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ABOUT US

"Journal of Unique Laws and Students" (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE IV of Volume I focuses on three themes i.e. (i) Environmental Law (ii) Company Law, (iii) Labour Law, (iv) Constitution Law and the themes from our previous issues.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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PREFACE

Legal research is the "hands on" subject you will take in the course of your legal education. Although numerous books discuss research methods and techniques, there is no substitute for actually performing the task of legal research. Our journal`s Issue IV of Volume I has worked on crucial themes such as Environmental Law, Company Law Law, Labour Law, Constitution Law. We would like to express our deep appreciation of the cooperation of the contributors, who so willingly devoted their time and energies.

We have tried to cover these wide topics with the relevant research and landmark judgments in the form of Research Paper, Case Analysis, Short Notes and Case Commentaries. We have used a standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The work also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

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EDITOR'S NOTE

Volume 1 Issue IV of **Journal of Unique Laws and Students (JULS)**

This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence. These research papers, case analysis and shortnotes are the result and we feel privileged to have been able to act as editors.

We thank to all our authors for their obedient submission to the third issue of the journal and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue IV a success.

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ENVIRONMENT IN THE ERA OF COVID-19 : THE PROS AND CONS OF THE DOOMS DAY

Author: Kislay Raj[*]

ABSTRACT

The global demolition caused by novel-coronavirus which became the cynosure of every eye in 2019 has managed to survive for two years now. Since then, every aspect of an individual life has been affected by this malignant virus, even the surroundings we live in.

This look at intends to recognize the modern and unfavorable impact of covid-19 on our very mom nature and the surroundings we stay in. By reviewing the instructional medical sort of literatures and articles posted over the net and numerous articles with the aid of using scholars, this look at attempts to set up the reality that this international pandemic state of affairs has advanced the air excellent index in numerous towns of the globe, decreased greenhouse gases, water pollution, and due to the fact all of us are quarantined, we're compelled to be at a place, it has not directly assisted withinside the healing of the ecological system. But, the whole thing has its high quality in addition to terrible consequences, so does the pandemic. Due to this pandemic and the character of this deadly virus, we see an upsurge withinside the scientific wastes which can be distinctly infected and contagious, insensitive control of used disposable and disinfectants, masks, gloves, PPE kits utilized by people that have positioned a further burden on its secure disposal control.

We all wish that the wrath of covid ends quickly and the whole thing receives again to normal. With the wish to peer the silver lining withinside the sky at some point quickly, this look at additionally attempts to convey a few sustainable feasible methods to acquire the preferred goal. It is predicted that the right and strict implementation of those proposals would possibly grow to be useful for international ecological sustainability and its modern development.

Keywords:- *COVID-19 Pandemic, Air Quality Index, Biomedical wastes, Waste Management, Ecological Sustainability.*

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METHODOLOGY

This paper was created by reviewing publicly available literature, case studies, and various information from government and non-governmental organizations from reports and official websites. Scientific literature was collected electronically from Science Direct, Springer, PubMed, WebMD, Indian Express Newspaper, ISI Web of Knowledge, Research Gate, and Google Scholar databases, but not systematically. This study presents data and information related to the environmental impact of COVID 19 and the blockade imposed by various studies.

INTRODUCTION

What is Covid-19 and how it all began?

Covid-19 belongs to a vast family of different viruses and it is named “Corona" after its crown-like appearance. The first discovered coronavirus dates back to 1965, which caused only cough and cold to humans. According to scientists, there are seven different corona virus variant that can infect an individual. The one which causes SARS (severe acute respiratory syndrome) emerged in the southern Chinese province in the year 2002-03 belonged to the Beta-coronavirus sub-family and spread rapidly across the 26 countries infecting more than 8600 individuals and causing 774 deaths.[1]

This SARS-COV sub family of viruses had symptoms like fever, headache and respiratory problems like shortness of breath and cough. After the interval of 8 years, the same sub family of SARS virus, Beta-coronavirus were re-discovered in Saudi Arabia in the year 2012, infecting 2494 individuals and 858 casualties. This outbreak was less contagious than its cousin but more fatal. Most of the cases reported during the outbreak were from the Middle East, so it was termed Middle East Respiratory Syndrome (MERS). MERS almost had the same symptoms as SARS but it had an additional trait of kidney failure.[2]

The present variant of coronavirus that originated from the wet market of Wuhan, is the seventh variant of SARS and the most fatal variant that caused this pandemic and put the globe on stand-

[1] WebMD Medical Reference- Reviewed by Hansa D. Bhargava, *Coronavirus History*, WEBMD (Aug. 15, 2021), https://www.webmd.com/lung/coronavirus-history.
[2] *Id.*

by. The scientists have also examined the biological changes in the virus and concluded conclusion that the virus has mutated and the mutations have helped the virus to survive and circulate, the variant B.1.617 circulating in the Vidarbha region of Maharashtra, India and B.1.1.7 from the United Kingdom is considered as "variant of concern". [3]

Scientists are studying the further mutations in this particular variant, and at least three different sub-variants, named B.1.617.1, B.1.617.2 and B.1.671.3, are supposed to have the potential to spread even faster and are more fatal than the parent variant.[4]

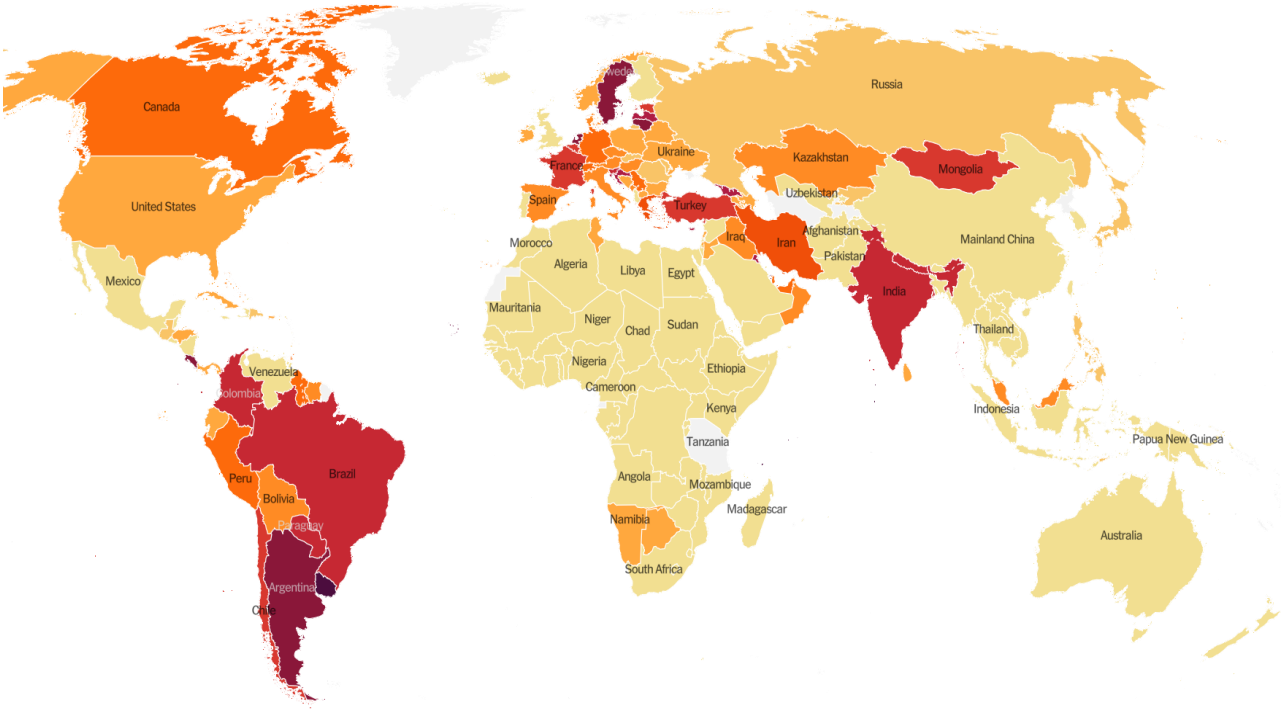


Figure 1 : Coronavirus World Map: Tracking the Global Outbrea- Updated May 11, 2021, 2:55 A.M. E.T.

[3] PTI, *WHO classifies India Covid strain as 'variant of concern'*, THEINDIANEXPRESS (May 11, 2021), https://indianexpress.com/article/india/who-classifies-india-covid-strain-as-variant-of-concern-7310230/.
[4] PTI, *supra* note 3.

ENVIRONMENT IN PANDEMIC

Since the outbreak of the novel-coronavirus and the proliferation of the cases being recorded worldwide, certain restrictions were imposed on individuals across the globe, which have brought some significant change in the environment and our surroundings. The air quality around the world significantly improved in most of the countries and their cities.[5]

PROS OF COVID ON ENVIRONMENT

1. IMPROVEMENT IN AIR QUALITY INDEX

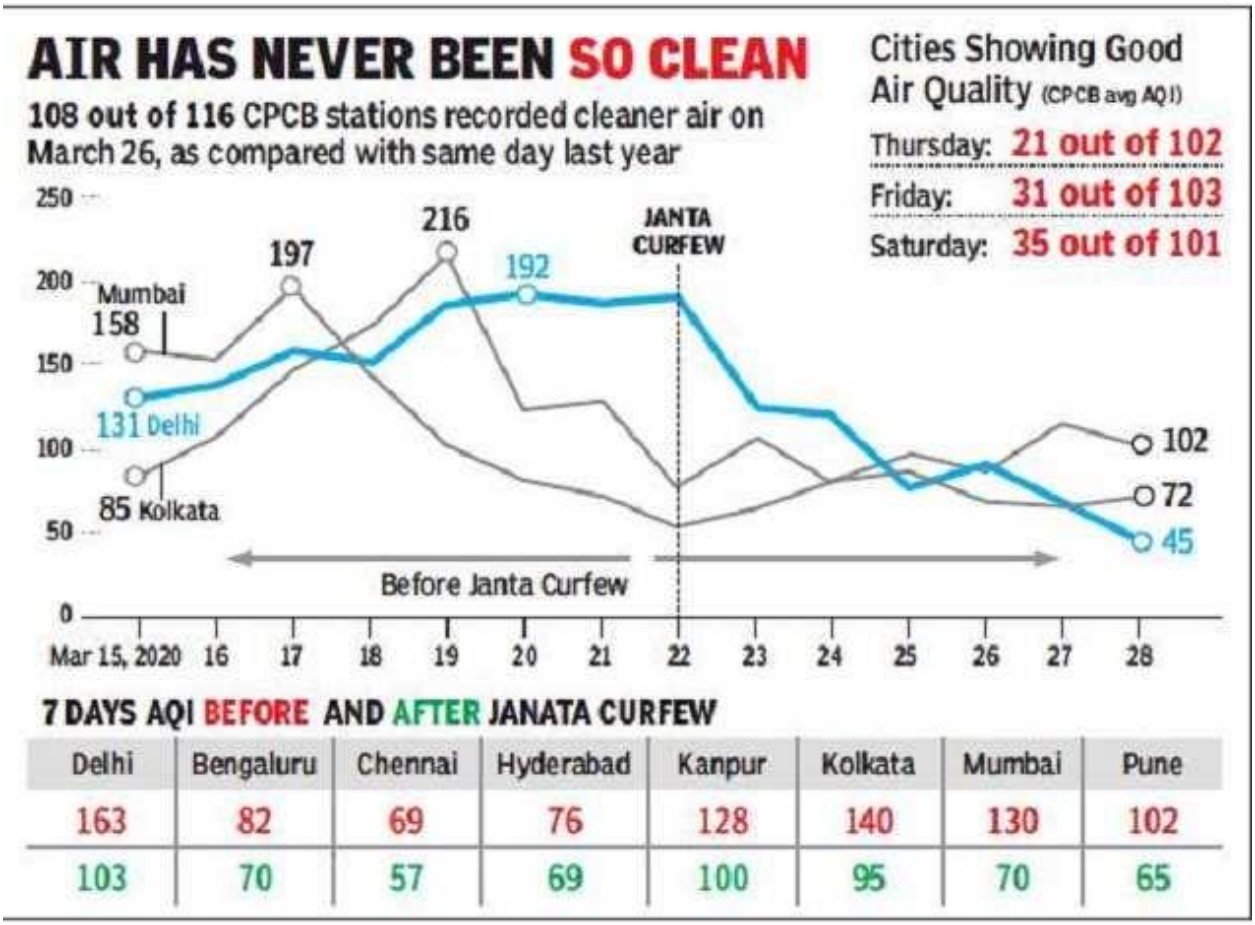
Due to the imposition of restrictions on the movement of individuals and lockdown in force, the motor vehicles were not able to produce as much PM 2.5 and NO_2 as they used to, industries were forced to limit their productions, curbing the GHGs they release into air the air quality across the globe has shown remarkable improvement from the past year.

According to the IQAir World Air Quality Report, 2020, Singapore has recorded a drastic fall of 25% in its PM 2.5 pollutant in its air whereas China's capital city of Beijing has managed to take second position in the list with a reduction rate of -23% of PM 2.5 pollutants from its air. In India, Delhi and Mumbai with -16% and -13% of reduction have bagged the first two spots in the list.

In China, Beijing achieved a year-on-year record of 11.1 liters, with NO2 and CO produced due to the closure of heavy industry decreased by about 50% and CO2 produced by regulation decreased by 17%. It is imposed on the aviation department.[6] South Korea was able to reduce pollutant PM 2.5 by 23% from last year simply because it limits emissions from coal-fired power plants, despite the problem of chronic air pollution 63% of Indian cities have direct improvements in air quality compared to 2019 data[7]. In the state capital, Delhi, PM2.5 and NO2[8] decreased by 70%. During the blockade in India, the overall reductions in PM2.5 and PM10 were 46% and

[5] IQ Air, *Amid COVID-19, air pollution remains most pressing environmental health threat*, IQ AIR (Jan. 30, 2022, 6:30 PM), https://www.iqair.com/world-air-quality-report.
[6] IQ Air,supra note 5.
[7] Id.
[8] Tamara Thiessen , How Clean Air Cities Could Outlast COVID-19 Lockdowns, FORBES (Apr.10, 2020), https://www.forbes.com/sites/tamarathiessen/2020/04/10/how-clean-air-cities-could-outlast-covid-19-lockdowns/?sh=6ef358106bb5

50%, respectively. India's coal-based power generation is reported to have fallen by 26% and total power generation after the blockade has fallen by 19. % Back.[9]



Delhi	Bengaluru	Chennai	Hyderabad	Kanpur	Kolkata	Mumbai	Pune
163	82	69	76	128	140	130	102
103	70	57	69	100	95	70	65

Figure 2 : A comparative study of air quality indexes in major cities in India before and after the blockade of Janta.

2. REJUVENATION OF THE WATER BODIES

In developing countries, such as India and Bangladesh, large amounts of industrial waste consisting of chemical spills are dumped directly into nearby rivers untreated and are a major cause of water pollution in these countries.[10]

[9] Lauri Myllyvirta and Sunil Dahiya, *Air quality improvements due to COVID 19 lock-down In India*, CENTRE FOR RESEARCH ON ENERGY AND CLEAN AIR (Apr. 16, 2020), https://energyandcleanair.org/air-quality-improvements-due-to-covid-19-lock-down-in-india/.

[10] M. Bodrud-Doza , SMDU Islam, T Rume, S.B. Quraishi, M.S. Rahman, M.A.H., *Groundwater quality and human health risk assessment for safe and sustainable water supply of Dhaka City dwellers in Bangladesh*, 10 GROUNDWATER FOR SUSTAINABLE DEVELOPMENT (2020), https://doi.org/10.1016/j.gsd.2020.100374;

The blockade imposed on the country acted as a fan of river waters, as most industries were closed and the reduced capacity dormancy gave these waters valuable time to clean themselves. At 27 of the 36 measurement stations along the Ganges, water was below the permissible pollutant limit. According to UPCB, 2020 (Uttarakhand Pollution Control Board, India), the water of the Ganges had the following parameters:

PH value = 7.4 - 7.8

DO (Dissolved Oxygen) = 9.4 - 10.6 mg/L

BOD (Biological Oxygen Demand) = 0.6 - 1.2 mg/L

Total Coliform = 40 - 90 MPN/ 100 mL

MONITORING STATION	Parameter	Values
UPSTREAM OF GANGA BARRAGE	DO	8mg/liter
	BOD	2.1mg/liter
	pH	7.90
	Ammonia	0.49mg/liter
DOWNSTREAM OF GANGA BARRAGE	DO	7.90mg/liter

S.M.D.U. Islam and Gausul Azam, *Seasonal Variation of Physicochemical and Toxic Properties In Three Major Rivers*; *Shitalakhya, Buriganga, and Turag around Dhaka city, Bangladesh*, 7 JOURNAL OF BIODIVERSITY AND ENVIRONMENTAL SCIENCES, 120, 120-131 (2015), https://www.researchgate.net/publication/303311392_Seasonal_variation_of_physicochemical_and_toxic_properties_in_three_major_rivers_Shitalakhya_Buriganga_and_Turag_around_Dhaka_city_Bangladesh; Islam S.M.D. Islam, M.E. Huda, *Water pollution by industrial effluent and phytoplankton diversity of Shitalakhya River, Bangladesh*, 8(2) JOURNAL OF SCIENTIFIC RESEARCH 191, 191-198 https://doi.org/10.3329/jsr.v8i2.26402; Ali P. Yunus, Yoshifumi Masago, Yasuaki Hijioka, *COVID-19 And Surface Water Quality: Improved Lake Water Quality During The Lockdown*, 731 SCIENCE OF THE TOTAL ENVIRONMENT (2020), https://www.sciencedirect.com/science/article/pii/S0048969720325298.

	BOD	1.21mg/litre
	pH	7.91
	Ammonia	1.1mg/litre
SHUKLAGANJ	DO	8.51mg/litre
	BOD	2.1mg/litre
	pH	7.68
	Ammonia	0.79mg/litre

Source: CPCB data on March 28, 2020

It was observed that the concentration of pH, electric conductivity, dissolved O_2, biological oxygen demand and chemical oxygen demand has reduced almost 1–10%, 33–66%, 45–90%, and 33–82% respectively in different monitoring stations during the Janta curfew (lock down) in comparison to the pre-Janta curfew period (before 22nd of March,2020).[11]

On the global level, the Grand Canal of Italy turned clear and many aquatic species who were forced to migrate because of the unhealthy aquatic conditions returned to their homes.[12]

[11] M. Arif, Rajesh Kumar, Shagufta Parveen, *Reduction in water pollution in Yamuna river due to lockdown under COVID-19 pandemic*, CAMBRIDGE OPEN ENGAGE (2020), https://chemrxiv.org/engage/chemrxiv/article-details/60c74c8ebdbb8978eba397ef.

[12] Cathrine Clifford, *The water in Venice, Italy's canals is running clear amid the COVID-19 lockdown*, MAKEIT (Mar. 18, 2020), https://www.cnbc.com/2020/03/18/photos-water-in-venice-italys-canals-clear-amid-covid-19-lockdown.html.

Bangladesh beaches saw reduced pollution along with Malaysian, Thailand and Indonesian beaches due to travel bans imposed during lockdown.[13]

3. RESTORATION OF THE ECOLOGY

Beautiful natural locations such as beaches, coral reefs, islands, national parks, mountains, deserts, deltas and mangroves usually attract travelers for a comfortable stay or vacation with friends and family. To facilitate and accommodate these travelers, many hotels, motels, guest houses, restaurants and markets with various shops consume a lot of energy and other natural resources to operate and maintain tourists. It is built for various ideas of. Studies show that carbon dioxide emissions from coastal hotels in Spain and reported electricity and fuel consumption play an important role, with two-star hotels having the highest carbon emissions.[14]

Some insensitive tourists throw away various wastes that spoil the aesthetics of nature and create ecological imbalances. The pandemic has significantly reduced the number of tourists around the world. As a result of the restrictions, the color of the seawater in Phuket, Thailand has changed and became transparent. It usually remains cloudy due to swimming, bathing, playing and various water sports.[15] Bangladesh's Bay of Bengal coast reports that after a long decade, its native dolphins have returned to their streams, canals, waterways and ports in Venice, Italy.[16]

CONS OF COVID ON ENVIRONMENT

1. **SPIKE IN BIOMEDICAL WASTE GENERATION:-** Since the outbreak of COVID 19 and this pandemic, pharmaceutical waste has skyrocketed around the world, which is now a serious problem for waste management authorities. Wastes such as cotton swabs used to sample samples of suspected COVID-19 patients, bottles needed for storage, and wastes used to treat large numbers of patients can afford to dispose of and dispose of them. Will generate waste.[17] As an

[13] Chayan Kundu, *Has the Covid-19 lockdown returned dolphins and swans to Italian waterways?*, INDIA TODAY, (Mar. 22, 2020), https://www.indiatoday.in/fact-check/story/has-covid19-lockdown-returned-dolphins-swans-italian-waterways-1658457-2020-03-22.
[14] Rita Puig, Eylem Kiliç, Alejandra Navarro, Jaume Albertí, Lorenzo Chacón and PereFullana-i-Palmer, *Inventory analysis and carbon footprint of coastland-hotel services: A Spanish case study*, 595 SCIENCE OF THE TOTAL ENVIRONMENT 244, 244-254 (2017), https://www.sciencedirect.com/science/article/abs/pii/S0048969717307763.
[15] M. Rahman, *Rare dolphin sighting as Cox's Bazar lockdown under COVID-19 coronavirus* (2020), https://www.youtube.com/watch?v=gjw8ZllIlbQ.
[16] *Id*, Kundu *supra* note 13.
[17] Mohit Somani, Abhishek N. Srivastava, Shiva Kumar Gummadivalli and Aparna Sharma, *Indirect implications of COVID-19 towards sustainable environment: An investigation in Indian context*,

example, the Asian country has created quite 18000 metric loads of covid19 connected medical wastes in a very span of four months of 2019 (June to September). In June, Asian countries generated three,025.41 tons of COVID19 connected biomedical waste; in July the quantity rose to four,253.46 tons and any spiked to five,238.45 tones in August and five,490 tons in September.[18] Also, in the city of Ahmedabad in the Asian country, the number of medical waste generated doubled from 550,600 kg / day to about 1,000 kg / day at the time of initial detention19. Daka, the capital of other Asian countries, produces about 206. COVID19 tons daily as a result of medical waste. [19] Many other major cities, such as Manila, Malaysia's capital, saw about the same increase, producing 154 to 280 tonnes of medical waste per day than before the pandemic.[20] Such a sudden increase in infectious and unsafe waste and its proper disposal and disposal poses a major challenge for national and global waste management authorities.

To protect themselves from the infection and hardship associated with ncovid19, people have developed a habit of carrying face masks, hand gloves, face shields and different protective instrumentality that increase the number of health care waste generated. Since the eruption of COVID19, the assembly and use of plastic based mostly PPE have increased worldwide.[21] However, due to the lack of information on the disposal of infectious waste, most people dispose of these infectious substances in open areas, possibly with family waste.[22] Such haphazard merchandising of those wastes creates preventive evacuation and worsens environmental pollution.

11 BIORESOURCE TECHNOLOGY REPORTS (2020), https://www.sciencedirect.com/science/article/pii/S2589014X20301122.

[18] Aastha Ahuja, *India Generated Over 18,000 Tonnes Of COVID-19 Related Bio-medical Waste In 4 Months, Experts Call To Reduce, Reuse And Segregate*, NDTV (Nov. 16, 2020), https://swachhindia.ndtv.com/india-generated-over-18000-tonnes-of-covid-19-related-bio-medical-waste-in-4-months-experts-call-to-reduce-reuse-and-segregate-52901/.

[19] Md Mostafizur Rahman, Md Bodrud-Doza, Mark D Griffiths and Mohammed A Mamun, *Biomedical waste amid COVID-19: perspectives from Bangladesh*, 8(10) LANCET GLOB HEALTH (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7426104/.

[20] ADB, *Managing Infectious Medical Waste during the COVID-19 Pandemic*, ASIAN DEVELOPMENT BANK (Apr., 2020), https://www.adb.org/publications/managing-medical-waste-covid19.

[21] Narendra Singh, Yuanyuan Tang, and Oladele A. Ogunseitan, *Environmentally Sustainable Management of Used Personal Protective Equipment*, 54(14) ENVIRONMENTAL SCIENCE & TECHNOLOGY 8500, 8500-8502 (2020), https://pubs.acs.org/doi/full/10.1021/acs.est.0c03022.

[22] Rahman, Doza and Mamun, *supra* note 19.

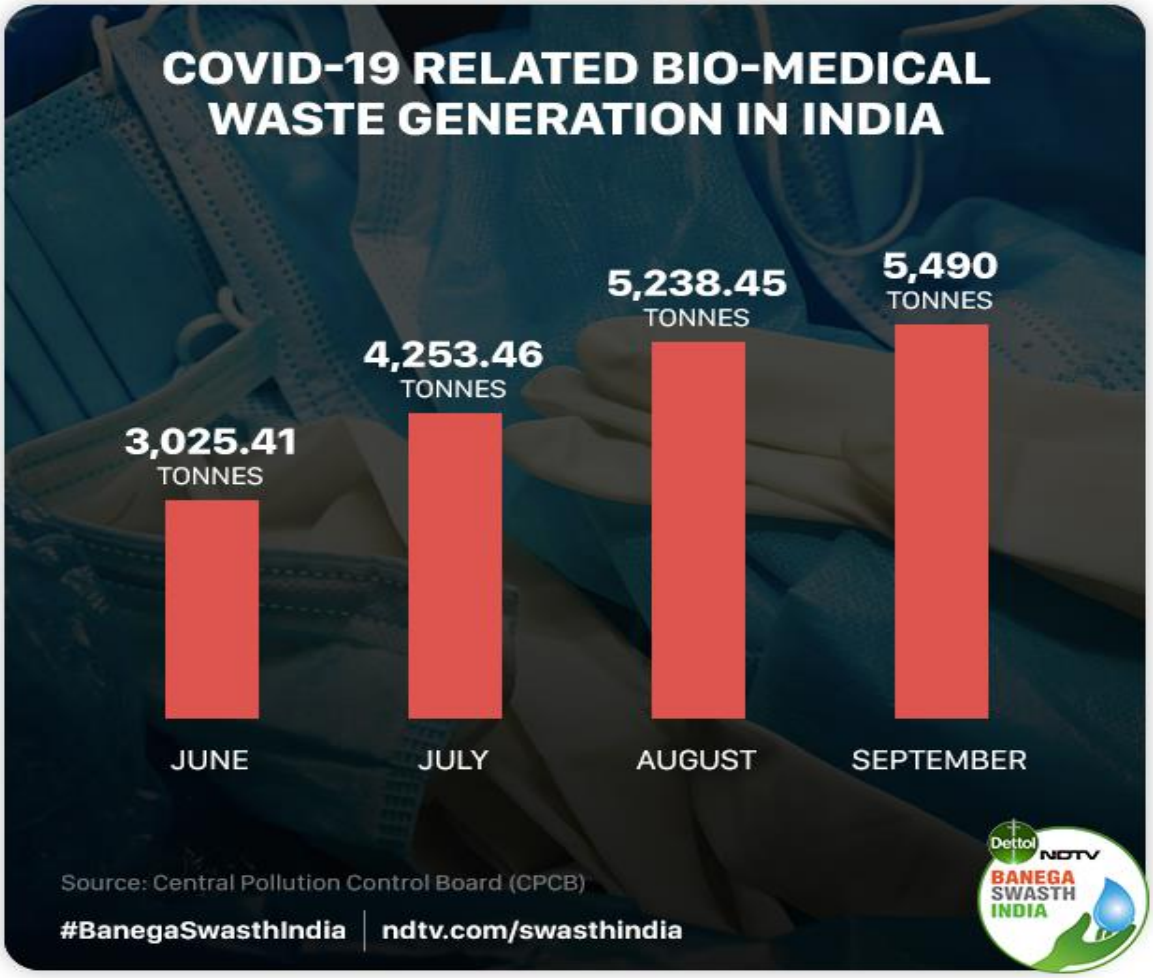


Figure 3 : Medical Waste Generation during the 1st phase of lockdown.

Polypropylene is used in the manufacture of N95 masks and Tyvek to protect suits, gloves and medical face shields and can take up to 24 years to break down hydrocarbons and ototoxic compounds and release them into the environment.Failure to separate this waste increases the risk of disease transmission and exposure to the virus by staff.

2. BURDEN ON THE MUNICIPAL TREATMENT PLANTS:-

Increased generation of municipal waste (both organic and inorganic) has direct and indirect environmental impacts such as air, water and soil pollution. Due to the pandemic, some countries have postponed litter drills to control the transmission of viral infections. For example, the United States has reduced 46% of its recycled practice programs through government collusion on the

risks associated with the spread of nCOVID19 in clinics. [23]Overall, there is an increase in landfills and environmental pollutants around the world due to the disruption of routine municipal waste management and disposal systems, waste recycling, and athletic activities.

3. **ECOLOGICAL INJURIES BECAUSE OF DISINFECTANTS:-** Recently, large amounts of disinfectants and disinfectants have been applied to streets, industrial areas and residential areas to eradicate the virus in order to curb the anger of ncovid19. Such intensive use of disinfectants can result in untargeted killing of useful species and can lead to ecological imbalances[24]. The presence of the virus was co-detected in the excrement of patients with COVID19 and was co-detected in urban waste in several countries as well as the United States, Australia, India and the Netherlands.[25] Some measures in the 1-hour waste treatment area, which are usually difficult for developing countries to drain untreated sewage directly into the river, can interfere with the water system, and the virus is us. There is a risk of being brought into the body through marine organic and organic phenomena.

POTENTIAL STEPS FOR ECOLOGICAL SUSTAINABILITY

Pandemics have upset human life, along with upset the international economy, and ultimately worsen the global climate and environment. It reminds us that we ignored environmental factors and carried out anthropogenic global climate change. In addition, the global response to COVID 19 is collectively teaching the United States to unite to combat human threats. The environmental impact of COVID19 is simple, but collaborative and systematic time-oriented efforts will strengthen environmental assets and save the world from the effects of global climate change.

Some of the projected steps for a property setting area unit as follows:

1. **SUSTAINABILITY IN INDUSTRIES:-**

[23] Somani, Srivastava, Gummadivalli and Sharma, Supra note 17.
[24] S.M Didar-UI Islam and M.A.H .Bhuiyan, Impact scenarios of shrimp farming in coastal region of Bangladesh : an approach of an ecological model for sustainable management ,24 AQUACULTINT ,1163,1163-1190(2016), https://link.springer.com/article/10.1007%2Fs10499-016-9978-z
[25] Smriti Mallapaty,How Sewage Could Reveal True Scale Of Coronavirus Outbreak, 580 NATURE 176,176-177 (2020), http://igims.org/Datafiles/cms/COVID%2017.pdf.

For proper industrialisation, it`s a compulsion to possess a paradigm shift to proper energyintensive industries that have access to cleaner fuels and technologies, and powerful energy economic policies.[26] In addition, industries need to be established in some specific zones, keeping in mind that waste from one industry is used as a raw material for other industries, creating dependencies between sectors. To further control pollution, industrial areas may also be required to stop work on a regular basis to reduce emissions without impacting the global economy.

2. GREEN AND CLEAN ENERGY IS THE KEY TO FUTURE:-

To reduce the emission of greenhouse gases and PM particles into the atmosphere, use transportation means or use CNG (compressed natural gas) or LPG or EV (electric vehicle) instead of choosing the usual ones. Encouraging colleagues to use it is essential. Gasoline or diesel car. The COVID19 pandemic has reduced international energy demand, leading to lower emissions and improved air quality in several major cities around the world.[27] Apart from these, individuals ought to be inspired to run or use bicycles for a brief distance, and a public bike sharing (PBS) system ought to be offered for mass usage, that isn`t solely surroundings friendly however additionally helps to stay you healthy.

3. WASTEWATER TREATMENT AND REUSE:-

Similar to international authorities, by installing many sewage treatment facilities in cities, states and countries, locals regulate urban and industrial waste before it is dumped into rivers and toxic aquatic flora and fauna. It will be easier. To reduce the burden and pollution of waste, industrial and municipal wastes need to be recycled and reused. Roundness systems need to be implemented within the manufacturing and manufacturing process to reduce personnel and waste generation.[28] In addition, dangerous and contagious pharmaceutical waste must be properly disposed of in accordance with the rules set out in UNEP's COVID 19 Waste Management Fact Sheet.[29]

[26] JIAHUA PAN, CHINA'S ENVIRONMENTAL GOVERNING AND ECOLOGICAL CIVILIZATION (Springer 2016).
[27] Somani, Srivastava, Gummadivalli and Sharma, *supra* note 17.
[28] Eglantina Hysa, Alba Kruja, Naqeeb U. Rehman and Rafael Laurenti, Circular Economy Innovation and Environmental Sustainability Impact on Economic Growth: An Integrated Model for Sustainable Development, 12 SUSTAINABILITY 1, 1-16 (2020), https://doi.org/10.3390/su12124831.
[29] ICIMOD, *COVID-19 Impact and Policy Responses in the Hindu Kush Himalaya*, INTERNATIONAL CENTRE FOR INTEGRATED MOUNTAIN DEVELOPMENT (2020), https://lib.icimod.org/record/34863.

Government must take in depth steps to unfold awareness campaigns through totally different sources, relating to the right waste segregation, handling and disposal ways.

4. CHANGE IN LIFESTYLE:-

We need to change our standard of living and optimal consumption or resource behavior to reduce carbon dioxide and international CO2 emissions. Skip processed and locally aged foods, make compost from scrap, and cut or unplug electronic devices when not in use. For short trips, use a bicycle instead of a car.

5. INTERNATIONAL COOPERATION:-

To meet the property environmental goals and protection of worldwide environmental resources, like the worldwide climate and biological diversity, combined international effort is crucial.[30]

ANNEXURE I: TABLE OF FIGURE

Figure No.	Relevance
01	Coronavirus World Map: Tracking the Global Outbreak
02	Comparative study of Air Quality Index of major cities of India before and after Janta Curfew.
03	Medical Waste Generation during the 1st phase of lockdown.

[30] *Id.*

IMPOSITION OF PRESIDENT'S RULE – S. R. BOMMAI VS. UNION OF INDIA

Author: Shubhangi Chand Co-Author: Prakalpa S Iyengar***

INTRODCUTION

S. R. Bommai was Chief Minister of Karnataka from August 1988 to April 1989. He led the government of the Janatadal Party, which was dismissed on April 21, 1989, when the Presidential Regulations under Article 356, were enacted in Karnataka.[31]

It become an uncommon exercise till then to import Article 356 on states run through opposing parties, to the only in power.

• In Bommai`s case, his authorities become overthrown on account that he had misplaced majority due to more than one defections (that had been politically influenced and grasp minded).

• The CM proposed to the then Governor P Venkatasubbaiah that the meeting consultation be known as to check the energy of the authorities withinside the Parliament residence, however his proposal become disregarded and he become denied the possibility through the Governor.

• The Governor additionally did now no longer check out the opportunities of forming an opportunity authorities, however alternatively said to the President that due to the fact Shri Bommai had misplaced the bulk withinside the residence and no different celebration become in a function to shape authorities, movement below Article 356 (1) must be taken.

• In April 1989, the President issued a proclamation, which Bommai challenged withinside the Karnataka High Court. However, the High Court disregarded his writ petition on account that the proclamation issued below Article 356 (1) isn't completely immune from judicial scrutiny. The case become then heard through the Supreme Court of India, wherein it took almost five years to attain a selection.

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[31] INDIA CONST. art. 356.

• In March 1994, a nine-choose constitutional bench of the Supreme Court issued a landmark selection that constrained the Centre`s capacity to impose the President's rule on states.

9 BENCH JUDGE

1. Justice Kuldip Singh
2. Justice P. B. Sawant
3. Justice Katikithala Ramaswamy
4. Justice S. C. Agarwal
5. Justice Yogeshwar Dayal
6. Justice B. P. Jeevan Reddy
7. Justice S. R. Pandian
8. Justice A. M. Ahmadi
9. Justice J. S. Verma

FACTS OF THE CASE

Circumstances surrounding S.R. Bommai imposed presidential rule in Karnataka. These actions by the Center did not require immediate parliamentary approval and were often considered an abuse of power. When interpreting the president's authority, it should be noted that the decisions made by the president require the approval and guidance of the Prime Minister of the Council of Ministers and the Center. This allows the center to control the nation arbitrarily, assuming "presidential rule". S.R. Bonmai was elected Prime Minister of Karnataka in 1989 and formed the Janata Dal Legislative Assembly. He lost the majority in various escapes. It was later discovered that all seven of the 19 ministers who wrote to the governor about the withdrawal of support were misrepresented, but by that time the president had already assumed responsibility for power under Article 356.[32] As the Governor`s report was already been received before the message of misinterpretation, he reiterated that S.R. Bommai had lost the vote of confidence, and the Parliament approved its proclamation. Regarding this, Bommai filed a writ in Karnataka High Court but was rejected. Similar situations have been addressed in the states of Meghalaya,

[32] INDIA CONST. art. 356.

Rajasthan, Madhya Pradesh, Himachal Pradesh and Nagaland. All these situations had the Centers use of arbitrary power over the State.

ISSUES RAISED

1. Is the president's unilateral rule over the six states legal?

2. Whether the President violated Article 356 (1) of the Constitution of India by making such a declaration. The answer to this question is determined by the answer to the next question.

a. If so, how widespread is judicial review?

b. What does Article 356 (1) mean when it says "a situation has arisen in which the government of the state cannot be carried on under the provisions of this constitution"?

ARGUMENTS RAISED BY THE PETITIONER

- S.R. Bonmai was not given the opportunity to prove a majority in parliament, and the president's decision to govern the state was illegal and completely uncompensated.
- The petitioner also alleged that the president's rules were imposed because the central government did not disclose materials or information.

ARGUMENTS RAISED BY THE RESPONDENT

- Defendants argued that judicial review differs significantly between administrative law and the Constitution. The court has the power to challenge the statutory authority of public authority in administrative matters, but if it can be declared unconstitutional in a constitutional matter, it will not challenge it in a constitutional matter. The same was taken in this case, and the court argued that it could not determine whether the imposition of the president's rules was valid.
- The court cannot object to imposing an order of the president on the advice of a lawyer.
- Respondents further stated that if state government actions are not secular, they can be resolved by imposing presidential rules in accordance with secularist debates.

JUDGEMENT

The decision concluded that the president's authority to dismiss the state government was not absolute. The ruling stated that the president should exercise his authority only after both houses have approved the proclamation (imposition of his rules). Until then, the President can suspend the Legislative Assembly only by suspending the provisions of the Constitution that governs the Legislative Assembly. "The dissolution of the legislative assembly is not automatic," the court says. It should only be used when absolutely necessary to achieve the goals of the declaration.

What takes place if the Presidential proclamation isn't always accredited with the aid of using the Parliament?

"If both parliaments do not reject or approve it, the declaration expires at the end of the two-month period. In such a scenario, the previously dismissed government reappears. Legislation that was suspended. Congress has revived. "The court ruled. As the court clarified, the presidential declaration issued under Article 356 is also subject to judicial review.[33]

All judges agreed that the President's statement was justified under Rule 356 and that it was justified. The Supreme Court has ruled that a proclamation issued under Article 356 (1) may be appealed in court. Article 356 (1) permits judicial review of the legitimacy of the President's Declaration, to the extent that it is based on the material, whether the material is important or whether the declaration was made maliciously. There is. If the declaration is made dishonestly, for unusual reasons, or for completely irrelevant reasons, the Supreme Court reserves the right to invalidate it. The Indian Union must prepare the materials on which the claim is based if the objection to the proclamation is found to be justified. The accuracy of the material has not been considered by the court. Rather, the importance of the content is taken into account.[34]

The courtroom docket then assessed whether, beneathneath Article 356(1) of the Indian Constitution, the president has infinite powers to trouble proclamations. The president`s powers are conditioned as opposed to absolute, in keeping with the Supreme Court. The delight can be primarily based totally at the Governor's report, applicable papers, or a mixture of the two. The

[33] S.R. Bommai and Ors. v. Union of India Ors., AIR 1994 SC 1918.
[34] *Id.*

dissolution of the legislative meeting isn't always allowed; it need to best be executed whilst simply critical to gain the proclamation's goal.

The workout of the energy calls for the consent of each homes of Parliament, and the Honorable Supreme Court has made it clean that the President can't dissolve the legislature with out the approval of each homes.

In response to the claim that Article 74 (2)[35] prohibits the inquiry of relevant materials, the Honorable Supreme Court carefully considered the extent and impact of Article 74 (2). What is important here is that Article 74 (2) of the Constitution states that the court cannot ask the president, and if he does, the court cannot give advice to the president. In this case, the Supreme Court ruled that Article 74 (2) prohibits judicial review of the ministerial report, but does not limit the review of the materials underlying the report. The advice is not integrated into the subject it is given. As a result, the court ruled that your right to know if this material exists is unaffected. This does not mean that the government cannot claim its privileges under Article 123 of the Evidence Act.[36]

If the disclosure privilege is invoked, the court will determine it within its own merit, within the scope of the section. Article 74(2)[37], on the other hand, does not exclude judicial review of the data used to make the proclamation. The Honorable Supreme Court further concluded that the court's jurisdiction to return the government to office if the proclamation was determined to be illegal was undeniable. If he declares the declaration invalid, the state government can be restored by the court. If the court is not authorized, the entire exercise will be useless as the jurisdiction of the examination will expire. If the court cannot rectify the revocation of the decree, it can also refuse to review the opposition. The court does not have to force the federal government to hear the objection, evaluate it, and then provide the material used to provide the satisfaction needed only to refuse relief. The Supreme Court also ruled that it is not necessary to distinguish between the proclamation and the legislation passed by Parliament. If the decree is invalid, it cannot be confirmed simply because it has been approved by Congress.

[35] INDIA CONST. art. 74(2).
[36] The Indian Evidence Act, 1872, § 123, No. 1, Acts of Parliament, 1872 (India).
[37] INDIA CONST. art. 74(2).

There may be differences between the reasons for disagreeing with the validity of the decree and the reasons for disagreeing with the legality of the legislation. However, due to its limited legitimacy, the validity of a declaration made under Rule 356 (1) is questioned, even if both parliaments approve it under Rule 356 (3). there is. The Supreme Court also considered whether the appeal would be granted if the validity of the notice was challenged, and whether the court could order the suspension of new elections. In this regard, the Honorary Court has a precautionary mission to postpone a new election to the legislature while waiting for a final decision to challenge the validity of the proclamation to avoid compliance with the proclamation in the event of a failed judicial review.

The Honorable Supreme Court, which ruled that a state government cannot obey a particular religion, extensively discussed the concept of secularism. The court determined that one of the fundamental elements of the Constitution is secularism. Secularism is a good idea that promotes equal treatment of people of all faiths. This approach is sometimes referred to as religious neutrality or benevolent neutrality. While everyone in India has the right to religious freedom, the state considers one`s faith, religion, or perspective to be irrelevant. From the perspective of the nation, everyone should be equal and everyone should be treated equally. The Honorary Court added that "faith is of no use to national affairs." And if the state must be secular in thought and action, the same must be true for political events under the Constitution. The Constitution no longer recognizes the fusion of religious and state power, but much in itself. You need to keep both separate. That is a constitutional obligation. As long as the country is governed by this constitution, no one can say anything else. Politics and religion are incompatible. State governments that pursue non-secular goals or act in non-secular ways are unconstitutional. And it is the subject of the activities of Article 356. From the above, there is no doubt that it has a narrow effect of weakening the secular philosophy of the Constitution, but the political parties and groups that oppose the election based on the table are responsible for the following illegal acts.[38]

[38] The Hindu Net Desk, *What is the S.R. Bommai case, and why is it quoted often?*, THE HINDU (May 18, 2018), https://www.thehindu.com/news/national/what-is-the-sr-bommai-case-and-why-is-it-quoted-often/article23929119.ece.

ANALYSIS

Court decisions have proven to be most effective in addressing the issue of abuse of administrative power. Reading the goals of the drafter of the Constitution with the support of the Constitutional Council's deliberations, the court correctly rejected the competing argument that the state government was subordinate to the federal government. Federalism and secularism have been identified by the courts as part of the basic structure. It also overturned the Rajasthan ruling,[39] which said the president's decision should not be subject to judicial review and should only be decided by the central government.

Owing to the political parties` tendency to disrupt the democracy`s pluralistic form, the court declared that judiciary will operate as a watchdog so that such powers are not misused. Even though the Court provided principles for establishing President`s Rule in states, it left enough discretion to the Union Cabinet and the President. The ruling came after a thorough examination of provisions that are in relation with the proclamation of the President, and it also put an end to future arbitrary dismissals of state governments, as well as strengthening the federal structure of Indian policy, which had been harmed on several occasions in federal and state level specifically when different political parties were in power.

CRITICAL ANALYSIS OF THE JUDGEMENT

This judgment is considered as a landmark judgment in discovering and strengthening the country`s federalism. Center State relations had huge impacts after this case. The Supreme Court set apart the limitations and an ideology of the Article 356's [40] functioning in this case. Article 356 is an intense energy, in keeping with the Supreme Court of India, and ought to handiest be applied as a ultimate motel whilst development is certainly not possible and the constitutional technique has failed. The courtroom docket`s issues in this situation are akin to the ones of the Sarkaria Committee, which become set up through the vital authorities in 1983 to research the Center-State relationship. The judgment of the Honorable courtroom docket is praiseworthy. Future dismissals of the State management through the politically effective Center will nearly probable be prevented if the concepts indicated right here are followed. In this situation, a provision referring to

[39] State of Rajasthan & Ors. v. Union of India, AIR 1977 SC 1361.
[40] INDIAN CONSTITUTION ARTICLE. 356.

Presidential proclamation beneathneath article 356 become installation through the Honorable Supreme Court. The Supreme Court successfully said that the Presidential assertion beneathneath Article 356 is a conditioned energy challenge to judicial review, in place of an absolute energy. In addition, if the President's proclamation is judged to be unlawful, the dissolved legislature's assertion may be reinstated. It's additionally been cautioned that Article 74 (2) prohibits the courtroom docket from searching into the proof that brought about the assertion. Despite the honorable Supreme Court's brave and famend judgement, it's been criticized that the courtroom docket took see you later to provide the verdict, permitting the illegality withinside the Karnataka and Meghalaya instances to keep and in the long run deprive citizens.

CONCLUSION

Judgment at S.R. The Bonmai case strengthens India's federal structure. This is a legal mechanism for assessing and investigating the full range of constitutional requirements related to the relationship with the central government and the disputed role of the Governor demanding a presidential government. The decision clarifies the scope of judicial review and thus maintains the scope of control and balance. This process was aimed at curbing the objective political abuse of Article 356, but recent events have shown how these provisions are being used by political parties for political gain. is showing. The center cannot contain that power. This decision is recognized as an important decision as it must have ended the arbitrary expulsion of the government of the country under Article 356. The ruling was based on the premise that the president's power was not absolute, but habitual, and that the power declared by the president was not exempt from judicial analysis.

WHAT'S WRONG WITH THE EIA NOTIFICATION 2020, AND WHY IT IS CRITICAL

Author: P Sanskar Naidu[*]

ABSTRACT

India isn't resistant to the impacts of environmental change, which influences the whole world. More than one million animals were killed during the bushfires in Australia. Massive amounts of methane are being released due to the melting of permafrost in Siberia, melting of glaciers in the Himalayas, as well as massive deforestation in the Amazon. All these factors are stressing our environment, and we are witnessing the effects worldwide. Also, in India, there are major environmental projects that threaten ecosystems, for example, the Dibang Valley hydropower project and numerous others.

Generally, the main objective of an Environmental Impact Assessment notification is to protect the environment and reduce environmental impact, especially when the environment conflicts with development. In addition, it safeguards the health and safety of those connected to the environment. The purpose of this manuscript is to examine the role of Environmental Impact Assessments in the protection of the environment. Aside from studying the differences between the EIA Notification 2006 and the draft 2020 EIA Notification draft, we have also taken a closer look at the most pertinent issues and concerns regarding this 2020 EIA Notification draft.

Keywords:- *EIA Notification 2020, Environmental Clearance, Public Hearing, Strategic projects, Post-Facto Clearance*

INTRODUCTION

This paper is committed to assessing and inspecting the idea of environmental impact assessments and their significance for the security of the environment. It likewise recognizes the serious issues with the EIA Notification 2020 draft.

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An Environment Impact Assessment is a technique for exploring whether a proposed venture might effectively affect the climate straightforwardly or in a roundabout way, and regardless of whether the proposed task will have positive or adverse consequences on the climate according to a socio social perspective, an organic variety, and aesthetic perspective, given the current state of the climate where the undertaking is to be executed and the likely effects of the task on the climate in ongoing occasions.[41] It is expectant, participatory, and deliberate.

An amazingly shocking occasion throughout the entire existence of our nation prompted the introduction of the EIA in India. It was the Bhopal Gas Tragedy of 1984 when the break of isocyanate gas killed 7000 individuals very early on. Before that time, getting environmental clearance was generally a managerial choice made by the central government.

Following this occurrence, the Indian government passed the Environmental Protection Act in 1994, which made EIA required for specific ventures. Under the EPA 1986, the Ministry of Environment and Forests gave notification of EIA on 27 January 1994. Subsequently, for extensions and modernization of existing exercises or the foundation of new undertakings, environmental clearance has turned into a necessity.

Further, in September 2006, another notification of an EIA was supported. With the decentralization of the environmental clearance process, some issues are tended to at the state level. In contrast, others are tended to at the central level, as laid out in EIA 2006. A draft EIA was delivered for input and ideas in March 2020, following the completion of amendments to the notification.

BACKGROUND OF EIA

Because of the National Environmental Policy Act (NEPA) 1969, government offices were needed to evaluate the environmental impacts of their decisions as per standards of environmental impact assessments. As an approach advancement, it is among the best in the twentieth century. It was trailed by numerous nations in 1970.[42] The National Environmental Policy Act 1969, which was passed after the publication of Rachel Carson's "Quiet Spring," made it obligatory for huge scope

[41] Anita Singh, *Unit-4- Regulations in India*, INDIRA GANDHI NATIONAL OPEN UNIVERSITY, (2019), http://egyankosh.ac.in//handle/123456789/70656.

[42] Abhishek Chakravarthy, *Draft EIA notification 2020: Is it contra legem to international conventions, judicial verdicts*, DOWNTOEARTH (Oct. 19, 2020), https://www.downtoearth.org.in/blog/environment/draft-eia-notification-2020-is-it-contra-legem-to-international-conventions-judicial-verdicts-73858.

ventures to think about the climate before continuing. That prompted the development of environmental impact assessments.

EIA was first embraced universally by the OECD nations' Declaration on Environmental Policy (1974). It diagrams the significance of surveying an action's environmental effect preceding executing it, as a development to the UN Conference on the Human Environment in 1972. The Earth Summit Rio gathering in 1992 shows the historical backdrop of this. A National Instrument, through an EIA, is needed by Principle 17 of the Rio revelation for proposed exercises that might have considerable environmental impacts. These exercises are dependent upon endorsement by a skilful public power. EIA is in like manner, a dynamic cycle just as a composed report that gives an arranged and responsible assessment of the expected impacts of development exercises, activities, or elective advancement options, according to the Rio statement.

The possibility of an EIA started with the NEPA Act of the USA. The NEPA Act was passed in December 1969 and endorsed into law by President Nixon on January 1, 1970.[43] EIA, as characterized by the United States NEPA, is an efficient and interdisciplinary way to deal with arranging and independent direction. It coordinates the regular and social sciences and human expressions of the natural plan.[44]

The reason for this act was to build up a public arrangement to take out harm to the environment and biosphere. This will animate the wellbeing and government assistance of the populace. It will likewise upgrade information on the ecology and biosphere frameworks and regular assets appropriate to the country, and make a committee on environmental quality.

In the Indian setting, this began after India took part in the Stockholm conference in 1972 and Rio Summit in 1992. With a more grounded Environmental Impact Assessment system set up, India is likewise partaking in worldwide environment arrangements like the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. Both of these instruments have accentuated the requirement for a solid EIA system to limit the unfriendly impacts of environmental change.

[43] Singh, *supra* note 41.

[44] Christopher F. Tamasang And Sylvain N. Atanga, *Environmental Impact Assessment Under Cameroonian Law*, 37 RECHT UND VERFASSUNG IN AFRIKA - LAW AND CONSTITUTION IN AFRICA (2018), https://doi.org/10.5771/9783845294360-275.

Likewise, the show on biodiversity focuses on the requirement for successful interaction to protect biological assets. India took an interest in these occasions and these huge occasions in environmental history have underscored the significance of EIA. After participation in the Stockholm conference on the sharing economy, Indian ecological law saw a time of change. Various newly enacted laws were being embraced as of now, similar to The Wildlife (Protection) Act, 1972, The Water (Prevention and Control of Pollution) Act, 1974, and The Forest (Conservation) Act, 1980, for instance. There was one specific expansion to the 42nd amendment to the Constitution that can be described as being of extraordinary importance. This expansion is the expansion of Article 48A and Article 51A (g), the two of which address the assurance and improvement of the environment.

After the 1984 Bhopal Gas misfortune, the Environmental Protection Act of 1986 was passed under Article 253 of the Constitution. Subsequently, it turned into fundamental law for the insurance of the environment in India. This Act contains section 3, which is the piece of this Act that contains the regulations for EIA in India. The association government is enabled to go to lengths to ensure and work on the environment under Section 3.[45] EIAs were first led by the Indian government in 1978-79, yet they were not obligatory until 1994. The primary EIA study was completed as a mandate of the Planning Commission Government of India under the Department of Science and Technology in 1978. Following the creation of the Department of Environment in 1980, the function of environmental clearance was moved from the Department of Science and Technology to the Department of Environment. Environmental clearance and environmental impact assessments became compulsory for chosen projects in 1994. Under the Environmental (Protection) Act 1986, the Union Ministry of Environment and Forests (MEF), the Government of India, distributed a notification on Environmental Impact Assessment of Development Projects on 27 January 1994. There have been various amendments to this notification.

The fundamental advances associated with EIA are impact identification, baseline study, impact evaluation, assessment, documentation, decision making, and post audits.[46]

[45] Chakravarthy, *supra* note 42.
[46] Singh, *supra* note 41.

FEATURES OF EIA

EIA notification is a part of the environmental legislation. Our environment legislation has a special branch in India to deal with issues related to the environment. Due to this peculiarity, environmental legislation has special features.

Environment impact assessment notification is notified under a separate branch of environmental legislation, under the Environment Protection Act 1986. As a result of this act, there are special environmental laws with silent features, like the fact that there is criminal jurisdiction. This means that these cases are handled by criminal courts. As a result, stiff punishments are handed out, such as long prison sentences of up to seven years, and heavy penalties as well. NGT (National Green Tribunal Act) has been designated as the special court. This environmental legislation also offers an additional feature, which is that it applies to all government authorities. This is because ensuring the environment is a priority and there is no concession for government authorities and government bodies to pollute as part of any project.

In addition to public participation, environmental legislation is also giving special attention to public participation, such as holding public hearings, inviting NGOs to participate, and making information related to the project public. Therefore, public participation is an imperative feature of environmentalism.

EIAs have likewise become one of the globally acknowledged standards of worldwide environmental law. It is for the most part considered as harmony among monetary and ecological advantages in these kinds of evaluations. Because of such an evaluation, it is basic that before a venture is embraced, its monetary advantages should surpass its ecological expenses by a critical degree.

EIA NOTIFICATION 1986

The first EIA notification in India was formulated under the Environmental Protection Act, 1986, in 1994, for the first time. Accordingly, the system for extension, modernization, and the formation of new ventures must be joined by environmental clearance. A few changes have been made to the EIA from that point forward. Perhaps the main change was in 2006.[47]

The Ministry of Environment, Forests, and Fisheries (MoEF) advised the requirement for compulsory EIAs on 27th January 1994, under Rule 5 of the Environment (Protection) Rules, 1986,

[47] Chakravarthy, *supra* note 42.

for 29 assigned ventures (after changes, 30 exercises). This is the chief piece of regulation overseeing ecological effect evaluation.

Environmental Impact Assessments became required in 1986 under the Environment (Protection) Rules, with the accompanying objectives:

1. Anticipate the natural effects of the undertaking,
2. Track down available resources to decrease antagonistic effects,
3. Shape the ventures to suit the nearby environment,
4. Present the forecasts and choices to the leaders.[48]

EIA NOTIFICATION 2006

The EIA-2006 was created because of the recommendations made by the Govindarajan Committee. It was made to analyze the methods for supporting speculations and carrying out projects. The report observed that the leeway cycle for the environmental clearance created the most setback to projects, and suggested that a few unwieldy systems be changed. Delegates from industry and government agencies were the main ones involved in consultation on the draft notification.

In the 2006 Notification, more undertakings were brought inside the domain of the environmental clearance process. In this way, a changed rundown of ventures and exercises that need earlier environmental clearance has been created. What's more, there is no order of tasks that are dependent upon an EIA in light of their investment level. Rather, it is the size or limit of the task that decides if it is approved by the central government or the state government.

The significant distinction in the EIA Notification 2006 from the previous one (1994) is its endeavour to decentralize capacity to the State Government. Before that, all activities under schedule 1 were submitted to the Central Government for environmental clearance.

Nonetheless, according to the 2006 notification, a critical number of projects will be submitted to the state for clearance relying upon their size/limit/region. For this, the notification has arranged to frame a specialist board, the Environment Appraisal Committees (SEAC) at the State level.[49]

[48] Singh, *supra* note 41.

[49] Centre for Environmental Law, *Post-Graduate Diploma In Environmental Law & Policy Sep 2020-2021*, NLU DELHI (Jan. 14, 2022), https://wwfin.awsassets.panda.org/downloads/pgdelp__sep_2020.pdf.

ENVIRONMENTAL CLEARANCE UNDER EIA

EIA Notification sorts projects as "A", "B1", "B2" in the Schedule. For "A" classification projects, Environmental Clearance (EC) is allowed by MOEF. For the "B1" and "B2" classification projects, EC is allowed by State/Union Regulatory Authority (SEIAA or UTEIAA). Application Form for assent is added. For certain activities, a practicality study is required. For certain undertakings, an Environment Impact Assessment (EIA) report is prepared.

An application is made before the Regulatory Authority according to the task. Plausibility study for Category "A" and "B1" projects. EIA Reports are submitted. Assuming that the Regulatory Authority proposes a few rectifications or augmentations those are done. For Category "A" and "B1" projects public discussion/hearing is required. Applications for EC are considered after public reviews for Category "A" and Category "B1" projects, alongside the EIA and public review report.

KEY DIFFERENCES BETWEEN OLD EIA NOTIFICATION 2006 AND NEW EIA NOTIFICATION 2020 DRAFT

1. Environment Clearance

In EIA 2006 EC (Environmental Clearance) was needed before any development work or arrangement of land, just getting off the land was admissible. This implies that under EIA notification 2006, which is at present as a result, planning of land, or any sort of construction, or cutting of trees or cutting of limits or mixtures, was not permitted until the undertaking defender got authorization and the plot used to be straightforwardly open so people, in general, could see what was being done on with the venture.

So an earlier environmental clearance was required according to EIA Notification 2006 while in EIA Notification draft 2020 earlier environmental clearance isn't obligatory for getting land, building compound dividers, and temporary sheds even though it is needed for beginning any development work.

2. Validity Of EC

In EIA Notification 2006 the validity of EC for mining projects was thirty years, for stream valley projects it was ten years, and for any remaining ventures, it was five years. Though in EIA Notification 2020 draft the validity of EC for the mining project is fifty years, for the stream valley project is fifteen years, and for any remaining ventures ten years.

So at whatever point an environmental clearance is allowed, the freedom is restrictive and for the span of the period, so presently the term of the period has been stretched.

When the time of environmental clearance is finished, it must be reapplied for. On account of environmental clearance, the examination can happen; consequently, when the defender of the venture gets an environmental clearance, he is liberated from investigation for a more extended period.

3. Public Hearing Notification

Public hearings are led under the EIA notification as a component of public participation. In EIA Notification 2006 the notice time frame for public hearing and outfitting reactions was 30 days. While in EIA Notification 2020 the notification time frame for public review and outfitting reactions has been diminished from 30 days to 20 days.

4. Monitoring of EC

In EIA Notification 2006 the checking of EC was done double a year after, at regular intervals, which implies it sets out that the venture advocate needs to report because any environmental clearance given for a task is given with the condition so how far the undertaking defender is following the condition, what is the situation with the task, all that should be accounted for in the compliance report in like clockwork according to the EIA 2006 Notification and it was obligatory and this environmental compliance report is a public record, it is disclosed on the administrative power site, so this is a vital archive in keeping the data and update of the data of the undertaking on the site and unveiling it.

EIA Notification 2020 draft endorses that this report is presently required just one time per year and it additionally has an arrangement that currently permits regularization, so assuming the report has not been set up by the undertaking defender in time then he wants to pay each day to postpone charges and afterward he can proceed with the deferral, while prior according to EIA Notification 2006 it was considered as an encroachment of the Environment Protection Act.

5. Exclusions According To the New Draft

1. In EIA 2006 just ventures concerning national defence and security were accepted from the public hearing. Be that as it may, in EIA Notification 2020, the public hearing is excluded for all linear projects for items 31-38 for example port, disposal facilities, ship breaking, etc, in border areas.

2. In EIA Notification 2020, the border area is newly defined as 100 km aerial distance from the actual line of control.
3. In addition to that in the new EIA Notification 2020 public consultation is exempted for certain 'strategically considered projects'. The central government will have full power to decide if a certain project falls under this category.
4. Inland waterways and national highway projects excluded from the public consultation.
5. Construction projects less than 1, 50,000 square km exempt from EIA.

6. Managing Violated Cases

In EIA 2006, there was a provision for violators of EC. They were covered by section 15 of the Environment Protection Act, so anybody could claim an infringement. But, in EIA Notification 2020, perception of the infringement can be claimed by the venture defender themselves or the administrative power. Infringement of EC is currently regularized by charging late expenses.

WHAT ARE THE MAJOR CONCERNS ABOUT EIA NOTIFICATION 2020 AND WHY IT IS PROBLEMATIC?

1. Post-Facto Clearance

Environment Clearance (EC) is a strategy to get clearance from the administrative board for explicit tasks that lead to environmental contamination, which can either be accepted or objected to given the satisfaction or non-satisfaction of the administrative process.[50]

EIA Notification 2020 draft permits post-facto clearance. This implies that clearance for the venture can be taken even after the undertaking work has been begun or has been running without getting environment clearance. The venture can get environmental clearance later. This is amazingly perilous. We have effectively seen the Vishakhapatnam gas spill. The substance plant engaged with that case was working without environmental clearance. The spilled gas killed 11 individuals and nauseated over 1,000 and impacted numerous greenery nearby.[51] In this manner, prior environmental clearance is extremely important, if not it can prompt exceptionally antagonistic impacts.

[50] Nishka Kamath, *Ex post facto environment clearance - view of the Supreme Court*, IPLEADERS (Oct. 6, 2021), https://blog.ipleaders.in/ex-post-facto-environment-clearance-view-of-the-supreme-court/.

[51] Amit Kumar, *Vizag Gas Leak: Why the NGT Should Have Applied Absolute, Not Strict, Liability*, THEWIRE (May 13, 2020), https://m.thewire.in/article/rights/vizag-gas-leak-ngt-strict-absolute-liability/amp.

In a new judgment (2020) on account of Alembic Pharmaceuticals Ltd versus Rohit Prajapati, the Supreme Court, likewise alluding to Common Cause versus Association of India judgment struck down and censured ex-post-facto environmental clearance (an idea which, shockingly, the new draft EIA proposes to regularize). It expressed: *"The concept of an ex-post-facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation."* [52]So in a way, we can say that the new draft is against the judgment of the Supreme Court.

2. Strategic projects exempted (No information in the public domain)

It is correct that previously any project concerning national defence or security was not put up for public hearing. In addition, the information related to it was not made publicly available. However, the government has included one extra line in this new draft, which states *"All projects concerning national defence and security or involving other strategic considerations as determined by the central government."* This third part is problematic because it implies that, according to the government, no information regarding strategic projects would be revealed to the public nor there a public hearing. It is up to the government to decide what is strategically important and what isn't even if it doesn't threaten national security. This means that the government can put a stamp of "strategic" on any project and then no further information regarding that would be revealed by the government and no public hearing would be held. This power of the government can be misused and the projects that should have been important for the public to know but due to the government declaring them strategic no information regarding them would be shared with the public.

3. Public Hearing

Draft EIA notification 2020 states that the general population will just have 20 days to give their reactions. Prior 30 days were dispensed for formal proceeding but according to the new draft, just 20 days will be given. Beforehand these 30 days were at that point inadequate now it has been diminished to 20 days. For projects that will be for extremely long years like dams, and so forth, general society is being given 20 days to survey its pessimistic effect isn't at all adequate, it's an exceptionally short window for them to do that and put the focuses before the public authority authorities and regions where data isn't effectively accessible or where individuals are very little

[52] Alembic Pharmaceuticals Ltd. v. Rohit Prajapati, 2020 SCC OnLine SC 347

mindful of the entire cycle allowing only 20 days won't at all be significant, it will simply bring about an absence of transparency.

Furthermore, according to the 2020 EIA Notification the overall population doesn't have the position to report infringement and non-compliance, the reports from the violator, the power of the public authority, Appraisal Committee, or Regulatory power might be considered by the Government[53], so assuming a venture abuses environmental law, then, at that point, people, in general, has no privilege to bring up that infringement, this infringement can be uncovered by the violator himself or the public authority authorities, this is finished malarkey, they are essentially anticipating that assuming that somebody has committed burglary then the cheat himself can say that he has committed the robbery no one else can bring up that.

Indeed, even the Supreme Court on account of Lafarge Umiam Mining Private Limited versus Union of India held that public consultation was a mandatory requirement of the environmental clearance process for an effective forum for a person aggrieved by any aspect any project to register and seek redress of their grievances.[54]

In the Samarth Trust Case, the Delhi High Court featured the significance of formal conferences, expressing

"A public hearing is a form of participatory justice giving a voice to the voiceless and a place and occasion for them to express their views about a project. Such a public hearing allows the people to raise issues about the social impact and the health impact of a proposed project." [55]

In Majdoor Kisan Ekta Sangthan versus Union of India, the Supreme Court announced a defective public hearing to be nullity according to law[56]. Therefore it is unjust to remove the public's right to report such violations.

4. Regularization

In EIA Notification 2020 infringement of EC is presently regularized by charging late expenses, this might bring about a delay in the data to the specialists and people in general, and surprisingly

[53] Kamath, *supra* note 50.
[54] Chakravarthy, *supra* note 2, Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338 (India).
[55] Samarth Trust v. Union of India Ministry of Environment and Forests, 2010 SCC OnLine Del 2127(India).
[56] Adivasi Majdoor Kisan Ekta Sangthan v. Ministry of Environment and Forests, 2012 SCC OnLine NGT 51(India).

the venture proprietor might abuse this by disregarding the arrangements and hurting the climate and afterward getting gotten away simply by paying a few measures of late charges and fine.

CONCLUSION

Right now, we are encountering the repercussions of hurting the environment in different ways, like global warming. Thusly, it is significant to shield it from being harmed and to institute new and more rigid guidelines. However, the EIA Notification 2020 draft, rather than making environmental protection tougher, has relaxed limitations. Subsequently, there might be a huge number of provisions in the framework, which could be taken advantage of to exploit natural resources. We can't give inclination to advancement over the environment after seeing its consequences. Subsequently, in the wake of seeing such countless issues with it, it ought not to be acknowledged or executed by any means. All things being equal, the public authority ought to make more suitable guidelines and guidelines for the protection of the environment before it is past the point of no return.

ABORTION LAWS IN INDIA – A RIGHT OR A PRIVELEGE

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ABSTRACT

The concept of abortion has become a horrific crime, or rather a social norm, in India, a country of atheism and spirituality, but the wave of modernization and the post-colonial ideological conflict will cause people to move between cultures. And the culture of dealing with current difficulties, including medical abortion, was a sign of reassurance for everyone. This article describes the Medical Abortion Act of 1971, the amendments made in 2002 and 2003, and the rules and improvements made. This article addresses not only initiatives to improve women's reproductive rights and the availability of safe abortion, but also needs, issues and some issues that are often overlooked.

Keywords:- *The Medical Termination of Pregnancy Act 1971, Unwanted Pregnancies, Feotal anamolies, 20 weeks of pregnancy, 24 weeks termination*

INTRODUCTION

Female sexuality, childbirth, and reproductive health are rarely considered as essential as publicly debated. Due to the overwhelming patriarchal framework of society, such issues are often ignored. The same can be seen in the kind of law enacted on women's issues.

Abortion, in particular, is always associated with ethical issues as it involves the killing of humans. Those who support liberal abortion have a legal debate, claiming that it is a matter of pure choice for women.[57] Those who oppose it often use moral or religious arguments to contradict the former.

Despite progressive legislation, women struggle to acquire basic rights and now lack access to safe abortion treatments as well as reproductive choices. But the debate of necessity is summarized in all fundamental rights to equality and freedom in all areas, regardless of caste, beliefs, gender

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[57] Joyita Ghosh, Women's Right to Abortion in India: A Critical Analysis, JOURNAL FOR LAW STUDENTS AND RESEARCHERS (Sep. 09, 2020), https://www.jlsrjournal.in/womens-rights-to-abortion-in-india-critical-analysis-by-joyita-ghosh/.

or sexual orientation, the life and individual of all with full dignity. It is a vow to respect and accept the freedom of.

We have come a long way from completely criminalizing abortion to legalizing it under certain conditions and to a more liberal approach to abortion law. Despite the abortion law, morality has remained a major issue in women's lives, not only due to lack of information, but also due to various urban and political issues. India today has a set of roles and obligations available to all genders, but the situation was not the same. This also applies to abortion and pregnancy regulations. Today, India is one of 14 countries where abortions are taking place for a variety of socio-economic reasons, not on demand.

WHAT IS ABORTION?

Abortion is the end of an accidental or induced pregnancy before the foetation is fully developed to survive on its own. It refers to the act of aborting with a non-viable fetal or non-living child. Every year, about 205 million pregnancies occur worldwide. Most abortions are caused by unwanted pregnancies.

Abortion is the medical termination of pregnancy using external intervention. It is also known as targeted abortion. Abortion is a safe practice when done properly, but unsafe abortion is a major cause of maternal death, especially in developing countries. With sufficient knowledge of family planning and contraception, abortion rates have declined significantly over time.

HISTORY OF ABORTION LAWS IN INDIA

Under the Indian Criminal Code of 1860 and the Criminal Procedure Code of 1898, British India called abortion a "criminal act." It was a criminal offense for both the woman under the colonial government and others who wished to do so, with or without her consent.

Prior to 1971, abortion was considered illegally punished under Articles 312-316 of the Indian Penal Code of 1860, which was defined as causing miscarriage unless done to save the life of a woman. A voluntary abortion can result in a sentence of up to 3 years in prison or a fine, and a voluntary miscarriage can result in a sentence of up to 7 years in prison or a fine.[58]

[58] Indian Penal Code, 1860, § 312, No. 45, Acts of Parliament, 1860 (India).

By the turn of the century, abortion was illegal in almost every country in the world. Roe v. Wade [59], the historic US Supreme Court ruling on abortion has changed the way other countries see abortion law.

This decision lifted the strict abortion law and ratified the Fourteenth Amendment to the US Constitution. The Fourteenth Amendment to the United States Constitution guarantees that citizens have the right to vote. Right to privacy is protected by the Constitution, which also guarantees the choice of women for or against abortion. European countries moved to legalize abortion shortly after this ruling.

In the 1960s, the Government of India established the Shah Commission, led by Chantilal Shah, in response to the excessive maternal mortality and morbidity caused by abortion failures. The Commission was established to investigate the problem of maternal mortality due to bacterial miscarriage. The Commission conducted a thorough investigation into the social and medical aspects of abortion and recommended that abortion be legalized for compassionate medical reasons. Abortion (MTP). Law 1971 was enacted as a result of their recommendations.

THE MEDICAL TERMINATION OF PREGNANCY (MTP) ACT 1971

All countries, including India, have their own strict abortion legislation to prevent induced abortion and reduce maternal mortality from unsafe abortions. However, the criminal law was not changed by the enforcement of the MTP law. The rules and penalties for miscarriage have not changed.

The MTP Act 1971 consists of eight parts that address issues such as when, where, and under what conditions a pregnancy ends. Abortion is legal by law if the pregnancy is terminated by a qualified doctor and the foetation is less than 20 weeks in any of the following situations:

A prolonged pregnancy might shorten a pregnant woman`s life expectancy or cause serious bodily or psychological harm. If the baby is born, there is a risk that he or she will be impaired due to physical or psychological problems.[60] Two qualified practitioners must be consulted if the pregnancy is more than 12 weeks but less than 20 weeks.

[59] Roe v. Wade, 410 U.S. 113 (1973).
[60] Meenaz Kakalia, *Abortion in India-Still Not a Right but a Privivlege*, THE LEAFLET (May 03, 2021), https://www.theleaflet.in/abortion-in-india-still-not-a-right-but-a-privilege/.

Rape that leads to pregnancy. It can cause psychological distress to pregnant mothers. Pregnancy caused by the inability of a married woman or her husband to use her contraception. This can affect a woman's mental health.

WHO CAN TERMINATE PREGNANCY?

The MTP method only allows the termination of pregnancy by a doctor, such as:

- A registered physician with medical qualifications recognized under the Indian Medical Council Act
- Its name is in the state medical registry
- Meets the requirements of the OB / GYNMTP law. 4,444 doctors who meet these requirements are eligible for an automatic abortion. Moreover, the doctor cannot refuse an abortion because of his religious beliefs.

The following types of consent are required before a qualified physician aborts a pregnancy:

If the female is single, written consent is sufficient. Single women under the age of 18 require written permission from her parents or guardians. If you have a mental illness, you will need written permission from your legal guardian.

PROBLEMS IN THE ACT

The law stipulates that if a pregnancy is less than 12 weeks, the opinion of one doctor is required to legally end the pregnancy. If the pregnancy is 12 to 20 weeks, the woman needs the advice of two doctors before proceeding with the abortion. The law was enacted primarily to curb population growth and completely ignored women's rights. This includes the ability to make decisions that affect a woman's body.In comparison to our population, India lacks a significant quantity of skilled medical workers. Due to a lack of medical practitioners and services, many women are forced to use risky methods to abort their babies, which push them to do so. [61]

A woman suffers both mental and physical harm as a result of the MTP act. For example, medical incompetence and prolonged court hearings can harm the mental health of a rape survivor who is also carrying the rapist's child. The act also ignores the socio-economic implications of unwanted

[61] Rujuta Joshi, *Social, Legal and Ethical Analysis: How Do We View Abortion in India*, ACADEMIKE (June 1, 2021), https://www.lawctopus.com/academike/india-abortion-laws/.

pregnancies and their impact on women. Medical research has advanced to the point where late-term abortion procedures can now be streamlined. Doctors can now discover problems in the foetus as late as the twentieth week of pregnancy. This rule, however, permitted abortion up to the twentieth week, resulting in a clumsy implementation and a closed-minded attitude.

The act enables only allopathic doctors to terminate a pregnancy but with the rise in technology, medications, talents, the MTP act needs to bring into account the developments of ayurveda, homoeopathic doctors as well. There are a few problems which can only be diagnosed after 20 weeks of pregnancy, which to convert an intended pregnancy into an unwanted one.

While *section 3*[62] permits single, divorced, or widowed women to have an abortion, but the term "married woman or her husband's permission" can send the wrong message. Activists are trying to replace it with the phrase "all women", but nothing has changed yet. Prior to the introduction of the 2021 MTP Act, many petitions were made due to the shortcomings of the 1971 Act. The court also acted against the rules. As a result, there is a collection of misleading decisions and orders that take different approaches to enforcing the 1971 MTP Act..

STANCE OF INDIAN JUDICIARY

Nikhil D. Dattar v. Union of India[63]

Sections 3 and 5[64]of the Act were challenged in this instance because they did not include any events that were outside of the Act's scope. In this case, the foetation was confirmed to have a complete heart block at 26 weeks gestation. The mother then applied for an abortion.

The petitioner submitted that *Section 5(1)* [65]should be construed down to include Section 3's scenarios. As a result, respondents should be instructed to allow an abortion. However, the court may grant Section 5 tax exemption only if it does not have the authority to enact a law and can show that the life of the mother is at risk if the pregnancy does not end.

[62] Medical Termination of Pregnancy Act, 1971, § 3, No. 34, Acts of Parliament, 1971 (India).
[63] Nikhil D. Dattar v. Union of India, SLP (C) 5334 of 2009.
[64] Medical Termination of Pregnancy Act, 1971, § 3, 5, No. 34, Acts of Parliament, 1971 (India).
[65] Medical Termination of Pregnancy Act, 1971, § 5(1), No. 34, Acts of Parliament, 1971 (India).

Samar Ghosh v. Jaya Ghosh[66]

The Supreme Court has determined whether it is psychologically cruel for a woman to have an abortion without her husband's consent. In this case, the court said, "If a wife undergoes a vasectomy or abortion for no medical reason, such conduct may constitute psychological abuse without the consent or consent of her husband.

Dr.Mangla Dogra & Others v. Anil Kumar Malhotra[67]

In this case, the Punjab and Haryana High Court said, "The MTP Act requires the consent of only one person, a woman who has an abortion. A husband cannot force his wife to have a period of pregnancy. "

Suchita Srivastava and v. Krishnanan, 2009[68]

Rights of ladies to select withinside the context of persevering with a being pregnant were affirmed through the Supreme Court and the High Court of Madras, respectively. The Supreme Court evidently stated in Suchita Srivastava that the nation has a dedication to guard a woman`s reproductive rights as a part of her Article 21 rights to non-public liberty, dignity, and privacy.

Anand Manharlal Brahmbhatt v. The State of Gujarat[69]

The question in the lawsuit was whether the state could approve to the abortion of a mentally challenged woman that was unable to look for herself. It was held that yes, the state may consent to termination if a medical expert determines that a woman is unable to make decisions for herself or recognise that she is pregnant.

Ms. X v. Union of India & Others[70]

In this case, after 20 weeks, the woman discovered that her baby had structural flaws and abnormalities. The woman may have her pregnancy terminated under *Section 5* of the MTP Act if the medical board determines that continuing the pregnancy would represent a grave threat to the woman's mental and physical health.

[66] Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.
[67] Dr.Mangla Dogra & Others v. Anil Kumar Malhotra, (2012) 3 PLR 267.
[68] Suchita Srivastava and v. Krishnanan, (2009) 14 SCR 989.
[69] Anand Manharlal Brahmbhatt v. The State of Gujarat, 2015 LawSuit(Guj) 2786.
[70] Mrs. X v. Union of India & Others, 2017 SCC OnLine SC 124.

Halo Bi v. State of Madhya Pradesh & Ors. 2013 [71]

The question in this case was whether a jailed woman needs jail officials' permission to obtain a medical abortion. It was decided that a pregnant woman who is detained does not need to obtain permission from jail officials to terminate her pregnancy.

MEDICAL TERMINATION OF PREGNANCY AMENDMENT BILL, 2020

Some of the above cases and judgments that resulted in damages and conflicts of interest, as well as the law, urged the government to pass an approved MTP amendment bill 2020.[72] The Minister of Health and the Ministry of Family Welfare Dr.Harsh Vardhan introduced this law on March 2, 2020. In March 2021, both Lok Sabha and Rajya Sabha passed the law.[73]This is a popular step towards women's rights, as it is the first time in 49 years that our elected officials have had time to tackle issues such as abortion. The bill aims to renew outdated, ineffective and inadequate legislation by changing some provisions and stating that pregnancy can be terminated within 20 weeks with the consent of a certified physician. It is said that. For abortions between the 20th and 24th weeks of pregnancy, only the consent of two qualified doctors is required. Pregnancy up to 24 weeks ends only for certain groups of women defined by the government.

Pregnancy due to the inability of a married woman or husband to limit the number of children who can become pregnant using contraception under the original law can pose a significant threat to the psychological well-being of pregnant women. The new bill replaces the phrase "married woman or her husband" with "female or her partner." As a result, there is a more liberal move.

The bill proposes the establishment of a medical committee consisting of:

- Obstetrician and gynecologist
- Pediatrician
- Radiologist or scholar
- A number of other members determined by the state government. It makes recommendations in critical and unusual situations and approves abortions.

[71] Halo Bi v. State of Madhya Pradesh & Ors., WP(C) 7032/2012.
[72] Medical Termination of Pregnancy (Amendment) Bill, 2020.
[73] Akanksha, *Abortion in India- Right or Restriction*, IPLEADERS (Aug. 6, 2020), https://blog.ipleaders.in/abortion-law-indiaright-restriction/#Medical_Termination_of_Pregnancy_Amendment_Bill_2020

On the other hand, the bill focuses on privacy issues, stating that certified practitioners do not have the authority to identify the woman in question unless otherwise provided by applicable law.

THE EXPECTED BENEFITS OF THE EXTENSION

Twenty weeks later, many fetal abnormalities are discovered that turn an intended pregnancy into an unwanted one. Prenatal abnormal scans are usually done between the 20th and 21st weeks of gestation. If this scan is delayed and a fatal defect is found in the foetation, the 20-week deadline is the limit.[74]

With this change, if a fetal abnormality is detected after 20 weeks, the pregnancy can be terminated. Empowering unmarried women with the ability to medically end their pregnancy, and providing provisions to protect the privacy of those seeking abortion, will give them reproductive rights. The law helps rape victims and allows sick and young women to legally end unwanted pregnancies. Importantly, the law also applies to unmarried women, abolishing one of the 1971 law's retreat clauses that prohibited single women from citing contraceptive failures as a reason for abortion.

CONCLUSION

Until the women`s rights movement, almost every country disapproved of this practice. It required several historic decisions to finally stir up the rest of the globe from its slumber.

Abortion is rarely a simple choice. It's not fair to hold a woman responsible for choosing abortion when she doesn't want or can't care for a child. It should be entirely up to the woman, and it should be made available to all women, regardless of their circumstances. The term "abortion" has a negative connotation in a conservative society. Abortion of an unmarried woman is considered completely unacceptable. Several times, such primitive attitudes have subjected young single/unmarried women to emotional and physical anguish, resulting in the deaths of numerous women.

[74] Drishti IAS, *Medical Termination of Pregnancy (Amendment) Bill, 2020*, DRISHTIIAS, (Feb. 03,2020), https://www.drishtiias.com/dailyupdates/daily-news-editorials/medical-termination-of-pregnancy-amendment-bill-2020.

The 2021 MTP Amendment Act is meaningful and more flexible in its application, but the arbitrary classification reflects a regressive attitude towards women's rights in general. After reviewing all the clauses and clauses, the bill seems to be moving in the right direction, but if you take a closer look at Section 2 (b) of the bill, the amendment is the most vulnerable individuals such as rape victims and incest. You can see that it only applies to. Victims, minors, women with disabilities, and the bill rarely improve the shortcomings of India's abortion law. In addition, the law defines abortion as an extension of criminal liability under Indian criminal law, not as an extension of women's physical autonomy. But there is no reason why abortion should not be recognized as a fundamental right of women's free choice. Therefore, the state should empower women by allowing them to make decisions about their reproductive health, rather than depriving them of their autonomy.

DISTRIBUTION OF POWER BETWEEN CENTRE AND STATE: THE LEGISLATIVE AND ADMINISTRATIVE ASPECT

Author: Siya Jindal[*]

"Power should not be concentrated in the hands of so few, and powerlessness in the hands of so many"- Maggie Kuhn

ABSTRACT

A country consisting of 28 states and eight federal territories, India follows a federal system in which legislative, administrative and financial powers are divided between the federal / central and state governments. This research paper examines the legislative powers of the Centre and the detailed constitutional provisions for the three lists, namely the union list, the state list, and the states listed at the same time, under Article 245, Article 254 of the Constitution. In addition, this paper analyses the division of administrative power when the powers of unions and state governments extend to the subject of the list of unions and states, respectively, as defined in Article 256, Article 263 of the Constitution. The end-of-life study also educates readers about the exercise of administrative and legislative power over federal territory by the central government and the president of the country. Like other federal constitutions, the central and state governments work closely together, and in most cases one jurisdiction exclude the other.

Keywords:- *Federal System, Administrative Relations, Seventh Schedule of Indian Constitution, Centre and Union Territories, Article 370*

INTRODUCTION

In the structure of the federal government, legislative and administrative powers, as well as financial control, are divided between the central and state governments. Most of these structures have only two levels, but there are even more.[75]

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[75] *What is Federalism?*, ATOMIC ENERGY EDUCATION SOCIETY, (Dec. 9, 2021, 9:00 PM), http://www.aees.gov.in/htmldocs/downloads/econtent_06_04_20/1%20Faderalism%20Handout-1.pdf

The centre is responsible for the entire country and has broader authority, while the state government is responsible for the day-to-day management of each state and has relatively limited authority.[76]

Our country, India, is a democratic country. That is, the government is elected for the people and by the people. It also follows the structure of the federal government to meet the needs of large numbers of people with diverse populations. And this separation of powers is stipulated in detail in the national constitution. In addition, in addition to the two levels of the Centre and the State Government, the amendments to Articles 72 and 73 of the 1992 Constitution introduced a third level of federalism in the form of the Panchayati system and local governments.[77]

This federal system is protected nationwide. Initially, Jammu and Kashmir had its own constitution, flags, and government rules at the time, but in 2019 the government cancelled almost all art. 370 of the Constitution of India, which gave the state such autonomy. Therefore, a single constitution applies. The Constitution of India and the same rules apply nationwide.[78]

In such an arrangement, the central and state governments are independent of each other because the separation of powers is clearly defined in the Constitution. The state government cannot be enforced by the central government and both are independently accountable to the public.[79]

This system is well suited for the world's largest democracy because it creates a check and balanced environment and increases management efficiency.[80]

LEGISLATIVE POWER

Legislative powers are constitutional powers that enact laws and amend or abolish them as necessary.[81]

[76] *What is Federalism?*, *supra* note 75.
[77] DEMOCRATIC POLITICS II, 13-15, (NCERT 2021).
[78] *Article 370: What Happened in Kashmir and Why it Matters*, BBC (Dec. 9, 2021, 9:10 PM), https://www.bbc.com/news/world-asia-india-49234708.
[79] DEMOCRATIC POLITICS, *supra* note 3.
[80] Pooja, *10 Advantages of A Federal Government*, POLITICAL SCIENCE, (Dec. 9, 2021, 9:13 PM), https://www.politicalsciencenotes.com/articles/10-advantages-of-a-federal-government/316.
[81] John Bouvier, *Legislative Power- A Law Dictionary, Adapted to the Constitution and Laws of the United States*, THE FREE DICTIONARY BY FARLEX, (Dec. 9, 2021, 9:17 PM), https://legal-dictionary.thefreedictionary.com/Legislative+power.

As many may know, the three divisions of legislative power between the centre and the state government are very well explained by the three lists provided in the 7th schedule of the Constitution of India. These lists are as follows:

1. **THE UNION LIST: -**This list contains issues that are of national concern and therefore of broader significance. These are under the control of the central government and can independently legislate such issues, covering 97 items, some of which are defense, banking, currency, railroads, nuclear power and diplomacy.[82]

2. **THE STATE LIST: -**This list consists of 66 items listed in Appendix 7 of the Constitution. His subject covers important areas of the state and provinces. Here, the state government has the right to enact laws in the areas of police, medical care and transportation.[83]

3. **THE CONCURRENT LIST: -**This list consists of 47 items covering criminal law and criminal procedure, prevention of animal cruelty, electricity, marriage, divorce and more. The central government, together with the state government, has the right to legislate these issues.[84]

It should be noted that if there is a disagreement between the state and the central government, the central government's decision will prevail.

These lists cover almost all subjects, but some subjects do not fit into any of these three lists. Therefore, the remaining power associated with such issues rests with the union government.

Legislative power is provided under Article 245-254 of the Constitution of India, which basically talks about the legislative power of parliament and the state legislature.

It should be mentioned that the Parliament of India is made up of three parts: the President of the country, Rajya sabha (Upper House) and Lok Sabha (Lower House). The Legislature consists of

[82] DEMOCRATIC POLITICS, *supra* note 77.
[83] Arkaduti Sarkar, *Distribution of Legislative Power Between union and States*, IPLEADERS, (Dec. 9, 2021, 9:15 PM), https://blog.ipleaders.in/distribution-legislative-powers-union-states/.
[84] *Id.*

the Governor, the Legislative Council (Vidhan Parishad), and the Legislative Assembly (Vidhan Sabha).

These articles of the 1949 Constitution of India are discussed in detail below.

1. **ARTICLE 245:-** This article states that:

"(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."[85]

That is, the legislature has the power to legislate all or part of the Indian Territory, and the legislature has the power to legislate all or part of the state. And the reason that such laws enacted by Parliament are valid outside the territory of India does not invalidate them.

This concept is also known as the territorial nexus doctrine that the legislature cannot exercise its jurisdiction outside the state unless it is determined that there is sufficient correlation between the state and the subject.[86]

In the case law of ***Tata Iron And Steel co. v. State of Bihar, 1958***,[87] the appellant enterprise had its registered workplace in Bombay, manufacturing facility works in Bihar and the top income workplace in West Bengal. As in line with the Bihar Sales Act 1947 which applies to items that are:

1) Produced and synthetic in Bihar.

2) Actually in Bihar on the time of sale.

[85] INDIA CONST. art. 245.
[86] Vicky, *Doctrine of Territorial Nexus*, LEGAL SERVICE INDIA, (Dec. 9, 2021, 9:15 PM), https://www.legalserviceindia.com/legal/article-1343-doctrine-of-territorial-nexus.html.
[87] Tata Iron and Steel Co. v. State of Bihar, AIR 1958 SC 452.

The taxes have been imposed on the products of the enterprise. The enterprise contended that considering the products have been offered and brought outdoor Bihar, it need to now no longer need to undergo the taxes.

The court, in this example said that the presence of products with inside the taxing kingdom on the date of settlement of sale or the manufacturing of products in that kingdom creates an enough Territorial Nexus among the taxing kingdom and sale of products.

2. **ARTICLE 246:-** states:

"Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List."[88]

3. **ARTICLE 247:-** empowers

the Parliament to establish courts and other judicial bodies to improve control of the laws passed by Congress or those applicable to the list of states.[89]

4. **ARTICLE 248:-** states

It talks about the remaining legislative powers to legislate issues that do not fit into any of the three lists. As already mentioned, this power is in the hands of the federal government.[90]

5. **ARTICLE 249:-** talks about:

[88] INDIA CONST. art. 246.
[89] INDIA CONST. art. 247.
[90] INDIA CONST. art. 248.

(1) Parliamentary authority is required to formulate legislations on the subjects provided in the state list, or on part or all of India's sovereign territory, if at least two-thirds of the members of the state parliament are present and vote for support. A resolution that legislation must be made for the national interest.[91]

(2) Parliamentary authority to legislate the subject matter on the state list, or to legislate part or all of India's sovereign territory, if at least two-thirds of the members of the state legislature are present and the vote upholds the resolution. That such a law must be made for the national interest.[92]

(3) This clause states that a law enacted in accordance with such a resolution may remain in force for up to six months from the date the resolution ceases to exist.[93]

6. **ARTICLE 250:-** It discusses:

(1) Parliamentary authority to legislate some or all of India's territory, or matters specified on the state list when necessary. [94]

(2) Such laws shall come into force only for six months from the date of the state of emergency.[95]

According to Article 352 of the Constitution, if the security of a country is threatened by armed groups, war or external attacks, the president of the country can declare a state of emergency.[96] In such situations, the provisions of the Constitution, including the basic rights of citizens, may be invalidated.

7. **ARTICLE 251:-** It states that

art. 249 and art. The 250 cannot prevent the Legislature from enacting legislation on behalf of the state. However, if such a law conflicts with the law passed by Parliament in the exercise of rights under Article 249-250, whether the law passed by Parliament was passed before or after the law passed by the legislature. Regardless, priority shall be given.[97]

[91] INDIA CONST. art. 249, cl. 1.
[92] INDIA CONST. art. 249, cl. 2.
[93] INDIA CONST. art. 249, cl. 3.
[94] INDIA CONST. art. 250, cl. 1.
[95] INDIA CONST. art. 250, cl. 2.
[96] INDIA CONST. art. 352.
[97] INDIA CONST. art. 251.

8. **ARTICLE 252:-** Under this article-

if the legislatures of two or more states think that the legislatures should pass legislation on state issues outside the legislature, and all the legislatures of those legislatures. If you go through such an act, Das Parliament can legislate such an issue. And if Congress passes such a law after such resolution has been agreed, it is the legislature, not the state legislature that has the power to amend or abolish it.[98]

9. **ARTICLE 253:-** As per this article,

"llegislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."[99]. It empowers the Parliament to bring into force international agreements.

10. **ARTICLE 254:-** This article explains that:

(1) If the state legislature passes a law that contradicts the law passed by the legislature in exercising its powers, or if the state legislature and the legislature's law relate to a subject that falls under the competition list (as per clause 2).) In case of conflict, the legislative law will prevail and the state legislative law will be invalid. The effect is the same whether or not Congress passed such a law before or after the state legislature.[100]

(2) The clause states that if an action taken by the state legislature conflicts with the actions of a previous or existing legislature, it will be subject to scrutiny by the president and, if approved by the president, the legislature's law will prevail. I am saying. However, Congress retains the power to amend, amend, or abolish such laws.[101]

ADMINISTRATIVE POWER

Administrative authority refers to the authority to enforce or enforce a law, that is, to enforce a law. In India, the federal government controls the legislation enacted by Parliament, and the state

[98] INDIA CONST. art. 252.
[99] INDIA CONST. art. 253.
[100] INDIA CONST. art. 254, cl.1.
[101] INDIA CONST. art. 254, cl.2.

government manages issues that fall into the state list. Art.256 Art.263 of the Constitution of India lists the administrative relations between the central and state governments.

11. **ARTICLE 256:-** It establishes-:

a stipulation that the state must exercise its executive functions while ensuring compliance with the legislation enacted by the Parliament, and the existing legislation enforced by the state and the federal government under its administrative authority is India.[102]

In case of default by the States in giving effect to the directions given by the Union is dealt with in **Art. 365** of the Constitution of India. Which says:

"Under the instructions for exercising federal enforcement powers, if the state fails to comply with, or does not comply with, the instructions given in exercising federal enforcement powers comply with or execute the federal instructions. Failure to do so it is legal for the President to determine that under any provision of this Constitution there has been a situation in which the state government cannot continue in accordance with the provisions of this Constitution."[103]

Such a situation could lead to a state of emergency under **Art. 356,** of the Constitution, which could impose presidential rules on the state. This provision aims to ensure that the state complies with the legislation enacted by Parliament in exercising executive power.[104]

The case of Rameshwar Oraon vs. State of Bihar and Ors. (1995) confirmed that the state government was obliged to act in accordance with the instructions of the central government. [105]

In the case of Tehseen S Poonawalla (S) v. Union of India Ors. (S)[106] According to Article 256 of the Constitution, "it is the duty of the central government to direct the state to maintain and stabilize the concept of collaborative federalism."

12. **ARTICLE 257: -** It provides for control of the Union over States in certain cases.

[102] INDIA CONST. art. 256.
[103] INDIA CONST. art. 365.
[104] INDIA CONST. art. 356.
[105] Rameshwar Oraon vs. State of Bihar and Ors., AIR 1995 Pat 173.
[106] Tehseen S. Poonawalla vs. Union Of India on 17 July, 2018.

(1) According to Article 256 of the Constitution, "it is the duty of the central government to direct the state to maintain and stabilize the concept of collaborative federalism."[107]

(2) The second sentence is that communications are the subject of a state list, but if the means of communication are of national or military importance, federal authority directs the state to build and maintain the means of communication. It states that it may extend to giving. The clause further states:

"Any provision of this clause should be construed as reducing the power of Parliament to declare a highway or waterway as a national highway or waterway, or the power of the Union to build means of communication as part of its Navy-related obligations. Not. And maintain and detain the work of the military and the air force."*[108]*

(3) Clause 3 says that: "The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State."[109] . A railway is a subject under the Union list and the government can give directions on protection measures even within a state.

(4) Clause 4 offers with the situation, that when, with inside the discharge of obligations as directed via way of means of the Union authorities beneath Neath clause (2) and clause(3), the State incurs a cost, which in any other case might now no longer had been incurred were discharging its ordinary daily obligations, then such extra sum have to be paid to the State via way of means of the Government of India as in keeping with settlement or in case of default, as can be decided via way of means of the arbitrator via way of means of the Chief Justice of India.[110]

13. **ARTICLE 258:-** Power of the Union to confer powers, etc., on States in certain cases.

(1) (1) The Clause one of this article, with the consent of the Governor, is that the President of the State conditionally or unconditionally delegates to the State or its civil servants to administer matters of power in other ways. It states that it can be done. State union government.[111]

[107] INDIA CONST. art. 257, cl.1.
[108] INDIA CONST. art. 257, cl. 2.
[109] INDIA CONST. art. 257, cl. 3.
[110] INDIA CONST. art. 257, cl. 4.
[111] INDIA CONST. art. 258, cl. 1..

(2) Clause 2 states that if the laws enacted by Parliament are applicable to the state and the state council does not have administrative authority over those laws, the Parliament may confer upon the State or its officers or authorize the transfer of power and duties to make such laws.[112]

(3) This clause provides that by delegating such obligations and powers to the State, the Government of India will pay the State an agreed amount or, in case of default, a State-determined amount. The Chief Justice of the Indian Supreme Court and arbitrators appointed to the state may arise in the management of these powers and obligations.[113]

ARTICLE 258A:- Power of States to entrust functions on the union.

The provisions of this article state that the Governor may, with the consent of the Government of India, conditionally or unconditionally delegate the power to exercise administrative control over activities under the control of the state to the Commonwealth increase.[114]

14. **ARTICLE 260:-** This article provides that-:

the government of India can obtain jurisdiction over a territory apart from the Indian territory by the way of agreement between the governments of that territory. Such an agreement will shift the executive, legislative or judicial functions to the government of India. And every such agreement must be subject to the laws on foreign jurisdiction applicable for the time being.[115]

15. **ARTICLE 261:-** It deals with public acts, records and judicial proceedings.

(1) This clause states that we must rely entirely on the actions, records, and legal proceedings of federal and state governments throughout the Indian Territory.[116]

(2) This clause provides that the above acts, records, and legal proceedings (clause 1) are substantiated and their effectiveness is determined by the relevant legislative legislature. [117]

[112] INDIA CONST. art. 258, cl. 2.
[113] INDIA CONST. art. 258, cl. 3.
[114] INDIA CONST. art. 258A.
[115] INDIA CONST. art. 260.
[116] INDIA CONST. art. 261, cl. 1.
[117] INDIA CONST. art. 261, cl. 2.

(3) It states that judgments or orders by civil courts nationwide may be enforced anywhere in India's sovereign territory in accordance with the law.[118]

16. **ARTICLE 262:--** It deals with solving disputes relating to interstate rivers or river valleys.

(1) This clause states that Parliament is empowered and can legislate to determine such disputes relating to the distribution and management of water on interstate highways or valleys.[119]

(2) This clause provides that Congress may pass legislation limiting the jurisdiction of Apex or other courts for such disputes referred to in clause (1).[120]

The Interstate river water Conflict Act of 1956 is the current law used to resolve such issues. The 2019 Interstate river water Conflict Amendment Bill was introduced in Lok Sabha in July 2019, but has not yet been passed by Rajya Sabha.[121]

One of the provisions of this law is that, at the request of the state government, an interstate water dispute court may be established to resolve such disputes if the central government deems it appropriate. This is a widely used method nationwide.[122]

18. **ARTICLE 263:-** "Provisions with respect to an inter State Council If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of

(A) Investigate and advise on possible disputes between nations.

(B) Investigate and discuss matters in which some or all states, or coalitions and one or more states have common interests also,

(C) The President established such a council to make recommendations on such subjects, especially for better coordination of policies and actions related to that subject, and it, and its organization and Procedure.

[118] INDIA CONST. art. 261, cl. 3.
[119] INDIA CONST. art. 262, cl. 1.
[120] INDIA CONST. art. 262, cl. 2.
[121] S. Rama Krishna, *The New Water Bill Solve Interstate Disputes*, THE SUNDAY GUARDIAN, (Dec. 9, 2021, 9:20 PM), https://www.sundayguardianlive.com/news/new-water-bill-will-solve-interstate-disputes.
[122] The Inter-State River Water Disputes Act, 1956, No. 33, Acts of Parliament, 1956 (India).

PART XII FINANCE, PROPERTY, CONTRACTS AND SUITS CHAPTER I FINANCE General."

The article states that the president has the power to form an interstate council to resolve interstate disputes to secure the public interest. And the council thus formed has some of the above obligations.[123]

LEGISLATIVE AND ADMINISTRATIVE POWER OVER UNION TERRITORIES

Art. 1(1) of the Constitution says that India is a Union of States[124] and **Art. 1(3)** of the constitution says that the territory of India shall consist of: the States, the Union Territories and any territory that may be acquired in the future.[125]

In India, the concept of Union Territory (UT) was introduced in 1956 Amendment Article 7. Currently, India has eight Union Territories. In 2019, two new territories, Jammu, Kashmir and Ladakh, will be formed, the two existing Union Territories will be merged, and unlike the states with their own governments, in India in the Union of Dadar and Nagar Haveli. Union territory and Daman and Diu were formed. India is under Union Territory, meaning that it will be under the control of the Central Government through the Deputy Governor of the Union Territory appointed by the President of India.[126]

ARTICLE 239 of the constitution deals with provisions of administration of Union Territories.

(1) This clause authorizes the President to administer the Union Territory to the extent that he may appoint a manager (vice governor) to carry out management positions if he deems it appropriate.[127]

[123] INDIA CONST. art. 263.
[124] INDIA CONST. art. 1, cl. 1.
[125] INDIA CONST. art. 1, cl. 3.
[126] Janane Venkatraman, E*xplained: State, Union Territory, and Union Territory with a Legislative Assembly*, THE HINDU (Dec. 9, 2021, 9:25 PM), https://www.thehindu.com/news/national/explained-state-union-territory-and-union-territory-with-a-legislative-assembly/article28837329.ece.
[127] INDIA CONST. art. 239, cl.2.

(2) This clause provides that the Governor adjacent to Union Territory may be appointed as administrator if the President deems it appropriate. The governor appointed in this way operates independently of the Council of Ministers.[128]

Union territory can also have elected governments like states. In fact, the Union Territories, Delhi and Pondicherry, with elected governments, enjoy the partial government brought about by certain constitutional amendments. After the 2019 divergence, Jammu and Kashmir is similar to this category, with power split between the Governor and the Chief Minister.[129]

ARTICLE 239A of the constitution talks about the creation of local Legislatures or Council of Ministers or both for the UT of Pondicherry.[130]

ARTICLE 239AA (Sixty Ninth Amendment Act, 1991) gives the UT, Delhi the right to have its own legislature.[131]

CONCLUSION

Analyzing all these provisions reveals that federalism is the essence of the Indian Constitution. India is also known as a quasi-federated state because it has the characteristics of both a federal government and a single government system. With legislative and administrative powers granted to both the central and state governments, unions/centres have the power to oversee state activities, maintain proper balance and ensure that there is no abuse of power. At the same time, the coalition dominates, but it relies heavily on the state to be effective in their programs. Legislative powers are listed in detail in Appendix 7 and the above three lists are given. This power allocation is for India as a whole, 28 states including UT in Jammu and Kashmir and Ladakh and 8 Union Territories (as a result of changes made in 2019) and government authorities. Each level of authority and function is established and guaranteed by the Constitution, which has long carried out the country's greatest democracy.

[128] INDIA CONST. art. 239, cl. 2.
[129] India Bureau, *What is union territory and how it's different from state*, BUSINESS INSIDER, (Dec. 9 2021, 9:30 PM), https://www.businessinsider.in/india/news/india-news-difference-between-states-and-union-territories/articleshow/71831006.cms.
[130] INDIA CONST. art. 239A.
[131] INDIA CONST. art. 239AA.

COMPANY LAW AND ITS VARIOUS ELEMENT

Author: Ishika Jain[*]

ABSTRACT

Law acts as a guideline to what is accepted in society. Hence, it is imperative for various organisations who abide by these guidelines. Indian Company Law was presented by government for the benefit of people. Companies Law is a means of discipline, regulations and guidelines while governing an enterprise. In order to understand Company Law, it is important for us to know about what a company is and what are its various forms. Seeing the need of the hour, our national government created a team, IRANI COMMITTEE, which introduced Companies Bill in 2012 which got approved and is known as Companies Act, 2013 today. Companies Act states the framework of an enterprise or an organisation. The authors try to elucidate on the journey of Indian Company Law by discussing various forms of companies, incorporation of a business and approval and removal of its Board of Directors.

Keywords:- *IRANI Report, Incorporation of Company, Board of Directors, Corporate Social Responsibility, Amendment in Company Law*

INTRODUCTION

People come and go but companies remain forever. The word company is acquired from the Latin word Com which means 'together' and Panis which insinuates 'bread'. Altogether, it depicts an association of people coming together and sharing their meal. Now, the word company has a wider meaning. It is now known for a business that is run by its investors in which people contribute large amount of capital. Company is called a body corporate because the persons hustle it according to the laws. In the legal sense, a company is both an artificial person as well as a natural person which is established under a law that already exists in the country. Law suggests that an enterprise and the owner of the enterprise are two different entities. They are treated as separate

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members. Being the creation of law, companies possess only the properties which are conferred to them according to the Memorandum of Association.

RESEARCH OBJECTIVE

- Understand the concept of incorporation of company.
- Analysis of Indian Corporate Law Concepts.

RESEARCH QUESTION

Evaluate the concept of Indian corporate law and analyse its various categories.

JOURNEY OF INDIAN COMPANY LAW

- Just like Common Law and Statute Law, Company Law has also been customised from English Acts. Company Law in India is one of the most cherished and dearest conventions. The very first Companies Act was passed in India in 1850 which followed the Joint Stock Companies Act, 1844 in England. By way of this Act, registration of the companies and transferability of the shares became easier.[132] The right of registration was given with or without liability, according to the Amending Act of 1857. Later, a law of 1860 granted similar rights to banking and insurance companies. The Companies Act of 1856 amended the existing law. The law governed matters regarding the establishment, directives, and dismissals of legal entities and other bodies. In 1951, the Government of India promoted the idea of the Indian Company Ordinance, which empowers the central government and the courts to directly interfere with the business of the company and take necessary measures for the welfare of the company. Later, the 1951 Amendment Act replaced the ordinance.
- The Companies Act of 1956 came into effect on April 1, 1956. This demonstration was ordered to integrate previous legislation that existed at the time and was equated with the enterprise. The Organizing Law Committee shared its report on the 1952 Walk, which proposed the current Organizing Law. This demonstration is the longest regulation ever

[132] ICSI, *History of Companies Act in India*, THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (Jan.22, 2021, 13:10 PM), https://www.icsi.edu/ccgrt/research/bare-acts/corporate-laws/#:~:text=A%20Royal%20Charter%20established%20the,the%20first%20time%20in%201844.&text=After%20this%20the%20Joint%20Stock,the%20first%20time%20in%20India.

passed by Congress. There were sometimes many adjustments made in the demonstration. Currently, the Companies Act consists of 658 sections and 15 registers.

- The main features of the 1956 Companies Act are the complete and proper disclosure of the various problems faced by miners, the complete details of the financial companies of the organization to be recorded, the arrangement of mediation and scrutiny by the authorities, and the authority to manage staff. Restrictions and requirements are included for the organization of the board to properly fulfill its obligations and protect the interests of the minority shareholders.[133]

CONCEPT PAPER ON COMPANY LAW, 2004; IRANI REPORT

The government was again responsible for the detailed amendments to the Companies Act of 1956. A concept paper was produced in legal form for public inspection, through which all the stakeholders were able to express their views on various aspects of the company's business law and encourage conceptualization.

The Government has found a Commercial Code Concept Paper to help submit relevant proposals to an independent expert committee for evaluation. The council was chaired by a Dr. JJ Irani. They aimed to simplify compact legislation and introduce the adoption of internationally recognized best practices, along with sufficient resilience to assess new positions in a timely manner.

The Dr. JJ Irani Business Law Expert Committee has produced a report on the new company law, which is elastic, snappy and user-friendly. All views, realities, and concerns are taken into account while creating stakeholder reports to enable adoption of best practices. The Commission's report also considers developing ideas for multiple progressive and visionary concepts to encourage a remarkable shift from a "government approval system" to a "shareholder approval and disclosure system." It also suggested to private and SMEs, the need for flexibility, freedom of management, and low-cost consent.[134]

[133] Sanjay Rawat, *Nature of a company: History, Meaning and Definition*, SOCIAL LAWS TODAY (Nov. 27, 2021), https://sociallawstoday.com/nature-of-a-company-history-meaning-and-definition/?amp=1.
[134] Mahavir Lunawat, *J.J. Irani Committee Report on Company Law – The recommended legislative Scheme and major recommendations*, IRANI COMMITTEE REPORT COMPANIES ACT, (Jan 19, 2022, 1:00 PM), http://mahavirlunawat.in/html/%5B2005%5D061SCL0047(MAG).htm.

COMPANIES ACT, 2013 & ITS APPLICATION

After the government took into account the recommendations of the Iranian Commission, a bill was introduced in Lok Sabha that puts more emphasis on self-regulation and minimizes coordination permits when regulating the company's operations. Following certain changes to the existing bill, the revised company bill, 2011, was introduced. Lok Sabha on December 18, 2012 and Rajya Sabha on August 8, 2013 amended the law. The law was later renamed as the Companies Bill, 2012.[135]

The 2012 Company Bill later became the 2013 Company Law. With the approval of the President, it was subsequently published in the Indian Bulletin on August 30, 2013. The Companies Act has been amended four times. The 2015 and 2017 Companies Act focuses on improving and facilitating the ease of running a business. It was subsequently revised by the Bankruptcy and Bankruptcy Act (2016) and the Finance Act (2017), omitting Section 253, Section 289, Section 304, and Section 325. The ministry has also issued notifications, messages, orders, and various revised policies for the smooth operation and enforcement of the law.

Unincorporated companies have been declared illegal and do not fall within the scope of the Companies Act 2013. Under Article 464 of the Companies Act 2013, an association or partnership may not represent more than the number of people specified to continue its business. The maximum number of people who can run a business are 100. Section 464 would not govern the number of members involved in the joint Hindu family business. This section does not apply even if the freelancer operates a business or partnership subject to certain laws.[136]

TYPES OF COMPANIES

There are numerous kinds of businesses. Businesses can be distinguished by size, control, motive, incorporation and number of staff present. Legal persons can be classified based on charter companies, registered companies and statutory companies. On the other hand, they can be recognized on the basis of a clear and endless commitment to risk organizations. It can be

[135] The Companies Bill, 2012.
[136] Divesh Goyal, *Applicability of Companies Act, 2013 based on Limits*, TAX GURU (Aug. 30, 2019), https://taxguru.in/company-law/applicability-companies-act-2013-based-limits.html#:~:text=Applicability%20of%20Provision%20under%20Companies,Managing%20Director%2F%20Whole%20Time%20Director%2C.

categorized as a single organization, a private company, or a public organization based on the number of workers in a large company. Little ventures and different organizations can be partitioned based on structure. There are organizations that can be recognized based on control also. They might be grouped into holding organization, auxiliary organization and partner organization. There are organizations which can be named as non-benefit organizations that are authorized under segment 8. These are government organizations, unfamiliar organizations, auxiliary organizations, venture organizations and so forth.

The three main types of companies that can be incorporated under the Companies Act 2013 are:

- Private companies,
- Public companies, and
- One Person company

Private businesses are the ones businesses which have minimal contributed capital and the articles prescribe that the personal businesses now no longer provide the rights of transferability of shares.[137] Except in case of 1 individual organisation, the maximum number of individuals could be 200. Private businesses restrict calling the general public with the intention to subscribe for securities in their organisation. One individual organisation refers to the businesses this is run with the aid of using unmarried human as a member. They are fashioned as a personal restrained organisation only. Public organisations are the businesses that are not personal. They have a minimal paid-up percentage capital.[138]

INCORPORATION OF A COMPANY

Under the Companies Act 2013, "A company may establish a public limited company with seven or more people for legal purposes[139]." Private companies need more than one person, but partnerships, as the name implies, require only one member.

[137] Arjun Radhakrishnan Nair, Private Companies – Restrictions on Transferability of Shares, IPLEADERS, (Aug. 6, 2017), https://blog.ipleaders.in/private-companies-restrictions-transferability-shares/.
[138] Types of Companies, BUSINESS JARGONS (Jan. 20, 2022, 11:00 AM), https://businessjargons.com/types-of-companies.html
[139] AK Prasad, *Public Limited Company Registration*, TAX GURU (Oct. 17, 2018), https://taxguru.in/company-law/public-limited-company-

The companies can either be-

- limited by shares
- or limited by guarantee
- or can be an unlimited company
- The first step in establishing a company is to apply to the registrar in your jurisdiction where the company's registration office is located, with form number INC32, along with the fees listed below. [140] There are various other documents and information that need to be linked to the application.

1. Signed memorandums and articles of company subscribers
2. A statement from the auditor, solicitor or company secretary, director, company secretary, and anyone involved in the establishment of the company that all legal and regulatory requirements are taken into account in the registration.
3. Directors must agree that they have not been angry with the company's advertising, incorporation, or management in the last five years, or have been the victim of fraud or breach of duty against other companies that execute the document.
4. An alternative place to contact his registration office.
5. In addition to proof of personality, the application for registration must include details such as name or family name, private land, and citizenship.[141]
6. The registrar then registers all required documents in the register subsections and issues a legal entity establishment certificate indicating that the company is registered under the law.
7. The registrar then gives the company a company ID number. This number is also included in the certificate and has a different ID than other existing companies.
8. The company is required by law to retain a second copy of all registered documents until it is finished. If the person deliberately sends fraudulent or false information or documents to the registrar, they will be charged with fraud under Section 447.

registration.html#:~:text=Minimum%20Seven%20People%3A%20Minimum%20seven,in%20the%20public%20limited%20company.

[140] Shweta Maheshwari, *Incorporation of company-Form SPICE+*, TAX GURU (Sep. 16, 2020), https://taxguru.in/company-law/incorporation-company-form-spice-plus.html.

[141] The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

9. Under corporate law, capital is the capital provided by an organization and is referred to as apparent capital, approved or enlisted capital, donated capital, purchased capital, redemption capital, settled stock capital, value stock capital, and sloping stock capital.[142]

BOARD OF DIRECTORS & THEIR APPOINTMENT

The board is the highest authority and chair of an organization. You run a business as a company or a corporation. The board of directors runs the company. They play a central role in functioning of the company. The board of directors is responsible for the overall functioning of the company. [143]Section 2 (10) of the Companies Act 2013 provides that the equivalent of an association, the "board of directors," means an integrated organization of regulatory agencies. They steer, manage and regulate business issues.

As indicated by area 149 of the Organizations Act, 2013, Top managerial staff ought to be people and not firm, affiliation or some other corporate body. By passing a special resolution, there can be maximum 15 directors in a public company. The section also provides that there should be at least one Director of India period of not less than 182 days during the year.

Assuming that there is no arrangement to appoint a Chief in articles of relationship of the organization, as indicated by segment 152, the supporters of the declaration shall be seen as the primary supervisor of the organization until the individuals delegate the chief. A person cannot be appointed as the director until he has a director identification number or any other number. Director Identification Number is extremely important for any Director. If the Director does no longer has his Director Identification Number, he is not taken into consideration to become the legitimate Director beneath the Act.[144] Person shall no longer be appointed as Director until he gives his consent and files the same with the registrar within 30 days of his fixture. Board is empowered to

[142] Dhruv Bhardwaj, *Incorporation of a company*, IPLEADERS (June 22, 2019), https://blog.ipleaders.in/incorporation-of-company/.

[143] James Chen, *Board of Directors,* INVESTOPEDIA (Aug. 29, 2021), https://www.investopedia.com/terms/b/boardofdirectors.asp.

[144] TG Team, *Disqualification of Directors not Deactivate or Cancel DIN*, TAXGURU (Nov. 4, 2019), https://taxguru.in/company-law/section-1642-disqualification-directors-not-deactivate-cancel-din.html.

appoint a director, in case the original one is missing for the duration not less than 3 months, from the state in which board meetings are ordinarily held, in accordance to the Companies Act. [145]

If a director is appointed by a majority of the shareholders of the Company, the Company may be dismissed at any time after the appointment of the director and before the expiration of the term of office. This does not apply to directors appointed by the National Company Court. Independent directors reappointed in the second term may be dismissed by the Company if a majority of 3/4 pass the resolution and are given the opportunity to be heard. The recalled director vacancies will be filled by the directors present at the current recalled meeting. A board of directors is held to operate the company efficiently and effectively. Company should hold a minimal number of meetings [146]for the proper functioning according to the Companies Act, 2013.

The board is very important because it discusses policies, management, strategies, and stakeholders' expectations. The first meeting of the board of directors must be held within 30 days of the merger date. There are at least four consecutive executive meetings, and the interval between the two meetings is within 122 days. Section 8 states that the entity should hold a meeting at least every 6 months. Two directors or one-third of all the powerholders must attend the meeting. We also hold a general meeting of shareholders. Shareholders' meetings are held when it is necessary to comply with the Companies Act 2013 and the provisions of the Act. The general meeting is the first meeting of the company. The power of decision-making is in the hands of members and the board of directors. Regular meetings provide individuals and managers with the opportunity to maintain a perspective on organizational issues. Gathering yearly and comprehensive gathering is necessary. The hole between two yearly comprehensive gatherings ought not to surpass 15 months. It very well may be called during business hours from 9 AM to 6 PM. It ought to be stowing away at the enlisted office of the organization or the state where the enrolled office is arranged. As indicated by area 102(2) (a) ought to be considered extraordinary other than—

- thought of budget summaries and reports of the Directorate and evaluators

[145] *Directors and Managing Directors*, LEGAL SERVICE INDIA (Jan. 22, 2022, 1:25 PM), https://www.legalserviceindia.com/company%20law/com_6.htm#:~:text=A%20person%20shall%20not%20act,30%20days%20of%20his%20appointment.

[146] MCA, GOI, *Management and Board Governance*, MINISTRY OF CORPORATE AFFAIRS (Jan.22, 2022, 12:30 PM), https://www.mca.gov.in/MinistryV2/management+and+board+governance.html#:~:text=25.1%20The%20requirement%20of%20the,should%20not%20exceed%20four%20months.

- assertion of any profit commitment of Chiefs instead of those ending
- what`s more the commitment of, and the fixing of the compensation of bookkeeper

Section 99 of the Companies Act states that if any mockery occurs while organising the meeting of the enterprise, the company and the officer who is the law breaker shall be punished with fine of one lakh rupees and if the default continues to happen, the fine would keep on extending by ₹5000 on each fault.[147]

CORPORATE RESPONSIBILITY & BUSINESS ETHICS

There are certain corporate social responsibilities as well. Companies with net worth of more than Rs.500 crore, income of Rs.1000 crore or more or a net profit of Rs.5,00,00,000 or more are responsible for protecting their corporate social responsibility. The board has to maintain a report of Corporate Social Responsibility Committee. The committee of social responsibility for the corporate shall develop the responsibilities that has to be undertaken by the company in its area of subject which is specified in Schedule VII. [148]

The committee also determines the costs that the company must not exceed in order to fulfill these responsibilities. They also need to keep the company in mind while taking the responsibility for their field or topic. The board is responsible for ensuring that each organization borrows consistently at substantially 2% of its normal net income, as set out in the company's social responsibility strategy. Assuming a certain amount is withheld, not used at that time, and is not equated with an on-going venture, that amount will be remitted to the assets determined under Schedule VII within the last six months of the currency year. If this amount is saved for on-going business, the unused amount will be transferred to a special bank record called the Unused Corporate Social Responsibility Record within 30 days of the end of the payment year. The reform order states that the organizations can be fined more than 50,000 rupees and can be fined up to 25 rupees. Employees who are part of the organization and have defaulted will be imprisoned for a long period of time, fined at least 50,000 rupees.

[147] Surabhi Bairathi, *Directors and their liabilities*, LEGAL SERVICE INDIA (Jan. 21,2022, 5:00 PM), http://www.legalservicesindia.com/article/577/Directors-&-Their-Liabilities.html.
[148] Vijaya Lakshmi, *Section 135 Corporate Social Responsibility & Schedule VII*, TAXGURU (May 12, 2021), https://taxguru.in/company-law/section-135-corporate-social-responsibility-schedule-vii-csr.html.

Every business has its associated business ethics. Business ethics generally means business behavior. It helps the company fulfil its social responsibilities, improve profitability and promote employee productivity. It also means doing the right thing at work. The growth of an organization depends on business people who follow business ethics. When a habit is accepted by both society and members of the organization, it becomes the ethics of the organization.

According to Wheeler, business ethics is both an art and a science. It relates to business ethics as it maintains a smooth relationship with the environment, its various types of groups and organizations, and reorganizes its moral responsibility for the right and wrong of doing business. As Rogene states, business ethics refers to the right behavior of an individual in the association when making business decisions. There are times when an individual has to fall into a moral situation. A plight is a situation in which you need to choose from the available options, as well as situations that are considered negative or completely irrelevant. You may have to choose between right and wrong. Finding the right situation seems to be more difficult than choosing the wrong path, known as the moral dilemma. It is also known as the ethical paradox. However, you need to resolve the issue. Dilemmas arise from the failure of an individual's personality and the conflict between individual and organizational values. While making the right decision, businessmen need to keep in mind not only their stakeholders, but also impact of such decisions. In these situations, you need to behave in a resolute manner.[149]

CONCLUSION

Since, the company is a legal entity, it is not a human being, but an artificial person which has many of the policies, obligations, authorities, and licenses recommended under law. Since the owner of the company and the company are two different persons, the company can function as a natural person within the scope of the articles of incorporation.

In order to maintain discipline in business activities, it is essential to define regulations. Companies also need a dispute reading wrestling mechanism that provides a means of resolving day-to-day disputes. Disputes can arise for a variety of interests or other reasons. In such cases,

[149] Kezia Farnham, Business Ethics and Corporate Social Responsibility Debunked, DILIGENT (Apr. 8, 2021), https://www.diligent.com/insights/esg/business-ethics-and-corporate-social-responsibility/#:~:text=While%20business%20ethics%20and%20corporate,customers%2C%20suppliers%20and%20other%20stakeholders.

commercial law plays a central role. Business law also protects corporate intellectual property such as patents, trade secrets, symbols, copyrights and names. It also protects the interests of consumers. The Business Act also defines guidelines for the provision of legal financial statements by companies. It also helps the government by collecting tax information and subsidizing people in need. It sometimes reassures the enterprise.

The government has enacted various laws and regulations to protect businesses and their interests. The 2013 Organization Act, pays homage to new ideas that maintain corporate visibility, commitment, management and support chiefs, extraordinary courts, secretariat norms, prestigious secretaries, class activities, integrated evaluators, accountant changes, refusals to be elected, etc.

However, the Companies Act 2013, does not allow registration of companies that have not been incorporated and have been declared illegal. Certain number of people have to work for the company. The Companies Act 2013 also provides imposition of various types of penalties and indemnities, if a company fails to comply with the law.

COMPARATIVE ANALYSIS BETWEEN INDIA AND SWEDEN ON THE INSTITUTION OF OMBUDSMAN

Author: Sneha Ann Santosh[*]

ABSTRACT

The term ombudsman connotes an institution which exists to represent grievances. Accordingly, it refers to an office established by the constitution or by the Legislature and an independent high-level public official, who is responsible to the Legislature or Parliament and responsive to citizens is the head of such office. The concept of Ombudsman first originated in Sweden in 1809. The word "Ombud" in Swedish means representative, agent, or intermediary. The gradual spread of the idea began after a decade when Denmark, Norway and New Zealand adopted the institution. The reason why such a notion was implemented, because the existing machineries such as the courts, administrative agencies and other government bodies proved fruitless to the voice of the public, and to combat this situation a special individual who can particularly look into such matters was required, who primarily solved citizen's complaints against the bureaucracy.

Keywords:- *Ombudsman, Sweden, Riksdag Lokpal and Lokayukta, Banking Ombudsman, Insurance Ombudsman*

RESEARCH QUESTIONS

To understand in-depth the evolution of Ombudsman, the same is discussed through the following questions:

1) Has the concept of an Ombudsman fully developed in India?
2) Is the success of the Ombudsman more efficient in the Banking and Insurance sector?
3) Does the Swedish Parliamentary Ombudsman have a strong office in comparison to India?

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RESEARCH OBJECTIVE

The aim of the paper is to provide a comparative analysis between India and Sweden on the institution of Ombudsman by producing statutes that support the implementation of the Ombudsman in both countries. The research shall produce infrastructural comparison present in both countries through effective polices and duties established by the respective statutes. Additionally, other sectors of the government that hold Ombudsman offices shall be examined as well. To supplement the same, criticisms and suggestions have been put forth which would help to understand the study exhaustively.

REVIEW OF LITERATURE

- Haridwar Rai and Sakendra Prasad Singh, *Ombudsman in India: A Need for Administrative Integrity and Responsiveness*, 37 THE INDIAN JOURNAL OF POLITICAL SCIENCE 43, 43-63 (1976), https://www.jstor.org/stable/41854746.

The article states how the concept of Ombudsman evolved in the wo0rld due to the existing shortcomings in administration and how high discretionary power given to administration can lead to maladministration and corruption. Ombudsman institution is needed to create a machinery that is responsive to people. It further talks how the concept originated in different parts of the world, beginning from Sweden and then developing across countries like Denmark, Tanzania, Malaysia. Further, the article specifies how such an institution is required in India, considering the rampant corruption present in its offices and provides detailed provisions of its appointment, removal, duties and other guidelines. Lastly, it also specifies safeguards to criticisms of the institution to ensure its success in the country.

- Derya Ozmen, *India Ombudsman: Aspect of Structural Institutional and Functional*, 2 INTERNATIONAL JOURNAL OF SCIENCE AND SOCIETY (2020), https://doi.org/10.54783/ijsoc.v2i4.252.

The purpose of this article is to provide information on the structural, institutional and functional aspects of the Indian Ombudsman representing Asia and how the institution plays an important role for the Indian democracy and public administration. Further emphasis is given on the political influence of the institution and the structural influence of the Lokayukta or state ombudsman in the country. The article also states the contribution of state Lokayuktas who have contributed to

citizens even in matters not concerning corruption. It also states that despite of absence of Lokpal at the federal level, the Ombudsman institution in India has contributed to its spread over the world and in democratisation of the country.

- I.P. MASSEY, ADMINISTRATIVE LAW (EBC 2017).

Chapter 13 of the book mentions how a good system of administration that is responsible and responsive is required to protect the rights of citizens and so, an Ombudsman who is the protector of people was produced. It further states the developments in US, England, and briefs the developments of the Ombudsman institution on how it evolves in India. It proposes ideas on how the Ombudsman has jurisdiction, its appointments and also the criticisms of the old bills passed prior to 2010. However, the progress of Lokayuktas is addressed and it simultaneously brings attention to the political influence in its appointment. Finally, reasons are also provided to ensure government's non-interference in enquiry proceedings, highlighting the failures of the institution as well.

- EBC's Insurance Rules, 1939 along with Insurance Ombudsman Rules, 2017 Indian Insurance Companies (Foreign and Investment) Rules, 2015 and Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016, Chapter 2, 20th Edition, 2021.

Under Chapter 2 of the book, the Insurance Ombudsman Rules, 2017 specifies the provisions in relation to the insurance sector. It states how the Executive Council of Insurers create guidelines for the Insurance Ombudsman along with government representative from finance ministry and other important functionaries to solve disputes between consumers and insurance agencies. It mentions the tenure of the officers, renumeration given and other duties of the Ombudsman. To keep the Ombudsman in check, an advisory committee is also appointed to ensure fair practice and unbiased opinion.

ANALYSIS

THE LOKPAL AND LOKAYUKTA

In India, the concept of Ombudsman was first introduced when it was suggested by M.C Setalvad in his speech in All India's Lawyer Conference in 1962, which was immensely probed into by the Administrative Reforms Commission, which later, resulted in the introduction of the Lokpal and Lokayuktas Bill, 1968. The term Lokpal was coined by Laxmi Singhivi, the then member of

Parliament. But this bill lapsed due to the dissolution of the government and was brought up many times later in the Parliament but with no avail due to violent protests, fall of the government, and controversy over the inclusion of the Prime Minister within its jurisdiction. Gradually, the impetus to introduce and pass the bill was a movement commandeered by Anna Hazare against corruption in India, which finally was instituted under the Lokpal and Lokayuktas Act, 2013 (hereinafter referred to as 'the Act') by then Congress-led union government. It must be noted that though the government of India took time discussing and debating widely over the bill, the first state that is Maharashtra introduced Lokayukta through the Maharashtra and Lokayukta and Upa-Lokayuktas Act, 1971. The main objective of the Act is to establish a Lokpal for the union and Lokayukta for the state to inquire into allegations of corruption against public officials of the government.

Section 3[150] of the Act, states that the Lokpal shall consist of a chairperson who has been the Chief Justice of India, judge of Supreme court or an eminent person of eligibility, and eight members of which fifty percent shall be judicial members and others belonging to scheduled castes, schedules tribes, other backward classes, minorities and women. The judicial members must be a judge of supreme court or chief justice of high court, while the others must have eligibility with expertise over anti-corruption policy, public administration, finance and so forth of 25 years. The chairperson and members are appointed by the Selection Committee that consists of the Prime Minister residing as the chairperson and other members which consist of the Speaker of the House of the people, Leader of Opposition in the House of the People, Chief Justice of India or judge of supreme court and an eminent jurist nominated by the President. In addition to the Selection Committee, a search committee consisting of at least seven persons having special knowledge in the field of policy making, anti-corruption policy and others is constituted for the purpose of preparing a panel of persons for appointment of Lokpal for the Selection committee. It is necessary that the body of Lokpal should not consist of a member who is the member of Parliament or Legislature of any state or union, person convicted of any offence, less that forty-five years of age, member of Panchayat and removed from the service of union or state. Supplementarily, if such a member or chairperson holds any office of trust or profit, carries on business and practices any profession must resign from such office, sever connection with business and cease to practice the profession respectively.

[150] The Lokpal and Lokayuktas Act, 2013, No. 1, Acts of Parliament, 2014 (India).

Under the seal and warrant of the President of India, the chairperson and members of the Lokpal are appointed for a term of five years or till he attains the age of seventy-five, whichever is earlier and after ceasing to hold office shall not be reappointed at the same office, any other office of profit under the union or state, contesting elections for a period of five years as per section 8[151] of the Act. A secretary of the Lokpal is also appointed by the Chairperson and other officers and staff which most importantly includes the Director of Inquiry and Director of Prosecution heading the Inquiry Wing and Prosecution wing respectively. The Jurisdiction of the Lokpal includes the Prime Minister, unless the allegations do not relate to international relations, external and internal security, public order, atomic energy and space, provided two-thirds majority of Lokpal considers the initiation enquiry, Minister of the union, member of either house of Parliament, Group A, B, C and D officers as under section 2 of the Prevention of Corruption Act, 1988 and other officers or employees mentioned under section 14 of the Act.

CRITICISM

Although, the act created a landmark moment, it was passed in such a manner that the provisions had defects in spite of the number of times the bill was introduced in Parliament. In 2014, as the NDA government emerged victorious, the institution of the Lokpal was suspended in failure of not recognising the leader of the opposition for the Selection committee. The suggestion to introduce an amendment to this composition faltered when the government passed a bill[152] in 2016, contrarily diluting the scope of the Act, by discarding the way in which the assets of public servant's spouses and dependent children are disclosed. This was widely criticised as illiberal because, often, the assets that are acquired illegally are transferred to the family members. The absurdity lies in how the law wasn't in operation but, Section 44 of the Act was operationalised irrespective of the appointment of the Lokpal body after the Act's inception. Moreover, section 63 of this Act delineates that from a period of one year when the act was commenced, all states are required to implement a Lokayukta. In 2018, when the Supreme court questioned 11 states of their inability of not establishing a Lokayukta of which a few were Tamil Nadu, Mizoram, Jammu and Kashmir, Telangana and others, only then steps were taken to implement them. Prior to the Supreme court

[151] The Lokpal and Lokayuktas Act, 2013, No. 1, Acts of Parliament, 2014 (India).
[152] The Lokpal and Lokayuktas (Amendment) Bill, 2016.

order, states like Kerala and Karnataka had state laws that implemented such body and are considered to be model level laws for other states.

Albeit to the formulation of the Act after 6 years, states still do not have an appropriate body of members to look into corrupt activities of public servants, along with inadequacies in different state Lokayukta laws. For instance, Tamil Nadu does not have the provision of a prosecution wing similar to the central legislation, making it difficult to charge offenders, also the Tamil Nadu Lokayukta Act, 2018 provides provisions for penalty to those who make false complaints while no fine or imprisonment exists for the corrupt officers if found guilty. Additionally, the state Act does not consist of a judicial member or apolitical person in the selection committee but only members of political influence. One of the features of the Act is the prosecution wing, which does not require prior sanction from the government to prosecute officials as it always results in delays and in escape of the accused, but the amendment to the Prevention of Corruption Act, 1988 strengthens prior sanctioning, to prosecute public officials for any investigating authority. Lastly, the Lokpal at the centre was only formed in 2019, six years later after the Act commenced, proving how both Centre and State are inefficient and reneging in their promise for an anti-corrupt India with low budget, weak infrastructure and other deficiencies.

STATURE OF THE BANKING AND INSURANCE OMBUDSMEN

It should be stressed that, the Banking and Insurance Ombudsmen was established prior to the Lokpal and Lokayukta in India, showing more prominence in the country than the actual establishment of an Ombudsman in the country. The financial sector in the country has more cases resolved which aided in deterring financial frauds between customers and insurers and banks. Under the Banking Ombudsman Scheme, 2006 (as amended up to 2017) the Reserve Bank of India appoints a Banking Ombudsman in the rank of a Chief Manager or General Manager for a frame of three years and specifies the territorial jurisdiction of each Banking ombudsman who shall receive complaints relating to deficiencies of banks and their services irrespective of pecuniary value. Clause 8 of the scheme provides various grounds for redressal of which a few are; non-payment or delay of payment or collection of cheques, levying charges without giving advance notice to the consumer, refusal to close or delay in closure of accounts, closure of the deposit accounts forcefully without providing justifiable reason and appropriate notice of the same. A report of general activities should be submitted every year of preceding financial year to the

Reserve Bank as directed and if necessary, for public interest. The Banking Ombudsman also has the authority, if the agreements aren't settled through mediation or conciliation between complainant and bank, to pass an award or reject the complaint in account of the evidence and pleadings before him within a period of one month from the date of receipt of complaint.

Compared to the Banking Ombudsmen, the Insurance Ombudsmen have broad provisions for institution provided by the Executive Council of Insurers under the Insurance Ombudsman Rules, 2017. The Executive Council of insurers shall consist of nine members including the chairperson which are; two person who are life insurers, two person who are general insurers, one person who is health insurer, representative of the Insurance Regulatory and Development Authority of India (IRDAI), representative from ministry of finance, chairman from Life Insurance Corporation of India (LIC of India) or chairman of General Insurers' (Public Sector) Association of India (GIPSAI) and the chairperson of either LIC of India or GIPSAI by rotation. Based on territorial jurisdiction, a number of Ombudsmen are selected by a selection committee comprising of the chairperson of IRDAI who is also the chairman of the selection committee, one representative each of Life Insurance Council and General Insurance Council from the Executive Council of Insurers and a representative of Government of India, which finally shall be based on Executive Council's criteria. Both the Executive Council of Insurers and Insurance Ombudsman are appointed for a period of three years, where the latter is eligible for reappointment unless he has attained the age of seventy years. The duties of the Insurance Ombudsman shall include redressal of the case where the policy terms and conditions are misrepresented, insurance policy after receiving premium in life and general insurance including health insurance is not issued, matters in violation of the Insurance Act, 1938 or other rules issued by IRDAI and so on. Similar, to the Banking Ombudsman, the Insurance Ombudsman has the authority to settle disputes through mediation which if impossible, can pass award for the same. Further to ensure that the system works efficiently, an advisory committee consisting of five members is constituted to review the Ombudsmen's performance.

THE PARLIAMENTARY OMBUDSMEN

Sweden is the foremost country that initialised the concept of an ombudsman institution which now is constitutional body making it a requirement in the country. This progress can be attributed to socio-political conditions, increased participation in the administration, development of

democracy and rule of law and the need to assure the protection of human rights.[153] The Constitution of Sweden comprises of four fundamental laws, namely the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, including a Riksdag Act. As per Chapter 13, Article 6 of the Instrument of Government, the Riksdag or the national legislature of Sweden, elects the Parliamentary Ombudsmen for the supervision of the implementation of laws and other public activities as requested having access to documents of the court of law, administrative authorities and information when requested to employees of state and local government. Chapter 13, Articles 2 to 4 of the Riksdag Act specifies the members of the Parliamentary Ombudsmen which consists of four members: one Chief Parliamentary Ombudsman and three Parliamentary Ombudsmen. A deputy ombudsman may also be elected by the Riksdag. The members are elected for a period of four years and the successor assumes office without any delay as elected by the Riksdag, who also get the Ombudsman or Deputy Ombudsman removed from office when such Ombudsman loses the confidence in Riksdag.

EFFECTIVENESS OF THE INSITUTION

The Swedish Ombudsman being non-partisan is unique in grievance handling, appeal and investigation compared to other countries. He is an officer of the legislature and politically independent as the office is provided by the Constitution. No legislator can intervene in the investigation of the Ombudsmen once begun as it is the latter's right to do so. He also has the authority of reviewing the matters handled by the court and a serious error committed by a judge can be prosecuted by the Ombudsmen however, he has no power to quash a decision or reverse the same. He has no direct control over the courts or its administrative system. Even legal proceedings of criminal nature against a member of the Supreme court can be initiated by him. Further, issues presented in newspapers or by the press can be investigated, provided the complainant writes a letter and, appeals against administrative decisions. This could be done in a direct, speedy, cheap and an informal manner as compared to the courts. Cabinet Ministers are omitted from the jurisdiction as the Ministers are not responsible for administration yet, they are

[153] Haridwar Rai and Sakendra Prasad Singh, *Ombudsman in India: A Need for Administrative Integrity and Responsiveness*, 37 THE INDIAN JOURNAL OF POLITICAL SCIENCE 43, 43-63 (1976), https://www.jstor.org/stable/41854746.

not wholly excluded in case the former acts beyond authority. This is the reason why strict division of powers between legislature, executive and judiciary exists to make certain that individual departments are responsible to the rule of law and not minsters. It is not essential that complaints should be lodged before the Ombudsman because they themselves can initiate investigation. Also, persons need not have personal interest for a complaint. An unusual characteristic of the Swedish Ombudsman is the authority to oversee the courts which is a special duty for upholding the liberty of the citizens, specifically in regards to arrests and detention. Another distinctive feature is the work of Ombudsmen are open to the press, who observes the former closely.

Apart from the Parliamentary Ombudsmen, there exists other Ombudsman in different fields. The Consumer Ombudsman under the Swedish Consumer Agency is well known for its service of protecting the consumers from unfair marketing practices of business operators and represents them in court as well. The Equality Ombudsman ensures that discrimination based on sex, religion, ethnicity or age does not occur in the society and also works to promote equal opportunities for both men and women at workplace. The Ombudsman for Children is another government agency entrusted to build information relating to children's rights and interest in order to help them especially from vulnerable situations on the basis of the United Nations Convention on the Rights of the Child. Finally, the Press Ombudsman is a voluntary agency that exists on the financial support of three press organisations to regulate good journalistic practices among the newspapers. Thus, the origination of the Ombudsman concept and its evolution over time along with powerful legislation has brought an effective system that scrutinises the application of public administration in the country.

CONCLUSION AND SUGGESTIONS

The comparison between India and Sweden through the working of the Ombudsman institution in respective countries makes it clear, that a stronger Ombudsman exists under the Constitution in Sweden than in India as India only recently launched the Lokpal at the centre appointing former supreme court judge Justice Pinaki Chandra Ghose after six years from the Act's commencement. The Parliamentary Ombudsman have more power to review court matters while maintaining Judiciary's independence, and initiating investigation themselves. The very objective of an Ombudsman is to find the corrupt officials and malpractices of administration and make the citizens aware of the same who have the right to know about them. However, in India, unless the

government approves no cases brought before the Ombudsman is publicly available. The central government has provided authority to the state government to assemble their own Lokayukta's, the situation is worse at the regional level because some states still do not have appropriate members involved in its formation, which shows the inefficiency of the central government in providing stringent provisions.

Therefore, Ombudsman institution should be strengthened by centre and states to deal with corruption in India. A stronger Ombudsman in India needs to be established, which has the authority, without prior sanction from central government, to investigate matters like the Parliamentary Ombudsmen in Sweden has. More significance is given to the Banking and Insurance Ombudsmen than the Lokpal and Lokayukta, which should advocate for the negligence caused by the top public officials and other public servants. Other factors responsible for the weak and fragile structure in India are low budget, legislation loopholes and insignificant recognition towards the Ombudsman institution. Moreover, less awareness resides among citizens, for example, an Income Tax Ombudsman subsisted until it was abolished in 2019, due to reduction of grievance redressal to single digits, persons employing alternative methods to redressal and no independence from tax department. Similarly, Banking Ombudsman Scheme was given more publicity through newspapers and awareness camps. Despite the disadvantages, few benefits that can be identified in the country is a strong Karnataka state law, which in 2011 after scrutiny of reports, implicated the Chief Minister resulting in his resignation from office owing to a mining scam.

To conclude, effective measures have to be laid down by the state and central Ombudsmen to make sure that people are protected and encouraged to bring forward cases, where the complainant shouldn't be the one to investigate the cases and to bring substantial evidence. The provisions of punishment should be laid down for public officials who are found guilty. Enhancing administrative cooperation and boosting public cooperation from fear of reprisals and various other factors shall guarantee the success of the institution.

THE DOCTRINE OF ESSENTIAL PRACTICES OF RELIGION

Author: Vivek Serjy[*]

ABSTRACT

India is a secular state which has no official religion of the State. However, all religions are given equal respect and dignity. The people are free to profess, practice and propagate[154] *their religion and this is protected under the fundamental right of Article 25. It is to be noted that the Supreme Court is the custodian of the Constitution and has the right to interfere in the legislations that violate the Fundamental rights of the Citizens i.e through the process of Judicial review. On other hand, the practices that are inherent and essential part of the religion cannot be interfered with by the Judiciary or any other organ as it is protected by the Constitution.*

Eversince the case of 'The Commissioner, Hindu Religious Endowments, Madras vs Sri Lakshmindra Thirtha Swamiyar of Sri Thirur Mutt', the Apex Court has developed the doctrine of the Essentiality test to determine whether the religious practice is essential part of the religion or not. The primary goal of the research paper is to analyse how the Judiciary employs this test to different cases pertinent to religious practice and describe the criticisms followed on this test. Also, the research also analyses how the role of the Supreme Court varied from the interpreter of the Constitution to the role of theological interpreter. The research is based primarily on the ratio and judgements of the cases. In the end, the overall utility of the essentiality test would be elucidated.

Keywords:- *Article 25, Religious Freedom, Judicial Review, The Essentiality Test*

INTRODUCTION

Secularism is the DNA of Indian society. Even before the European definition of Secularism arose from the French revolution, India was a pot of different religions, cultures and languages

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[154] INDIA CONST. art. 25(1).

coexisting with each other. The respect for each other's identity, accomodation of communities and appreciation of ideas and thoughts of different schools was part of the Indian society. The Golden Age of India at that time of Hindu Kingdoms of Maurya dynasty, the open mindedness and civilisation were intertwitched. It was at the same period where the new religion of Buddhism flourished and expanded across the world. At the rule of emperor Akbar (termed it as the Golden Age of Mughal empire), the emperor advocated a new religion of 'Din-i-Illahi' which is a collection of syncretic ideas of all religions and promoted the religious unification of the country. The Freedom fighters of India like Gandhi advocated and fought for one united independent sovereign India where all the faiths, castes and creed are treated one.

India has a history of religious freedom and accomodation. This is the reason why the secularism in the Constitution has been deeply inscribed and accepted within the Indian society. The Western definition of Secularism arose primarily from the French revolution, where the State and the Church are separate and the Church has no role in the administration of the State and vice versa. The word 'laicite' primarily arose from the context of Separation of powers of the State and the Clergy. However, the Secularism model followed in India is religious plurality and accomodation.

In the Indian Constitution, religious freedom has been protected under Article 25 and Article 26. The religion has not been defined in the constitution but the Supreme Court has the power to define it in judicial matters. A framework was needed to determine the practices which are essential to the religion or not, therefore, it developed the doctrine of 'the essential practices of religion' or also known as 'the Essentiality Test'.

THE ESSENTIALITY TEST:

Analysis

Primarily in the case of Hindu Religious Endowments, Madras v. Shri Laskmindar Tirthu Swamiyar of Shri Shirur Mutt, the Apex court defined the framework which defines what constitutes the practices that are integral part of religion and what are secular practices associated with the religion. This framework in short was known as the Essentiality Test. The Apex Court considers this crucial as the essential practices of religion are protected under Article 25 and the State cannot interfere.

The Supreme Court implied in the above case that all rituals, modes of worship and ceremonies come under the essential practices of religion.[155] It is essential to note that there should be differentiation between 'laws' and 'laws in force'. Laws passed by the competent authority in the territory of India prior to the commencement of the Constitution and are not previously repealed are referred to as 'laws in force'. Whereas, the laws which are the existing legislations, are passed in the both houses of Parliament with the acceptance of the President of India through his signature.

Here, there are uncodified religious personal laws which do not come under the ambit of 'laws in force'. This is important because the Supreme Court may not be empowered to make any of these uncodified religious personal laws voidable under Article 13 of Indian Constitution even if such laws are in contravention to the fundamental rights. It is reasonable to think that these uncodified personal laws do not come under the ambit of the clauses of Article 13, so how can the Supreme Court strike down such laws.

However, it is interesting to see in different cases how the Apex Court deals with constitutional validity of religious practices using the Essentiality Test. Also, the exceptions of Article 25 used by the Apex Court is used along with the essentiality test. Article 25 stated that the religious freedom to profess, practice and propagate is subject to the public order, morality and health and other parts of the provision and the Apex Court has used the literal interpretation for these exceptions of Article 25 in several other cases.

Sri Venkatarama Devaru v. State of Mysore [156]is one of the cases. Here, the issue was whether the exclusion of people outside the Hindu temple was an essential practice of a religion. According to some ancient religious texts, the Harijan community is not permitted to enter this temple. The Apex Court eventually used the essentiality test. Hence, the Apex Court ruled out the judgement of the ancient religious book prohibiting specific groups from entering the temple and declared that the temples are open to all. The court ruled that "temples should not be confined to certain groups for the purposes of social welfare and reform as outlined in Article 25".[157]

[155] The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt, AIR 1954 SC 282.
[156] Sri Venkatarama Devaru v. State of Mysore, AIR 1958 SC 255.
[157] The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt, AIR 1954 SC 282.

In the case of Dilawar Singh v. State of Harayana[158], Punjab and Harayana court was working on the issue whether Sikhs could enter in the Court as witness donning a Kirpan. The Court depended on the interpretation of religious books such as the Sikh history and religion to determine the essentiality test. The Court using the judgements and verdicts of Shirur Mutt case and Avadhuta case, upheld that "the wearing of Kirpan was an essential of Sikh religion and therefore, allowed the Sikhs to wear five khakars including the Kirpan."[159]

Similarly, in the case of Jagadishwaranand v. Police Commissioner, Calcutta[160], it was the question whether Tandava dance is recognised as an essential practice of religion. It was a controversial case that has created a lot of debate. Here, the Tandava dance by the Anand Marga religious group involved dancing in the street with skulls and knives on the hand. The police charged them under Section 144 of CrPC. The Ananda Marga community filed a petition regarding violation of their essential religious beliefs. The Judiciary was criticized for being given excessive power in deciding the difference between essential and non-essential religious practises. The Supreme Court has established the right to decide whether a particular ceremony or observance is considered essential by the tenets of a certain religion.

In this case also, the Apex Court has asserted the right to determine whether a particular rite or observance is regarded as essential by the tenets of a particular religion. The Apex Court has considered the status of a separate Hindu religious denomination but ruled out that the 'Tandava' dance is an essential practice of the religion. The bench stated that "the Tandava dance involved in the street was formed after ten years of the formation of Ananda Marga community, according to the religious texts. Moreover, this type of dance involving knives on hand and skulls involve the degradation of public morality and deprivation of public order. Hence, on this basis, the Tandava dance is not an essential practice of the Ananda Marga denomination of religion." [161]

[158] Dilawar Singh vs. State of Harayana, AIR 2016 P&R 149.
[159] *Id.*
[160] Jagadishwaranand v. Police Commissioner, Calcutta, (1983) 4 SCC 522.
[161] *Id.*

ROLE OF SUPREME COURT THROUGH ESSENTIALITY TEST

From the Shirur Mutt case, the Apex Court has put forth two concepts: The Doctrine of Essentiality and Constitutional Morality. The Doctrine of essentiality has been derived from the 7 bench case of Apex Court in 1954 where it was upheld that all customs and rituals are integral practices to religion and the Supreme Court took upon the responsibility of determining essential and non-essential practices of a religion. It is a doctrine intended to protect religious activities that are considered essential to the religion.

In the case of Sardar Syedna tahere Saifuddin Saheb v. State of Bombay[162], the apex Court dismissed the argument that the head of the Dawoodi Bohra's authority of excommunication is unconstitutional. The Apex Court determined that the power of excommunication is a fundamental practice of the Bohra community protected under Articles 25 and 26 of the Constitution, and that the State cannot intervene to make the practise voidable.

It is seen that the role of the Supreme Court has widened to theology and reformism. There is a considerable contention and disagreement with this widened role as the critics believe that it overrides the protection of religious practices guaranteed by Article 25 of the Indian Constitution. In Triple Talaq Case[163], the All India Muslim Personal Law Board argued that the Judiciary has to keep out the matters of faith and hence, oppose any court intervention in religious matters. However, the Apex court has contested this viewpoint by stating that the "Judiciary has the right to interfere in the non-essential practices of the religion such that of secular activities associated with the religion and the determination of essential and non-essential practices of religion is through the Essentiality test doctrine and with subject to the exceptions provided in the Article 25." [164]

In another case of Gulam Abbas v. State of Uttar Pradesh & Ors[165], the Apex Court upheld that the fundamental rights guaranteed under Article 25 and Article 26 are not absolute and are subject to public order. Hence, in case the court believes that the shifting of graves is in the interest of the

[162] Sardar Syedna tahere Saifuddin Saheb v. State of Bombay, AIR 1962 SC 853.
[163] Shayara Bano vs Union Of India, (2017) 9 SCC 1.
[164] *Id*.
[165] Gulam Abbas v. State of Uttar Pradesh & Ors., AIR 1981 SC 2198.

public then, the consent of the parties is immaterial although the Muslim Personal law is against such practice of shifting the graves.

The Supreme Court also does not always follow the doctrine; instead it uses horizontal application of fundamental rights also. It was seen in the famous Triple Talaq case (Shayaro Bano v. Union of India)[166], that besides the use of the essentiality test, the horizontal application of Article 14 was also executed. The majority view in the 5 judge bench upheld that Talaq was not authorised practice in the Quranic text. However, the minority view involving the Chief Justice JS Khekar and Justice Nazeer asserted the view that "it was not upto the ambit of the Judiciary to interfere in the personal laws of the religion as it is a practice protected by the Article 25." [167]Thus, the minority view believed that it is best for the parliament to decide the ending of the triple talaq practice through law. On the other hand, the Justice Kurian in disagreement with the Chief Justice quoted that "there is no constitutional protection to such a practice." [168]Also, through Justice Kurian's deep research into the Quranic texts, he opined that "essential practices equate to those practices that are fundamental to follow a religious belief. Moreover, he stated that the test for determining whether a part or practice is fundamental to religion is to determine whether the nature of the religion will be altered without that part or practice".[169] In both cases of Danial Latifi and Shayaro Bano, gender based reasoning was resorted to come to the verdict.

Regarding the usage of essentiality test by the Judiciary, there is no straight jacket formula on the application of it towards the cases. It is contested by the critics that the Apex Court has always been favouring the reformist viewpoint rather than giving importance to the proof of religious text. In the case of Sri Vekatarama Devaru v. State of Mysore[170], the Apex Court gave more importance to the progressiveness. Also, in the Durgah Committee v. Syed Hussain Ali[171], the Apex Court mentioned that "the religious practices arousing from the superstions do not have immunity from the State intervention."[172]

[166] Shayara Bano vs Union Of India, (2017) 9 SCC 1.
[167] Shayara Bano vs Union Of India, (2017) 9 SCC 1.
[168] *Id.*
[169] *Id.*
[170] Sri Vekatarama Devaru v. State of Mysore, AIR 1958 SC 255.
[171] Durgah Committee vs. Syed Hussain Ali, AIR 1961 SC 1402.
[172] *Id.*

The role of reformist can be often criticised by referring to it as the role of interventionist in certain spectrum. It can be argued in both ways for both sides. From the critics' side, it may be true because it violates religious autonomy of an individual as the Supreme Court dictates what constitutes the essential practices of a religion or not and affirms the position that the Supreme Court has the right to do so for the purpose of maintaining and upholding the constitutional provisions. The idea of secularism should be maintained according to the Supreme Court. In the case of Adi Saiva Sivachariyangal Nala Sangam & Ors v. State of Tamil Nadu[173], the Supreme Court stated that "even in the absence of special ecclesiastical jurisdiction, the Apex Court is not barred on the grounds of interference with religious practice's 'complete autonomy'. It believes this right of essentiality test because the Apex Court is the custodian of the Constitution. The rule of law is fundamental to the nation and that the Constitution should be followed in necessity and the Judiciary plays a vital role here". [174]

However, it is important that consultation with the religious pundits and the concerned community should be done in reference to the decisions related to the essential practices of the religion. A reformist approach can be perceived as purely interventionist also in the eyes of the public. The famous case of Sabarimala temple is the perfect example. Menstruating women between the ages of 10 and 50 were not permitted to enter the Sabrimala temple grounds since the temple is devoted to Lord Ayyappan, who is an eternal celibate. The five bench judge ruled out in majority view that this religious activity is violative of Article 14 and 25 of the Indian Constitution. Justice Deepak Mishra has said that "religion is a way of life inherently associated with the self respect of an individual and gender biased exercises based on exclusion of one gender in favour of another is not acceptable."[175] He believes anything that is contrary to constitutional mandate is not permitted in the State. Justice Mishra opines that this practice removes the women of their freedom to worship under Article 25(1).

Also, Justice Mishra observes that "followers of Lord Ayyappan do not come under the ambit of constitutional criteria that these followers are separate religious denominations, instead they are hindus. Also, Article 25(2)(b) allows the State to make any law that provides a public Hindu

[173]Adi Saiva Sivachariyargal Nala Sangam & Others v. The Government of Tamil Nadu & Another, (2016) 2 SCC 725.
[174] Adi Saiva Sivachariyargal Nala Sangam & Others v. The Government of Tamil Nadu & Another, (2016) 2 SCC 725.
[175] Indian Young Lawyers Association & Ors v. State of Kerala & Ors, (2019) 11 SCC 1.

institution to all classes and sections including the gendered category of women". [176]Hence, Justice Mishra concludes that this custom is under the ambit of State sanctioned reform. Also, Justice Mishra does not recognise it as "an essential religious practice as the majority of Ayyappan followers are Hindus". [177]Justice Rohington Nariman is of the same opinion of Justice Mishra for these arguments.

According to the distinct and concurring judgement of Justice D Y Chandrachud, he upheld that this practice of debarring certain age groups of women by the Sabrimala Temple is unconstitutional and that leads to undermining of ideals of autonomy, liberty, and dignity. He decided that "the morality conceived under Articles 25 and 26 of the Constitution cannot have the effect of abridging the fundamental rights guaranteed under these Articles".[178] Along in agreement with Justice Deepak Mishra and Justice Rohington Nariman, Chandrachud believes that the followers of Ayyappan are not a separate religious sect and hence the debarring custom for a certain age group of women to enter in the temple, is not an essential religious practice. Also, he underscored the psychological characteristics of women like menstruation, and mentioned that such categorisation does not have significance on the entitlements guaranteed to them under the Constitution. It cannot be a valid constitutional criterion to deny her dignity and respect, and the taboo and stigma followed around have no validity under the Constitutional morality. Moreover, Justice Chandrachud gave the opinion that this custom of debarring was more like the practice of untouchability which is prohibited under Article 17 of the Constitution. He highlighted in the Constituent Assembly Debates that the Constitution drafters have not intentionally given specific meaning of untouchability. In the conclusion, he said that "untouchability was not restrictive in meaning and had to have an expansive and inclusive meaning. Hence, the custom of debarring the women group of certain age comes under the ambit of Article 17 which is used for guarantee against exclusion of groups". [179]

On other hand, the minority judgement by Justice Indu Malhotra which marvellously a woman supports the essentiality of the Sabrimala custom. She believes in her view that "the Judiciary should not interfere in regards to which religious practices needs to be struck down except in issues

[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] Indian Young Lawyers Association & Ors v. State of Kerala & Ors, (2019) 11 SCC 1.

where it is of social evil like Sati". [180]Also, she asserts that "the Judges should not exercise their personal views, rationality and morality when it comes to the worship of a deity". [181]Also, she questions the capacity of the petitioner to file the case as she said that "those who at the behest not engaging in such practice are not appropriate to file such a course of action".[182] Justice Malhotra also observed that the petitioners do not belong to the concerned group of devotees visiting Sabrimala, as a result they do not have any interest in the matter.

She also observed that "prevention of changes for time to time made the practice to be competent which leads to categorisation of essential practice. Also, the imposition of morality of court on a religion would create impedance in the freedom to practice one's religion according to one faith". [183]Justice Malhotra noted this point that it is outside the ambit of the court's intervention.

The Sabrimala Case was eventually stayed by the Supreme Court itself and passed it for the review which also included larger issues encapsulating different issues altogether. It includes Muslim's entry to mosques, female genital mutiliation by Dawoodi Bohras, and entry of Parsi woman married to non-parsis in the Agyari. These are some questions regarding the larger bench review. It could open up new questions instead of resolving the pending cases. Also, a single verdict to four cases together may bring disagreements and conflict among the religious communities. The clash of limits and boundaries of the Judiciary pertaining to religious matters can arise. The role of Supreme Court can be clearly seen as the reformist model as it is evidenced in the cases of decriminalising[184] section 377 of Indian Penal Code which dealt with offence of same-gender consensual sex as well as section 497of Indian Penal Code which dealt with adultery[185]. However, acceptance and accommodation of the reforms by the people is still slow with regard to religious matters. People may see that the Apex Court widens its role from the custodian and interpreter of the Constitution to the role of clergy.

[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*
[184] Navtej Singh Johar vs. Union of India (2018), AIR 2018 SC 4321.
[185] Joseph Shine vs. Union of India, (2018) SCC OnLine SC 1676.

CONCLUSION

It is obvious that the Supreme Court played a reformist role, rendering verdicts on matters involving religious customs through a reform lens. It has been playing very active role in recent years where many landmark judgments like decriminalization of adultery and same-gender consensual sex have been passed. However, it is critized on the ground whether the Apex Court breached the limits of interventionism or not. Article 25 protects religious practices in particular, and the State is prohibited from interfering with practices essential to the religion. It is seen that through the Shirur Mutt case the Supreme Court has formulated the essential test doctrine to determine what practices are essential to the religion. Moreover, the Supreme Court has highlighted the right to make the practices voidable under Article 13 if the practices are derived from the superstitions. Though the doctrine of essential test has been a contentious debate, certain ways have developed the Judiciary to determine the verdicts. The Essential test is not absolute and differs from case to case. The Judiciary should go for case by case settlement instead of clubbing together and delivering a single verdict as each case varies from issue to issue and requires a disticint redressal. Also, the Courts have to be consistent in application of essentialit tests as a strait-jacket formula for applying it is not there. This means there should be uniformity in decisions so that parties have a fair sense of justice and avoid tensions and conflicts.

RIGHTS OF LABOUR IN INDIA

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ABSTRACT

In a labour-intensive country like India, where more than 90 percent of the 450 million-strong labour force work in the informal sector with low wages, no social security, no bonuses, and some are even deprived of fundamental rights guaranteed by the Indian constitution due to illiteracy and poverty even though such workforce is classified as is considered the backbone of the economy. In India, workers' fundamental rights have traditionally been governed by a plethora of labour laws, many of which overlap and are regulated by a broad range of authorities. The approach has generally been that of compliance while placing little emphasis on the employers' duty to improve labour conditions for a significant portion of the workforce.

In this paper, the details of the rights that workers in India enjoy under the "Indian Constitution" as well as the 27 laws passed by the central government that have now been optimized and codified into four labour codes that are universally applicable within the Indian borders are discussed. This study seeks to discover every improvement in labour rights brought by the government or by the Hon'ble Supreme Courts or High Courts through their judgements over the years. In India, both central legislations and the constitution provides to protect labour rights and eliminate exploitation. Most workers are unaware of the rights that have been developed specifically for them to protect their interests. This paper attempts to compile all of the laws and provisions that a worker should be aware of.

Keywords:- *Labour Rights, Labour laws, Constitution and labour, 4 new codes in regards to labour, social security*

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INTRODUCTION

To be considered civilized, society must give its working-class the right to exist as human beings with dignity and security. This idea was expressed in Universal Declaration of Human Rights, as well as in presentations made by the United Nations[186]. At the national level, workers' aspirations are reflected in the national Constitution.

The constitution is the supreme law of the land. It becomes the foundation on which all the legislations in the nation are grounded. The Constitution provides for social change. It is binding on all legal instruments and on the judicial system also with the object of changing the status quo into a new system of people in which there would be assurance of justice which comprises of social, economic, and political justice. Moreover, it states for equal status and opportunity to everyone in the nation.[187]The Indian Constitution, individual legislation, Fundamental Rights, and the Principles of Country Policy delineates the basic principles that serve as the framework for all the codes in the nation which also include the labour law. The trinity of the constitution tells its citizens that it will provide a "Social Pattern" and establish a "Social Welfare". All laws, especially labour laws, are strongly influenced by it.

Our constitution has had a major impact on the transformation and growth of labour laws in India. Part III and Part IV of the Fundamental Rights and Guidelines of the National Policy contains guidelines for the labour legislations. The labour laws are enrooted in the part 3 of the constitution. Part III (Sections 12 to 35) of the Constitution also deals with the basic rights of citizens, such as equality before the law, religion, gender, class, place of birth, elimination of inequality, freedom of speech and expression, and the prohibition of child labour in industry[188].

In addition to the basic rights, the Constitution incorporates a number of "guiding principles" that serve as a legislative guide for achieving social and economic goals. Given the history of India, social justice has always been at the forefront of many Indian laws, including labour and employment laws. It is noteworthy that various labour laws in India are designed with regard to the labour liberties, including those in the ruling industries, mines, fields, shops, and commercial

[186] United Nations General Assembly, Universal Declaration of Human Rights (UDHR), 1948.
[187] THOMAS HOBBES, LEVIATHAN (Penguin Classics, 1981).
[188] INDIA CONST., Part 3.

centres. It also governs the aspects of payroll, trade unions, public safety, industrial security, and hygiene.

The Constitution of India covers various areas to protect workers' rights and provides a platform for workers to be heard and not exploited.

India has taken a step forward and consolidated national labour laws into code. This can be accounted as a progressive action considering that various labour laws were nearly more than 70-80 years old and were established mainly in the industrial era. There is dramatic transformation of the Indian economy since then, and it is finally the time to bring change in our labour laws. Endeavours to make labour laws relevant and suitable, began in the early 2000s and now some changes could be seen in this regard.

Indian Labour Laws refer to the laws that govern Indian workers. The Indian Constitution provides for a series of fundamental rights, especially Employment Equity and decent working conditions. The current Labour Law in India dates to the time when independence was achieved in 1947. The subject of workers lies in the Concurrent List and thus, it empowers the Parliament and state legislatures to make laws for governing the workers and associated matters. The central government said there were 100 and 40 central laws governing the distinct fields associated with the workforce like industrial disputes, working conditions, public safety, and wages. The Second National Labour Commission (2002) (NCL) found the existing legislation to be complex, with antiquated provisions and inconsistent interpretations. For establishing uniformity in the labour laws, the NCL provided the recommendation for the integration of middle labour laws into expanded categories such as (i) industrial relations, (ii) wages, (iii) social security, (iv) security, and (v) welfare and conditions.

LABOUR LAWS AND THE CONSTITUTION OF INDIA

Article 14[189]

It provides equal protection to everyone. "Equal compensation for equal work," as defined under labor regulations. Physical labor, as well as unskilled and skilled workers who are paid based on their profitability, are exempt from labor rules. Equal protection under the law is guaranteed by

[189] INDIA CONST. art. 14.

Article 14 of the Indian Constitution. Total equality, which is physically impossible to accomplish, is not implied by the idea of equality. It is a concept that says that in the common law, there are no special rights granted to anybody based on their birth, religion, or other factors. All people and classes are treated equally[190], as Dr. Jennings puts it "that the law must be equal and treated similarly among equal individuals, that equality must be handled equally." "All citizens of full age and understanding, regardless of race, religion, income, social status, or political influence, must have the right to sue and be prosecuted, to be prosecuted and persecuted for the same cause." [191], suggests that all persons in the same situation should be treated equally in terms of the rights granted and the obligations imposed by the law. All individuals acting in the same role should be subject to the same laws, and there should be no distinction between them.

Article 16[192]

In concerns hooked up to the employment of state-owned firms, Article 16 of the Indian Constitution ensures equal opportunity for all people. Section 16 (1)[193] states that all people have an equal chance of being hired or appointed to a position in the state. Only government-owned services or positions are covered by the equality rule. The State defines the standards for public servant recognition. If all candidates are given an equal chance to apply for public service, the government may also nominate people for employment.

Section 16(2)[194] establishes the basis on which no one can be discriminated against in the appointment or reappointment to any State post. Section 16 prohibits discrimination on the basis of religion, race, class, gender, birth, place of birth, domicile, or on any combination of these factors. The phrase "any public office or office" in Article 16 paragraph 2 suggests that the concept only applies to public and private employment.

Equal employment opportunities in the public sector are guaranteed under Articles 16 (1) and (2). However, nothing in this article prevents Parliament from making a legislation requiring citizens elected to any post under the State to reside in that State or Union territory before being appointed or engaged in any capacity under the Constitution, as stated in paragraph 3 of Article 16.

[190] A.V. DICEY, THE LAW OF THE CONSTITUTION (OUP Oxford 2013).
[191] IVOR JENNINGS, THE LAW AND THE CONSTITUTION, (University of London Press, 1948).
[192] INDIA CONST. art. 16.
[193] INDIA CONST. art. 16(1).
[194] INDIA CONST. art. 16(2).

Reserving government services allows for a poorer class of people to get the job, as per Article 16 (4)[195] of the Indian Constitution. The state will decide whether or not a certain group of residents is falling behind as compared to others. As a result, the state must develop acceptable criteria for evaluating whether a group is a retrospective class.

Article 19 (1) (c)[196]

Art 19 (1) (c) states that citizens have the fundamental freedom to join or form associations and unions. However, on this right, some justifiable and reasonable boundaries could be imposed by the state through legislations for the interests of the social or moral order, or the sovereignty and integrity of India, as provided in Section 19, section (4)[197]. The right to self-determination necessitates planning. As a result, it encompasses the freedom to create groups, communities, companies, trade unions, and political parties. A guaranteed right includes the right to create an organization as well as the right to keep it in its current form. The freedom to create or not to form an association or a union, as well as the right to join or not join, are all examples of the freedom of association[198]. "The freedom to organize an organization, according to the Court," means that the founder of the party has the right to continue interacting exclusively with individuals who freely accept to join the association, according to the Supreme Court in the case of *Damayanti v. The Union of India*. It will be a breach of the law and of their right to freedom of association if they join involuntarily."[199]

Article 21[200]

The core of the Constitution of India is Article 21. It is a provision of the Indian Constitution that is very effective and progressive and protects fundamental rights[201]. Article 21 deals with equality before the law, freedom of speech and expression, freedom of religion and culture, and other matters. Section 21 applies to all the citizens of India. It also applies to the outsiders. The right to life, without question, is the most basic right. All other rights have a role to play in the right to life and are subjected to the very existence of the right to life. The human rights could be connected

[195] INDIA CONST. art. 16(4).
[196] INDIA CONST. art. 19(1)(c).
[197] INDIA CONST. art. 19(4).
[198] J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA (Central Law Agency 2021).
[199] Damyanti Naranga v. The Union of India and Others, AIR 1971 SC 966.
[200] INDIA CONST. art. 21.
[201] Francis Coralie Mullin v. The Administrator [1980] 2 SCR 557. Justice P. Bhagwati had said that Article 21 'embodies a constitutional value of supreme importance in a democratic society'.

with the living beings only. It is of paramount importance and other rights do not provide any value or advantage without this right. If Article 21 had been intended to be original, there would have been no Fundamental Rights to be exercised. This article analysed and applied the Indian Supreme Court's definition of the right to life[202]. Article 21 of the Constitution defines 'health' as more than just the act of breathing. It does not mean the life of an animal or the life of an anxious one. It covers a wide range of rights, such as the right to dignity, the right to self-determination, the right to health, the right to fresh air, and more.

ARTICLE 23[203]

Trafficking in people and begar, as well as other types of forced labor, are forbidden under Article 23 of the Constitution. Any breach of this regulation, according to the second half of this article, is a crime. Clause (2)[204], on the other hand, gives the permission to the state to impose obligatory services if demanded by the public purpose. No discrimination is to be made on the basis of religion, race, caste, or class, or any combination of these characteristics. The selling and purchase of men and women as property is referred to as "human trafficking," and it covers the trafficking of women and children "or for other purposes." The phrase "human trafficking" is not directly addressed in Article 23 but it is included in it. Article 35[205] of the Constitution gives Parliament the authority to pass legislation to penalize behaviour that is banned by this article. It is commendable for the government to take measures to combat "human trafficking," beggars, and other types of forced labor, using whatever means that are available. The clause bans a person from being compelled to work when he or she is not legally entitled to do so. The protection also applies to "other sorts of forced labor" in addition to begar.

Article 24[206]

The act of employing children who are below the age of 14 years in industries, as well as in the work involving dangerous activities, is not permitted as per Article 24 of the Constitution. This idea is unquestionably in the public's and children's best interests. In the world, children are

[202] In Maneka Gandhi v. Union of India AIR 1978 SC 597, 1978 SCR (2) 621. The Supreme Court gave a new dimension to Art. 21. The Court held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity.
[203] INDIA CONST. art. 23.
[204] INDIA CONST. art. 23(2).
[205] INDIA CONST. art. 35.
[206] INDIA CONST. art. 24.

priceless. As a result, Article 39 of the Constitution requires the state to assure that the health and the capacity of workers, men and women, and children of all ages are not abused. It also forbids compelling the citizens who are not in good economic conditions, to participate in the activities that are inappropriate for their age or ability just. People's Union for Democratic Rights v. Union of India[207] contended that the Child Employment Act of 1938 did not apply to the employment of children in Asiad Projects' building work in Delhi since construction was not a procedure listed in the Children Act schedule. Although the construction sector is not on the schedule of the Child Labour Act, 1938, the Court disregarded the claim, saying that the construction work is a dangerous employment and hence, under Art. 24, no child under the age of 14 is to be appointed as an employee for the same. Concerned about the "sad and alarming abandonment," Bhagwati, J., advised the State Government to take urgent measures to include building projects in the Act's program, and to guarantee that legal responsibility under section 24 is not broken elsewhere in the country. In another decision, the Court reaffirmed that construction work is hazardous and that minors under the age of 14 should not be engaged in the same.

Article 32[208]

Article 32 is the most substantial right. Section 226 gives power to all the high courts to issue fundamental rights warrants. The right to petition to the High Court for "appropriate actions" to enforce the fundamental rights established in Part III of the Constitution is protected by Section 32 (1)[209]. Clause (2) of Art. 32[210] authorizes the Supreme Court to issue appropriate directives, orders, or papers, such as habeas corpus, mandamus, restraint, quo-warranto, and certiorari, to exercise any of the constitutional rights bestowed on Part III. Clause (3)[211] of Article 32 states that Parliament may enable any other court within its jurisdiction to exercise all of the responsibilities of the High Court. Clause (4)[212] stipulates that until the Constitution states otherwise, a right guaranteed by Article 32 will not be infringed upon. As a result, Article 32 offers a rapid and low-cost method for safeguarding basic rights in judicial and administrative proceedings.

[207] People's Union for Democratic Rights v. Union of India & Others, AIR 1982 SC 1473.
[208] INDIA CONST. art. 32
[209] INDIA CONST. art. 32(1).
[210] INDIA CONST. art. 32(2).
[211] INDIA CONST. art. 32(3).
[212] INDIA CONST. art. 32(4).

Under Art. 32, the Supreme Court has the ultimate jurisdiction to enforce fundamental rights. There are no limitations on the sorts of processes specified in Art. 32 (1) unless the trial is to be "fair," which must be defined by the objective for which it is to be conducted, which is to enforce basic rights. A conflicting system is not needed by the Court. The reason behind this is that in the state, there are conditions of extreme poverty, ignorance, illiteracy, deprivation, and exploitation in prevalence. Any persistence in delineating the proper way of advancing the enforcement of a fundamental right could complicate the enforcement, therefore, the founders of the Constitution purposefully did not set up any kind of system to enforce a fundamental right, nor did they impose that such procedures must be accompanied by any solid pattern or solid jacket formula.

Anyone can petition to the Court for appropriate redressal whenever a basic right is violated, according to Section 32 (1). The conventional norm that a petition under Section 32 may only be brought by a person whose fundamental right has been violated has been drastically modified by recent Supreme Court rulings. Because of poverty or a lack of public or economic position, the Court now enables trials of public interest at the request of "citizens with a public spirit" to exercise the constitutional and other legal rights of any person or group of persons who cannot pay to seek assistance from the court. Workers can file a petition with the Supreme Court under Articles 32 and 226 if their rights are violated.

Article 38, 39, 39-A, 41, 42, 43, 43-A, and 47[213]

Article 38, 39, 39-A, 41, 42, 43, 43-A, and 47 of the Constitution stress the Principles of State Policy, which, while not enforceable in a court of law, are nonetheless significant to the national government since the government is in responsibility of implementing those principles through legislations. As a consequence, the terms of reference are in accordance with the basic rights guaranteed by Part III of the Constitution[214].

According to these articles, the state is under the obligation of raising the welfare of the people by achieving and preserving social order. There must be prevalence of the social, economic, and political justice in all of the country's institutions of health; optimizing the provision of employment rights, education, and social assistance in employment conditions, etc., within the

[213] INDIA CONST. art. 38, 39, 39-A, 41, 42, 43, 43-A, and 47.
[214] Janardhan Reddey v. State of Hyderabad, AIR 1951 SC 218, 228.

limits of its economic capacity; and providing for fair and humane working conditions and materials.

To achieve the aforementioned goal, the state must direct its own policy towards ensuring adequate livelihoods for all citizens; allocating ownership and control of public services in the most efficient manner; avoiding the accumulation of wealth and production practices that harm everyone; ensuring equal pay for equal work for men and women; and preventing workers, men, women, and children from abuse.

In Minerva Mills v. Union of India[215], it was ruled that the Guidance Principles and Fundamental Rights must be agreed upon without regarding the Guidelines as subordinate and subservient to the Fundamental Rights. Similarly, a principle that contradicts the Guidelines should be seen as nonsensical, whilst any action made to give effect to the Guidelines should be regarded as rational. [216]

Article 41[217]

Article 41 states that "the State shall make its provisions effective within the limits of its economic and social development, and protect the right to work, education, and social assistance in the event of unemployment, old age, disease, and disability, and in other cases of unreasonable demand." The view stated in Article 41, combined with Article 45, states that the provision of education to all citizens is not only necessary but also desirable for the ultimate function of the State and its obligation. It has been argued that Articles 29 and 30 relating to Cultural Education and Rights should be understood in accordance with Articles 41 and 45. In Article 41, the right to employment, education, etc. depends on the State's ability and economic development. As a result, if a person is left unemployed under any scheme, he or she will not want his or her employment suspended every time the scheme expires. The Founding Fathers deliberately put the right to work in the Directive Principles Chapter and thus made it mandatory because, in their wisdom, they knew that, although it was their intention for everyone to be given a job, the truths of our society could not be ignored.

[215] Minerva Mills Ltd. and Ors. v. Union of India and Ors., AIR 1980 SC 1789.
[216] Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir & Anr., AIR 1980 SC 1992.
[217] INDIA CONST. art. 41.

Article 42[218]

Article 42 states: "The State shall make provision for the just and humane working conditions along with maternity relief." This Article identifies the founders of the Constitution with a concern for the welfare of workers. The Directive Principle should not be enforced by a court. However, they should interpret the law in such a way that they improve instead of blocking the objectives set out in the Guidelines.

Article 43[219]

Article 43 empowers the state to take action, by appropriate legislation or otherwise, to ensure employee involvement in the administration of any industry's operations, institutions, or other organizations. Article 41 compels the government to provide individuals with (a) work, (b) education, and (c) social support in instances of unemployment, old age, sickness, and disability, as well as other inadequacies. Article 42 empowers the state to establish provisions for the protection of human dignity and maternity benefits. Article 43 requires the State to strive for a living wage and working conditions that ensure a decent standard of living and full enjoyment of leisure, and social and cultural opportunities for all workers, agriculture, industry, or otherwise, and, in particular, the State will strive to promote the small-scale housing industry individually or collectively in the rural areas.

Article 43 refers to "living wages" rather than "minimal wages." Aside from the essential requirements of life, such as food, shelter, and clothes, the concept of a liveable wage also covers education and child insurance.

Article 43A[220]

The 42nd Amendment adds article 43A to the Constitution, which allows the state to take action, by appropriate legislation or otherwise, to guarantee that employees are involved in the administration of enterprises, institutions, or other organizations in any industry. Workers will no longer be employed, but will instead be treated as partners (Hindustan Tin Works v. Employers -

[218] INDIA CONST. art. 42.
[219] INDIA CONST. art. 43.
[220] INDIA CONST. art. 43(A).

SC 1979, Gujarat Steel Tubes v. Mazdoo Sabha - SC 1980) who have invested in the development of the enterprise and are entitled to the share of the earnings.

Article 45[221]

Article 45 mandates that all children under the age of 14 to get free and compulsory education. The objective was to make the country illiteracy free. The Supreme Court held in Unni Krishnan v. the State of AP[222] that the "Right to Education" for 14 years is a basic right under Article 21 of the Constitution, but that it is the State's responsibility to provide education. The Court stated, "The right to education is intrinsically intertwined with the right to life."

Article 47[223]

Article 47 requires the government to strengthen the diet and nutrition of its citizens, as well as the community's health. Except for medical grounds, the state should make it unlawful to consume alcoholic drinks and drugs that are hazardous to human health. Article 46 mandates that states to promote the education and economic interests of marginalized people, notably Scheduled Castes and Tribes, as well as safeguard them from social injustice and exploitation in all forms.

Article 39[224]:

Article 39 authorizes the state to guide its policies toward upholding the following principles: (a) Men and women have equal access to adequate livelihoods.

(a) For the benefit of all, transfer of ownership and management of public services.

(c) Ensuring that the economic system does not fail to acquire wealth and does not employ production methods that are incompatible with regular profitability.

(c) Men and women should be paid equally for equal labor.

(e) To protect employees' health and strength, as well as the age of the children, and to ensure that they are not forced to undertake jobs that are not appropriate for their age or aptitude due to financial constraints.

[221] INDIA CONST. art. 45.
[222] Unni Krishnan, J.P. And Ors. Etc. v. State of Andhra Pradesh and Ors., AIR 1993 SC 2178.
[223] INDIA CONST. art. 47.
[224] INDIA CONST. art. 39.

(f) Children should be given the chance and resources to grow up in a healthy, pleasant, and dignified way. The childhood and adolescence should be free of exploitation, moral and material abuse.

FURTHER DEVELOPMENTS AND INTERPRETATIONS BY SUPREME COURT

The Supreme Court ruled in the matter of Daily Rated Casual Labour v. Union of India [225]that Sections 14 and 16 of the Constitution prohibit the categorization of workers into regular and casual employees for the purpose of paying less than the minimum wage. It also violates the spirit of Article 7 of the International Covenant on Economic, Social, and Cultural Rights, which was signed in 1966. Despite the fact that the rule in Articles 38 and 39 (d) may not be enforced due to Section 37, applicants may rely on them to prove that they have been subjected to severe disadvantage in a specific case. The authority held by the government cannot be misused.

Additionally, in the case of M. Nagaraj v. Union of India[226], the reservation of schedule castes and tribes, as well as Articles 16 (4A) and (4B) of the Constitution, were disputed. In this case, it was argued that in order to establish reserves for scheduled Castes and scheduled tribes, the State would need to collect "immeasurable statistics" to confirm their regression. It was thought that the concept of a creamy layer would apply equally to Scheduled Castes and Scheduled Tribes, thus they would be denied any such quota. Furthermore, the decision was reversed because the Attorney General of India argued that both arguments were unlawful since they contradicted the ruling given in Indira Sawhney v. Union of India.

The Supreme Court ruled in the case of Balakotiah v. Union of India [227]that the right to life includes the right to a quality of living that permits a person to live. The term 'life' refers to more than just the life of an animal. It does not mean that life could be taken away, such as by imposing and carrying out a death sentence, unless done in line with legal procedures. This is the sole facet of the right to life that exists. The right to make a living is a vital component of that right since no one can exist without a source of income. If the right to livelihood is not recognized as part of the constitutional right to life, depriving a person of his right to life is as simple as depriving him of

[225] Daily Rated Casual Labour v. Union of India, AIR 1987 SC 2342.
[226] M. Nagaraj v. Union of India, (2006) 8 SCC 212.
[227] Balakotiah v. Union of India, AIR 1958 SC 232.

his livelihood till he is bereft. Such a deprivation not only robs lives of their active purpose and significance, but also makes existence impossible.

The Supreme Court in D.K. Yadav v. J.M.A. Industry[228] held that Article 21 guarantees the right to life, which includes the right to self-sufficiency, therefore terminating an employee without providing him or her a fair hearing is unfair, unjust, and unlawful. Article 14 mandates that the technique used to deprive a person of their livelihood be reasonable, fair, and just, rather than unreasonable or cruel. Article 14 demands that the method for depriving a person of his or her livelihood be valid, fair, and unbiased, as well as free of negligence or cruelty. In summary, it must adhere to the principles of natural justice. Article 21 comprises, in addition to the beautiful content of human dignity, life and liberty, the dignity of the individual through life, and the glorious content of human dignity via personal means.

Furthermore, the Supreme Court declared its power and the extent of Article 23 in the Peoples Union for Democratic Rights v. Union of India [229]case, where the court concluded that Article 23's scope is broad and unlimited, impacting "human trafficking" and "begar and other types of forced labour" wherever they are located. Article 23 forbids not only "bound labour," but all other types of forced labour as well.

In the case of M. C. Mehta v. State of Tamil Nadu[230], the Supreme Court held that minors under the age of 14 cannot be involved in any harmful employment. The Court concluded that addressing this issue at the national level is critical in order to develop an appropriate solution that would remove the problem in the country. The Court found that Sections 24, 39 (e) and 9 (f), 41, and 47 require the state to ban child labour while ensuring the child's healthy growth. The Court further stated that India has ratified the United Nations Convention on the Rights of the Child.

The Supreme Court ruled in Bandhua Mukti Morcha v. Union of India [231]that the government was required to implement social and labour laws created to provide employees with a life of fundamental human dignity. Similarly, in Neerja Choudhary v. State of MP[232], the Supreme Court stated that if it is discovered that any person is obligated to do work without pay or a minimum

[228] D.K. Yadav v. J.M.A. Industry, 1993 SCR (3) 930.
[229] Peoples Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.
[230] M. C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699.
[231] Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
[232] Neerja Choudhary v. State of MP, AIR 1984 SC 1099.

wage, that individual is presumed to be a bonded employee, and it is up to the employer or state government to determine this. To that end, the Supreme Court has devised a strategy based on the Public Interest Trial, with the goal of providing easy access to justice for the poorest and weakest segments of Indian society (workers in general), as well as providing a powerful tool for civil society and social action groups to combat the exploitation and injustice. While the notion of "equal compensation for equal labour" is not specifically defined as a basic right in our Constitution, the Supreme Court has declared that it is unquestionably a constitutional principle under articles 14, 16, and 39 (c) of the Constitution. As a result, this right may be enforced on the basis of uneven remuneration based on unjustified categorisation.

LABOUR RIGHTS UNDER NEW LABOUR CODES

WAGE CODE, 2019

The Wage Code Bill, 2019 is a comprehensive act that governs and integrates four labour laws relating to salaries and bonuses, and related matters. It is the first of four labour codes that have been given the status of the Act: The Code on Wages 2019, The Occupational Safety, Health and Working Conditions Code 2019, The Code on Social Security 2019, and The Industrial Relations Code 2019.

Code on Wages, 2019, is a comprehensive law with 69 sections, compared to the previous four pieces of law, which had 119 sections. Starting, incorporating, simplifying, and balancing the existing labour laws would facilitate business, remove outdated rules, provide unique definitions and universal use in India to all institutions, employees, and employers. This will eliminate social, gender, and income inequality. It aims to bring similarities by establishing the National Floor Wage. The code is intended to help approximately 500 million workers nationwide[233]. It will apply to all Indian and Union Territories institutions, workers, and employers[234].

How Does It Benefit the Workers?

1. **Uniform Applicability**: The Salary Remuneration Act of 1936 applies to employees earning equal or less than the legal limit, but the Minimum Wage Act of 1948 only applies

[233] The Code on Wages, 2019.
[234] The Code on Wages, 2019, § 1.

to the scheduled work. The Wage Code now looks at the common minimum wages and salary for all employees, regardless of the sector or category.

2. **Minimum Wages:** Earlier, the Wage Act of 1948 only set a minimum wage for specific occupations. The Wage Code now empowers the responsible government to determine wages across the board. For the first time, the notion of a minimum wage was established. The Wage Code gives the Central Government, the authority to determine the minimum wage based on an employee's basic living needs while they work in different locations of the country. Provincial governments will not, under any circumstances, implement minimum wage that is lower than the central government's minimum wage.
3. **Equal Salary**: The Wage Code, such as the Equal Employment Equity Act of 1976, prohibits discrimination on the basis of employers' wages or employment purposes, in relation to the same or similar employment. The Wage Code guarantees non-discrimination for all genders, although the Equality Act specifies and limits gender to men and women. [235]
4. **Bonus Payment**: There are no major changes from the Bonus Payment Act of 1965, and the regulations relating to the bonus calculations are also in line with the requirements of the Bonus Payment Act. Previously, the use of this rule was limited to employees earning less than INR 21,000 per month. The Payment Code now empowers the appropriate authority to set salary limits to determine usage. The Salary Code states that employee cannot be given bonus if such employee is removed for doing fraud, misconduct, violence, sexual harassment[236].
5. **Time-bound resolution of claims**: The Remuneration Code sets a three-year deadline for employee applications, contrary to existing legal timetables. Disputes about bonus adjustments or the appropriateness of the bonus payment are regarded as an "industrial dispute." An employee who is a member of a registered trade union or an Inspector-Cum-Facilitator may lodge a claim under the Wage Code in a notified organization. Authorities must make a decision on the allegations within three months. Complaints must be lodged within 90 days, and the authority will try to resolve them within three months. Claims must

[235] The Code on Wages, 2019, § 3.
[236] The Code on Wages, 2019, § 29(d).

be repaid as a land tax liability and then sent to management for the payment to the appropriate employee[237].

6. **Penalties and Offenses**: Unlike previous laws, the consequences of punishment under the Wage Code are not severe, with only imprisonment for second and subsequent offenses[238]. However, the amount of fine for violating the Wage Code has increased dramatically[239]. In addition to this, cases that can be punishable only by imprisonment must be dealt by a gazette official authorized by a competent authority.

Why is it better than previous laws?

- There is a clear definition of the word wage, which makes it difficult to disagree in the first place.
- Protects disadvantaged workers and promotes fair competition by extending the legal protections given by the minimum wage to all workers regardless of schedule or salary limit. This will benefit millions of low-paid workers in India.
- Requires central government to set minimum wage across the country according to the standard of living, with provincial governments obliged to set minimum wage level above or above the floor level. As a result, there will be changes in the payment system, wage will increase, and the income inequalities would be eliminated within and across the region.
- Regulates and provides a comprehensive framework for low wages in India, while at the same time allowing for dialogue between workers and employers.
- Ensures that salaries are paid on time on the 7th of each month.
- Eliminates gender-based wage inequality and integrates people who change gender under the equal pay and payment clause.
- Demands overtime pay, extra money, and post-retirement benefits.
- Visualize a single template for completing online returns, eliminating the need to maintain registration, refunds, and other legal obligations.
- Strengthens the rights of contract workers, who can receive a small bonus from the main employer if the contractor fails to comply with the law.
- Extends the period from two to three years for the application.

[237] The Code on Wages, 2019, § 59.
[238] The Code on Wages, 2019, § 52.
[239] The Code on Wages, 2019, § 54(1).

- It creates recurring lawsuits, allowing for agreement between the employer and the employee and the withdrawal of cases.

INDUSTRIAL RELATIONS CODE, 2020

The Industrial Relations Code, 2020 is one of four Labour codes that are part of the Central Government's reform agenda over decades. It covers three key Central Laws on industrial dispute resolution and collective bargaining mechanisms: the Industrial Disputes Act of 1947, the Trade Unions Act of 1926, and the Industrial Employment Act (Regulations) Act of 1946[240]. These Acts will not only ensure that there is no ambiguity in interpreting the many meanings that existed under the previous regime but will also reduce the requirements for business compliance.

The Industrial Relations Code, 2020 incorporates rules that make it easy to compile a document into a single document, preserving most of the objectives of these Rules. Some reforms, however, have been made to increase business facilitation, reduce compliance requirements, and modernize the legal framework controlling the industrial relations in India.

How does it benefit employees?

In general, the Code is designed to benefit both employers and employees. It streamlines the dispute resolution procedure, protects temporary workers, allows all significant industrial organizations to submit stand-down orders, creates a retrenchment fund for laid-off workers, and increases fines to deter lawlessness. To achieve industrial peace, a business-friendly strategy is required, which includes permitting a single bargaining body and giving a flexible ambit to the employers in regards to the operational choices to be made.

Social Security Benefits

Employees in the informal sector, the employees were required by the Code to give their Aadhaar number in order to get the payments or social security services at the workplace. However, in the case of Justice K.S. Puttaswamy (Retd) v. Union of India, Supreme Court[241] has ruled that Aadhaar numbers are only required for the use of funds in services received from the Consolidated Fund of India.

[240] Ministry of Labour and Employment, *List of Central Labour Laws Under Ministry of Labour and Employment*, https://labour.gov.in/sites/default/files/Central%20Labour%20Acts_0.pdf.
[241] Justice K.S. Puttaswamy(Retd) v. Union Of India, AIR 2017 SC 4161.

Enhanced Wage Ceiling for Coverage of Supervisory Employees under Workers

The requirement to classify supervisors as "employees" has been increased from INR 10,000 to INR 18,000. Thus, in the future, supervisors earning between INR 10,000 and INR 18,000 per month will be considered “employees,” and their employers will, among other things, be required to comply with retrenchment requirements to terminate their services.

Increasing the Performance and Effectiveness of the Grievance Procedure

In contrast to the members of the former legislation, the Code mandates the grievance redressal committee ("GRC") to be made up of ten members. Women employees needs to represented greatly in the GRC as well. A one-year restriction on filing complaints with the GRC has now been imposed. Furthermore, if the GRC does not resolve the grievance or if the employee is unsatisfied with the GRC decision, the procedure would no longer remain within the industrial centre since the employee may seek reconciliation. Employers should take GRC certification strictly because violations are punished by a monetary fine to INR 100,000.

Establishment of Tribunals[242]

This code calls for the establishment of Industrial tribunals and the National Industrial Council to resolve labour disputes. Although Section 55 of the Code allows the court to issue a compulsory award after 30 days, it also allows the central government (CG) to postpone the enforcement of the award if it is against the country's economy or social justice.

Increased Benefits for the Fixed-Term Workers

Industrial enterprises with or without a CSO are the entities now liable for giving the temporary employees the same or equivalent benefits as are granted to the full-time employees who are indulged in the same or similar jobs. Part-time employees in business companies for which having a CSO is a necessary condition, are entitled for fixed-term employee benefits, including the sum, after one year of employment, according to the Act. As a result, businesses that hire part-time workers may face greater costs in the future.

Deterrence of Arbitrary Strikes and Lock-outs[243]

[242] Industrial Relations Code 2020, § 44.
[243] Industrial Relations Code 2020, § 62.

The public employees are only having the right to strike after the 14th day of their 42-day notice period. Workers at all industrial institutions, on the other hand, must give 60 days' notice before striking, and they are prohibited from doing strike within the frame of 14 days of that notice. In the event that an employer is excluded, they are subject to the same obligations. Furthermore, the Code enlarges the definition of "strike" to also account the "collective or maximum free leave" taken by 50% or more of employees on a given day. As a result, the Code tries to prohibit employees and employers from taking part in unfair strikes and outside closures by expanding the scope of strikes and requiring early notification, while making a balance between the interests of all the parties involved in such strikes and outbursts.

Body authorized to negotiate with the Management[244]

The negotiating union or council is designated as the only negotiating body which can negotiate with the industrial employer on the defined concerns by the code. A registered trade union that is either the only union in the institution or has at least 51 percent of the workers in that institution as members must be recognized as the institution's only bargaining body. Where there are many unions and no single union commands a majority, a bargaining council comprised of representatives from major unions representing at least 20% of members should be constituted to act as a special negotiating body.

Grievance Redressal Committee and Works Committee[245]

The Grievance Redress Committee (GRC) is made up of institutions with 20 or more employees, while the Labour Committee (WC) is considered to have 100 or more staff centres. Although they are similar in many ways, they differ from one another. One such factor is that the GRC see a compulsory and equitable representation of women, whereas the WC does not. The authors argue that equal participation of women should be made binding in the WC in order to reduce gender inequality and effectively address the challenges women workers face in business.

[244] Industrial Relations Code 2020, § 14.
[245] Industrial Relations Code 2020, § 4.

Time Limit of Disciplinary Proceedings for Misconduct by Workers

The Code sets a 90-day deadline for the completion of an investigation or investigation into any employee misconduct that results in his or her suspension by the employer. Employee interests will be protected as a result.

The Threshold for Closure, Lay-off, and Retrenchment in Certain Establishments is increased[246]

In accordance to the Act, industrial institutions like as factories, mines, and fields are required to obtain government clearance before the closure of the facilities or retrenching/retrenching the personnel if the number of people employed were equal to or more than 300 on an average working day last year. Under current legislation, this limit applies to 100 employees; nevertheless, some provinces have expanded it to 300 employees.

Protectionist measures for workers

Under the IDA, high fines relating to misconduct by employees, employers, and unions were imprisonment for upto six months or penalties of upto INR 5,000 or both. However, under the Code, if any employer commits any of the unethical practices highlighted in Schedule 2 of the code, he or she will be fined INR 10,000 which may exceed INR 2,00,000.

OCCUPATIONAL SAFETY, HEALTH, AND WORKING CONDITIONS CODE, 2020 (OSH CODE) CODE

In response to the Second National Labour Commission's recommendations, the Department of Labour and Employment proposed the Occupational Safety, Health, and Working Conditions Code, 2020 ('OSHW') Code in Lok Sabha to consolidate and bring reform in the regulating legislation. Occupational safety and health are all about making sure that individuals who work or are employed are safe, healthy, and happy. Occupational safety and health initiatives has the target of instituting a healthy and safe workplace. The Occupational Safety, Health, and Conditions Code, 2020 (OSH Code) is one of three new codes that will cover the majority of India's labor laws, control labor law compliance, and develop the social security worker's network. People's

[246] Industrial Relations Code 2020, § 77.

employment, as well as their health, safety, and working conditions, are all governed by the code. Employees will have the access to paid security, social security, security, health, and grievance redressing systems.

Salaries do not comprise of (a) bonus; (b) the costs incurred for housing, lighting and water, or medical expenses (c) the contribution made by the employer for pension or provident fund; (d) transportation; (e) the payment given to the employees for meeting the special expenses; (f) rental housing; (g) overtime allowance; and (h) good as given in the OSH Code.

How does it benefit employees?

1. **Employee Rights**

Under the OSH Code, every employee has the following rights:

i. The employee can demand information associated with the occupational health and safety of the employee from the employer.
ii. If he or she has a reasonable fear of serious bodily harm or death or imminent danger, he or she may submit this to his or her employer directly and simultaneously to the inspector;
iii. If the employer is satisfied that such an emergency threat exists, he or she must take immediate action and report the action taken to the inspector-facilitator as per the manner described by the government.
iv. If the employer is not in agreement with the claim made by the employees in regards of apprehension of some imminent danger, then such employer can refer the matter to a cum-facilitator inspector, whose decision on the point whether some imminent danger is present or not would be considered final. [247]

Changed Workplace Rules

Section 25 of the Revised Code establishes a maximum working time of 8 hours per day at any facility, with exceptions for mines. Section 26 establishes a weekly maximum of six working days. Employees who work overtime are entitled to get double their regular wage. Section 32 states that senior manufacturing employees are having the right to have one day off every 20 working days, whereas younger workers and miners are having the right to get one day off every 15 working days if they work a total of 180 days per year. There is also the option to roll over unused vacation days for up to 30 days to the next year.

[247] Occupational Safety, Health and Working Conditions Code, § 14.

The new Code removes the constraint imposed by earlier legislations and permits women to seek employment in all institutions (including dangerous jobs and work time extended from 6 a.m. to 7 p.m.). This is an acceptable measure of greater gender equality. However, it continues to prohibit minors under the age of 18 from working in mines (excluding apprentices aged 16 or older).

Workplace Health, and Safety Conditions

The employer has the duty to assure the social services which are ascertained by the Central Government to the employees, such as adequate and separate bathing amenities for males and females; (ii) bath and changing rooms for male, female, and transgender staff; (iii) sufficient first aid kits must be available. Appropriate cabinets must be there from which all employees who have the duty to work on a standing order, could easily access the things required.

Furthermore, the Central Government has the authority to set criteria for cleanliness and hygiene; (ii) air quality; (iii) appropriate humidity and temperature; (iv) drinking water; (v) adequate light; (vi) overcrowding, and so on.

Employment of Contract Labour and Inter-State Migrant Workers

For implementing the OSH Code, the number of small contract employees was raised from 20 to 50. The institution's principal employer is required to offer social services to the institution's contractors, as stipulated by the OSH Code.

The OSH code includes a general license for the factory, an industrial region for bed and cigar activities, and included contract work, all of which should be helpful.

Social Security Trust Fund

The government concerned will establish a social security fund for safeguarding the interests of workers in unorganized sectors, which will include the amount received from the case and the amount of the sentence. The fund may also be funded in other ways as determined by a competent government. The Fund will be managed and utilized for the welfare of informal workers in a manner authorized by the relevant Government, including the transfer of any funds established under any other applicable law for the benefit of informal employees.

SOCIAL SECURITY CODE, 2020 (SS CODE)

The Social Security Code, 2020 is one of four Labour Codes which constitutes the components of the larger program instituted by the central government for decades. It was the view of the National Labour Commission (2002) (NCL), which laid the foundation for the need for general public safety for all Indian workers, to ensure that the basic social security requirements of all workers do not

slip into cracks, due to duplication of rules and lack of compliance. The Second National Labour Commission (2002) proposed to combine middle labour laws into four categories: (I) wages, (ii) industrial relations, (iii) social security, and (iv) occupational safety, health, and working conditions. The Social Security Code 2020 ("SS Code") was developed to review and integrate public safety legislation with a view to extend public safety to all employees and employees, whether in the formal or informal sector. Public safety refers to the protective measures provided to employees, including unorganized staff, gig staff, and stage staff, to assure income and job security, accessible health care facilities, specifically in the cases of aging, unemployment, illness, unemployment, occupational injury, childbirth, or loss of a breadwinner, with the rights granted under the 2020 Code of Social Security. The Social Safety Code provides public safety and security for employees in the informal sector by making health care accessible and providing income security, especially in older aged sections, unemployment, illness, unemployment, occupational injury, childbirth, or loss of the breadwinner. Rights and schemes to the workers are incorporated under this Code.

How does it benefit employees?

Benefits of Gig and Platform Employees[248]

The SS code does not currently provide any special Social Security benefits for Gig Workers and Platform Workers; however, it does give the Central Government and Provincial Governments the right to know about those employees' plans for health and disability insurance, health and maternity insurance, provident funds, occupational injury benefits, housing, and more. Schemes must be supported by a mix of central government, regional government, and aggregated contributions, according to the SS code.

Employee Provident Fund[249]

The Employees' Provident Fund Scheme currently functions in all organizations with 20 or more employees, thanks to the SS code. The central government may create a provident fund into which employers contribute 10% of per capita income (either directly or through personal contact). The employee's contribution to him or her will be equivalent to the employer's contribution. By notification, the Central Government may raise the contribution rates for both employers and workers of selected institutions to 12%.

[248] The Social Security Code, 2020, § 7.
[249] The Social Security Code, 2020, §16 and 21.

Gratuity[250]

In order to qualify for payment, the SS code stipulates distinct conditions for permanent and fixed personnel. Every shop or institution with ten or more employees on any given day during the preceding 12 months shall pay qualified employees.

State Employee Insurance[251]

In order to qualify for payment, the SS code stipulates distinct conditions for permanent and fixed personnel. Every shop or institution with ten or more employees on any given day during the preceding 12 months shall pay qualified employees.

Maternity Allowance[252]

Maternity benefits will be available at any store or facility as well as at any additional stores or institutions approved by the relevant government. An employer may not intentionally employ a woman within the period of six weeks immediately after her birth, miscarriage, or termination of a pregnancy. A woman is entitled to maternity benefits if she works for her employer's employer for a minimum frame of 80 days in the twelve months prior to the expected delivery date.

CONCLUSION

India is in the category of the states, where delivering and securing social justice is like a far-fetched dream, the complete suppression of workers' rights cannot be considered less than dictatorship, which is in stark contrast to the democratic principles delineated in the Constitution of India. Labour laws are also made as per the constitution, and any violation of the constitutional law leads to the abolition of that specific law. It is noteworthy that to protect their fundamental rights, workers around the world had to constantly battle, which led to a change in judicial thinking. Today, workers' rights are based on the principles of international law, but much remains to be done so that, in effect, all workers can enjoy the fruits of their labour and live a decent and dignified life in a civilized society.

The Principles of Country Policy holds a prominent status in the formulation of new labour law in the country. Workers have been a major pillar of economic development since time immemorial, and these laws must be changed to suit the needs and progress of workers so that laws change over

[250] The Social Security Code, 2020, § 53, 54 & 57.
[251] The Social Security Code, 2020, § 5, 16, & 29.
[252] The Social Security Code, 2020, § 60, 63, 65, 68, 69 and 70.

time and workers' rights are upheld. As a result, the government has fulfilled its mandate by the establishment of the three Labour Laws, 2020, which grants scope of flexibility to the employers in regards to the work to be executed. The central government has issued four regulations that change the various operating systems and provide ways to improve efficiency. It also compiles a checklist so that regional governments can ensure that the regulations are strictly adhered to. India needs fundamental reforms, so these labour laws regarding occupational safety, health, and working conditions, the Industrial Code, and the Social Security Code will kind of bring transformation in the conditions of the workers in the nation.

The new codes were much needed because of the global crisis, which resulted in hundreds of job losses, and these rules also applied to equality between employer and employee, which is much needed. The focus is on raising and improving the quality of life of the country's small, poor, and disadvantaged working class, which includes a large part of the working class, by providing them with the same benefits as other working classes.

Every new beginning has some problems, and there may be some loopholes in the new labour laws when adopted, but it can be a change that brings about similarities by eliminating regional inequalities. All in all, Codes are a great addition to any game-changing feature. Codes are intended to be a win-win situation, which provides much-needed flexibility for organizations in hiring people, minimizing foreign interference in their operations, and doing so without infringing on workers' rights.

As we have seen, the Constitution of India does all it can to safeguard the rights and privileges of the workers so that the health and dignity of such workers could be assured. However, much remains to be done on informal workers such as bonded workers, child labour, women labour, sweat industrial workers, and agricultural workers. The Constitution has internal power, but the resources used have failed to meet the expectations. Despite of the various rights delineated in the Constitution for protecting the rights of the workers, the workers are still becoming the victims of exploitation even after passing of more than 70 years of independence. Therefore, a lot of measures are required to be taken to safeguards the rights of the workers.