But, in case, the court finds that application has been filed by the accused involuntarily or that he has previously been convicted in a case where he had been charged with the same offence, the court shall proceed further in accordance with the provisions of the Code from the stage such application has been filed under Section 265(1).

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[4] Central Government Notification by S.O. 1042(E), dated 11th July, 2006.

Procedure for working out a mutually satisfactory disposition

Section 265C provides 'Guidelines for Mutually Satisfactory Disposition':

1. Case instituted on police report: The Court issues notice to the following parties for participating in the meeting to work out a satisfactory disposition of the case:
    a. Public prosecutor
    b. Police officer who investigated the case
    c. Accused
    d. Victim

The pleader of the accused may participate in such meeting with the accused.

2. Case instituted otherwise than on police report: The court shall issues notice to accused and victim to participate in working out a satisfactory disposition of the case. The victim or accused may choose to participate in the meeting with his pleader engaged in the case.

In both the cases mentioned above, it shall be the duty of the court to ensure that the whole process of working out a satisfactory disposition is completed voluntarily by the parties.

Report to be submitted before the court (Section 265D)

Where a satisfactory disposition of the case has been worked out, a report shall be prepared by the court signed by the presiding officer of the court and persons who participated in the meeting. In case no such disposition has been worked out, the court after recording such observation shall proceed further with the case in accordance with the provisions of code from the stage the application under Section 265(1) has been filed.

Disposal of case(Section 265E)

In case a satisfactory disposition has been worked out between parties, the court shall dispose of the case in the following manner

a) Award compensation to victim in accordance with disposition arrived at between the parties and hear the parties on
    - Quantum of punishment
    - Release of accused on Probation of good conduct or after admonition under Section 360 or

- Dealing with accused under the Probation of Offenders Act or any other law for the time being in force.

b) If the court is of the view that Section 360 or the Probation of Offenders Act or any other law is attracted, it may release the accused on probation or provide the benefit of any such law as the case may be.

c) If the Court finds that minimum punishment has been provided, under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment.

d) If the Court finds that offence committed by the accused is not covered by clause (b) or(c), then it may sentence the accused to one-fourth of punishment provided for such offence.

Judgment(Section 265F and Section 265G)

- The court shall deliver its judgment in open court and it is to be signed by the presiding officer of the court.
- The judgment shall be final and no appeal shall lie in any Court against such judgment except a special leave petition under Article 136 and a writ petition under Article 226 and 227 of the Constitution.

Power of the court in plea bargaining

According to Section 265H, the court shall have all the powers vested in respect of bail, the trial of offences, and other matters relating to disposal of a case to discharge its functions under this chapter.

Non application of the chapter(Section 265L)

The chapter on Plea Bargaining is not applicable in the case of a juvenile or child as defined in Section 2(k) of the Juvenile Justice(Care and Protection of Children) Act,2000.

Section 265I provides for setting off the period of detention already undergone by the accused against the sentence of imprisonment.

Statements of accused not to be used

Section 265K contains a very important provision that says that the statements of fact stated by the accused in his application for plea bargaining shall be used only for the purposes of this chapter and not for any other purpose.

Changing judicial attitude towards plea bargaining

- *Madan Lal Ramchandra Daga v. the State of Maharashtra*[5]

In this case, the Supreme Court looked down upon the practice of plea bargaining and held that it is wrong for the courts to enter into a bargain with the accused by which money is recovered for the complainant through their agency. The judgment came in an appeal from the High court's decision wherein the High Court accepted the plea of the appellant(who was accused of cheating) to deposit money and pay his share of losses if his sentence was reduced.

- *Kasambhai Abdul Rehman Bhai Sheikh v. the State of Gujarat*[6]

In the case, the Supreme Court held that the practice of plea bargaining was unconstitutional, illegal, and would tend to encourage corruption, collusion and pollute the pure Fount of Justice.

- *State of U.P v. Chandrika*[7]

The Honorable Supreme Court held that the concept of plea bargaining is not recognized and is against public policy under the criminal justice system of India.

- *State of Gujarat v. Natwar Harachandji Thakor*[8]

In this case, Gujarat High Court while favoring the practice of plea bargaining, opined that the concept of plea bargaining as an alternative method of dealing with disputes or offences should

[5] Madan Lal Ramchandra Daga v. State of Maharashtra, 1968 SCR (3) 34
[6] Kasambhai Abdul Rehman Bhai Sheikh v. State of Gujarat,1980 AIR 854
[7] State of U.P v. Chandrika, 1999 Supp(4) SCR 239
[8] State of Gujarat v. Natwar Harachandji Thakor,2005 CriLJ 2957

be given serious consideration keeping in mind the huge arrears of cases, long time spent in trials and resultant hardships caused to the parties.

- *Rahul Kumpawat v. Union of India through CBI*[9]

In this case, Rajasthan high Court held that an application for plea bargaining can be rejected only on the grounds mentioned in Chapter XXIA of CrPC, and rejection of such application on any other ground is not proper.

Plea bargaining is based on the concept of the restorative justice

It is pertinent to note that plea bargaining gives effect to the principal of restorative justice. It has made the much-needed victim-oriented reforms in the criminal justice system a reality. The victim is no more a forgotten loser who has been wronged. The concept of plea bargaining allows participation of the victim in working out a satisfactory disposition of the case and also ensures timely payment of compensation to the victim. Victims are in a position to bargain the quantum of compensation and thereby get wider choices as against leaving their fates to the mercy of the courts in case of a traditional trial. Another important benefit of plea bargaining for victims is that they can avoid the unpleasantness of trial and do not have to give evidence. This reduces stress regarding the publicity of a trial also.

Conclusion

Plea bargaining, just as every other concept, has its pros and cons. Sometimes an accused who is in a poor financial condition might be ready to trade off his innocence in an attempt to save litigation costs or to avoid jail time. However, the practical significance of plea bargaining for a country like India cannot be ignored in the light of the ever-increasing number of cases before the courts. It would not be wrong to say that plea bargaining has become an essential part of the criminal justice system of India. It is beneficial for both the accused and victim as well as the community. An accused gets a chance to reform himself and save litigation costs thereby avoiding the uncertainty of trial, victims get quick justice and fast compensation, and the community is also benefited as plea bargaining saves the time and public money wasted in long criminal trials. It is indeed true that ‘Justice delayed is justice denied’. Plea bargaining is one of

[9] Rahul Kumpawat v. Union of India through CBI, 2016 RAJASTHAN HC

the most effective methods to deal with less grave offences and ensure timely justice to the victims. That being said, in order to make this scheme fully successful, adequate safeguards must be provided such as ensuring that the accused files for plea bargaining voluntarily and knowingly and that the victim is not coerced during the negotiation process, etc.

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Equality and Justice: The Constitution Dynamics

-Ishwar Mohan Jaiswal

Introduction

Equality and Justice is foremost reflected in the Preamble of Indian Constitution, although it was drafted to set guidelines and principles of Constitution but is considered as an integral part of the Constitution and is enforceable in court of law for the interpretation of ambiguous parts of the Constitution.[1] Preamble by constituting Equality and Justice seeks a nation to be governed by the 'rule of law' and equal rights with the absence of arbitrary powers.

Justice and equality are inseparable concepts as to attain Social, Economic and Political Justice in the Nation it will have to deprive all sort of inequalities amongst the citizens. India being a Democratic Republic Nation has vested the power to elect and rule in hands of the citizens without any basis of discrimination.

Equality portraits that all citizens of the nation are equal for the law without any discrimination and personal privileges. Universal Declaration of Human Rights also have enlisted Right to Equality and Non-Discrimination in Article 2 to explicitly prohibit any kind of discrimination.

Equality and Equity are the two concepts of society, Equality is referred to when each and every individual is treated equally without any privileges or discrimination i.e to provide same level of opportunities in every aspect to every individual whereas equity is referred to fair and just equitable distribution with the sense of natural justice and practicability. Equality would be to give everyone 1,000 rupees irrespective of their needs whereas equity would be to distribute money according to ones needs.

Indian Concept

Right to Equality and Justice is enshrined in Article 14 of our constitution, combining with Articles 15,16,17 and 18 enhances the spirit of equality. Article 14 provides equal protection to everyone within the territory of India whether or not a citizen of the nation, it is a integral part of basic structure and cannot be destroyed by Article 368 of Indian Constitution[2].

The concept of Equality is rather more of a hybrid concept than a formal Equality concept as spirit of our constitution provide "equality among equals and does not forbid different treatment amongst unequal."[3] Although Article 15 prohibits discrimination on sex, creed, caste, color etc. but it also consists an exception to provide special protection and provisions for growth by the State to lower class or underprivileged group like to provide explicit protection from rape to women and

[1] Kesava Nanda Bharti Case Vs State Of Kerala, AIR 1973 SC 1461
[2] INDIA CONST. art. 368
[3] Ms.Amita vs union of India & Anr 2005

children[4]. It propounds the concept of "equality in fact" and allows intelligible differentia amongst different class of people, distinction on the basis of reasonable grounds is only acceptable.[5] In case of Air India V Nargesh Meerza Regulations, women were asked to retire after age of 35 years, 4 years of being married or after being married which was concluded to be an unjust discrimination and thus was ordered to be prohibited.[6]

The doctrine of equality being a dynamic and evolving concept is growing by the needs of time, women were not granted the right to hold property but with evolution of equality in the case of Mary Roy V State of Kerala, Supreme Court conveyed a landmark judgement by proving women rights to hold father's property[7]. Furthermore, National Legal Service Authority V Union Of India had further spread the ambit of equality to third gender also by Supreme Court[8].

India seeks Social, Economical and Political Justice by the 'rule of law' and abolishing arbitrary nature for a system of equality and freedom in the society. Equality and Justice are entangled subjects and it is not possible to achieve one without another, Justice can only flourish if equality is practices in the society and Equality amongst the society is also only possible if justice fairly prevails.

Social Justice is referred to the improvement of living standard and eliminating all the exploits and evils of society, such as untouchability, discrimination and under social deteriorates. Economic Justice means to remove all the subjects of economic differences amongst citizens like income, wealth and status with an objective to establish society with equal economic status and resources. Political Justice portrays equal means of opportunities for the people to participate in political matters, it promotes the establishment of liberal democracy with the equal rights to participation with the citizens.

Right to equality and justice is not an absolute fundamental right, there are some exceptions of the same for the smooth working of administration in the nation. Article 105 and 194 provides parliamentary privileges to the members of the house during the business of house, privileges like freedom of speech and publications, freedom from arrest before and after 40 days of house meeting, freedom to expunge members, outsiders and speeches from the house. Such privileges are given for the smooth working of house without any interventions and disturbances. Article 361 provide President and Governors special privileges, they are not answerable to the courts for their exercise of powers and duties and cannot be sued for criminal or civil proceedings during their term of office and thus can neither be arrested during the time.

[4] Indian Penal Code,1860, No.45, Acts Of Parliament, 1860
[5] D.S. Nakara & Others vs Union Of India on 17 December, 1982 AIR 130, 1983 SCR (2) 165
[6] Air India Etc. Etc vs Nergesh Meerza & Ors. Etc. Etc on 28 August, 1981 AIR 1829, 1982 SCR (1) 438
[7] Mrs. Mary Roy Etc. Etc vs State Of Kerala & Ors on 24 February, 1986 AIR 1011, 1986 SCR (1) 371
[8] National Legal Services Authority (NALSA) vs. Union of India. [(2014) 5 SCC 438]

Fundamental Rights

Article 14

"The state shall not deny to any person equality before law or equal protection of the laws within the territory of India."

It is embodiment of the objective of Equality portrayed in the Preamble of Constitution of India and also a part of Golden Triangle of Constitution with Article 19 and 21. The article signifies two aspects "equality before law" being a negative one meaning absence of any special privilege to any person and "equal protection of the laws" being a positive concept meaning similar protection by laws in similar circumstances. This is an article which is equal for all people within the territory of India whether a citizen or not.

In the case of K. Thimmappa v. Chairman Central Board of Directors[9], Supreme court observed that,

"Mere differentiation does not per se amount to discrimination within the inhibition of equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any rational basis having regard to the object which the legislature has in view."

Article 15

"Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth…."

This Article prohibits the government from discriminating on the basis of religion, race, caste, sex or place of birth and shall also not deny access to public places on the basis of such discrimination. At the same time the article also empowers the state to make special provisions for women, children, scheduled castes and tribes and other backward classes for their upliftment and overall growth of society any other arbitrary discrimination is prohibited by this provision.

In the case of Joseph Shine V Union of India [10], section 497 (adultery) was decriminalized and was held to be only a ground of divorce because of being unconstitutional by violating Article 14,15 and 21. Adultery only punished men and could only be sued by men against men which had unreasonable discrimination and violated the sense of equality and non-discrimination.

Article 16

"Equality of opportunity in matters of public employment…"

Article 16 prohibits the state to discriminate on the basis only of religion, race, caste, sex, descent, place of birth, residence or any of them, the state shall provide everyone with equal opportunities to work. Clause 4 enables the state to make special laws and provisions regarding the upliftment of SC, ST and Other Backward Classes, 4(A) enables the state to make reservation in the matters of promotion and 4 (B) allows them to 'carry forward' the unfilled vacancies to the next year

[9] K.Thimmappa v. Chairman Central Board of Directors., SBI (AIR 2001 SC 467)
[10] Joseph Shine v. Union of India, 2018 SCC OnLine SC 1676.

provided that the limit do not exceed fifty percent of ceiling mark. Clause 5 enables the offices related to a religious sect to reserve the profession to particular religious only.

Formation of Special Provisions for Upliftment of backward classes in Article 15(4) and 16(4) are enabling provisions i.e it empowers the state to do so but one cannot claim as their right according to Professor Pramanand Singh and fundamental rights by M.P Singh.[11]

The case of Indira Sawhney V Union of India [12], Supreme Court overturning the judgement of T. Devadasan V Union of India[13] held that the reservation quotas should not exceed the limit of fifty percent after including 'carry forward' and also that reservation should not be applicable as the basis of promotion.

Article 17

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

Article 17 is more of a self-explaining article which condemns and prohibits the practice of untouchability which had been continued in India since ancient period. Article 35 enables the state to punish the act, based on which The Untouchability Act,1955 was passed and was later renamed into Protection of Civil Rights Act,1976

Article 18

"Abolition of titles…"

This article prohibits one to accept any title except on for academic or military excellence, it forbids citizens to even forbids accepting titles from foreign states too. It also forbids government workers to accept presents, emoluments or any office without the consent of President.

In case of Balaji Raghaman V Union of India[14], did not regard National Awards like Padma Bhushan, Bharat Ratna etc. as violative to article 18 because National awards do not amount to titles.

Directive Principles of State Policies

Directive principles of state policies are included in Part IV of the Constitution from Article 36-51 although they are not enforceable by court of law, they are given heavy importance before passing of legislations in the nation as Article 37 embarks it as a duty of state to apply these principles in the process of making laws.

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[11] By Pramanad Singh, "Tension Between equality and affirmative action : An overview"

[12] Indra Sawhney Etc. Etc vs Union Of India And Others, Etc. on 16 November, 1992 AIR 1993 SC 477, 1992

[13] T.Devadasan vs The Union Of India And Another on 29 August, 1963
1964 AIR 179, 1964 SCR (4) 680

[14] Balaji Raghavan/S.P.Anand vs Union Of India on 15 December, 1995

Although there has been continuous debate about the importance of DPSP's and their priority over fundamental rights such as in the case of State of Madras v. Champakan[15], supreme court observes that since any law contravening fundamental rights is to be void but if the same is not held void if a valid law contravenes DPSP, thus, Fundamental Rights to be given priority over DPSP's. But after the 42nd Amendment[16], changes in article 31 C increased the ambit of DPSP's stating that if any law passed for the implementation of same is immune against the violation of Fundamental Rights. In Keshavananda Bharti Case[17],DPSP were given priority over Fundamental Rights. This view has been foiled in the case of Minerva Mills v. Union of India, supreme court had struck down the widening of Article 31 C and observed that both Fundamental Rights and DPSP have important role and are complementary to each other, thus, to be balanced in a proper way.

Article 38

Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities.

Article 39

Secure citizens:

- Right to adequate means of livelihood for all citizens
- Equitable distribution of material resources of the community for the common good
- Prevention of concentration of wealth and means of production
- Equal pay for equal work for men and women
- Preservation of the health and strength of workers and children against forcible abuse
- Opportunities for the healthy development of children
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Article 39 A

Promote equal justice and free legal aid to the poor

Article 41

In cases of unemployment, old age, sickness and disablement, secure citizens:

- Right to work
- Right to education
- Right to public assistance

Article 46

Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation.

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[15]The State Of Madras vs Srimathi Champakam on 9 April, 1951

[16]Transgender Persons Act,2019 , No. 4, Acts of Parliament, 2019

[17] Kesava Nanda Bharti Case Vs State Of Kerala, AIR 1973 SC 1461

Inequality in different aspects:

Gender Inequality

Due to the traditional norms and social background, women in India have been a suppressed by male dominated society quashing all the believes of equality and justice. Indian society have been male dominated society since the history which have resulted in great inequalities in the rights of citizens, by perseverance and continuous battle against such unjust society has managed to amend several such evils. Feminism is the approach in which women come together for their battle against traditional views and for their equal rights and opportunities. Lack of equal opportunities and status amongst gender portrays poor culture and also harms the economic growth of a nation.

Development of society has not only empowered women but has also started recognition of third gender LGBTQ+ as a part of society with equal rights and opportunities. Although they have not yet attained the equal status in the society but a milestone for the future development have been set and started to grow by the NALSA Judgement of Supreme Court and Transgender Persons (Protection of Rights) Act, 2019[18].

Racial Inequality

Racial Discrimination have always been a deep part of controversies and biasness in the society even though any such distinction does not remark to be a difference in intelligence, beauty, capabilities or in any matter. Such discrimination has been majorly experienced by dark colored and northeastern mongoloid looking people, several job opportunities and social gatherings have been sensitive to such discrimination and people have been stripped of their equality rights. One of such practice of name-calling and banishing mongoloid looking people as "chinkies" or of Chinese origin have been experienced widely in the contemporary situation amid pandemic[19], even though such activities are categorized as a crime in Indian Penal Code and can attract punishment upto 5 years jail term. Even women and men of dark complexion have been treated as inferiors in the society, one of such supermassive revolt starting from America spreading throughout the globe was "Black Lives Matter" after the incident of George Floyd's death during the police custody in Minneapolis.[20]

Religious and Caste Inequality

Religious and caste base discrimination is one of the most widespread evils against the goal of equality and justice in the society. In order to grow one's faith, people group together and form cults with the purpose of demeaning other religious sects which results in wide clashes and violence in the society. There have been several examples of such riots even in the modern world, "Ayodhya Ram Mandir" controversy is the most famous amongst them. Such discrimination not only harm equality in the nation but also the sense of justice and feeling of fraternity amongst the citizens. Further the leaders of such cults have also been interfering in political situation of the

[18] Transgender Persons Act,2019 , No. 4, Acts of Parliament, 2019

[19] By Naorem Pushparani Chanu, " A Novel Virus, A New Racial Spur", The India Forum , July 3,2020

[20] By Evan Hill, Ainara Tiefenthaler, Christian Triebert, Drew Jordan, Haley Wills and Robin Stein "How George Floyd was killed in Police Custody", The New York Times, May 31,2020

nation and causing one sect to bear hatred against the other, and have been advancing political rifts amongst public. The purpose to profess and propagate one religion in order to surpass other is slowly ripping the choice and liberty of citizens.

Caste based discrimination have been passed on to the society since ancient period there have been efforts of several national leaders in order to get rid of such discrimination, but they were not completely successful in doing so, Dr. B.R Ambedkar scholar and an advocate by profession also is recognized as "Father of Indian Constitution" had lived his life fighting against the caste tyranny. Caste system have been derived from Brahmanical Texts "Brhamsutras", a set of rules for the society to follow, which limited the choice of profession since the birth of a child. It has been a major impediment in the economic growth of nation.

Uniform Civil Code

India is a blend several civil laws like Hindu Personal Law, Muslim law, Succession Act etc., there is no uniform code of civil laws in the nation even though formation of one is advised in article 44 of Indian Constitution, Directive Principles of State Policies. Article 44 states "*The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India"*[21]

Formation of Uniform Civil Code will further enhance Equality, Secularity, Fraternity and Justice in the nation. Personal Laws leave loopholes in the society and is also degrading the growth of society. But due to lack of political will and misinformation about Uniform Civil Code has been the major issue against its approval.

In the case of Shah Bano[22], a 73-year old woman was denied of maintenance after divorce through the means of triple talaq in Muslim Law. The supreme court ruled in favor in 1985 as section 125 of Cr.P.C.[23] that applied to all citizens for providing maintenance of wives and children. Court also discussed of applicability of Uniform Civil Code. Goa is the only state to have Uniform Civil Code in the form of common family law.

Conclusion

Right to equality and Justice being an evolving dynamic has been regularly developing with the motive of establishing welfare state in India, from a formal concept of equality it had already evolved into more flexible concept of "equality amongst equals". Although the struggle of equality in India have been long, there are yet several loopholes in the concept. With women empowerment and growth of modern society people have come to know the deep importance of equality in the society not only for personal growth but also for overall growth of economy and nation itself.

[21] INDIA CONST. art. 44
[22] 1985 AIR 945, 1985 SCR (3) 844
[23] Code Of criminal Procedure,1973, Acts of Parliament,1973

Citizenship (Amendment) Act, 2019: An Analysis

-by Rasmita Behera, 4th year

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Part II of the Constitution of India,1950 lays down the different provision relating to the different aspects of the CITIZENSHIP. Article 5 barely describes the about who is a citizen of India. The Constitution does not lay any permanent or comprehensive provision relation to citizenship in India. It only describes the class of persons who would be deemed to be citizen of India.

Article 5 states that:

"At the commencement of this constitution every person who has his domicile in the territory of India and-

a) **Who has born in the territory of India; or**
b) **Either of whose parents was in the territory of India; or**
c) **Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,**
Shall be a citizen of India."

Article 11 expressly confers power of the Parliament to makes law relating to citizenship.
"11. Parliament to regulate the right of citizenship by law. – Nothing in the forgoing provisions of this Part shall derogate from the power of Parliament to make provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

In exercise of this power the parliament has enacted the Indian Citizenship Act, 1955, which provides for the acquisition and termination of citizenship subsequent to the commencement of the Constitution.

The Indian Citizenship Act, 1955: The Act was enacted by the Parliament in exercising its power under Article 11 of the Constitution. The object as mentioned in the Act is "An Act to provide for the acquisition and determination of Indian Citizenship".

According to the Act, there are four ways a person can acquire Indian citizenship: -

- Birth
- Descent
- Registration and
- Naturalisation.

Provisions for the same are listed under sections 3, 4, 5 and 6 of the Citizenship Act, 1955.

The 1955 Act was amended six times — 1986, 1992, 2003, 2005, 2015 and 2019. While the 2003 amendment mandated the government to have a National Register of Citizens, the latest one seeks to ease the citizenship process for the persecuted minorities — Hindu, Sikh, Buddhist, Jain, Parsi and Christian — of Pakistan, Bangladesh and Afghanistan.

The amended provision is as follows:

1. The proviso to Section 2 clause(b) is added.
   The proviso is as follows:
   "Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;".

Section 2 of the Act provides for the basic the interpretation or definition of words that are incorporated in the Act. Clause(b) of sub-section (1) of section 2 talks about the definition of "illegal migrant". It defines illegal migrant as-

"illegal migrant" means a foreigner who has entered India-

a. Without a valid passport or travel document and such other document or authority as may be prescribed by or and any other law in that behalf;
b. With a valid passport and other travel document and such other document or authority as may be prescribed by or under any law in that behalf remains therein beyond the permitted period in India.

The proviso added to this clause by the amendment provides that any person from Afghanistan, Bangladesh or Pakistan who is ether Hindu, Sikh , Buddhist, Jain, Parsi or Christian shall not be treated as illegal migrant under this Act if such person has entered India on or before 31st December, 2014. Although if such person is excluded by the Central Government or under the provisions of the Passport Act, 1920 or under the Foreigners Act, 1946, still those persons shall not be called as illegal migrant under the meaning of section 2(1)(b) of the Act.

This in other words means non-Muslim immigrants from India's three Muslim-majority neighbors: Pakistan, Bangladesh, and Afghanistan will be granted Indian citizenship, provided they entered India before 31 December 2014.

The Act does not explicitly state that Muslims are barred, however, the fact that it spells out the religious communities that will benefit from the amendment makes it clear that Muslims have been kept out.

2. The Act inserted a new Section as Section 6B.
   "6B. (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalization to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.
   (2) Subject to fulfilment of the conditions specified in section 5 or the qualifications for naturalization under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalization under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.
   (3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him:

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section:

Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

(4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873."

The above provision is specially added to indicate the applicability of proviso clause added under Section 2(1) (b).

The section states that persons referred to under the proviso of section 2(1)(b) shall be entitled to get a certificate of registration or certificate of naturalization on application made by such persons on that behalf. The grant of such certificate of naturalization will be provided only if the applicant has fulfilled the condition prescribed under section 5 of the act or on qualifying the criterion given under the Third Schedule of the Act.

As per section 5 for citizenship registration an applicator must not be an illegal migrant by virtue of the Constitution or any other provision of this Act. To qualify for registration, following conditions need to be fulfilled:

i) Person Indian origin who has been a resident of this country for 7 years before applying for registration.
ii) Married to an Indian citizen and is a resident for 7 years before applying for registration.
iii) Persons of Indian origin who are ordinarily resident in any country or place outside undivided India under section 5(1)(b).
iv) Minor children of persons who are citizens of India.
v) A person of full capacity age and capacity whose parents are registered as Indian citizen under clause (a) of section 5(1) or under section 6(1).
vi) Person whose both parents were living in India before 12 months of filing such registration.
vii) Person who has been registered as overseas citizen of India for 5 year and is ordinarily resident of India for 12 months before applying for registration.

The qualification for naturalization of a person are: -

a. that he is not a subject or citizen of any country where citizen of India are prevented by law or practice of that country from becoming subjects or citizens of that country by naturalization;
b. that, if he is a citizen of any country, he undertakes to renounce the Citizenship of that country in the event of his application for Indian Citizenship being accepted;
c. that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application:

[Provided that if the Central Government is satisfied that special circumstances exist, it may, after recording the circumstances in writing, relax the period of 12 months up to a maximum of 30 days which may be in different breaks.][1]

d. that during the 14 years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years;
e. that he is of good character;
f. that he has an adequate knowledge of a language specified in the Eighth schedule of the Constitution; and
g. that in the event of a certificate of naturalization being granted to him, he intends to reside in India, or to enter into or continue in, service of the government in India or under any International organization of which India is a member or under a society, company or body of persons established in India.

Further under clause (3) of section 6B it states that it shall have its effect from the date of commencement by Official Gazette notification, i.e., it came into force on January 10, 2020. Any person after such notification if an illegal migrant his application shall be rejected on that ground or if any proceeding against such person is in trail, then application by such person shall estopped until any notification by the Central Authority or any authority specified on that behalf. The proviso of clause (3) further states that such person shall not be deprived of any rights and privileges from the date of application.
The newly added section 6B shall not be applicable to the triable area of Assam, Meghalaya, Mizoram and Tripura as per the 6th Sechdule of the Constitution and the area mentioned under the Regulation stated under clause (4) of 6B.

3. Amendment of Section 7D.

Section 7D states about the cancellation of registration of Oversea Indian Citizenship card on satisfaction of the grounds mentioned therein.
Before Amendment the only grounds were:

a. when the registration was obtained under fraud, false representation or concealment of any material fact;
b. does not obey the Constitution or any law established under it.
c. when such person was involved in business or engaged in trade unlawfully with the enemy during any war in India;
d. where such person within 5 years from the date of registration has been sentenced to imprisonment for a term of two years;
e. when such cancellation is done in the interest for the sovereignty and integrity of India or for security of India or in interest of the general public or in friendly relation with other country;
f. where the citizenship was obtained under basis of marriage, the cancellation will be on the basis of dissolving of such marriage by a competent court of law or dissolved due to marriage of such person with another person during the subsistence of the pervious.

The new Amendment to this provision is to add a clause namely as clause (da) and as sub-clause(iii) to clause(f) which states as follows:
(da) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette; or";

[1] Inserted by Act 1 of 2015, Section 6.

(ii) after clause (f), the following proviso shall be inserted, namely:
"Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.".
The clause (da) states that the cancellation of the overseas citizenship will be on the basis of any violation of any provision under this Act or any other law specified by the Central Government by Official Gazette from time to time on that behalf.
The clause (f) talks in general about cancellation of overseas citizenship on the basis of dissolution of marriage under the ground provided in sub-clause (i) and (ii), i.e., by a competent court of law and marriage during subsistence of previous marriage. The third ground added to it states that a citizen holding overseas citizenship shall be given reasonable opportunity to prove his innocence.

4. Amendment of Section 18.

Section 18 states about the power to make rules. The rules made should not be prejudiced and such rules may be provided for: -
(a)the registration of anything required or authorized under this Act to be registered, and the conditions and restrictions in regard to such registration;
[(aa) the form and manner in which a declaration under sub-section (1) of section 4 shall be made;][2]
(b) the forms to be used and the registers to be maintained under this Act;
(c) the administration and taking of oaths of allegiance under this Act and the time within which, and the manner in which, such oaths shall be taken and recorded;
(d) the giving of any notice required or authorized to be given by any person under this Act;
(e) the cancellation of the registration of, and the cancellation and amendment of certificate of naturalisation relating to, persons deprived of citizenship under this Act, and the deliver-ing up of such certificates for those purposes;
[(ee) the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (b) of section 6A shall be submitted and other matters connected with such declarations;][3]
[(eea) the conditions and the manner subject to which a person may be registered as an Overseas Citizen of India Cardholder under sub-section (1) of section 7A;][4]
[(eeb) the manner of making declaration for renunciation of Overseas Citizen of India Card under sub-section (1) of section 7C;][5]
(f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;
(g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of an oath of allegiance, and in respect of the supply of certified or other copies of documents;
(h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;
(i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil court;
[(ia) the procedure to be followed in compulsory registration of the citizens of India under sub-section (5) of section 14A;][6]

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[2] Inserted by Act 6 of 2004
[3] Inserted by Act 65 of 1985
[4] Inserted by Act 1 of 2015
[5] Inserted by Act 1 of 2015
[6] Inserted by Act 6 of 2004

(j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and
(k) any other matter which is to be, or may be, prescribed under this Act.

In section 18 of the Act, in sub-section (2), after clause (ee), the following clause is inserted, namely:
"(eei) the conditions, restrictions and manner for granting certificate of registration or certificate of naturalization under sub-section (1) of section 6B;".

5. Amendment of the Third Schedule.

The Third Schedule talks about the qualification for naturalization.

In the Third Schedule to the Act, in clause (d), the following provision is inserted, namely:
“Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven year".”

The proviso added states the minimum period of residence or services under the Government in India shall not be less than 5 years instead of 11 years for any person specified as under Section 2(1)(b).

The Amendment of 2019 is basically relating to the National Register of Citizenship (NRC) of Assam containing the names of the all-genuine Indian citizen. When the new NRC started in Assam the problem started which was demand long back by the migrant from Bangladesh which were almost 19 lakhs. The NRC was basically started in that year for listing Citizens who were left out. The Hindus got the Indian Citizenship automatically and the other religion had to take the recourse of legal provisions basically the Muslim community were left out. In the amendment made in 2019 has indirectly made the migrants from Afghanistan, Bangladesh and Pakistan as illegal migrants. The protest by the Muslims during the Citizenship Amendment Bill was by stating that it is indirectly shaking one of the pillar of the Constitution of India that is depicted in the Preamble of the Constitution, that India is a SECULAR country.

RIGHTS OF ACCUSED DURING ARREST AND TRIAL IN INDIA

-Preeti Dulat

Abstract

The term arrest stands for the meaning that apprehension of a person by legal authority, it involves the keeping of a person in custody by legal authority especially in response to a criminal charge.
The purpose of arrest to bring an accused before the court and to not let him abscond.
One of the basic principle of our legal system is the presumption of innocence of accused until he proved guilty at the end of the trial on legal evidences. There are certain fundamental rights given to citizens of India. These rights are given irrespective of the fact that the person is an accused of a crime. Our constitution is based on the fundamental that LET HUNDREDS GO UNPUNISHED, BUT NEVER PUNISH AN INNOCENT PERSON. An unlawful arrest of a person can be violation of Article 21 of The Constitution of India. According to Article 21 no human shall be denied of his right to life and personal liberty except procedure followed by law.

Introduction

The accused means the person charged with any infringement of law for which he is liable and if convinced than to be punished. In other words a person who is charged with the commission of offence. An offense is defined as an act or omission made punishable by any law for the time being inforce. The term accused is different from the term convicted person. The basic difference isthat someone who has been accused of a crime has not been proved guilty yet. Like every other country, there exists certain rights of an accused person in India. The rights of an accused in India are devised into rights before trial, rights during trial and rights after trial. The reason behind these rights is that the government has numerous reasons for prosecution of an individual and therefore accused are entitled to some protection from misuse of those arbitrary power of government.
Accused should be protected from any arbitrary or illegal arrest. It is to be noted that no arrest canbe formed on the basis of mere suspicion or information.

In the leading case of Maneka Gandhi v. Union of India it was held that no matter what procedurethe state take into action. The basic rule behind it should be the just, fair and reasonable trial.

What are the rights of accused in India

Right to know the ground of arrest

Article 22(1) of Constitution of India provides that no person can be arrested by police officialswithout informing him the ground of his arrest.

According to section 50(1) of Code of Criminal Procedure every police officer or other person having authority to arrest a person if arresting without warrant , must inform the person arrestedabout the offence for which he is arrested and grounds of such arrest.

According to section 50 (a) of Code of Criminal Procedure it is mandatory for a police officer orother person making arrest to inform about the ground of arrest to any friend, relative or other member of family as nominated by the arrested person.

Sec 75 of Code of Criminal Procedure provides that if a warrant is issued for arrest of a person then the police officer or the person exciting a warrant must notify the substance to the arrestedperson and if necessary shall show him the warrant.

Right against wrongful detaintion

According to section 57 of Code of Criminal Procedure and Article 22 (2) of Constitution of India.No person shall be in custody for more than 24 hours. Every person who is arrested shall be produced before the nearest magistrate with in 24 hours.

Protection against self – incrimination

Article 20(3) of Constitution of India states that no person shall be compelled to be a witness against himself and to give a self incriminatory statement. It was also held by supreme court inMakbul Hussain v. State of Bombay and Budh Singh v. State of Haryana.

Right against double jeopardy

Article 20(2) provides that no person shall be prosecuted and punished for the same offence morethan once

Section 300 of Code of Criminal Procedure also states that the person once convicted or acquittednot to be tried for the same offence.

Right to fair and speedy trial

As justice delayed is justice denied, this legal maxim applies to all person irrespective of the factthat person is accused of a crime. Thus even a accused person has a right to fair and impartial justice quickly.

Right to consult a legal practitioner

According to Article 22 (1) of Constitution of India, it is the fundamental right of an accused to be defended and to consult a legal practitioner of his choice.

Section 41(d) of Code of Criminal Procedure also provides that when any person is arrested and interrogated by police, he has a right to meet an advocate of his choice during interrogation

Section 303 of Code of Criminal Procedure also states that an accused person has a right to bedefended by a pleader of his choice.

Right to bail

According to section 50 (2) where a police officer arrest without warrant any person who is accused of a bailable offence then he shall inform the person arrested that he is entitled to takebail

Presumption of innocence

As Indian legal system is based on the principle that it is batter that hundred guilty person escapethen that one innocent person punished. Thus the charge against the accused must be proved beyond any reasonable doubt so the accused person has a right to be presumed innocent until proven guilty.

Right to free legal aid

According to Article 39(a) of constitution of India it is duty of state that no one should be denied justice by reason of economic disabilities and it is the duty of state to provide free legal aid to indigent accused section 304 of Code of Criminal Procedure also provide that where it appears to the court that an accused person is not represented by a pleader by reason that he has not sufficient means to be engaged a pleader the court shall assign a pleader to him at the expense ofstate.

Right to privacy and protection against unlawful searches

The police officials cannot violate the privacy of the accused on a mere presumption of an offenceand his property cannot be searched without a search warrant.

Right against export facto law

An accused person cannot be tried for an act which is not an offence when it was committed but later it become an offence. This means that a retrospective effect affect law is not applicable. ANact that was not a crime on day when it was committed cannot be considered as an offence.

Right to be present at trial

Section 273 of code of criminal procedure provides that all evidences and statements must berecorded in the presence of accused or his pleader.

Right to get copies of document

Section 207 of code of criminal procedure provides that where the case has been instituted on police report the magistrate shall without delay furnish to the accused free of cost a copy of police report, the first information report recorded under section 154, statements of all witnesses and anyother document forwarded to magistrate with police report.

Section 208 of code of criminal procedure also provides that where a case instituted otherwise than police report the magistrate without delay furnished to the accused a copy of statement of complainants, the statement and confession of witnesses any other document produced before themagistrate on which the prosecution proposes to rely, free of cost.

Right to appeal

If the accused person is not satisfied with the decision of trial court then he has right to file anappeal in higher court.

Right to humane treatment in prison

Prisoners are persons have some rights and do not lose their basic fundamental right and entitledto rights as a normal human being Article 14, 19 and 21 of constitution of India are available to prisoners as well as a free man. Prisoners also have right to live with human dignity and the person having custody of prisoners cannot treat them with cruelty.

Section 55(a) of code of criminal procedure also provides that it shall be the duty of person havingthe custody of accused to take reasonable care of the health and safety of the accused.

Right to reasonable wages in prison

Whenever during the imprisonment the prisoners are made to work in prison they must be paidwages at the reasonable rate.

Conclusion

In spite of various rights provided to accused under code of criminal procedure and constitution of India the power given to police officials are often being misused by them we often hear cases about custodial death and police encounter. It is also seen that police use their power to threaten the accused and to extort money from them there is imminent need to bring change in criminal justice. It is the duty of police to protect the rights of society. It must be remembered that this society includes all people including the accused. Hence in the light of the above discussed provision a police officer must make sure that the accused is not harassed unnecessarily. That thearrested person is made aware of the grounds of his arrest, informed to whether he is entitled to bail on not and produced before a magistrate within 24 hours of his arrest.

SEC 377 AND ITS CONSTITUTIONAL VALIDITY

- Rakshitha Poojary

The issue to be examined is whether Section 377 of the Indian Penal Code is ultra vires of the Indian Constitution- that is, if it violates any of the provisions of the Indian Constitution.

Section 377 of the Indian Penal Code (henceforth abbreviated as IPC) is-

Unnatural offences. —Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. —Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.[1]

The phrase "against the order of nature" is the point of contention here- as it implies that the purpose of sexual intercourse is only procreation. It permits only those activities between two consenting adults in sexual intercourse which could result in conception. This effectively criminalizes those acts in sexual intercourse between two consenting adults in which there is no direct possibility of conception- all acts which do not involve penile penetration of the vagina.

In Naz Foundation v. Govt. of NCT of Delhi, the petitioner challenged the constitutional validity of Sec 377, the plea asserting that Sec 377 violated rights guaranteed under Articles 14,15, 19 and 21 of the Constitution of India because it covered sexual acts between two consenting adults in "private confines".[2]

As illustrated in Naz Foundation v. Govt. of NCT of Delhi, Section 377 IPC has major ramifications for the LGBT+ community as it leaves an already marginalized group of people open to prosecution, harassment, blackmail and extortion. Section 377 IPC has also impeded measures taken to control the spread of HIV/AIDS in this community as LGBT+ persons are hesitant to reveal their sexual activities for the fear of prosecution and endangering their safety and dignity.

AJIT PRAKASH SHAH, CHIEF JUSTICE, HIGH COURT OF DELHI*:* *The petitioner claims to have been impelled to bring this litigation in public interest on the ground that HIV/AIDS prevention efforts were found to be severely impaired by discriminatory attitudes exhibited by state agencies towards gay community, MSM or trans-gendered individuals, under the cover of enforcement of Section 377 IPC, as a result of which basic fundamental human rights of such individuals/groups (in minority) stood denied and they were subjected to abuse, harassment, assault from public and public authorities.*[3]

[1] Indian Penal Code,1860, §377
[2] Naz Foundation v. Govt. of India, 160 Delhi Law Times 277
[3] Naz Foundation v. Govt. of India, 160 Delhi Law Times 277

With a cursory reading of the petitioner's arguments- one does observe that the arbitrary and indeterminate classification of individuals in Sec 377 IPC denies those individuals equality before law and the right to freedom of speech and expression when it comes to their sexual orientation. If an individual is unable to openly and freely express something which is a fundamental part of their existence and unchangeable, that is a clear violation of Article 19(1)

of the Indian Constitution. Even the appeal to "public order, decency or morality" falls apart on scrutiny because Sec 377 IPC also covers acts done by consenting adults in private and public perception of the morality of the acts which Sec 377 seeks to criminalize has undergone a drastic change within India as well as around the world.

AJIT PRAKASH SHAH, CHIEF JUSTICE, HIGH COURT OF DELHI: *The scope, content and meaning of Article 14 of the Constitution has been the subject matter of intensive examination by the Supreme Court in a catena of decisions. The decisions lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that the differentia must have a rational relation to the objective sought to be achieved by the statute in question. The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus, i.e., causal connection between the basis of classification and object of the statute under consideration.*[4]

Art.19(1) of the Constitution of India states-

All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions [or co-operative societies];

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; [and]

(g) to practise any profession, or to carry on any occupation, trade or business

Art.21 of the Constitution of India states-

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

The petitioner in Naz Foundation v. Government of NCT of Delhi had presented evidence in the form of records of arrests and case files for Section 377 IPC which showed that the personal liberty of individuals involved had been violated in the form of harassment by the police and detention. The evidence indicated multiple violations of Art.21, read with Art.19(1), because in these instances the right to freedom of speech and expression, the right to move freely through the territory of India along with the right to personal liberty had been restricted.

[4] Naz Foundation v. Govt. of India, 160 Delhi Law Times 277

The petition also raises the question of the right to privacy- one which is complex because there is no explicit provision in the Constitution of India guaranteeing this right. However, the right to privacy can been read into the notion of "personal liberty" as given in Article 21 of the Indian Constitution.

The design of the law must be to protect those persons with whose affairs the community has no legitimate concern, from being dragged into an undesirable and undesired publicity and to protect all persons, whatsoever; their position or station, from having matters which they may properly prefer to keep private, made public against their will. It is the unwarranted invasion of individual privacy which is reprehended, and to be, so far as possible, prevented.[5]

Personal liberty includes the ability to do, speak and live as one desires- provided that one's acts do not harm others or affect the welfare of the community. Consensual sexual acts between two adults in private confines, by no means, harm any individuals and neither do they affect societal welfare. Any attempt at surveillance and prosecution of individuals engaging in such consensual sexual acts, thus restricting actions done of free will, points to a clear deprivation of personal liberty of those individuals.

The judicial precedent set for the right of privacy being "read into" personal liberty has been mixed. In the case of Kharak Singh v. State of UP [6], **Justice Subba Rao** observed that-

So also, the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty.

However, the judges held that only domiciliary visits made in this instance were unconstitutional, and the rest of the petition failed because other actions carried out by UP Police were considered to be reasonable and well within the ambit of Constitutional provisions.

In Gobind v. State of MP [7] too, the concern was domiciliary visits made by MP police to the petitioner's house- but majority opinion in the case was different.

Unlike Kharak Singh, however, in Gobind the Court found that the Regulations did have statutory backing - Section 46(2)(c) of the Police Act, which allowed State Government to make notifications giving effect to the provisions of the Act, one of which was the prevention of commission of offences. The surveillance provisions in the impugned regulations, according to the Court, were indeed for the purpose of preventing offences, since they were specifically aimed at repeat offenders. To that extent, then, the Court found that there existed a valid 'law' for the purposes of Articles 19 and 21. [8]

The judgement for Naz Foundation v. Govt. of NCT of Delhi was concluded as follows-

We declare that Section 377 IPC, insofar it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. The provisions of Section 377

[5] Samuel D. Warren & Louis D. Brandeis, Right to Privacy, 4 HARV. L. REV. 193(1890-1891)
[6] Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295
[7] Gobind v. State of Madhya Pradesh, 1975 AIR 1378
[8] Gautam Bhatia, State Surveillance and the Right to Privacy in India: A Constitutional Biography, 26 NAT'l L. Sch. INDIA REV. 127 (2014).

IPC will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors. By 'adult' we mean everyone who is 18 years of age and above. A person below 18 would be presumed not to be able to consent to a sexual act. This clarification will hold till, of course, Parliament chooses to amend the law to effectuate the recommendation of the Law Commission of India in its 172nd Report which we believe removes a great deal of confusion. Secondly, we clarify that our judgment will not result in the re-opening of criminal cases involving Section 377 IPC that have already attained finality.[9]

But in Suresh Kumar Koushal v. Naz Foundation [10], this decision of the Delhi High Court was overturned and found to be "legally unsustainable".

While parting with the case, we would like to make it clear that this Court has merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of Section 377 IPC and found that the said section does not suffer from any constitutional infirmity. Notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting Section 377 IPC from the statute book or amend the same as per the suggestion made by the Attorney General.[11]

The judges stated that the High Court had been mistaken in declaring Sec 377 IPC to be violative of Articles 14,15 and 21 because the petition filed in the court did not have sufficient foundational facts in its favour. It was asserted that the claim that Sec 377 IPC obstructed the well being of a certain class of individuals did not have evidentiary and factual support.

It was observed that the Supreme Court and High Courts had the power to declare any pre-Constitution legislation unconstitutional, if it were ultra vires of the provisions of the Constitution. The Courts however, do not exercise this power too frequently for the fear of judicial overreach. Sec 377 IPC in itself, does not condone the mistreatment of individuals and neither specifically targets the LGBT+ community. Therefore, the enforcement of Sec 377 in a certain manner did not form sufficient cause to declare it unconstitutional.

In Mafatlal Industries Ltd. and Ors. v. Union of India and Ors. :1997(89) ELT 247(SC), a Bench of 9 Judges observed that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. In Collector of Customs v. Nathella Sampathu Chetty: 1983 ECR 2198D(SC) this Court observed: "The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity." It was said in State of Rajasthan v. Union of India: [1978]1 SCR1 "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief." [12]

The decision in Suresh Koushal v. Naz Foundation was overruled by Navtej Singh Johar v. Union of India [13]. The judgement held that the assertion made in Suresh Koushal of LGBT+ individuals being a nearly insignificant part of the Indian population had no weight in a

[9] Naz Foundation v. Govt. of India, 160 Delhi Law Times 277
[10] Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1
[11] Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1
[12] Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1
[13] Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

constitutional democracy when any legislation affecting that community was challenged on the grounds of it being unconstitutional and violative of fundamental rights. The Constitution of India was drafted to protect the rights of all citizens, be they in the majority or minority. There was also a reference to Justice K.S Puttaswamy v. Union of India, a landmark judgement which elevated the right to privacy to a fundamental right. Privacy goes hand in hand with individual autonomy. The right to keep any facet of our existence private or to express it publicly in a way that does not harm others, both are assertions of individual autonomy. This autonomy, which is essential for emotional, mental and spiritual development, is guaranteed by the Constitution to all citizens.

CHIEF JUSTICE DIPAK MISHRA: *The rights that are guaranteed as Fundamental Rights under our Constitution are the dynamic and timeless rights of 'liberty' and 'equality' and it would be against the principles of our Constitution to give them a static interpretation without recognizing their transformative and evolving nature*.[14]

CJI Mishra also noted that the classification sought to be made in Sec 377 IPC, of persons who engaged in non-consensual carnal intercourse failed to have a rational nexus with the objective it sought to achieve. Non-consensual acts of carnal intercourse have already been penalized in Sec 375 IPC and the POCSO Act.

Some of the conclusions made in the judgement were-

- *Section 377 IPC, in its present form, being violative of the right to dignity and the right to privacy, has to be tested, both, on the pedestal of Articles 14 and 19 of the Constitution as per the law laid down in Maneka Gandhi (supra) and other later authorities.*
- *An examination of Section 377 IPC on the anvil of Article 14 of the Constitution reveals that the classification adopted under the said Section has no reasonable nexus with its object as other penal provisions such as Section 375 IPC and the POCSO Act already penalize non-consensual carnal intercourse. Per contra, Section 377 IPC in its present form has resulted in an unwanted collateral effect whereby even consensual sexual acts , which are neither harmful to children nor women, by the LGBTs have been woefully targeted thereby resulting in discrimination and unequal treatment to the LGBT community and is, thus, violative of Article 14 of the Constitution.*
- *Section 377 IPC, so far as it criminalises even consensual sexual acts between competent adults, fails to make a distinction between non-consensual and consensual sexual acts of competent adults in private space which are neither harmful nor contagious to the society. Section 377 IPC subjects the LGBT community to societal pariah and dereliction and is, therefore, manifestly arbitrary, for it has become an odious weapon for the harassment of the LGBT community by subjecting them to discrimination and unequal treatment. Therefore, in view of the law laid down in Shayara Bano (supra), Section 377 IPC is liable to be partially struck down for being violative of Article 14 of the Constitution.*[15]

[14] Navtej Singh Johar v. Union of India, AIR 2018 SC 4321
[15] Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

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CRIMINAL JUSTICE ADMINISTRATION AND HUMAN RIGHTS

- Prashasti Dwivedi

ABSTRACT

Criminal justice administration is a complex subsidiary field of the criminal law. Indian criminal justice system has two main objectives:

1) To prevent and control the crime

2) To protect the rights of the individuals.

To understand the meaning of criminal justice in simple terms, we can say that criminal justice stands for maintaining the social order and delivery of justice to the victims of crime as well as the convicted criminals or offenders of the law. Criminal justice administration consists of all the governmental agencies and institutions bounded by the rule of law to work for providing justice to both the sufferers of a disease named 'crime'.

In a lawful democratic setup, it is important to protect the rights of the victims as well as offenders. We must have witnessed the amount of hate and disgust thrown at any criminal at some point of time. This tendency which a layman has for the criminal puts them and their family at a very vulnerable position in the society. The goal of criminal justice administration includes fair investigation of the crime, inquiry done in a just manner, fair trial, providing moral support to the victim, offender's family and also to make sure such instances never repeat in future.

Criminal justice and human rights go side by side. The amount of torture faced by the prisoners in many parts of the world is not a new thing to know and that is why the criminal justice administration was needed in the hour to protect the downfall of human rights in case of the prisoners. The constitution and various international conventions adopted by the United Nations speak against the violation of human rights when in detention, custody or arrest.

Keywords: Criminal justice, human rights, criminal justice administration, fair trial

INTRODUCTION

The basic principle of formation of every society lies in its social order. Having social order helps in maintaining the status quo in all the spheres of the society. Similarly, when a country primarily focuses on maintaining a social order it smoothens it functioning. The basis of establishing every country lies in its Criminal Justice System as peace is not only maintained by a judicial system but an investigating machinery also. The rule of law is undoubtedly the bedrock of the democracy hence best system of governance should be ensured to not make human rights suffer in any possible way. The basic crux of constitutional democracy is to respect the dignity and individuality of every section of the society. Criminal justice system makes sure to follow this principle by controlling as well as preventing the crime and punishing criminals thus setting up a constitutional governance system protecting the worth of every individual of the society.

The study of criminal law is broadly divided into two categories:

1. Substantive law
2. Procedural law

The substantive law deals with the area of law defining the legal relationship of an individual with the state. It lays down certain rights and obligations on the individuals of what they may or may not do. It also defines what is crime and about what constitutes to a crime along with the punishments and penalties attached to it.

On the other hand, procedural law deals with the substance of the case i.e., what are the facts of the case, how the case is to be handled, what is the procedure laid by the law to investigate upon the case of law etc. it lays down a procedure for trial and investigation of the offence defined under the substantive law. It is regulated by statutory law.

Both the substantive and the procedural law compliments the working of each other. One without the other isn't much valuable as both the laws are essential to make sure the delivery of justice.

CRIMINAL JUSTICE ADMINISTRATION

Criminal law primarily deals with protecting the society from the criminals and the lawbreakers. For this purpose, the law rules out certain punishments against the offences defined to prevent proper administration against the crimes. Therefore, the criminal law in general deals with two categories of the criminal law i.e., substantive as well as procedural criminal law. In India two types of codes are there to the administration of the criminal justice: the Indian Penal Code and Criminal Procedural Code. The Indian Penal Code being the substantive and the Criminal Procedural Code being the procedural respectively.

The criminal justice system is the balancing force in between the lawmaker and the individuals, individuals and the state and in between individuals and individuals. The administration of criminal justice is done to ensure that the offender has been punished so that it becomes an example

for the rest of the society to not go against the laid down social order as it may have severe consequences ahead of it. The criminal justice system is a sub unit of criminal law which talks about everything ranging from the facts of the case to the final hearing on the case.

Every criminal justice system of a democratic setup is mainly administered by 3 bodies:

- The court of law serves to establish the innocence and guilty of the apprehended person after hearing the facts of the case if the guilt is proven then the court of law prescribes penalty and/or punishment.
- The police, which acts as the law enforcing authority.
- The prison and correction homes where convicted offenders are kept after the punishment for the offence demands likewise.

These three bodies work together to provide a sense of security in the minds of the individuals and also encourage the individuals to practice peace and harmony among them by promoting the idea of punishment and penalty against those who goes elsewise.

HISTORY OF CRIMINAL JUSTICE SYSTEM IN INDIA

The onset of criminal justice system was brought in by the Manu. He was a believer of the 'Divine Theory' which says the king is the supreme power and all the people are bound to follow his rules and restrictions. With the advancing times the people started denying this theory of king's rule and started making their own rules as per their understanding.

In those tough times when various theories like Divine Theory, Social Contract Theory, Natural Justice theory came in existence. The essential object of all the theories eventually was to protect the society against all the crimes and wrongdoings happening around. To create a fear of punishment and penalties in the society so that the potential law breakers do not harm the society.

The concept of natural justice also prevailed during the ancient times when there were no well-defined laws. In the ancient times the victim was the centre of the criminal system. Victim of the crime had the freedom to take law into his hands and punish the offender as per the prevailing practices that were there in the society. There were no prisons at that time so punishment included death, exile or fine. In the primitive society, the right to save oneself from the crime was vested in the individual only (idea of retributive justice) but after the society got organised in the form of states the onus of protecting the subjects shifted to the political authority.

STAGES OF CRIMINAL JUSTICE ADMINISTRATION

The process of administrating criminal justice in India is divided into three stages: *Investigation, Inquiry* and *Trial.* The Criminal Procedure Code 1973 is the procedural law of India which provides for the procedure to be followed for investigation, inquiry and trial in any case mentioned in the Indian Penal Code, 1860.

Investigation is the preliminary stage of any of the case. It is conducted by a police officer after recording the F.I.R in the concerned police station. Section 157 provides for the procedure laid down by the Code for the investigation of any case mentioned under the Indian Penal Code, 1860. The process of investigation completes with the submission of police report to the magistrate under section 173 of the Criminal Procedure Code, 1973. The police report submitted to the magistrate by the investigating officer is nothing but a conclusive report of what the investigating officer has found out while investigating the case on the basis of the evidence collected so far.

The second stage of the criminal justice administration is *Inquiry*. The Code deals with the sections related to Inquiry from section 177 -189. The main motive of conducting inquiry is to extract important information related to the commission of an offense in order to know about the nature of the crime committed i.e., to find out if the nature of the case is criminal or not.

The last stage of administration of criminal justice is *Trial*. Trial is a systematic proceeding of the court of the law to judicially adjudicate the innocence or the guilt of the apprehended person. After the trial the court acknowledges all the facts and pleadings offered before the court and pronounces a judgement which is binding in nature. However, appeals can be filed if the parties want to review the judgement which has been pronounced.

CONSTITUTIONAL PROVISIONS RELATING TO THE CRIMINAL JUSTICE ADMINISTRATION

ARTICLE 20: PROTECTION IN RESPECT OF CONVICTION OF OFFENCES [1]

A person shall be convicted if he/she has violated any of law which was in force at that particular time. Article 20 restricts prosecution and punishment for the same offense twice and it also provides the right to the convicted person to not be a witness of his own actions.

ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY

Until and unless prescribed by the law, no person shall be deprived of his right to life and right to personal liberty without following the proper procedure laid down by the law.

ARTICLE 22: PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES[2]

Article 22 of the Indian Constitution Act 1949 provides that no any arrested person shall be held in custody without being informed, he shall not be denied his right to consult or to be defended by any legal practitioner of his choice. The arrested person shall be produced before the magistrate within 24 hours of his arrest. If the person is detained as per law by the means of preventive detention the order should be communicated to the concerned person in custody along with the grounds of prevention detention for which it was passed.

[1] The Constitution of India Act 1949.
[2] The Constitution of India Act 1949

INTERNATIONAL CONVENTION RELATED TO CRIMINAL JUSTICE

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)[3]:

Universal Declaration of Human Rights commonly referred to as UDHR was adopted by the United States General Assembly in 1948 in the presence of all the members of the United Nations. The UDHR convention was adopted after the barbaric scenario of the second world war to lay down certain obligations related to the protection of human rights all around the world. The convention in total has 30 articles out of which following articles talk about the criminal justice.

- **Article 3** provides everyone with the right to life, liberty, and security.
- **Article 5** provides against the torture, cruel, degrading, or inhuman behaviour, treatment, or punishment.
- **Article 9** provides against arbitrary arrest, exile, and detention.
- **Article 10** entitles each and everybody to have a fair trial, independent and impartial tribunal of any criminal charge against him.
- **Article 11** provides that until proven guilty, every person against whom any criminal charge is there shall be presumed innocent. No one shall be held for any crime on account of any act or omission which is not criminal or penal in nature.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS:

Following the formation of the Universal Declaration of Human Rights, the United Nations felt the need to form a body dedicated to civil and political rights which led to the foundation of International Covenant on Civil and Political Rights in 16 December 1966. It came in force from 23 March 1976. There are 53 articles in this convention. This multilateral treaty was passed to make the individuals capable of enjoying their wide range of rights which was entitled to them by the introduction of this convention including freedom for cruelty, torture, degrading treatment, etc.

Article 14 of ICCPR[4] talks about:

- fair and just trials and competent, impartial and independent hearing of all the offenders before the courts or the tribunals
- to presume every person charged with criminal offense as innocent until proven guilty.
- To inform the person in charge of criminal offense about the nature and cause of the charge so that he/she can have ample amount of time to prepare for his/her defence.
- To be tried in his presence without undue delay
- To have free assistance of an interpreter if needed
- To consider the procedure as per the age of the juvenile persons with a desire of promoting their rehabilitation.

[3] United Nations Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A (III)
[4] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

- To allow every convicted person to have a right to review their sentence by approaching the higher tribunal.
- To provide compensation to a person who was not guilty but still have gone through the punishment.
- To not punish an offender again for the same offense after the completion of his/her sentence of punishment.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

The International Convention on the Elimination of all forms of racial discrimination[5] was adopted on the 21 December 1965 and came in to force on 4 January 1969 by the United Nations General Assembly to promote the respect of human rights without any kind of discrimination based in the sex, race, caste, colour, originality, language and religion. There are total 25 articles in this convention.

Article 5 of this convention provides for the right to treat everyone with equality before all the tribunals and all other organs administering justice.

Article 6 of this convention provides for the just reparation of any of the human rights being infringed on the grounds of racial discrimination.

CONVENTION ON THE RIGHTS OF THE CHILD

The convention on the rights of the child[6] was adopted by the United Nations on 2 September 1990. This convention on child rights basically was adopted for the betterment of situation od children all around the world and also to work for the child rights in the rights deprived areas of the world. It contains 54 articles.

Article 12 of the convention provides for the child to heard either directly or indirectly of a judicial or administrative hearing by following the procedure of the law.

Article 37 provides that no any child shall be restricted to enjoy his/ her personal liberty and also no child should be separated from the adult until and unless it is the best possible thing suited for the child's best interest.

Article 40 of this convention talks about the similar aspect of fair trial as Article 14 of ICCPR talks about.

[5] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

[6] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

CRIMINAL JUSTICE AND HUMAN RIGHTS

Criminal justice and human rights work like two peas in a pod. Criminal justice can be the most challenging aspect of the human rights because in criminal justice system, legal system is continuously striving for the preservation of peace and harmony in the society. the criminal justice system takes care of society by preventing crimes but criminal justice system also concerns with the well being of the victims of a crime and also offenders and the family of the offender because all of the mentioned individuals are suffering and human rights come into play only where rights are infringed.

It is not very uncommon to hear about the torture prisoners go through. A Hollywood movie 'The Shawshank Redemption' clearly depicted how the human rights of the prisoner are treated when they are in prisons. In some of underdeveloped nations the prisoners are treated even worse than the animals. They don't have access to proper sanitation, clean air to breathe, clean water to drink, edible food to eat. So, to be precise victims' rights of living with dignity is infringed for which he/she needs justice, offender's right to life and right to personal liberty gets infringed when he/she suffers detention in prison or correction homes so the offenders are also humans and no matter what they have done they need to be treated with fair trials because that is what constitution has given them the right to avail.

The most attentive we have to be is for the child offenders because obviously punishment will be given to those who commit crime, no exceptions but for juveniles we need to rethink about the punishment and the environment we give them to realise their crime. The child grows through the environment in which he/she lives in. So, if in the correction homes the child offender is treated with dignity and is made to learn good things about anything and everything it will impact him positively which in turn will make him a dignified person after serving of his term of punishment.

Existence of human rights is the driving force of the existence of criminal justice administration because in my opinion the dire need of human rights should be with the offenders of the law because once a person has gone against the law for no matter what the circumstances may have been, a lot of hate and shame is thrown at them and their families as well which may result into the mental depression of the offender and their close ones. It is very essential for the law and all the organs of human rights associations all around the world to ensure whether the offender after serving his/her punishment is mentally sound or capable enough to survive in the outside world after serving his/her sentence because in my views that will impart the real criminal justice after penalising the offender for the crime, he/she committed along with others mentioned in this paper.

CONCLUSION

So far, we have discussed about various aspects of criminal justice, criminal justice administration and human rights. The amount of torture faced by the prisoners in many parts of the world is not a new thing to know and that is why the criminal justice administration was needed in the hour to protect the downfall of human rights in case of the prisoners. The constitution and various international conventions adopted by the United Nations speak against the violation of human rights when in detention, custody or arrest Criminal justice administration works primarily for the betterment of the society i.e. to keep the society free from crimes and to restrict the criminal outrage of the offenders as well as to balance that once the criminal is convicted for the crime it does not suffer any kind of harassment, torture, unjust behaviour, etc. it is the dire need of the hour to prevent the society from crime as well as the offenders from any type of human rights violation because that is the true spirit of humanity.

A CRITICAL ANALYSIS OF DISASTER MANAGEMENT ACT 2005 WITH SPECIAL REFERENCE TO COVID 19

-Raunak Shukla

Abstract

The Disaster Management Act, 2005 gives the Union Governments' forces to take fast arrangement choices and force limitations on individuals to deal with. Here's an explainer on what the law involves for individuals and governments in these troublesome occasions.

P.M. Narendra Modi a year ago declared a total public lockdown to contain the spread of Covid-19 by conjuring the Disaster Management Act, 2005. The law gives the Union Government forces to take speedy arrangement choices and force limitations on individuals to deal with a debacle.

Coronavirus outbreak is the first pan Indian calamity being taken care of by the lawful and established foundations of the country. The lockdowns have been forced under the Disaster Management Act, 2005 (DM Act). In spite of the fact that the Constitution of India is quiet regarding the matter 'calamity'. The National Disaster Management Authority (NDMA) under the DM Act is the nodal body for planning catastrophe management, with the P.M. of India as its Chairperson.

The administrative purpose of the Disaster Management Act was to, "accommodate the compelling administration of disasters". Coronavirus outbreak is the calamity which brought the Disaster Management Act to the front lines in every one of the conversations including conversations zeroing in on viability of the Disaster Management Act itself. It is the first pan Indian outbreak being dealt with after the order of the Disaster Management Act in 2005.

Coronavirus has come about into extraordinary advances which are likewise being named draconian by a couple.

Introduction

The Disaster Management Act, 2005 [1]("the DM Act") was instituted in the year 2005, in the outcome of the Tsunami calamity which happened on 26th December, 2004. It was ordered under Entry 23 of the Concurrent List, Seventh Schedule to the Constitution "Social Security and social insurance; employment and unemployment". The reasoning for establishing this law under the Concurrent List was that, if the States so want, they can sanction their own laws to meet their particular miniature level necessities. Not many State Governments have instituted their own laws, notwithstanding the public law. In spite of the fact that the Disaster Management Act was established in 2005, the States were horrendously delayed in outlining rules and draft State plans.

Coronavirus outbreak is the fiasco which brought forward the DM Act as one of the main points in every one of the conversations including conversations zeroing in on viability of the DM Act itself. Before starting with an examination of the lawful position, we should remember the way that the infection has fast spread, it knows no limits and our medical framework has certain impediments. To the extent that the readiness is concerned, it was a test for the created nations moreover. For India, the difficulties were the helpless specialist patient proportion, number of ventilators, number of beds per million, inaccessibility of adequate test packs, Personal Protective gear and face covers, and so forth There are additionally difficulties of various belief systems scrutinizing the adequacy of the actual lock-downs. The important yet drastic, lock-downs have been unquestionably welcomed certain unfavourable consequences for the economy. The adjusting of necessities came about into Lock-downs 1.0, 2.0, 3.0 and 4.0 for example the progressive facilitating of the limitations.

[1] Disaster Management Act, 2005

How does Disaster Management Act,2005 helps?

M.S. Reddy, through his experience as Vice- Chairman of National Disaster Management Authority (NDMA), said the calamity law gives all forces to the state to manage any disaster or outbreak, including a natural one. The authorities can act against any common citizen, administration official or head of an organization (governmental or non-governmental) for challenging its orders. The law accommodates confining an individual without warrant and a prison term of one year for first offenses. It likewise accommodates creating public and state level relief plans with a reasonable hierarchy of leadership.

In what ways DMA empowers the Union, State and UTs Governments?

The law approves the NDMA's chairman, the Prime Minister, to make choices and decisions to manage the pandemic, also including choosing for help for casualties and extraordinary measures for the destitute. The Chief Ministers of states may likewise conjure extraordinary forces under the law for managing the pandemic. The forces of the PM and CMs are something similar under the law, besides if there should arise an occurrence of Delhi, where the Lieutenant-Governor, has these forces. The LG is the executive and Delhi CM comes below him/her in the chain of command.

Scope of the Disaster Management Act, 2005

The administrative purpose of the Disaster Management Act was to, "accommodate the compelling administration of disasters". The National Disaster Management Authority (NDMA) under the DM Act is the nodal focal body for planning disaster management, with the Prime Minister as its Chairperson. The NDMA sets down arrangements, plans and rules for the board of calamity (S.6). Also, State, District and Local level Disaster Management Authorities were set up, monitored by high functionaries. Every one of these organizations are meant to work in coordination.

NDMA so far defined 30 Guidelines on different kinds of disasters including the 'Rules & Guidelines on Management of Biological Disasters, 2008'. The 2019 National Disaster Management Plan, given additionally manages Biological Disaster and Health related Emergencies. This is the expansive legal system inside which exercises to contain COVID-19 are being done by the Central and State governments respectively.

Powers and vigor given by DM Act on Union Government and NDMA are broad. The Union Government, regardless of any law in power (counting superseding powers) can give any headings to any position anyplace in India to work with or aid the disaster management (Section 35, 62 and 72). Significantly, any such bearings gave by Union Government and NDMA should fundamentally be followed the Union Ministries, State Governments and State Disaster Management Authorities (Sections 18 (2) (b); 24(1); 36; 38(1); 38(2)(b); 39(a);39(d) and so forth)

To accomplish all these, the Head of the Government i.e., the Prime Minister can practice all forces of NDMA (Section 6(3)). This guarantees that there is sufficient political and protected heave behind the choices made.

The current public lockdown came to force under DM Act according to Order dated 24-03-2020 of NDMA 'to take measures for guaranteeing social separating to forestall the spread of Novel Coronavirus also knows as COVID-19' (Section 6(2)(i)). Extra rules were given around the same time by the Ministry of Home Affairs (MHA), being the Ministry having managerial control of disaster management (Section 10(2)(l)).

To mitigate social sufferings, NDMA and SDMA are ordered to give 'least norm of help' to disaster influenced people (Sections 12 and 19), remembering alleviation for reimbursement of loans or granting of new loans on concessional terms (Section. 13).

Efficacy in context of disease outbreaks

The Act has been utilized coupled with the Epidemic Diseases Act, with the last giving the premise to control measures like limitations on flights arriving in India, and restricting social occasions past a specific number of individuals.

Nevertheless, note that its essential goal isn't to handle infection rate. Then again, The Epidemic Diseases Act, is a colonial period law, which implies it was ordered when the idea of

fundamental rights, as set down in the Constitution, didn't exist. The law is dubiously phrased, permitting the public authority to accept transitory measures as it "will consider significant or necessary" to contain the infectious disease.

What is The Epidemic Diseases Act, 1897?

One of the briefest enactments in India, The Epidemic Diseases Act,1897 [2]has four areas which it covers. It is pointed toward 'accommodating better avoidance of the spread of Dangerous Epidemic Diseases.'

The act was first established in the British provincial time essentially to control the Bubonic Plague flare-up in the late 19th century. It has stayed important from that point forward.

Section 2A of the Act permits the Union Government to endorse guidelines to investigate any boat or vessel leaving or showing up in any port and to confine any individual wanting to leave or come into borders of India.

The public authority's choices on limiting worldwide and local travel to and from India fall under the arrangements of this Act.

The Act additionally engages State Governments under Section 2(1) to endorse guidelines regarding any individual or gathering of individuals to contain the spread of Novel Coronavirus/COVID-19.

Punishment and Penalties under this act are mentioned in Section 3 of the Epidemic Diseases Act, 1897 which states the punishments for disregarding the guidelines. Section 188 of the Indian Penal Code expresses that it will be a half year jail or Rs 1000 fine or both.

[2] Epidemic Diseases Act, 1897

How can NDMA help in a tackling a pandemic?

Indeed, particularly concerning giving help and restoration/rehabilitation. The authority has conventions to manage natural or epidemiological fiascos, for example, Covid-19, for which exceptional separated health facilities must be made. The national and state disaster relief forces are prepared to manage natural or un-natural calamities, particularly as to separation and evacuation of individuals. This might be required is a significant Covid-19 affected area. The authorities gave effective advised and rules to give monetary help and pay to needy individuals all over India. The Union and the State governments can make disaster relief funds.

Are Lockdowns Violation of Fundamental Rights?

To the extent that the lockdown is concerned, right to life being the most 'holy right' outweighs any remaining rights in a situation like Covid-19. The other two principal rights which are basically getting influenced are – fundamental right to move freely throughout the territory of India and fundamental right to practice any profession, or to carry on any occupation, trade or business. Both the previously mentioned rights are dependent upon reasonable and sensible limitations/restriction's "in the interest overall population" of the under Articles 19(5) and 19(6) of the Constitution of India individually. Therefore, the Union Government can force a lockdown in the whole nation considering the fast spread of Covid-19. Likewise, according to the decisions of the Apex Court reasonableness of limitation is to be resolved in a target way and a limitation can't be supposed to be absurd only on the grounds that in a given case, it works brutally.

What is considered as a Disaster?

To the extent that the Disaster Management Act is concerned, it doesn't specify disasters or calamities for its usage or to the extent of applicability. It furnishes a conventional meaning of disaster with specifics. Any disaster whether it is a flash flood or drought conditions have been expressed in the meaning of disaster. The definition is adequately expansive to incorporate a pandemic. The conventional definition was given after the experience of Tsunami catastrophe which was excluded from the rundown of disaster by the Finance Commissions. The design was that in the event that we face a disaster in future which is additionally not covered under the particular definitions, it is more secure to make the definition more nonexclusive so such

occasions and/or calamities could likewise be covered in that. Coronavirus is in like manner covered under the conventional meaning of 'disaster' given in the Disaster Management Act, 2005.

Are Penalties and/or Punishment under Disaster Management Act stricter than the laws under Indian Penal Code?

Indeed, as the law accommodates detainment of any individual for resisting or not following government decree and regulations including government authorities and overseers of the privately owned businesses. The prison term recommended is one year for first time offenders and two years for the second time offenders. The authorities told as nodal officials; district magistrates for such situation; can gather anybody to perform obligations for disaster management and help. An office head could be considered answerable for any abandonment of obligation by the work force answering to him. A grievance against any authority can be made uniquely to chairman of national, state or local disaster management authorities.

Section 51 to 60 of the Act set down punishments for explicit offenses. Anybody discovered impeding any official or worker from playing out their duty or obligation will be detained for a term which may reach out to one year or fined, or be both. Further, if such a demonstration of such acts prompts loss of lives or any short term or long-term risk, at that point the individual can be imprisoned for as long as two years.

The Disaster Management Act is additionally being utilized to get control over the course of fake and phony news, which has been on an overdrive since the pandemic started. Section 52 of the Act expresses that individuals deliberately making bogus cases to get profits by the public authority can be detained for as long as two years. Section 54 accommodates one year's detainment for anybody coursing a "bogus alert/false alarms."

Section 58 of the Act further holds that if an offense happens by an "organization or body corporate," the individual who was heading the team/individuals at the time the offense was submitted will be expected to take responsibility. This arrangement can be utilized to guarantee that working environments permit representatives to work from home, distant working, distant learning or that they pay employees their due compensations and wages.

The Penalties under Section 51 to 60 of the Act endorses the punishments for the violators. The Law depicts the offense as preventing any official or worker from carrying out their obligation or declining to follow the directions. Violators can be imprisoned for as long as 1 year or fine, or both. On account of risky or dangerous conduct, the prison term can be reached out to two years.

The Way Forward

Without a doubt, India's enormous populace represents a managerial test in managing any kind of catastrophes, particularly a pandemic, for example, COVID-19. In any case, by and large administration can be reinforced through many potential ways. First and foremost, natural disasters (also known as biological disasters) of a national level requires a close coordination between political and administrative bosses, driven by Union Government and followed by State governments, Disaster Management Authorities, and different partners (both governmental and non-governmental). In the heart of Disaster Management Act and federal structure, Union and State political and managerial organizations ought to be more community and consultative. Issues like development of migrant workers, accessibility of food, orchestrating jobs for daily wage workers, help and relief camps, entitlement for minimum relief, and so on that straightforwardly influences millions in the country needs extraordinary consideration. By chance, the 'Report of the Task Force to audit Disaster Management Act'2013 recommended that the current construction of different specialists under the Disaster Management Act are not favourable for doing this huge nation-wide 'assignment' at hand, that it has been ordered to perform.

Also, accomplishment of compelling execution of the Union and State government's choices and decisions under the Disaster Management Act is reliant upon its ground level execution; district and area level organization and local self-governmental bodies foundations stays the smartest choice. According to command of Disaster Management Act (Sections 30 and 41), a coordinated force is needed to guarantee that these bodies are officially, strategically and monetarily readily enabled.

Lastly, in occasions, for example, these, constitutional courts should assume its part. There are objections of segregation, police abundances, starvation, absence of clinical or medical guidance and so forth from different corners of the country. Relevantly, there is bar on ward of

courts (Section 71) and there is no complaint redressal instrument under Disaster Management Act. Having accepted the job of sentinel on the qui vive (State of Madras v. V G Row, 1952[3]), it is mandatory on every one of the established courts in the country to suo motu register PILs and intently screen the execution of DM Act, guarantee law and order and security of common liberties as ensured under the Constitution of India.

Conclusion

Reaction to, and recuperation from disasters is a significant measuring stick to decide a country's inward strength and standing. Developed Nations like Japan and China have arisen as incredibly good examples in this regard. India is a disaster inclined nation and, infer-able from certain geographic variables and its parts, are continually wrestling with some calamity or the other. It has shown monstrous improvement in its managing catastrophes and disasters throughout the long term, especially in pre-disaster mitigation, following the enforcement of the Disaster Management Act of 2005. In any case, specialists and experts feel that there are still miles to go before the framework is idealized and the concerned authorities are equipped and able to manage future disaster of each sort and size.

Setting down intricate plans on paper doesn't fill the need except if they are converted into extremely well execution. Every calamity brings out new deficiencies in the Indian disaster management system, and the 2020 COVID-19 flare-up is by all accounts the latest one, where the public authority is attempting to accomplish regulation of the infection.

New disaster management rules are in progress and one might dare to dream it fuses arrangements to defeat dysfunctions of the current specialists and not regulate once more the important job that the common society, private ventures and NGOs can play towards building a more secure India.

The lockdown is constitutionally legitimate, yet the accomplishment of this lockdown and battle against Covid-19 relies completely upon the coordination among different partners. It incorporates political coordination drove by the Union Government. The Disaster Management Act gives adequate legitimate system to deal with all disastrous circumstances. Indeed, it

[3] State of Madras vs V.G. Row. Union of India & State, 1952 AIR 196, 1952 SCR 597

proved to be useful if there should be an occurrence of the pestilence because of its wide definition and as of now existent instrument.

We should likewise take in a couple of exercises from the nations which are confronting the second and massive wave of COVID-19. Is it not more important to arrange endeavours considering the way that a pandemic is an unprecedented disaster circumstance? Political contrasts will consistently be there in any majority rule government yet it is even more important to join in the event of a public wellbeing crisis.

Role of laws related to child labour in India for elimination of child labour in India

- Priya Sharma

"Children need love, especially when they do not deserve it."

Harold S Hulbert

The Children are the future of tomorrow. The nation wealth is depending upon the children and youth generation. The powerhouse of the nation so, it become necessary for nation to raise the kind and quality of the children. They called as a gift of god. It the duty of the parents, guardians, teachers, mentors to teach the children good habits, good lesson moulded to be in appropriate direction. They all are the future of the country. But what if they work like a labour in hazardous and exploitive condition. The child labour is deep-rooted in socio-economic stratification, mass poverty, illiteracy and unemployment, particularly in tribal areas of the state. The International Labour Organisation (2002) reports states that children are the worst paid labours along with they work for long period of time. The child labour is evil and exploitation of way of life of them and need to take steps to wipe out.

Keywords: Child Labour, ILO, Unemployment, Exploitive, Hazardous

WHAT IS CHILD LABOUR

The term child labour is defined by the [1]ILO as "work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work" According to the International Labour Organization report that 215 million children between the ages of 5 and 17 work under illegal, hazardous, or extremely exploitative condition.

As per the Child Labour (Prohibition and Regulation) Act, 1986, "child" defined as "person who has not yet attained the age of 14 years. In this age where a they are expected to grow, enjoy childhood to the fullest, seek education, gain a strong value system but he/she is forced to work and earn a living for himself/herself and for his/her family.

[1]Eric V. Edmonds Defining child labour: A review of the definitions of child labour in policy research 23 (2008) file:///C:/Users/a/Downloads/Defining_Child_Labour_En.pdf

FACTOR RESPONSIBLE FOR CHILD LABOUR

The child labour that deprive children of their childhood, their potential which harmful to physical and mental development. The most important factor that forced child to work as a labour is the [2]poverty. The children considered as the helping hand of the family and due to poor condition of the family to earn the livelihood forced to work at a very lower age. Thus for the sake of his family compelled to work in several places.

Ignorance by parent and illiteracy: In India, poor families have large number of children in a family are considered to be an economic asset rather than a liability. They concluded that rather than study is better to work for their family so that some earning can improve their condition. Sometimes, the previous debt which they are not able to pay back dragged the children to work for timely payment of the loan.

Improper Implementation of Compulsory Primary Education: the lack of education system, bored syllabus, unskilled teachers along with difficulties to reach the schools. It was found that the majority of children drop out of school because the teachers themselves are not interested in teaching. They considered that at the end we have to earn so, it better to earn early. The lack of infrastructure, no blackboards benches, no library, books are not distribute to them. At the last parent stop them to attend school by saying what you do when there is nothing, so, better to work rather than attend school.

Ineffective Enforcement of Legal Provisions: the number of constitutional provisions against child labour not properly implemented and not follow by anyone. The poor parents voluntarily forced their child in the labour force. The laws and regulation enforce against the prevention of child labour are violated easily. In every district there is labour department to inspect the industry and enterprises but the inspection are not carried out properly.

Most of the [3]factories, occupation like in bangle, cotton, carpet industries require delicate and soft hands rather than rough hands. So they prefer children for such work. For their benefits kept the children at lower wages abuse, forced them to work hard and longer time.

[2] Sudeep Limaye, Dr. Milind Pande ,A study of Child labour in India – Magnitude and challenges (2013) file:///C:/Users/a/Downloads/INCON13-GEN-041childlabour.pdf

[3] Shreyansh Chouradia Child Labour laws in India - Juvenile Laws(Dec13,2017) http://www.legalserviceindia.com/article/l216-Child-Labour.html

CHILD LABOUR LAWS IN INDIA

[4]According to the Indian Constitution under [5]article 24 guaranted that no child below the age of 14 years is employed under any factory, mine or any hazardous employment. [6]Article 39 direct state to make its policy ensuring the children is not abused and not forced by economic necessity to enter into labour practice. The right to free and compulsory education to all the children between the age group of 6-14 guaranted under [7]Article 21A, the bonded labour system has also been abolished and declared illegal under [8] Article 23. The government of India to eliminate the labour practice of children enforcing various laws Legislation, Policy, Programmes and other Interventions against practicing the child labour.

The three components stated in the National Policy on Child Labour are:

(a) Legislative Action Plan which focus on strict and effective enforcing of legal provisions

(b) Focus on General Development Programmes for benefits of the children

(c) Project-based plan of action emphasize launching project which will be benefits on areas with high concentration of child labour

This plan was formulated for the strict implementation of the Child Labour (Prohibition and Regulation) Act, 1986 and other labour laws. To abolishing the child labour the government enforce the strict legislative provisions and providing rehabilitation centres to improve the economic condition of the poor families. The State Governments assign many authorities to conducting regular inspections as well as raids to areas where there are violation of laws.

- **[9]Child Labour (Prohibition and Regulation) Act (1986)** was enacted on 23rd December 1986 by enforced on 26th may 1993 by the central government. The objective of the act is to

Prohibit employment of children below the age of 14yrs in certain employments

[4] Diva Rai Child Labour laws in India (August 7, 2019) https://blog.ipleaders.in/child-labour-laws-in-india/#:~:text=Child%20labour%20laws%20in%20India%20its%20implementation%20and%20consequences,the%20life%20of%20a%20child.
[5] Indian Constitution art24
[6]Indian Constitution art39
[7] Indian Constitution art21A
[8] Indian Constitution art23
[9] Child Labour (Prohibition and Regulation) Act 61 (1986)

to regulate the conditions of work of children has been prohibited in occupations relating to (I) transport of passengers, goods or mails by railways (ii) bidi making (iii) carpet weaving (iv) manufacturing of matches, explosives and fire (v) soap manufacture (vi) wool cleaning (vii) building and construction industry.

Lays down the health and safety measure and provides working condition like work between 7 p.m. and 8 a.m. and shall not be permitted to work over time.

it has also provided penalties including imprisonment for violations of the provisions of the act.

- **[10]Child Labour (Prohibition and Regulation) Amendment Bill, 2016**

The improvised the structure along with widen the scope of the act the Child Labour (Prohibition and Regulation) Amendment Bill, 2016 was passed by the Parliament in July 2016 which amends the Child Labour Prohibition and Regulation Act, 1986. The salient provisions of this Act are as follows:

The act states that employment of the children below 14 yrs. is prohibit in any occupation and enterprises but if the child employed in a family business without disturbance of the education of them then only he/she can employed.

The new term " adolescent" is add which means those child who are above 14th yrs. of age but less than 18 are also prohibit to employed under any hazardous occupation.

The act made practice of child labour as a cognizable offence. The employer will be held liable for keeping child as an employee with imprisonment of 6months to 2years or penalty of twenty thousand to 50 thousand or both. The employer who is habitual offender then he is held liable for jail between 1 year to 3 years. If the parent is the offender then a sum of Rs.10, 000 is made payable as a fine.

For rehabilitation of children rehabilitation fund is created under this act

The list of hazardous occupation is brought down from 83 to 3. The three occupations that are considered as hazardous are mining, inflammable substances and hazardous processes that are provided in the Factories Act, 1948.

This Act empower the Government to make periodic inspection to areas where the employment of children is banned and delegated power to District magistrate as may necessary, further the State Action Plan has been circulated to all the States/UTs for ensuring effective implementation of the Act.

[10] Child Labour (Prohibition and Regulation) Amendment Bill, 35 (2016)

- **Child (Prohibition and Regulation) Amendment Rules, 2017**: give wide and specific framework to prohibit, prevent, restrict and rehabilitation of child labourers. It additionally explains on issues and consolidates the provision related with family and family ventures and definition of family writ child. Further, it additionally accommodates shields for those child who have been allowed to work under the Act, regarding work condition. The rules states duties and responsibility of the specified authority and agencies to ensure that he rules are effectively implemented in compliance of the provision.

The government initiative abolishing the child labour

a) National Commission on Labour (1966-1969),

b) The Gurupadaswamy Committee on Child Labour (1979)

c) The Sanat Mehta Committee (1984).

d) National Policy on Child Labour was formulated in 1987

e) National Plan of action for children 2005

India was the first nation to join the International Program of Elimination of Child work (IPEC), a worldwide program by ILO since the year 1992. During the period 1992-2002, IPEC upheld more than 165 projects in India. The program additionally works state based tasks, distinguishing child workers prone areas in the state. The program works couple with NCLP. Under ILO-IPEC project, central government and the US department of labour built up a project, INDUS, pointed toward rehabilitation of children working in 10 unsafe areas. The project will straightforwardly profit 80,000 child workers and it intends to help 10,000 groups of previous workers

OTHER LAWS PROHIBIT CHILD LABOUR

- Minimum Wages Act, 1948: The act focus at occupations, which are less efficient and harder to regulate like tapris, dhabas where the scope of exploitation of labour is much more the act fixed the minimum Child Labour (Prohibition and Regulation) Amendment Bill, 2016time rate of wages by state government. It also provides the fixation of minimum piece rate of wages, guaranteed time rates for wages for different occupations and localities or class of work and adult, adolescence, children and apprentices.
- The Plantation labour Act,1951: The act regulate the work condition for children and women along with prohibit the employment of children between the ages of 12 years and the employment of child above 12 years permit only on a fitness certificate from the appointed surgeon.
- The Mines Act, 1952 states neither child shall be employed in any mines area nor any child be allowed to be present in any part of mine where mining operations being carried on.

- The Merchant Shipping Act, 1958 prohibits employment of children in a ship except a training ship, home ship or a ship where other family members work. It also prohibits employment of young persons below the age of 18 as trimmers and stokers except under certain specific conditions.
- The Apprentices Act, 1961: It states that no person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade unless he is 14 years of age and satisfied such standards of education and physical fitness as may be prescribed.
- Factories Act, 1948: It forbid the child not to work where risk of injury is higher, on a dangerous machines or any part of a factory for pressing cotton in which a cotton-opener is at work.
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966: Section 24 of the Act strictly prohibited any employment of the child under this Act.
- Domestic Workers (Registration Social Security and Welfare) Act, 2008: Section 14 specifies that for any domestic work or any incidental or ancillary work the child is prohibited to employ under this. The contravention of the act any employer is liable for imprisonment for not less than 3 months extending to 1 year or with fine not less than Rs. 10000 to Rs. 20000, or both. For habitual offence imprisonment for not less than 6 months which may extend to 2 years. Failure to maintain a register - simple imprisonment which may extend to 1 month or with fine which may extend to Rs. 10000, or both.

Conclusion

The practice of child labour is an evil and obstacle in overall development of the country. The ban on child labour is a welcome step, but changes made on paper are not enough. The laws to ban child labour need to improve upon their weak enforcement of existing child labour protections like there is no protection for children aged between 14 to 18, who also face exploitation and abuse by their employers. The laws prohibit the child labour but it is still persist because of the poor implementation of plan and programmes, lack of awareness among parents and child. There are many schools in rural area which are not available to them, are poor quality infrastructure, school fees or discrimination based on gender and caste all these factor which leads practice of child labour. Human Rights commission while investigating child labour in 2003 found that the most officials failed to do implement with compliance of the provision of laws. The money allocates for rehabilitation and development of the children are remained unspent. The government need to spread the awareness about it and make people understand that it is important for a child to grow and enjoy his/her childhood as they are future of our country.