

BHARATI VIDYAPEETH'S
New Law College
Bharati Bhavan, Rajwada Chowk Sangli. (MS)
Tel. : 0233-2377256 Fax : 0233-2326372
http : //nlcsangli.bharatividyapeeth.edu
E-mail : nclsangli.@bharatividyapeeth.edu

BHARATI VIDYAPEETH'S

LAW COLLEGE

(Affiliated to Shivaji University Kolhapur,
Recognised by Bar Council of India and Accredited by NAAC)

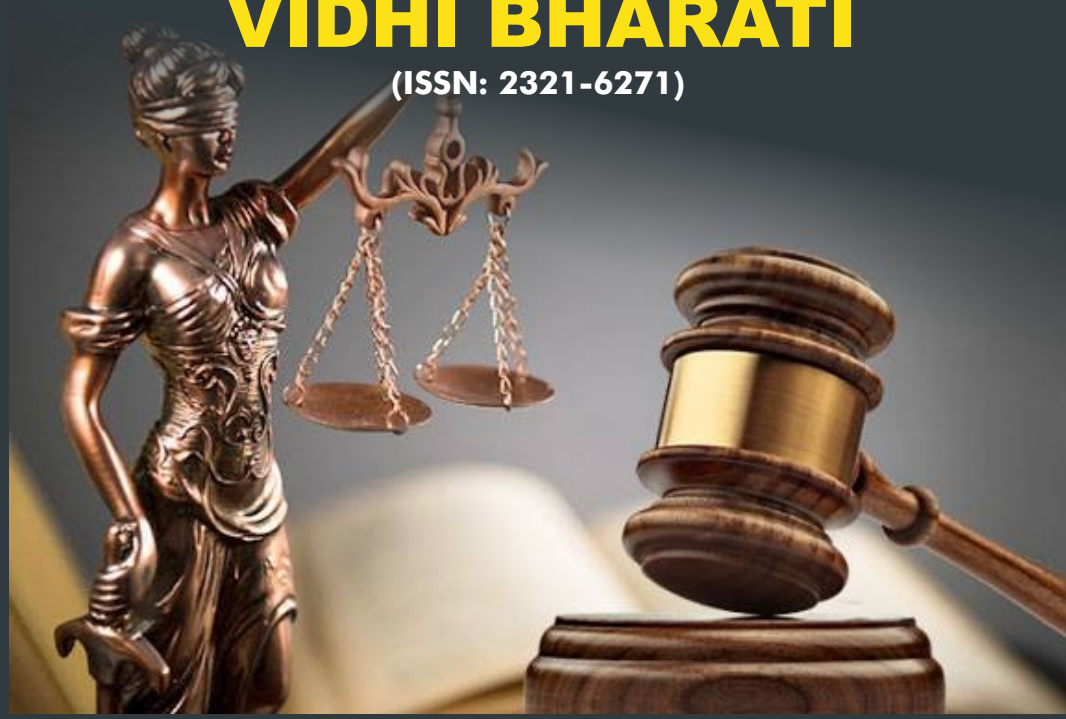
• Sangli • Kolhapur • Karad •

June, 2023

Research Journal

VIDHI BHARATI

(ISSN: 2321-6271)



Research Journal
VIDHI-BHARATI
(ISSN: 2321-6271)

OUR INSPIRATION

Late Hon. Dr. Patangrao Kadam Saheb
Founder,
Bharati Vidyapeeth Pune & BVDU Pune

OUR PATRON

Hon. Dr. Shivajirao Kadam
Chancellor,
Bharati Vidyapeeth
(Deemed to be University) Pune

Hon. Dr. Vishwajeet Kadam
Secretary,
Bharati Vidyapeeth Pune
MLA & Ex. Minister of State, Maharashtra

Hon. Dr. K. D. Jadhav
Joint Secretary,
Bharati Vidyapeeth Pune

Hon. Dr. H. M. Kadam
Regional Director Sangli,
Bharati Vidyapeeth

EDITORIAL BOARD

• Editor-in-chief •
Mr. Sanjay J. Aher
Asst. Professor, BV's New law College Sangli
• Associate Editors •
Prof. Dr. Pooja P. Narwadkar
I/c. Principal, BV's New law College, Sangli
Dr. Praful B. Chavate
I/c. Principal, BV's New law College Kolhapur
Prof. Dr. M. C. Shaikh
Shahaji Law College, Kolhapur
Mr. Satish H. Mane
I/c. Principal, BV's Y. C. law College Karad
Dr. Mahendra S. Khairnar
Asst. Professor, BV's Y. C. law College Karad
Dr. Sopan Jadhav
Asst. Professor, BV's New law College Kolhapur
Dr. Sanjeev Shinde
Asst. Professor, Vivekanand College Aurangabad
Mrs. Neha Wader
Asst. Professor, BV's New law College Sangli

Research Journal
VIDHI BHARATI
(ISSN: 2321-6271)

CALL FOR RESEARCH PAPERS/ ARTICLES

Dear Authors,

Greetings from Bharati Vidyapeeth's Law Colleges at Sangli, Karad, and Kolhapur.

I am elated to appeal the academicians, professionals, researchers, students etc., to contribute their original and unpublished experiences, views, ideas, and expertise in the form of papers/articles from any discipline of studies such as social, legal, political, commerce, technology, and so on. The papers/articles shall be published in the annual **Research Journal VIDHI BHARATI** having **ISSN 2321 – 6271**. Each author and co-author (if any) shall be sent a print copy of their journal and certificate of publication.

The articles/papers or any query can be sent to bvlawseminar@gmail.com up to 31st March of every year. Acceptance of the paper will be communicated within 15 days after review and plagiarism check. Authors may contact to the editor in chief Mr. Sanjay Aher @ 9822916809 for any query.

Author's details- name of authors (maximum 3), designation, name of institute/college, title of the paper, full address for journal & certificate.

Format: - MSWord doc, Times New Roman font, size 12, line spacing 1.5, page A4 size, page margin 1 inch all sides, word limits 2500 to 3000 including abstract of 150 words. Footnotes in bluebook style 20th edition.

Editor-in-Chief

Research Journal

VIDHI BHARATI

ANNUAL JOURNAL

(ISSN: 2321-6271)

Free Distribution

DISCLAIMER

All Rights Reserved.

The views expressed by the authors/co-authors of the articles/ papers are their own opinions and do not represent the publisher's or editor's views. If any idea, information published in the journal is plagiarized or copied without permission by the authors from any sources, the concerned authors shall be held responsible for the same, hence, the publishers or editors are not liable. No part of this Publication may be reproduced or transmitted or copied in any material or electronic form without permission of the copyright holder viz, Bharati Vidyapeeth's Law Colleges at Sangli, Kolhapur and Karad.

Printed at
Sonhira Printers, Plot No. 17,
Chatrapati Shahu Co-Operative Industrial Estate,
Agarbhag, Shirol, Pin code – 416 180,
Tq. Shirol, District Kolhapur. Maharashtra. (India)

EDITORIAL

Bharati Vidyapeeth is one of the topmost and dynamic Institutions in the country which provides professional education along with conventional education to the students in urban as well as rural areas. Considering the needs of the 21st Century, more focus is given on imparting quality professional education. As a part of it, Bharati Vidyapeeth is running three Law Colleges at Sangli, Kolhapur and Karad respectively, which are affiliated to Shivaji University, Kolhapur and approved by the Bar Council of India, New Delhi. These colleges have proved their excellence in the academics of legal discipline since their establishment for which NAAC accredited with 'A'.

Our academic and professional commitment to cater to the ever-growing demands of legal education and profession in Western Maharashtra, every year, we publish Research Journal- "VIDHI BHARATI" with ISSN 2321-6271. It covers different socio-legal issues from several fields of knowledge. This is a joint venture publication of the three law colleges of the Bharati Vidyapeeth Pune run in the jurisdiction of Shivaji University, Kolhapur.

The present volume is a selection of research articles received from research scholars, academicians, professionals, etc., from different parts of the country. The volume aims at documenting socially sensitive, economically crucial, and legally important issues observable in different sections of Indian society. It is true that the articles incorporated in the volume deal with different topics and aspects of socio-economic and legal reality. However, the articles are characterized by a common vision which critically addresses various issues relating to the progress of legal awareness and legal implementation. Some of the articles examine the present situation of a particular problem and suggest beneficial measures, while some others point towards the depth and seriousness of the problem. As such, most of the articles deal with ground level realities, focusing on positive aspects on the one hand and the negative consequences on the other. The articles express concern with regard to several issues viz. Globalization and changing profile of Indian legal system, Alternative Dispute Resolution, Female Feticide and female infanticide, corruption and Human Rights, Bio-diversity Law, Black Money, Medical Ethics, Honor Killing, Right to Education, cybercrimes, surrogacy etc. these articles underline the experiences and concern of different sections of our country.

The articles also raise some questions for the readers and seek to obtain the proper solution for it. No such specific theme was selected for this volume and hence the articles on a variety of issues and problems received from the scholars were accepted. However, only those based on criteria and of research skills and research norms are incorporated in the volume. It is overall, an attempt to share and shape the knowledge and enrich it. Furthermore, the present volume invites the attention of the scholars to make a further meaningful dialogue and strengthen academic discipline.

I hope that this volume will stand as a model of thinking and give strength to the volumes to be published every year in the month of June. Publishing the research journal is a teamwork. I was fortunate to get ready help and willing co-operation from my associates of editorial team. I am indeed indebted to them. However, I am especially thankful to the members of the Editorial Board for their constructive suggestions and encouragement.

I express sincere thanks to all authors for their expertise and contributions to this journal.

I am always inspired by the great work of and indebted to our late Founder Dr. Patangraoji Kadam Saheb. I am deeply grateful to Hon. Chancellor Dr. Shivajiro Kadam Sir, and Secretary Hon. Dr. Vishwajeet Kadam sir for their constant support, encouragement, and co-operation in this academic endeavor.

I look forward to a greater and a keener participation from our academic fraternity. We will march together to scale new heights in research quality. We would be very happy to receive suggestions or comments to raise the quality of the journal to greater heights.

Sanjay Aher
Editor-in-Chief

Research Journal
VIDHI BHARATI
ANNUAL JOURNAL

CONTENTS

ARTICLES

ROLE OF CONSTITUTION, LEGISLATURE & JUDICIARY IN PROMOTING GENDER JUSTICE IN INDIA
- Mrs. ManishaYogesh Kale — 1-7

THE RIGHT TO EQUALITY AND SOCIAL JUSTICE- A COMPARATIVE ANALYSIS BETWEEN USA AND INDIA
- Nithya Sree A — 8-21

IMPACT OF COVID 19 ON GENDER ROLE AND WOMEN EMPOWERMENT
- Dr. Parul Dixit — 22-29

RULE OF LAW' UNDER CONSTITUTION OF INDIA
- Priyanka K. — 30-45

EVERYONE HAS THE RIGHT TO LIVE WITHOUT WORRYING ABOUT BEING ATTACKED WITH ACID. STOP ACID ATTACKS RIGHT AWAY. PROTECT ACID ATTACK SURVIVORS, NOT THE CRIMINALS WHO COMMITTED THE CRIME
- Priyanka S. Shet — 46-62

Offences Against Women in India: A Study of Laws and Protection
- Saumya Verma — 63-82

Different Religious views on Organ Donations
- Shabnam A. Virani — 83-88

धर्मान्तरण विरोधी विधियों की प्रासंगिकता
- शारदा प्रसाद शुक्ला — 89 - 104

Good Governance in India: An Overview
- Sanjay Aher
- Dr. Sanjeev Shinde — 105- 115

EDUCATION AND UNEMPLOYMENT IN INDIA
- Shivnandini Dube — 116-121

HUMAN RIGHTS IN DIGITAL AGE
- Shreeshma V K — 122-130

LEGAL PRACTICE IN ANCIENT INDIA
- Suraj Amit
- Dr. Birendra Kumar Gupta — 131- 140

NEED FOR PRISON REFORMS WITH SPECIAL REFERENCE TO JUVENILES IN INDIA
- VINU SREE G — 141-154

UNDERSTANDING THE LEGALITIES, RIGHTS, AND OBLIGATIONS OF LIVE-IN RELATIONSHIPS
- Mr. Prashant Jarandikar,
- Mr. Sajeevkumar Sable — 155-167

ROLE OF CONSTITUTION, LEGISLATURE & JUDICIARY IN PROMOTING GENDER JUSTICE IN INDIA

Mrs. Manisha Yogesh Kale
Assistant Professor,
B. V's. New Law College, Sangli.

Abstract

Gender justice entails ending the inequalities between women and men that are produced and reproduced in the family as well as in the community. Gender equality is a fundamental human right that is guaranteed in national legislations, conventions and international and regional treaties. Harsh reality is that women have been ill-treated in every society for the ages and India is no exception for it. In male-dominated Indian society, women being a vulnerable group face discrimination at different levels.

In order to improve the condition of women in India, legislature enacted the large volume enactment. India has international obligation to protect the women and ensure gender justice. The role of Indian Constitution, legislature and judiciary is commendable in ensuring gender justice. The study aims to highlight the sociological status of Indian women, problems and discrimination faced by them. This paper is an attempt to review basic human rights as well as constitutional and statutory rights of Indian women and to evaluate concept of gender justice in India.

Introduction

The women are the soul of our community, and they are self-build and self-trained human responsible for the morale development of their

children, inspiration for the family and an example for the community to follow. As a wife, woman is his best friend and inspiration. The history conveys that, "Each successful man has an inspiring woman responsible for success". It is harsh reality that women have been ill- treated in every society for ages, India is no exception. Being a vulnerable group Indian women face discrimination at different levels. In male-dominated Indian society, women often face discrimination. They are considered as an object of male sexual enjoyment and reproduction of children. Women are discriminated because of their gender. The patriarchal system in India made women to live at the mercy of men, who exercise unlimited powers over them. The status of women is a benchmark of social process and is a very important part of the human development. Several developmental programmes have been implemented by the Five Year Plans. Judiciary as well as Constitution of India which is fundamental law of our country play vital role in ensuring Gender Justice.

Gender justice means equal treatment and equitable value of the sexes. Gender justice entails ending the inequalities between women and men that are produced and reproduced in the family as well as in the community. Gender equality is a fundamental human right that is guaranteed in international and regional treaties, conventions, and national legislation. Achieving gender equality means that men and women are able to share equally in the distribution of power and knowledge and have equal opportunities, rights and obligations both in their private and public lives. To achieve gender equality gender justice has to be practiced.

The need of gender justice arose due to gender discrimination and male domination since ancient times. In India 48.5% population is covered by the female who are restricted by various social taboos. The Indian women play multiple roles such as daughter, sister, wife, and mother. She is committed to serve the family. She creates life and gives strength to it. She plays important role in the preservation of our culture. Women have been the foundations of the family and society in general. If the foundation is not solid and carefully maintained and protected by

those who are responsible for her protections there are chances of disintegration of family system and ultimately the disintegration of the society itself. Women who are backbone of family should have given due respect and equal treatment. This paper highlights status of Indian woman, their human rights. It is an attempt to analyse gender justice in India.

Constitutional Rights of Indian Women

Gender equality is enshrined in Constitution of India in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Indian Constitution guarantees equality for women. Indian Constitution not only guarantees equality to women but also empowers the State to adopt measures of positive discrimination in favour of women. Article 14 of the Constitution of India guarantees equality before law and equal protection of law. Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex, etc., Article 15(c) of the Indian Constitution allows the State to make any special provision for women and children. Article 23 provides against exploitation of women & prohibition of trafficking in Human beings and Forced labour. Article 39 (a) mentions that the State will direct its policies towards securing all citizens, men and women, the right to means of livelihood. Article 39(c) ensures equal pay for equal work. Article 42 direct the State to ensure just and human working conditions.

The Constitution imposes a fundamental duty on every citizen through Article 15 (A) (e) to renounce practices derogatory to the dignity of women. The 73rd. and 74th amendments to the Constitution of India effected in 1992 provided for reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women. Another Constitution Amendment (84th Constitution amendment) reserve 33 per cent in parliament and State Legislature. Article 243-D of the Constitution contains that not less than 1/3rd of the total number of seats to be filled in direct election in every Panchayat shall be reserved for women. Same provisions have been made in Article 234-T for reservation of seats to women in the direct elections to every

Municipality. Thus, there is a reservation of 33% seats for women in local bodies.

Constitution of India also imposes obligation on the State to protect the rights of the women and to fulfil the requirements of international conventions regarding the rights of the women. Indian Government passed the Protection of Human Rights Act, 1993 and constituted a body known as the National Human Rights Commission for promotion and protection of human rights.

Gender Justice: Judicial Initiative

The judiciary play important role for protection of rights of women and also to ensure gender justice**.** Due to the failure of the legislations to protect women, judiciary has come forward to protect women. The Supreme Court has been playing an effective and meaningful role towards protection of human rights of women. The judiciary by its landmark judgments had filled up the gap created by the Legislative machinery. The judiciary had extended helping hands to women when the legislature had denied it. The higher judiciary has shown concern for women's rights in recent times; It also had been greatly influenced by the international declaration and covenants on women rights. Apart from securing several non – Justifiable socio – economic rights for women as guaranteed fundamental rights, the Apex Court has frequently resorted to evolving novel measures such as compensatory jurisprudence, judicial law – making and the like with a view to secure gender justice.

In the case of **Suchita Srivastava and another vs Chandigarh administration** it was held that women's right to make reproductive choice is a part of personal liberty conferred under Article-21 and that may include procreation as well as abstaining from procreation In **Vishakha v. State of Rajasthan**, the Supreme Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere.

In **Vishakha Case,** the Court assumed the role of legislature and defined sexual harassment and laid down guidelines in order to provide safe and healthy environment for working women**.** In **Apparel Export**

Promotion Council v. A.K.Chopra[4]**,** The Supreme Court found all facets of gender equality including prevention of sexual harassment in the fundamental rights granted by the Constitution.

In the case of **Randhirsingh vs Union of India**[5], the Apex Court talked about the doctrine of equal pay for equal work .It was held that the doctrine is applicable in case of both men and women Again, in the case of **Bhagwan Das vs State of Haryana**[6], the Supreme Court declared that when persons are doing similar kind of work under similar condition, then they cannot be denied of their right of equal pay for equal work on the ground that their mode of recruitment was different.

In **Sheela Barase Case vs State of Maharashtra**[7] Supreme Court issued certain guidelines protecting rights of women inmates and held that separate lockups should be provided to female prisoners, and it should be guarded by female police officers only. Interrogation of the female prisoners should only be done in the presence of female officers only. Court also held that a female suspect is to be checked by a female police officer only and they cannot be arrested after sunset and before sunrise.

Gender Justice: Legislative Initiative

Along with various legal provisions for women some legislation are especially enacted to ensure gender justice in India such as,

1. **Protection of women against Sexual Harassment at Workplace Act, 2013** provides safeguards for working women against sexual harassment. Act provides for the establishment of Internal Complaints Committee for protection of women.
2. **Dowery Prohibition Act 1961** bans giving and taking of dowry at or before marriage.
3. **Hindu Succession Act (1956)** recognizes the right of women to inherit parental property equally with men.
4. **Mines Act (1952) and Factories Act (1948)** prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.

5. **Immoral Traffic (Prevention) Act (1956)** is the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organized means of living.
6. **Maternity Benefit Act (1961)** regulates the employment of women in certain establishments for certain period before and after childbirth and provides for maternity benefit and certain other benefits.
7. **Medical Termination of Pregnancy Act (1971)** provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.
8. **Indecent Representation of Women (Prohibition) Act (1986)** prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.
9. **Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994)** prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female foeticide.
10. **Proteciton of Women from Domestic Violence Act (2005)** is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind—physical, sexual, mental, verbal or emotional.

Conclusion and Suggestions

Complete gender justice is complex to achieve typically in a country like India where the diversity of culture, subcultures is vast and there is a lot of rigidity in traditions and beliefs. Lack of education, lack of

development, poverty, improper enforcement of the laws, lack of awareness among women, deep rooted patriarchy, economic dependence of women all lead to the subversive condition of women in our society. Even though the government is trying to take care of this natural right by formulating various policies, enacting and formulating laws. This is not a one man's job – entire humanity will have to join hands.

In spite of having so many enactments dealing with women and judgments of the Supreme Court protecting women the downtrodden and poor condition of women has not been improved and she still faces all types of atrocities. After independence the founder father of the nation wanted to reform the society and to establish egalitarian society .To achieve this end they used law as an instrument to check the gender discrimination. But due to strong patriarchal mentality and unfavourable social environment they failed to accomplish the goal of gender justice.

To ensure gender justice the need of the hour is that laws should be implemented, and they should be backed by strong public willingness and public opinion. Because so long as conservative social thinking remain deep rooted in the society laws will not be able to achieve their ends. It must be asserted that idea of gender justice would be effective only if it is supported by major section of the society.

■■■

Reference :

[1] Shankar Rao C.N., Sociology of Indian Society, S. Chand & Company, 1st Edn,.2006

[2] 2009 S.L.P. (C) No. 17985

[3] AIR 1997 SC, 301

[4] AIR 1999 SC 625

[5] 1982 AIR 879, 1982 SCR (3) 298

[6] 1987 AIR 2049, 1987 SCR (3) 714

[7] 1983AIR 378 1983 SCR (2) 337

THE RIGHT TO EQUALITY AND SOCIAL JUSTICE- A COMPARATIVE ANALYSIS BETWEEN USA AND INDIA

NITHYA SREE A

ABSTRACT

The purpose of the paper is to analyse the fundamental right to equality and social justice in India and united states of America by comparing both constitutional provisions as well as the legislation. The study focuses on the comparative analysis of the past and present situations that involves discrimination. The study compares racial discrimination in USA and untouchability in India throwing a light on article 14, 15, 16 and 17 of the Indian constitution and on the other side, 13th, 14th, 15th US constitutional amendments. The study aims to compare the evolution of social justice through relevant case laws.

KEYWORDS :

Affirmative action, discrimination, equal justice & protection, reasonable classification,

Introduction

India and United states of America are two pluralistic societies in culture, religion, social and political systems. The right to equality clause in USA has a different interpretation than the equality provisions in India. Bill of rights in USA and the fourteenth amendment of the US constitution in 1868, doesn't protected the minorities, only the legislature through its legislative powers enacted laws to protect the

minorities. In India, constitution directly protects the minorities in the part III of the Indian constitution. Indian constitution through article 14 guarantees the fundamental right to equality and equal protection before the law. Indian constitution has incorporated affirmative action through reservation policies. A state cannot treat all persons equally, but it has to make reasonable classification to treat certain people unequal in certain circumstances. The reservation system in India is to strengthen the concept of right to equality by bringing unequitable groups in par with others.

Review of the literature:

1. Dr. Kavya B., (2016) focuses on the situations encountered by the marginalised women, in Indian patriarchal society. Man is a social animal has a sense of belongingness in the community, caste and religion. This research explores woman's life in the Dalit Community and explains the liberalisation of Dalit women towards hunger, poverty, child marriage and caste-based discrimination. And discusses the impact of Dr. B.R. Ambedkar in the lives of Dalit female.
2. Harish Chandra, (2012) talks about the international practices in human rights and the relevant provisions in the Constitution of India. The study highlights various, articles in the Constitution in relation to provisions of international treaties. The present study tries to define Human Rights and views of various authors across the globe.
3. Cyril-Marry P. Olatunji, (2013) addresses the gender inequality in Black African society and talks about the treatment of women and the topic of gender inequality in Africa. He suggests that the roots of women's oppression are to be sought in customs and traditions and so despite of a legal system that guarantees women rights in Africa. The objective is to advance the current discussion on the issue using the method of simple philosophical analysis, an argument from a legitimately African origin

proposing a re- examination of the widespread belief among Afro-critics, as well as Afro-apologetic scholars that treatment of women as second-class citizens or inferior folk in indigenous Africa.

Preamble:

Preamble of the Indian constitution includes EQUALITY of status and of opportunity. Every person should be seen equal in the eyes of law. All are equal before law, no person shall be discriminated on the grounds of religion, race, caste, sex, place of birth etc. also constitution of India prohibits the practice of untouchability. The constitution empowers the state to make special provisions for women, children and marginalised communities and backward classes.

Constitutional provisions

Article 14 guarantees to all persons, not only the Indian citizens, it also includes all persons (even the foreign nationals) within the territory of India as well as corporate or juristic persons the right to equality before law and equal protection of law. Dr Jennings on Equality "Equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to be sue and be sued to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinction of race, religion, wealth, social status or political influence." **A. V Dicey Rule of Law**, "Every official from the prime minister down to constable or a collector of taxes in under the same responsibility for every act done without legal justification as any other citizen".

Exceptions to the rule of law

The rule of law doesn't prevent member of armed forces, they are controlled by military laws, medical practitioners are subjected to medical council of India regulations, Article 361 provides immunity to

president and governor that they shall not be answerable to any courts.

Restriction of scope of article 14

It was restricted by 42nd amendment 1976. Article 31 (C) was added, which states that laws made by the state for implementing the directive principles of the state policy contained in article 39(b) or 39(c) cannot be challenged on the ground of violation of article 14. When the president by article 359(1) proclaims emergency. The fundamental rights (except article 20 and 21) including right to equality gets suspended. No criminal proceedings shall be instituted against president or governor of state. No process can be initiated for the arrest and imprisonment of a president or governor. No civil proceedings can be instituted against the president or governor. Under the international law, ambassador's and foreign sovereign are immune from judicial process.[5]

Equal protection of law:

Borrowed from 14th united states amendment. It means that all persons under similar circumstances shall be given the same rights and liabilities. It essentially means that equals are to be treated equally and there must be no discrimination amongst them. Equal and unequal cannot be put in the same footing and be treated without discrimination.[6]

Reasonable classification

Budhan Chaudhary v. the State of Bihar *(1955) and* Vajravellu Mudaliar v. Special Deputy Collector for Land Acquisition *(1965)* for class legislation to be considered reasonable or rational.

There should not be any arbitrary classification. There has to be some rational or substantial reasoning behind the distinction drawn between the people who fall into the class and the people who do not.

There has to be some rational object behind the classification that the legislation seeks to achieve. The classification can be on the basis of various factors like geography, age, or occupation. It is only required for the object of the legislation to match with the classification.[7]

Article 15- Article 15 empowers the state to make special provision for women, children and socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes as to their upliftment and admission as to educational institution. In the case of State of madras v Champakkam dorairajan, the court said that the directive principles of state policy cannot take away or abridge the fundamental rights. Champakkam dorairajan, a brahmin candidate filed a writ petition for issuing mandamus restricting the communal G.O that fixed proportionate seats in state colleges for different communities. The court held that the communal G.O violates fundamental rights under part III of the constitution. This led to the legislature in adding clause 4 to article 15 through the first constitutional amendment in 1951.[8]

Article 16- Article 16 provides for equality of opportunity in matters of public employment. If article 14 is a genus, article 16 can be called as species of article 14. Both talks about equality subjected to rule against arbitrariness and reasonable classification.[9]

77th constitutional amendment act 1995- It inserted 4A in article 16, thereby enabling the parliament to make provisions for reservation of SC, ST in promotion.[6]

Mandal case or Indra Sawhney v union of India - In this case, the scope of article 16 (4) was discussed. Facts of the case is as follows- On 1st January 1979, a commission was set up under article 340 known as "backward classes commission" headed by Sri B.P. Mandal to review the condition of the socially and educationally backward classes (SEBC's) and to make a report with the purpose of reservation of seats in state government jobs. In December 1980, mandal commission submitted its report stating that there were around 3743 castes who were socially and educationally backward and recommends 27% of reservation to them. Subsequently Janata dal collapsed, after the congress government didn't implement the same. In 1989, again when Janata dal came into power,

they implemented the 27% reservation policy. This led to various oppositions and anti-reservation movements for 3 months. State bar association filed a writ petition challenging the validity of office memorandum. On October 1990 judgement was passed. September 25, 1991, the government made two changes in the office memorandum. Economic criteria to benefit the poorer section of the society was included. 10% reservation to socially and educationally backward classes doesn't include the higher castes.

Judgement :

The court passed its decision with 6:3 majority. It was held that the union government decision to give 27% reservation to backward classes was constitutional. The socially advanced persons within the backward classes "creamy layer" should be eliminated. This reservation is limited only to the initial appointments and not to the promotion in jobs. The reservation limit should not exceed 50%.[10]

81ST constitutional amendment 2000 inserted 4B with a view of Protecting the reservation for SCs and STs in the backlog of vacancies. his constitutional amendment modifies article 16 of the Constitution of India.[11]

85th constitutional amendment 2001 bought consequential seniority to SC/ST's in matters relating to promotion. Article 16(6) exempts any law from application of clause 1 and 2 require the incumbent of any office to be religiously qualified.[12]

103rd constitutional amendment act 2019 inserted clause 6 in article 16, which empowers the state to make various provision for reservation in appointments of members of economically weaker section (EWS) of society to government posts. It gave 10% ceiling in addition to existing reservations.[13]

Janhit abhiyan v union of India 2022[14]

In this case, 103rd constitutional amendment was challenged as it was violative of the basic structure. It was held in the ratio of 3:2 that the

amendment was valid.

Catch up rule and consequential seniority:

Union of India v virpal Singh 1995 and Arijit Singh v state of Punjab 1996

After reservation in promotion was recognised by the constitution, there was a situation where reserved category candidates who were promoted over general category counterparts, became their senior due to early promotion. This was addressed and the court introduced "catch up rule"

The rule held that senior general candidate who were promoted after SC/ST candidate would regain their seniority over general candidates promoted earlier.[15]

Carry Forward Rule :

T Devadasan v Union of India 1964

In this case it was held that carry forward rule was unconstitutional. This means that unfilled seats for reserved categories one year could not be carried forward to the next year. The 50% rule have become accepted constitutional principle.[16]

In Indra Sawhney case, carry forward is valid as long as it did not exceed 50% of the reservation limit.

Expert committee on creamy layer: Justice Ram Nandan committee

For identifying the creamy layer among the OBC's Ram Nandan committee was appointed. In 1993, the committee submitted a report which was accepted by the government.[17]

Article 17

Untouchability has been abolished by the Indian Constitution through Article 17. The Article states that the practice of untouchability is prohibited in all forms. Article 17 of the Constitution abolishes the practice of untouchability. The practice of untouchability is an offense

under the Untouchability Offences Act of 1955 (renamed to Protection of Civil Rights Act in 1976) and anyone doing so is punishable by law. This Act states that whatever is open to the general public should be open to all the citizens of India.[18] In the case of Devarajjah vs. Padmana, the term untouchability was defined. It was stated that the Untouchability Offences Act, 1955 fails to define the word 'untouchability'. The court in this case gave wider interpretation and meaning to untouchability. The term "untouchability" should not be interpreted in literal sense, it is seen as a practice that has been practiced historic times. [19]

Chapter X- Equal justice

In order to overcome such situation and to provide access to justice for all the Parliament by its 42nd Amendment incorporated Article 39-A in the Constitution which directed Government for providing equal justice and free Legal Aid to indigent persons who are unable to fight for justice by reason of economic and other disabilities. "Article 39-A. Equal justice and free legal aid-The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."[20]

Comparative analysis between India and USA as to right to equality

Racial Discrimination in USA and Untouchability in India Similar to the provision under the Bill of Rights in the US, Article 14 in India is the foundation for providing the right to equality in the Indian Constitution. Article 14 has further introduced the concept of 'reasonable classification,' which states that people belonging to similar circumstances should be treated equally. Whereas in the United States, the mode for promoting equality is not based on fixing quotas. It is based on passing time-to-time legislation for the underprivileged like women and children and other minorities. In India, Article 14 and 15 protects

against discrimination based on religion, caste, race, sex, or place of birth. In the case Shayara Bano v. Union of India[21], triple talaq was struck down, stating that it is violative of Article 14, whereas the US constitution does not promote social equality per se in this manner. The concept of social equality was not a part of the American Constitution at the time of its framing. For example, the rights of black people were protected only after passing the 14th and 15th Amendments. After the American civil war, 13th amendment in US constitution 1865 abolished slavery. 14th amendment 1868 gave citizenship to former slaves. And 15th amendment 1870 gave the former male slaves right to vote.[22]

Reconstruction Amendments: Definition and Overview

The period in American history that came directly after the Civil War was called the Reconstruction. It gets its name from the fact that the North tried to remake the South in a way that would integrate newly-freed slaves into American society. One way that they tried to do this was to pass three important amendments, the so-called Recon-struction Amendments.

These amendments were necessary to combat the racist views of Black Americans by whites in the states of the former Confederacy. Unfortunately, despite the good intentions of the authors of these amendments, implementing them took over a century.[23]

13th Amendment: While the Emancipation Proclamation ended slavery in the Confederacy, the Thirteenth Amendment abolished slavery in the entirety of the United States. It also granted Congress the right to enforce this with appropriate legislation should states defy the ordinance.[24]

14th Amendment: This amendment ensured the Bill of Rights applied to all citizens of the United States of America, regardless of race. After Congress passed the Civil Rights Act of 1866, they realized they needed a firmer legal precedent to enforce the due process of law, equal protection of the laws, and so on within states. The Fourteenth Amendment allowed the federal government to challenge state

governments when they abridged the immunities and rights of citizens on the basis of race. It effectively overturned the Supreme Court's Dredd Scott decision by declaring everyone born on United States soil (including Black men and former enslaved people) citizens endowed with all the entailed rights.[25]

15th Amendment: Black men could not vote in all states until Congress passed and ratified the Fifteenth Amendment. The stipulation secured voting rights for Black men, making it illegal to refuse them the right to vote on account of race or previous condition of servitude. Individual states in the former Confederacy tested the limits of congressional power on this front.[26]

Brown v board of education[27]

It was one of the significant supreme court interpretations of the equal protection clause. In this case, the court said "separate but equal" doctrine proclaimed in Plessy v Ferguson [28]unconstitutional. The US supreme court unanimously held that segregation in public schools on the basis of race violates the fourteenth amendment to the constitution. Separate educational facilities for white and black were inherently unequal.

Gender equality in India and USA

Equality for women regarding education, job opportunities, etc., is a widely debated topic in both nations. Thus, both nations have separate provisions to protect and safeguard women's rights. Women's equality and rights protection laws have gained more attention in the USA than in India among various countries because these laws were framed and implemented decades before India's independence. The concepts like 'liberal feminism' and 'radical feminism' rose to popularity in the United States and changed people's stereotypical attitudes and resulted in women's independence. While discussing the protection of women's rights in the workplace, India made provisions to tackle this problem

only recently through the judgment of Vishaka v. State of Rajasthan. In contrast, this provision in the United States is more enhanced and developed[29]

After the ***Indian young lawyer association v state of Kerala*** judgement popularly known as sabarimala judgement, the hope in our constitution has increased. The court upheld the supremacy if the constitution. No discrimination on the basis of sex is entertained. Through the ***Shayara Bano v union of India*** verdict, one can understand that the judiciary will not appreciate any violations as to equality in the name of personal laws. If any law in India that is contradictory to the constitution will be overthrown.

In ***joseph shine v union of India***, the supreme court decriminalised adultery, it is no more a punishable offence, but only a ground for divorce. As the section 497 of IPC is derogatory to women, treats women like man's property and discriminatory, it was contradictory of article 14, 15, it was struck down.

India's affirmative action:

The United States and India are two countries which have implemented affirmative action programs. The controversy over the justifications and success of affirmative action will continue well into the future. While some will argue that affirmative action in United States and India has led to worse race or caste relations, the implementation of such preferential programs indicates a willingness on the part of both countries to address the problem of discrimination. Those governments which have been slow to confront problems of discrimination within their own countries are now suffering the consequences of such neglect. The former Soviet Union is a prime example of were suppressed and ignored minorities did not waste time in establishing their separate homelands when they got the opportunity to express their free will. In discussing the experiences of Indian untouchables and American blacks with affirmative action, there are many areas of comparison which warrant greater study and

analysis. This analysis has been general and should be viewed as heuristic rather than one which provides specific remedies to complex problems. Also, scholars engaged in comparative and international studies on the legal aspects of discrimination may find some useful ideas from this discussion. If a legal issue such as affirmative action can be compared between two such diverse cultures as the United States and India, then the scope for comparison between other countries should also increase. Many scholars have been reluctant to make comparisons between the United States and India due to perceived cultural irreconcilability. This perception may not only discourage scholars from making legitimate comparisons but may also inhibit the motivation for borrowing innovative and effective ideas from other cultures due to their foreignness.[30]

Rights of LQBTQ In India and USA

Navtej Singh Johar v/s Union of India[31] on 6th September 2018 declared the 150-year-old section no longer exists. No one can punish people who belong to LGBT[15] community under section 377 of IPC. And also stated that a part of section 377 of IPC which criminalized the homosexual act declared unconstitutional as it violates the basic fundamental rights enshrined under Articles 14,15,19 and 21 of the Indian Constitution. Through these judgement, Indian judiciary is moving towards achieving progressive nations that is free from all kinds of discrimination and limiting beliefs.[32] In US, The Equality Act is a landmark piece of legislation that would expand federal civil rights laws to protect LGBTQ people from discrimination in employment, housing, credit, jury service, and federally funded programs, such as those for health and education, as well as public places and spaces. Non-discrimination protections are sorely needed: A nationally representative 2020 survey from the Centre for American Progress revealed that 1 in 3 LGBTQ Americans, including 3 in 5 transgender Americans, experienced discrimination in just the past year. Evidence demonstrates that discrimination has adverse effects on physical and mental health as well as basic economic security.

Equality Act advances fair treatment for LGBTQ people, women, people of colour, and people of faith.[33]

Conclusion:

As we have seen that, equality before law and equal protection of laws is essential in safeguarding the decriminalised and marginalised communities in achieving education, health, sanitation, employment and improve their standard of living. India is in par with united states in reforming and safeguarding equality. The unlike cannot be treated like is the core principle behind the reservation system in India. Reservation in education and employment has uplifted the marginalised to a great extent. Recently the chief minister of tamilnadu has made women to travel free in government buses is an affirmative action. This will help the working sector women by encouraging them to work and earn. Indian judiciary has played a huge role in widely interpreting article 14, 15, 16 and 17 thereby bridging the gap between haves and have not's and ensuring social and economic justice.

■■■

Reference :

[1] https://www.govinfo.gov/content/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002-9-15.pdf
[2] https://www.constitutionofindia.net/constitution_of_india/preamble
[3] https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2014
[4] https://articles.manupatra.com/article-dtails/Article-14-Equality-Before-Law-and-Equality-protection-of-the-law
[5] https://www.iitr.ac.in/internalcomplaintscommittee/annexure.pdf
[6] https://www.law.cornell.edu/wex/equal_protection
[7] https://www.ijlmh.com/wp-content/uploads/Doctrine-of-Reasonable-Classification.pdf
[8] https://indiankanoon.org/doc/149321/
[9] https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-seventy-seventh-amendment-act-1995
[10] https://indiankanoon.org/doc/1363234/
[11] https://legislative.gov.in/constitution-eighty-first-amendment-act
[12] http://legislative.gov.in/constitution-eighty-fifth-amendment-act-2001
[13] http://egazette.nic.in/WriteReadData/2019/195175.pdf
[14] http://www.scobserver.in/cases/janhit-abhiyan-union-of-india-ews-reservation-case-background/
[15] https://www.scobserver.in/journal/reservation-in-promotion-court-in-review/
[16] https://www.scobserver.in/journal/do-reservations-have-to-be-below-50-from-balaji-1962-to-indra-sawhney-1992/
[17] https://archive.pib.gov.in/archive/releases98/lyr2003/roct2003/08102003/r081020035.html

[18] http://www.constitutionofindia.net/constitution_of_india/17/articles/Article%2017

[19] http://indiankanoon.org/doc/337685/

[20] https://www.ijlmh.com/paper/equal-justice-and-free-legal-aid/

[21] https://indiankanoon.org/doc/115701246/

[22] https://constitution.congress.gov/browse/essay/intro.3-4/ALDE_00000388/

[23] https://blog.ipleaders.in/thirteenth-fourteenth-fifteenth-amendments-u-s-constitution-reconstruction-amendments/

[24] https://www.carchives.gov/milestone-documents/13th-amendment

[25] https://www.law.cornell.edu/constitution/amendmentxiv

[26] https://www.archives.gov/milestone-documents/15th-amendment

[27] https://www.archives.gov/milestone-documents/brown-v-board-of-education

[28] https://www.archives.gov/milestone-documents/plessy-v-ferguson

[29] https://link.springer.com/chapter/10.1007/978-981-13-1414-8_12

[30] https://mckinneylaw.iu.edu/iiclr/pdf/vol3p101.pdf

[31] https://indiakanoon.org/doc/168671544/

[32] https://www.ijlmh.com/wp-content/uploads/2019/03/LGBT-Rights-in-India.pdf

[33] https://www.aclu.org/know-your-rights/lgbtq-rights

IMPACT OF COVID 19 ON GENDER ROLE AND WOMEN EMPOWERMENT

Dr. Parul Dixit
Dean & Head,
Faculty of Law D.A.V. (P.G.) College,
Dehradun (U.K.)

ABSTRACT

Women's empowerment is an important goal in achieving sustainable development worldwide. In India, it is the most effective tool for creating a developed society, as it is seen nowadays that women from across the world are actively working as leaders and surpassing others in all spheres of life. As the entire world clasped its breath and prayed every single day for a much-awaited escape from the COVID-19 Pandemic, it was women like KK Shailaja who took over the responsibility and marched ahead in the battle alone.

Women empowerment in India, to a great extent, depends upon variables that encompass social status, geographical setting, age factor, and educational status. Actions on women empowerment projects exist at the state, local, and national levels. However, it can be seen that women still face "differentiation" in several sectors like political participation, economic opportunities, the medical sector, and the educational sector, which proves that there are substantial gaps between the strategic advancements and the ground reality.

The crafting and execution of a concrete-policy framework, providing education, and spreading civic awareness, concerning the empowerment of women can usher in accomplishing the desired goals of creating a gender-responsive and balanced society. The realm of women

empowerment in our society seems stagnant at just granting balanced rights to women. Women's Empowerment is also about assuring that they are ingrained and rightful partners in the workforce.

Key Words: Gender, Gender Equality, Feminized Poverty, Maternal health, Women Empowerment

Introduction

The term "women empowerment" is all about authority and the power embarked on women sharing indistinguishable rights. It refers to the liberation of women from the socio-economic restraints of reliance. Women comprise around 48%[1] of our country's population, and most of them stay economically dependent on one another without any means of employment. In the era of feminism, a considerable portion of women in India are unconfined, employ their free will, and are carving out their lives as per their heart's desire. But there still remains a considerable division of those women who require optimistic support. In most of the villages, women are still denied fundamental education and are never allowed to pursue their higher education despite amassing the understanding required. Women are known for delivering multiple roles tirelessly and effortlessly every single day, and thus, they are considered to be the backbone of every society. Living in male-dominating societies,[2] women play a wide range of roles, such as caring mothers, loving daughters, and worthy colleagues. The best part is that they fit the bill perfectly in every role. Nonetheless, they've also stood as a neglected bunch of society in different parts of the world. It has resulted in women surviving the brunt of unevenness, distinct social evils, financial trustworthiness, and oppression. Women have been residing under the shackles of enslavement for centuries, which impedes them from attaining personal or professional highs.

The Components of Women's Empowerment

Women's empowerment comprises five components[3]: the sense of self-

worth; expansion of choices; access and control over opportunities and resources; control over their own lives; and their ability to influence the direction of social change to create a just social and economic order, nationally and internationally.

Some more important tools to empower women include access to education, raising awareness, training, expansion of choices, enhancement in self-confidence, increased access to and control over resources, and actions to transform the structures and institutions that reinforce and perpetuate gender discrimination and inequality.[4]

Women Empowerment: A Historical Perspective

Indian women have come a long way to achieve their current societal status. Gender inequality in India can be traced back to the historic days of "Mahabharata" when Draupadi was put at stake in a dice game, by her husband Yudhishthira as a mere commodity. History testifies that women were made to dance both in private and public places to please men. In Ancient Indian Society, a woman was always dependent on the male members of her family. There are traces of some very educated women of substance in the Vedic period, but the instances are so meager that it definitely raises doubt in the minds about her real place in society even at those times. Women were barred from using a loud tone in the presence of the elder members of their families. It was seen that women were solely responsible for the entirety of their faults, whether in their own lives or the lives of others. The dependence of women on the male members increased after the death of their husbands. Economic dependability must have been the sole factor why women at those times were kept in distressful conditions, where they could not be seen or mingled with men around them anymore. There have also been instances of "Sati", in which a widow was put at the funeral pyre of her husband and burned alive. There still exists the temple of "Sati Mata", referring thereby to those women, who voluntarily asked for extinguishing their lives at the death of their husbands. A society in which a widow has no

place, could not have thought of a much better way of relinquishing their obligation towards her. Women had very little share of personal opinion in the political, social, and economic life of the society. Even today, when "woman empowerment" is more like propaganda, than the issue itself, women still is struggling to define their roles in society. The National Movement, in the early twentieth century under the leadership of Mahatma Gandhi worked in favor of removing all the disabilities of women. Several reformers including Raja Ram Mohan Rai, and Ishwar Chandra Vidyasagar laid stress on women's education, Removing polygamy, abolition of Sati, abolishing Child Marriage, etc. The National Movement and various reform movements paved the way for women's liberation from the age-old social evils and religious taboos. After the independence of India, the constitution makers and the national leaders recognized the equal social position of women to that of men.

Several key constitutional decisions have been made to uplift women for instance The Hindu Marriage Act, 1955 has determined the age for marriage, provided for monogamy and guardianship of the mother, and permitted the dissolution of marriage under specific circumstances. Under the Hindu Adoptions and Maintenance Act[5], of 1956, an unmarried woman, widow, or divorcee of a sound mind can also adopt a child. The Dowry Prohibition Act of 1961 states that any person who gives, takes, or abets the giving or taking of dowry shall be punished with imprisonment, which may extend to six months, or a fine up to Rs.5000/ or with both.

The Constitution of India guarantees equality of sexes and in fact grants special favors to women. These can be found in three articles of the Constitution. Firstly, Article 14 states that the government shall not deny any person equality before the law or equal protection of the law. Secondly, Article 15 declares that government shall not discriminate against any citizen on the grounds of sex. Article 15 (3)[6] makes a special provision enabling the state to make affirmative discriminations in favor of women. Thirdly, Article 42 directs the state to make provisions for

ensuring just and humane conditions of work and maternity relief. Above all, the Constitution regards a fundamental duty on every citizen through Articles 15 (A)[7], (E) to renounce the practices derogatory to the dignity of women.

Changing Gender Roles During Covid 19 & Women Empowerment

During the pandemic, the whole world went into an inevitably changed status. Gender roles were mostly affected in the average household. A UN report[8] about COVID-19 and girls and women discloses that the pandemic can be seen in a spike in domestic violence against girls and women while they are sheltering in place with their abusers; there was substantial loss of employment for women who hold the majority of insecure, informal and lower-paying jobs; the nurses across the nations, who predominately are women had to bear the burden of the pandemic; and the huge increase in care work which is mostly offered by girls and women. The report also suggested that men are going to be most affected by the pandemic, the burden consequently is going to fall on the women force. Women have been facing the inequality from time immemorial. Man is the only animal/specie on earth, which is exploiting nature and its resources to an extent that even mother nature, which is not fragile for sure, has started retrieving itself. Nature never created a man and a woman differently. A woman was given the ability to procure, but the incessant need of men to own things, probably resulted in this age-old struggle. Even in today's time, when women are taking new roles in society, accomplishing things on their own, driving into their future, and withholding the steering into their hands, there are complexities they face at all levels.

Today we may have noticed several governments run schemes to empower women. But in our nation, women face discrimination and marginalization at each and every level of society from economic participation, social participation, access to education, and reproductive healthcare facilities, to political participation. Research shows that a

substantial number of women are found to be economically "very poor" and "less literate" all over the nation. A few women are engaged in services or other activities. Therefore, there is an absolute need amongst these women, to attain economic independence and basic education. An essential area of focus in attaining gender equality is women's economic and political empowerment. Though women seem to comprise approx. 48% of the nation's population, they only own 20-30% of wealth, much less than the global share of 40%. Throughout the world, women perform long hours of unpaid domestic work. In certain places, women still face a lack of rights to own land or inherit property, obtain access to credit, earn income, or rise in their workplace, free from job discrimination. At all levels, including at home and in the public space, women are widely under-represented as decision-makers. In legislatures around the world, women are outnumbered 4 to 1, yet women's political participation is crucial for achieving gender equality and genuine democracy.[9]

CONCLUSION

According to the census, the rate of literacy among men in our nation was found to be 82% whereas it was only 65%[10] among women. Thus, educating women is of key importance in empowering them. It has also been noticed that a fair share of the women is incapable of being employed since they have overworked themselves by consuming less food but working more for an increased wage. Therefore, from a health point of view, women are to be made stronger. There is an alarming increase in cases of rape, kidnappings, and dowry harassment. Therefore, women require empowerment of all kinds in order to protect and empower themselves. Women's Empowerment cannot be possible unless women themselves come forward and self-empower themselves. There is a need to reduce feminized poverty,[11] promote the education of women, and prevent and eliminate violence against women.

The issue of women's empowerment is a socio-legal issue, and thus it can only be worked upon by socio-legal instrumentalities. Just the way, the rights of a person can ensue only when they ensue to him from the moment he is born, the empowerment of women must begin from the moment she is born a woman. And the birth of a girl child will only be celebrated when she is an equal asset holder, equally powered as a boy. We will have to examine all those rituals, and traditions, where we disqualify her for being a girl. For instance, A boy is wanted for the last rites of a Hindu parent. A man is the one who brings the bride home, and not vice-versa. A dowry is often given from the bride's family to the groom's family. Girls are often not put into higher education, so that they could be given into marriage, before or at the age of puberty. Now in today's time if we carefully look into all these scenarios, we find that the girl has not been given much consideration to make a judgment for her own life. If there are no male children, you have no choice but to accept that the girl child will have to perform the last rites. A dowry was consideration for marriage, and it was given once and for all, as a matter of good gesture and to make good the shifting of your obligation to feed that child. This can never be perceived the same way in today's society. If your daughters are as dependable economically as a man, it definitely gives them an edge over the other partner in marriage. Society in ancient times was balanced because gender roles were fitting into place. In the contemporary world today, these roles are changing and so must the society's perception of a woman change. If you look around, you will find several women working and making their place in society. It is the need of the hour to realize that this shifting of gender roles was needed and inevitable, and it is desirable that society also changes its pattern of thought towards gender roles because no legislation can bring equality unless it is felt by the people of that society.

■■■

Reference :

[1] https://www.vogue.co.uk/arts-and-lifestyle/article/indian-frontline-coronavirus
[2] https://ec.europa.eu/international-partnerships/topics/gender-equality-and-empowering-women-and-girls_en
[3] https://www.peacecorps.gov/educators/resources/global-issues-gender-equality-and-womens-empowerment/
[4] https://www.frontiersin.org/articles/10.3389/fpsyg.2017.01678/full
[5] https://www.ripublication.com/ijepa/ijepav1n3_1.pdf
[6] https://www.ripublication.com/ijepa/ijepav1n3_1.pdf
[7] Ibid
[8] https://unfoundation.org/blog/post/shadow-pandemic-how-covid19-crisis-exacerbating-gender-inequality/
[9] https://www.frontiersin.org/articles/10.3389/fpsyg.2017.01678/full
[10] https://knowindia.india.gov.in/profile/literacy
[11] https://hindrise.org/resources/women-empowerment-in-india-and-its-importance/

RULE OF LAW' UNDER CONSTITUTION OF INDIA

PRIYANKA K.
Dr Ambedkar Law University,
Tamilnadu

Abstract

The basic feature of democratic country is the rule of law, where the governments are governed by the supremacy of law rather than decision of human. India is a secular democratic republic is governed by the law of the land and not by the emotional intelligence of the state men. In a society where rights are respected, duties are performed, violence is eschewed, equality is practised, and power is not abused then, that is the field of area in which rule of law, is well bring out. Natural justice is regarded as the foundational counterpart of the rule of law. In this research we are going to analyse the origin of the concept of "rule of law." How far the constitution of India enrooted with the concept of the rule of law? Is does the concept is working in the constitutional mechanism? Which consists of executive, legislative and judiciary. Try to bring out the effectiveness it has in the governing bodies and with the rights of the people. Aims to trace out the role of judiciary in maintaining the rule of law in India, with the distinct judgments of its own.

Keywords- rule of law, Natural justice, basic structure

Introduction

Law means code of conduct prescribing standard of human behaviour adopted with the concern of the people, rule of law means in an organised community the individual actions and social relationship

based only on the will of ultimate authority of law.

Rule of law aims at peace and order at the state, peace here refers absence of struggle and clash against authority by equality in opportunity, whereas order means unquestioning obedience towards law.[1] Rule of law is protected under the doctrine of basic structure, as it is one of the basic features of the constitution. The basic structure doctrine is merely a legal innovation designed to prevent parliament from abusing its amendment power. The concept is that the fundamental elements of the Indian constitution shouldn't be changed to the point where its distinctiveness is compromised. The idea of basic structure[2] asserts that certain principles set forth in the Indian constitution, which are the guiding principles for the parliament, cannot be changed by any amendment. Although the theory did not always exist as it does today, it has been advanced and supported by the nation's judges over time.

Some of the compound of rule of law are nation governed and constrained by the law, equal rights under the law, establishing law and order, administering justice in a fair and consistent manner, and defending human rights.

Definition

The rule of law means everyone in a country is governed by the authority of law, no person is above the law, everyone is equal before it without any discrimination. The supreme authority in the state is the law not anyone else. In simple terms, a set of authorised and accepted set of rules which sets the governing authority, legal rights duties, principal organs, the governments, and the way in which government should act.

Attempts to define the rule of law frequently refer to the ideals and goals that it is believed to uphold. The rule of law should first guard against anarchy and the battle of everyone against each other. Second, people should be able to arrange their lives with a reasonable assurance that they can be aware of the potential legal repercussions of their activities in advance thanks to the rule of law. Third, the rule of law ought to provide

protection from at least some forms of government arbitrary behaviour.

According to black's law dictionary: "rule of law" means legal principles of everyday application, authorised by the governing bodies or authorities, and expressed in the form of logical proposition. According to oxford advance learner's dictionary: "rule of law" way the state of affairs wherein all of the citizens as well as the nation are dominated by the law.

Lord bingham brought to his definition of the rule of law[4], Bingham's first subsidiary principle, "the regulation ought to be handy and to this point as feasible intelligible, clear and predictable," "recognised and predictable." Bingham adds a further size and which means to this precept with the aid of using declaring that the regulation must be written in a way that may be understood by ordinary individuals in society. That is, statutes and judicial reviews have to use phrases that may be understood by the average person.

An associated point expressed by bingham is that these reassert of law have to not be unnecessarily prolonged and complex so as to make it hard for the general public to recognize them. The following may also be brought to the definition of principles of the rule of law: the law must be written in a manner that may be understood by normal individuals in society. So, people can understand and obey for it.

Origin

The first republic that gave rise to the rule of law doctrine was established by the ancient romans, and it was later promoted by various mediaeval European intellectuals through the social contract theory, including Hobbes, Locke, and Rousseau.

The concept of rule of law is of vintage foundation and is an historic ideal. It was discussed by ancient Greek philosophers such as Plato and Aristotle around 350 BC. Plato wrote: "where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, isn't always far off; but if law is the master of the authorities and the

government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state". Likewise, Aristotle also recommended the concept of rule of law by writing that "law should govern and those in power need to be servants of the laws."

The phrase 'rule of law' is derived from the French phrase 'la principle de legalite' (the principle of legality) which refers to a central authority primarily based totally on concepts of law and not of men. Rule of law is one of the basic concepts of the English constitution and the doctrine is popular in the constitution of U.S.A and India as well.

The complete basis of administrative law is the doctrine of the rule of law. Sir Edward coke, the chief justice of king James i's reign was the originator of this idea. He maintained that the king need to be under god and the law and he set up the supremacy of the law towards the government and that there is not anything higher than law.

Evolution

One of the pillars of mankind is the rule of law where it replaced the rule of dictatorship, the concept evolved and strengthened through various events of history.

In American revolution in 1776 the founding fathers of United States protected against the colonial rule with the objective of 'no taxation without representation' which emphasize the rule of law through representation. The French revolution in 1789 brings the concept of rule of law against the monarch by want of ' liberty equality and fraternity'[5]. By these revolution and protest. Everyone treated equally and equal opportunity of representation, Quist for liberty enlightened and implies the rule of law.

Later, albert Venn dicey a British jurist and constitutional theorist developed the concept in his book 'the law of the constitution' 1885 his writing on the British constitution, which is unwritten included three awesome thoughts, kindred ideas on rule of law. The magna carta[6] of mankind in 1948 the universal declaration of human rights in its

preamble mentioned that human rights should be protected by rule of law.

The international conference on jurist[7] in 1959 declared that ' rule of law is not for protecting the civil and political rights of individuals but also for the establishment of social economic educational and cultural conditions where human dignity may be realised'.

Dicey's Rule of Law

Professor A.V dicey in 1885, propounded 3 concepts or postulates of the rule of law in his classic book 'law and the constitution.' which form the basis for today's world recognised principle of 'rule of law', according to professor A.V dicey, for attaining supremacy of law three principles of postulates must be followed that are as follows:

· Supremacy of law,

· Equality before law and

· Predominance of legal spirit

Supremacy of Law

Explaining the primary principle, dicey says that the rule of law means absolutely the supremacy or predominance of ordinary law rather than the impact of arbitrary power or extensive discretionary power. It excludes the existence of arbitrariness, of prerogative or even extensive discretionary authority at the part of the authorities.

It alludes to the law's unquestionable authority, dominance, and supremacy. It rejects the impact of broad discretionary power and arbitrary power. "Wherever there is discretion, there is room for arbitrariness," as dicey put it, "and therefore in a republic no less than under a monarchy discretionary authority on the part of the government must mean insecurity for legal freedom on the part of its subjects it additionally means that no person ought to be punished besides for breach of law. This is the most essential characteristic of rule of law as it distinguishes between rule bound regulated authorities and arbitrary authorities, suggesting that wherein rule of law Exists government

cannot clearly act as it pleases. E.g., It cannot punish citizen simply as it objects to their opinion or disapproves in their behaviour.

Equality before Law

Explaining the second principle, that is primarily based totally on widely known maxim, "however high you may be, law is above you." And "all are equal before law", dicey says that there must be equality before law or equal subjection of all classes to the regular law of the land administered by the regular courts. He criticised the French legal system of 'droit administrative wherein there had been separate administrative tribunals for determining cases between the officers of the state and the residents.

The law that is enforced should be a general rule of law that applies to everyone equally, regardless of caste, creed, or religion. Moreover, article 14 of the Indian constitution has this notion. These excerpts are also included in article 15. Dicey believed that any interference with the court's authority and any limitations on the subject's unhindered access to them would be in violation of his rights. According to him, exemption of civil servants from the jurisdiction of the ordinary courts of law and offering them with the special tribunals turned into the negation of equality.

Predominance of Legal Spirit

The third principle, dicey asserts that rights e.g., right to personal liberty, freedom from arrest etc. Are the result of judicial decision in particular cases which have really arisen among the parties. The constitution is not the source but the result of the right of the individuals. Thus, dicey emphasized the role of the courts as guarantors of liberty and recommended that it might be secured more accurately if they were enforceable via the courts of law than by mere statement of those rights in a document, as in the latter case, they can be ignored, curtailed or trampled upon. The rights of individuals have the constitution as a result, not as their source. Dicey placed emphasis on the judiciary in this situation. The mention of a citizen's rights in a document or other legal

instrument has little meaning if there is no power to defend and uphold those rights. Just including something does not make it authoritative, and its provisions could be reduced, disregarded, or ignored. General principles of the Indian constitution are the result of the decisions of the Indian judiciary which determine to file rights of private individuals in particular cases.

Origin of Rule of Law in India

The concept of rule of law was not a new theory to Indian origin, this concept was well prevailed in the society with various names and beliefs. In ancient India people were governed by ethical principles and moral values. Religious scripts, literature, and text form the basis of law that governs the people. The concept began in dharma. Dharma intended law, duty, and righteousness. It turned into a guiding element of each Indian's existence. Dharma was taken into consideration to have a divine foundation the rig, the Yajur, the Sama, and the Atharva are the four Vedas are named shrutis. Shrutis imply something that is heard. All these four Vedas are divided into four sections namely, the Samhitas, the Upanishads, the brahmanas, which played an important role in people's life.

The Upanishads are the source of rule of law. According to this, the law is king of all monarchs. Nobody has authority over the law. Not the king even. The rule of law is considerably more powerful and superior to rulers. Rules of conduct were compiled in a frame of literature that came to be known as the dharma sutra. Dharma sutras particularly treated customary law. They divided the duties and castes of people into four stages. Manuscripts is the most essential and the oldest of all smritis. It is assumed that it was primarily based totally on Manavi Dharma sutra though it cannot be ascertained. It deals with the responsibilities of humans from all walks of life and in every level of life.

In the history of the country only two kings earned the appreciation of "the great" the first was Ashoka under whom the code of conduct was in force, the second was Akbar the great under whom the first formal "court

of law" were established, both implied the concept in an indirect manner and earned the popularity by enforcing the rule of law. Principle of those days.[8] the rule of law notion has also been supported by Indian philosophers like Chanakya, who advocated that the monarch should be subject to the letter of the law. Even prior to independence the concept of rule of law was well established in India during the British times, in 1931 lord Atkin emphasize the principle in his judgement of privy council "no one from the executive interfere in the liberty or property of British subject otherwise his actions is support by law" in Eshugbayi Eleko[9]

Thus, the concept of rule of law is not a new principle to natives of India, the constitution is the basic law of land which emphasize and give new life to it.

Rule of Law under Constitution of India

Actual meaning of rule of law is not explained in any part of the constitution**,** as even though the principle of rule of law formed as one of the basic features of Indian Constitution. The Framers of Indian constitution left this part for the definition, application and interpretation of judiciary to satisfy the needs of changing society in accordance with their ever-changing needs and social order. Constitution as basic law of land stands as icon for upcoming generation and servers them with their basic rights, this principle of rule of law is very much essential to bring them alive. The concept is well bringing out in the preamble of our constitution as well as in the provisions of the constitution.

Preamble

The Indian constitution starts with the preamble, which states the ideal objectives of the constitution. The concept of liberty, equality, and justice which are the basic aspects of rule of law are set as constitutional objective to be achieved. In such a way the constitution of India adopted the principle of rule of law in its foundation core. Before entering inside the constitution provisions the preamble which stress on the principle of rule of law stands as authorised principle to be followed by the government of India.

Fundamental Rights

Many of the provisions in the Indian constitution have the spirit of rule of law, in its ambit. Right to equality before law and equal protection of law is guarantees under article 14. It means the law is supreme and there is no scope of arbitrariness, as everyone is treated equally by the rule of law. No biases, which is the basic requirement of rule of law. The supreme court held clearly in 'Maneka Gandhi V. Union of India'[10] that article 14 strikes at arbitrariness in state actions and ensures fairness and equality in treatment. Rule of law which is the basic feature of the Indian constitution excludes arbitrariness. Arbitrariness leads to denial of rule of law. The ideal of equality by the incorporation of protective discrimination as a means of ensuring equality among unequal. Further strengthen the rule of law by art 15, 16, 23.

The doctrine of rule of law in India. Is upheld in article 13 of the Indian constitution, the definition of "law," under article 13 which includes rules, regulations, byelaws and ordinances can be declare void if they are inconsistent to the constitution of India.

The rule of law has been included as one of the basic fore founding features of the constitution by the supreme court of India, in 'Keshavananda Bharti V. State of Kerala'.[11]

In this case, though amending power of the parliament enlarged by the supreme court, to amend any part of the constitution without altering the basis features.

Inalienable and common rights to the citizen of India are fundamental rights. Such rights can be provided by the government which respects the rule of law. Part 3 of construction contains fundamental rights. It cannot be abrogated by any authority and can be enforced by supreme court and high court by article 32 and 226 of the constitution. Every law has to be in conformity with the constitution as it's stands as a supreme law of land. Any law which is inconsistent with the provisions of constitution hence it will be held as void.

One of the basic objectivities of the rule of law besides justice and

equality is liberty. Right to life and personal liberty guaranteed in article 21 of the constitution. Anyone in India should not be denial of right to life and liberty except by procedure established by law, which is the fulcrum of rule of law in a republic of India,

One of the most important habeas corpus cases in terms of the rule of law is 'ADM Jabalpur V. Shivakant Shukla'.[12] "Whether there was any rule of law in India other than article 21," the court was questioned in this instance. This had to do with the suspension of the application of articles 14, 21, and 22 during the proclamation of an emergency. The majority of the bench answered the legal query negatively. Judge H.R. Khanna, however, dissented from the majority's viewpoint and argued that "even in the absence of article 21 of the constitution, the state has no jurisdiction to strip a person of his life and liberty without the authority of law. The supreme court held in 'E.P. Royappa V. State of Tamil Nadu & Anr.'[13] that for the state to justify its action of curtailment of fundamental right it has to fulfil all the requirements provided under article 14, 19 and 21.

Rule of Law and Constitutional Organs

To emphasize the principle of check and balance under rule of law, and bring out well functioning of government our constitution provides the doctrine of separation of powers, where government mechanism divided in to three organs with respective principles rules and regulations in their working and enforcement of powers. Each organ carries out the principle of rule of law in their administration. The executive, legislative, and judiciary are the three organ of the state are delighted with set of functions and powers which need to be kept separate from each other and Prevent Encroachment by other organs, in the best interest of individual liberty, which is the ultimate goal of rule of law. Let's discuss in detail about each organ and authority of rule of law in their workings.

Executive and Rule of Law

The operative or active organ of government is the executive, which plays an important role in maintainable of rule of law. In a broad and

collective sense executive includes all functionaries and agencies which concern with the execution of the 'will' of the state. This 'will' have been formulated and expressed in terms of law, execution of law is the responsibility of the executive.

The secondary meaning of rule of law is that discretionary powers should be limited and that government operations should take place within this framework. The supreme court noted in '**Som Raj V State of Haryana**[14] that the main tenet of rule of law, upon which the entire constitutional structure depends, is the lack of arbitrary power. The idea that is the opponent of the concept is discretion being used without any guidelines. In light of this, courts should have the authority to oversee administrative activity.

In "**Sukhdev V. Bhagatram**,"[15] Mathew j. Held that it is truly unimaginable that the executive government or any of its officers should have arbitrary power over the interests of the person in a democracy where the rule of law is upheld. Every decision made by the executive branch of the government must be rational and free of arbitrary behaviour. The very foundation of the rule of law and its most basic prerequisite is that. Therefore, it is irrelevant to the application of this concept whether the use of the power involves the adherence to one right or the denial of another privilege. The actual application or enforcement agency is the executive, without which it is not possible to make it close to the people of the country, the actual working of rule of law can be traced only by the work of executive.

The Legislative and Rule Of Law

The most important institutions of rule of law in a democratic country is the parliament and state assemblies, where democratically elected representatives of the people give expression to the will by enacting laws and holding the government accountable to law through parliamentary procedure. There are 97 items on the union list (list i), which includes topics that are of national interest and allow for identical regulations across the board. Only the union parliament has the authority to enact

legislation in these areas, including union taxes, banking, foreign policy, and the military. Public order and police, health, agriculture, forests, and other topics of local or state interest are included in the state list (list ii), which has 66 items and is under the purview of state legislatures. Concurrent list (list iii): it consists of 47 topics for which the state legislature and the union parliament both have concurrent legislative authority. The concurrent list, which is absent from all federal constitutions, was intended to be a tool.

Judiciary and Rule of Law

Whenever public discourses on rule of law take place redressal for which is seek in the institutions of judiciary, as which is the protector of constitution and protect the rights of the people and sets the limit for public authority. When a government is based on separation of powers and providing fundamental rights to the peoples, in such a case judiciary become a vital authority to declare the supremacy of law as final. In addition to that, art 141 of the constitution also confers the same thing by stating that the law declared by the supreme court of India will be binding in all courts within the boundary of India.

Another outcome of rule of law is the judicial review. Judicial review emphasizes and encourage the system of rule of law. The main objectivity of judicial review is to protect fundamental principles of constitution and in addition to that it makes sure the power of administrative should not led to arbitrariness. All work of administrators, officials, and government entities are subject to judicial review. Reasonableness of their actions are forms accountability to their authority while a matter decided by the courts. In this way to safeguard the supremacy of constitution which is the foundation for rule of law.[16]

The supreme court stated in chief settlement '**Commissioner Punjab V. Om Prakash**'[17] that " in our constitutional system, the central and most characteristic feature is the concept of rule of law, which means, in the current context, the authority of law courts to test all administrative action by the standard of legality." if the offended party raises the issue,

the administrative or executive action that does not comply with the standard will be reversed.

The independent judiciary and the supremacy of courts are highlighted in the third definition of the term "rule of law." in the case '**Union of India V. Raghubir Singh'**,[18] the supreme court correctly reaffirmed that it is undeniable that a significant degree influences people's lives. Whenever the rule of law is impartial in the society, independent judiciary plays a vital role to make principle of rule of law alive in every aspect of government and in its functioning.

Judgements of Courts

In many judgements of the courts, held the supremacy of law, let see in detail about the cases which supports the principle of rule of law in Indian society. Justice K.K. Thomas stated that the availability of judicial review is a key factor in the case of '**Indira Gandhi V. Raj Narain'**[19] in 1975.

In addition, Justice Y.V. Chandrachud listed four essential principles that he thought were immutable. The position of a sovereign democratic republic is among them, equality of opportunity and position for all individuals, secularism, and religious and moral freedom, the law is supreme (Judge Mudholkar) impliedly held it to be a component of the fundamental structure in the **Golak Nath**[20] case.

A constitution bench of this court outlined the law in secretary, '**State of Karnataka And Others. V. Uma Devi (3) And Others**.'[21] as follows: "thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of article 14 or in ordering the overlooking of the need to comply with the provision.

'**Amlan Jyoti Borooah V. State of Assam'**[22] S B Sinha argued that equity and compassion should not be linked. Equitable principles must be derived from events that are strange and uncommon on their own. The

court must strike a careful balance and exercise caution to ensure that its efforts to promote equality do not amount to judicial kindness or acceptance of well-known violations of basic rights and the rule of law.

Judge Bhagwati has underlined in the case of '**Bachan Singh V. State of Punjab Singh'**[23] that, the rule of law prohibits arbitrariness and unreasonableness. His ideas include the need for a democratic legislature to enact laws, but with limits on its authority, as well as the need for an independent judiciary to defend the public from abuses of executive and legislative authority. In another case, '**Yusuf Khan V. Manohar Joshi'**,[24] the supreme court ruled that the state has a responsibility to uphold and defend the law and the constitution and that it cannot tolerate any violent acts that can undermine the rule of law.

Exception to Rule of Law

Several exceptions to the rule of law exist, the concept of the rule of law is difficult to grasp conceptually, and it becomes even more challenging when applied to actual situations. For instance, even though a criminal has committed a crime, the law allows him to go free in the absence of proof. The term "equality of law" does not mean that everyone has the same rights in its strictest sense. A district magistrate, for instance, has the power to render legal judgements, but a private person does not. The rule of law does not prevent certain types of people from being subject to unique laws. For instance: no criminal procedures shall be brought against the president or the governor of any state.

Conclusion

A theory concerning law, justice, and morality is known as the rule of law. It considers what laws, norms, regulations, policies, systems, and structures ought to be and ought not to be. The public declaration of norms by the peoples or their competent representatives is required. Three realities are present in this formulation. One is that both the people and the government are governed by the law. Everyone should then follow the law.

The third requirement is that the rules we refer to as law must be obeyable, and not merely in the sense of being well-known, understandable, and predictable, but also in the truest sense of being right. It is crucial for democracy and effective government, and it also helps to promote peace and stability. Some believe it could aid in the prevention of war.

The establishment of new channels for seeking redress for human rights violations through PIL petitions and the promotion of sincere interventions by the judiciary in the areas of bonded and child labour, prostitution, clean and healthy environment, etc. Are a few examples of how our judicial system has upheld the rule of law and ensured justice. On the darker side, there have also been violations of fundamental rights. For instance,

Democracy is necessary for a society to have a meaningful rule of law, and a democratic state must have a strong rule of law. The conclusion that democracy and the rule of law are interconnected and that neither can exist successfully without the other. Despite being the largest democracy in the world, India generally faces threats to the rule of law. It must be avoided, and true spirit of law must be appreciated by its people.

Benchmarks and work to improve the spirit of the law, the authors of the Indian constitution took these guiding principles seriously and cautiously, giving them precedence. However, the "source of the constitution" remains the ultimate authority. The key quote to keep in mind is from Dr. Baba sahib Ambedkar, who said, "however good a constitution may be, it is certain to turn out bad because those who are called to work is it, happen to be bad lot, however bad a constitution may be, it may turn out to be good, if those who are called to work it happened to be good a lot."

■■■

Reference :

[1] Justice J.C shah, the rule of law and Indian constitution, citizen rights and the rule of law problem and prospects (p 149)
[2] Keshavananda Bharti v state of Kerala
[3] Shubham mongia, rule of law.
[4] Robert Stein, What Exactly Is the Rule of Law? (p 16)
[5] Chidambaram. P, the citizen and rule of law,' rule of law in a free society' (p11)
[6] Soli I Sorabjee, rule of law is ambit or dimension, ' rule of law in a free society'(p 6)
[7] Id at p.7
[8] Chidambaram.p, the citizen and rule of law,' rule of law in a free society' (p11)
[9] Eshugbayi Eleko v officer administrating govt of Nigeria (1931) AC 652
[10] AIR 1978 SC 597; 1 SCC 248
[11] (1973) 4 SCC 225; AIR 1973 SC 1461
[12] AIR 1976 SC 1207
[13] 1974 AIR 555, SCR (2) 348
[14] 1990 AIR 1176, SCR (1) 535
[15] 1975 1 SCC 421
[16] N.R Madhava Menon, constitutional institutions and rule of law, ' rule of law in a free society'
[17] 1969 AIR 33, 1968 SCR (3) 655
[18] AIR 1989 SC 1933 (Constitution Bench)
[19] 1975 AIR 159, SCC 159.
[20] 1967 AIR 1643; SCR (2) 762
[21] 1979, 3 SCR 937
[22] 4 SCC 171 (2008)
[23] AIR 1980 SC 898, 1980
[24] AIR 1999, SCW 4768.

EVERYONE HAS THE RIGHT TO LIVE WITHOUT WORRYING ABOUT BEING ATTACKED WITH ACID. STOP ACID ATTACKS RIGHT AWAY. PROTECT ACID ATTACK SURVIVORS, NOT THE CRIMINALS WHO COMMITTED THE CRIME

Priyanka S Shet
Assistant Professor of Law,
Devi Sharvani Education Society's
V.M. Salgaocar College of Law,
Miramar Panaji Goa.

Abstract

Despite efforts made by the Indian government and the Supreme Court, India has seen an alarming increase in acid assaults, particularly on women, every year. Violence against women is a symptom of men and women's historically unequal power relations. An upsurge in acid assaults can be linked to a male-dominated society, ideas, and principles in which men are explained and told to dominate while women are told to intercede. When a woman decides to speak out against her poor status in a patriarchal society, she is ostracised in various ways, including acid, physical violence, and burning to death. The penal laws do not provide victims with effective remedies. This article will explore the history and prevalence of acid attacks in India, the numerous causes of acid attacks, the existing law in India on acid attacks, the consequences for victims, and deficiencies in measures implemented to prevent crime and offer justice to victims.

Introduction

Every woman has a crucial place in the lives of people. She contributes to man's happiness by being a mother, wife, sister, and daughter. She

also contributes actively to the locality, society, country, and international arenas. Even though women are in charge of giving birth, they frequently end up dying as a result of violence against them. Despite being regarded as one-half of the sky and the world, she has had to fight for equality with her male counterpart at every stage and age of civilization. Violence against women has long been a source of contention. In layman's terms, violence is defined as causing physical, mental, or both types of harm to another person.

According to the Encyclopaedia of Crime and Justice[1] 'violence is a general term refers to all types of behaviour either threatened or actual, that result in the damage or destruction of property or the injury or death of an individual'.

The Concept of violence

Chambers Dictionary describes violence as an excessive unrestrained or unjustifiable use of force. Violence also means outrage, profanation injury, or rape. Infliction of injury on other person is the essence of violence. It may be either physical or mental. On the legal level, it is the illegal employment of methods of physical coercion for personal or group ends. The infliction of injury by police is an exercise of the state's force as long as it is legal. But as soon as it crosses the boundary of legality and inflicts injury for lust or for personal gain, it becomes violent and is more dangerous than the violence by ill-armed and ill-organized collective people.[2]

Some of the headlines in the daily newspaper are "Acid attack on young women." Acid attacks on women are a serious problem right now. The number of acid attacks on women is rising daily. The most abhorrent type of violence against women, in my opinion, is acid attacks. This brutal form of punishment "melts human flesh, even bones, inflicting agonizing pain and terror, it also leaves the victims mutilated and scarred for the rest of their lives". An acid attack is a deliberate attack in which acid is used as a weapon and is thrown on someone to torment, pester, and harass that person. Sulphuric acid is the most commonly used

chemical in acid attacks and it is also known as vitriol. The acid attack, also known as acid violence or vitriol, has emerged as a vindictive and vicious act that demonstrates the gravity and enormity of the ongoing atrocities.[3]

Because throwing acid is one of the worst crimes a person can commit, acid attack violence is a pernicious human rights issue. In South Asia, particularly Bangladesh, India, and Pakistan, it is very prevalent. Since the beginning of time, acid has been used to attack another person. Under the heading "Crimes of Passion," 16 cases of acid attacks were reported in the year 1879, the majority of which involved women attacking other women.[4] The first acid attack case in South Asia was discovered in Bangladesh in 1967, India in 1982, and Cambodia in 1993. Over the past few years, acid attacks have occurred most frequently in these nations.[5]

An acid attack is one of the most horrifying violent crimes in human history. According to the London-based charity Acid Survivors Trust, women are the targets of 80% of acid attacks, which are vastly underreported. Male attackers against female victims are sometimes motivated by the belief that "If I can't have you, no one will ever be." The spraying of acid is referred to as an acid attack. It could be on the victim's face or body. The goal of acid attacker is to deface, injure, and torture the acid attack victim. The attackers frequently target the victim's upper body and it frequently has long-term consequences that can be physical, psychological, social, or economic.[6]

The aim of the acid attacker is not to kill the victim but to make him/her endure throughout his/her life—to leave a permanent, indelible impact on the victim, physically as well psychologically. Regardless of age, caste, or religion, acid attacks are a problem that affects all females worldwide. An acid attack is a serious type of heinous crime and gender-based violence against women, and as such, it is forbidden by international law. It reflects and perpetuates the inequality women experience in society.[7]

Causes of Acid Attack in India

India is the second most populous and the seventh largest country in the world in terms of total area, but there are some drawbacks, such as underfunding at hospitals and police stations, and there is a significant underreporting of acid attacks in India. The causes of acid attacks in India are closely related to those of acid attack violence and include societal stratification, shifting gender roles, insecurity, shame and loss of honour, jealousy, patriarchy, aggression, and frustration. Other causes include refusal of unacceptable or indecent propositions, land disputes, financial disagreements, suspicion of infidelity, business disagreements, and various forms of sex crimes.[8]

The National Crime Records Bureau (NCRB) recorded 1483 cases between 2014 and 2018 in their report, indicating a rapid growth rate. As per the NCRB data in 2016, there were 283 instances of acid attacks, in 2017 it was 244, in 2018 it was 228, in 2019 there were 249 instances of acid attacks, in 2020 it was 182, and in 2021 it was 176.[9]

In 2021, the rate of charge sheeting for acid attack cases was 89% with only 20% of acid attack cases resulting in a conviction rate. After that, in 2015, the Ministry of Home Affairs (MHA) sent a recommendation to all the states urging them to expedite the court process in acid attack cases. Despite the addition of special provisions dealing with acid attacks in 2013, new measures were still implemented. The greatest irony, however, is how frequently acid attacks go unreported; this is one of the factors that contribute to injustice toward's both the victim and society at large. Because even if the victim survives an acid attack, it is still a crime that endangers his/her life.[10]

Instead of killing the victim of the acid attack, the wrongdoer wants to leave her in a pitiful state. Sulfuric, nitric, and hydrochloric acids are the most frequently used types of acids in assaults. Acid attacks rarely result in fatalities, but they unquestionably scare people severely on the

physical, mental, and social levels. The Criminal Law (Amendment) Act of 2013 and the Honourable Supreme Court of India's guidelines, however, have made the rules more stringent.[11]

Law on Acid Attacks in India.

Acid attacks on women are among the most heinous crimes ever committed. Despite the fact that Article 15 of the Constitution[12] talks about protecting everyone and prohibiting discrimination based on religion, race, caste, sex, or place of birth, the reality is that the State has failed to protect its citizens, particularly women because the majority of such heinous crimes are committed against women. Before the year 2013, there were no specific criminal laws in India to deal with the offenses of acid attacks.

Lila Devi v. State of Bihar[13] is an example of the judiciary's callous and unfeeling approach in acid attack cases. On July 21, 1993, the accused, along with three others, threw acid on the victim. The trial court took 25 years to sentence the main accused to only two years in prison and acquitted all other defendants. Furthermore, the High Court reduced the two-year sentence to an Rs.5,000 fine. If an acid attack occurred, it was dealt with under the Indian Penal Code,1860 Sections 320,322, 325, and 326.

The following provisions apply to acid attacks:

Section 320 of the Indian Penal Code, (IPC) 1860.[14]

Section 322 of the Indian Penal Code, (IPC) 1860[15] covers voluntary causing of grievous hurt This Section provides that if a person causes grievous hurt to any other person or aims at performing such an act that might cause grievous hurt to the victim, and this act is done voluntarily and with the knowledge that the act might cause grievous hurt, then such an act would amount to the voluntary causing of grievous hurt. Section 322 of the Indian Penal Code,1860 does not carry any punishment on its own, but Section 325[16] of the Indian Penal Code awards punishment for the act done under Section 322 of the Indian Penal Code 1860.

Section 325 of the Indian Penal Code, 1860[17] provides the punishment for voluntarily causing grievous hurt to any person, as defined under Section 322 of the Indian Penal Code,1860.[18] An exception to this Section is laid down under Section 335 of the Indian Penal Code,1860. So, if anyone voluntarily causes grievous hurt, then that person is liable under this provision.

Section 326 of the Indian Penal Code,1860[19] may sometimes be perceived as covering the offence of acid attack, but actually, it does not cover the offence of acid attack. This Section deals with voluntarily causing grievous hurt with a dangerous weapon, but not with acid. The definition in section 326 is relatively narrow; therefore, it does not refer to the offence of acid attack as it does not include such types of injuries which may arise due to acid throwing by any person, for example, burns on body parts, etc.

Also, there were no special provisions dealing with the compensation and rehabilitation provided to the victims of acid attacks before the said amendment and Laxmi's case.[20] Justice Verma Committee which was set up by the central government after the horrendous case of Nirbhayato[21] recommend reforms in the criminal justice system, understood the severity of acid attacks on innocent victims and it stated,

"We understand that the most heinous form of attack on a woman, which is common place in several Asian and African countries is the throwing of acid on the woman for a multitude of reasons, including alleged adultery, turning down advances from men, and also as a form of domestic violence. Acids and other corrosive substances are thrown on women or administered to them, thereby causing death or physical and psychological damage with unfathomable consequences".[22]

The committee recommended that an acid attack be included as an offence under the Indian Penal Code,1860. It observed, "The gender specificity and discriminatory nature of this offence do not allow us to ignore this offence as yet another crime against women. We recommend that acid attacks be specifically defined as an offence in the Indian Penal

Code 1860, and that the victim be compensated by the accused. However, in relation to crimes against women, the Central and State governments must contribute substantial corpus to frame compensation fund.

We note that the existing Criminal Law (Amendment) Bill, 2012, does include a definition of an acid attack".[23]

The committee also observed, "In a certain sense, the aggressor is conscious that self-worth and self-esteem of a woman often lies in her face, which is a part of her personality. The dismemberment of the face or the body is not merely an offence against the human body but will cause permanent psychological damage to the victim. What happens when there is permanent physical and psychological damage to a victim, is a critical question and law makers have to be aware that offences are not simply based on the principle of what might be called offence against the body, i.e., damage to the body, but they must take into account the consequences on the right to live with dignity which survives the crime. This is an important consideration both in the fields of criminology and also in the field of sociology".[24]

It was only after the Criminal Law (Amendment) Act, of 2013, various sections were inserted in the Indian Penal Code 1860, the Code of Criminal Procedure, and the Indian Evidence Act 1872. Sections 326A and 326B of the Indian Penal Code,1860 were inserted in 2013 on the recommendation of the Justice Verma Committee. The object of incorporated provisions for punishment for causing grievous hurt by use of acid etc or voluntarily throwing or attempting to throw acid causing permanent or partial damage, deformity, burns or maims or disfigures or disable any part of the body of that person.

Essentials for acid attack

Though even an attempt to launch acid has been made punishable under the Indian Penal Code, there are some essential elements of an acid attack that are as follows:

1. Acid throwing/ attempting to throw/ administering the acid.
2. Grievous hurt caused.
3. Permanent or partial damage caused (maims, burns, disfigures, or disablement)
4. The offender had the knowledge and intent to carry out this act.

While Sections 326 A and 326 B of the Indian Penal Code (IPC) 1860 were adopted in 2013, other provisions also allowed victims to obtain justice. Certain provisions concerning the compensation of victims of acid attacks were also included in various laws, but these arrangements were not specifically designed for the crime of acid attack. So, a need was felt to draft provisions, especially for the acid attack cases, and Sections 326 A and 326 B of the Indian Penal Code (IPC) 1860 came into existence.

A presumption regarding the acid attack is described under Section 114[25] of the Indian Evidence Act, of 1872. According to this Section, if someone commits the offence of "acid attack," the court will presume, as a general presumption, that the offender was very aware of his actions while having sufficient knowledge and intent that such injury was likely to be caused, as specified/given under Section 326A of the Indian Penal Code, 1860.

Several incidents involving acid assaults have resulted in the application of Section 302 of the Indian Penal Code,1860.[26] A few cases have been mentioned in the 226th Law Commission Report in which the criminal was convicted under Sections 302 and 307[27]of the Indian Penal Code,1860.

Aside from that, Section 357 A of the Code of Criminal Procedure Code,1973[28] discusses the Victim Compensation Scheme. According to this section, every state is required to establish a Victim Compensation Fund in collaboration with the federal government. The goal is to provide funds to the victim of the crime. The compensation is to be provided in accordance with the scheme adopted by the specific state. Compensation

could be given to the victim or his dependents who have suffered loss or injury as a result of the crime and require rehabilitation.

Aside from that, the Central Victim Compensation Fund (CVCF)[29] has been established. It was proposed by the Ministry of Home Affairs. Its purpose is to support existing victim compensation schemes in order to reduce opinion in the quantum of compensation notified by different states/union territories. It provides compensation to victims for various injuries, loss, and death caused by acid attacks, rape, human trafficking, disabilities, and burns.

A set of criteria for victim eligibility to seek compensation through CVCF has also been established. If a declaration with an application form is filed, the victim may seek compensation if no compensation has been received from the government (central/state); there is a significant loss of family income, the loss should be such that it becomes difficult to make ends meet, or the cost of medical expenses exceeds the family's fiscal capacity. Even if the perpetrator is undetectable, victims or dependents are entitled to compensation under Section 357A (4) of the Criminal Procedure Code,1973.[30]

Aside from that, the National Commission for Women, New Delhi, drafted the 'Scheme for Relief and Rehabilitation of Acid Offenses on Women and Children' in its Report 2008-2009. The primary goal of this scheme is to provide appropriate medical treatment as well as communal, mental, and financial support to acid attack survivors.[31]

Furthermore, the National Legal Services Authority (NALSA) has observed that legal service institutions can play a critical role in providing access to compensation under the Victim Compensation Scheme. It launched the NALSA (Legal Services to Acid Attack Victims) scheme in 2016.[32]

Its primary goals are as follows:

1. To improve legal aid and representation for victims of acid attacks at the national, state, district, and taluka levels so that they can take advantage of the various legal provisions and compensation schemes that are available.
2. To provide victims of acid attacks with access to medical facilities and rehabilitative services.
3. To raise and disseminate awareness about victims' rights through District Legal Services Authorities, Taluka Legal Service Committees, panel lawyers, paralegal volunteers, and legal service clinics.
4. To build the capacity of penal lawyers, paralegal volunteers, volunteers in legal services, government officers tasked with implementing various schemes, service providers, police personnel, and non-governmental organizations at all levels by organizing training, orientation, and sensitization programs;
5. To understand research and documentation to study the various schemes, laws, etc., to identify gaps and needs, and to make recommendations to the appropriate authorities.[33]

A plan of action has also been developed to expedite and accelerate the process of receiving compensation for acid attack victims. It mentions legal aid for victims of acid attacks. If a victim dies as a result of an acid attack, legal aid will be provided to the victim's heirs. State Legal Services Authorities must ensure prompt interim compensation due to legal formalities.[34]

The District Legal Service Authority and Taluka Legal Services Committee will appoint one penal lawyer as a legal service officer. To enforce the scheme's provisions, the District Legal Services Authority will appoint an appropriate number of paralegal volunteers. Legal volunteers will serve as a link between acid attack victims and legal aid organizations.[35]

Judicial Trends

State (Delhi Administration) v. Mewa Singh[36]

The accused in this case was known to the victim. He made some

offensive and indecent remarks to the victim one day, which she and her father did not like, and they chastised him. On the night of May 19, the accused became enraged and threw acid on the victim while she was sleeping with one of her cousins. She received 40% of the burn injuries. Giving the accused the benefit of the doubt, the Sessions Court acquitted him. When the case was appealed to the High Court, the Delhi High Court overturned the Sessions Court's decision.

In the case of **Gulab Sahiblal Shaikh v. State of Maharashtra** [37]

Because the victim (a woman) refused to give money to support her husband's second wife, the victim's brother-in-law splashed acid on her. At the time of the event, the victim was holding her two-and-a-half-year-old infant child. The woman's left side of her body was scorched with acid, including her face, breasts, and hand, while her young daughter was blinded. The woman died as a result of her injuries since she was unable to recover. Under Section 302 of the Indian Penal Code,1860, the Court sentenced the victim's brother-in-law to life imprisonment and to Rs. 1000 fine, as well as hard imprisonment for a month, in this case, but the fine was not given to the victim's daughter under the applicable judgment. If the victim dies as a result of the acid attack, Section 302 of the Indian Penal Code, 1860, comes into play.

Laxmi v. Union of India,[38] was a watershed moment in the history of acid attacks in India. Laxmi was 15 years old when she was attacked by three males at Tughlaq Road in New Delhi in 2005. Her rejection to marry Naeem Khan alias Guddu was the cause. Her face and body were disfigured as a result of the incident. Public Interest litigation was filed in 2006, and it sought the creation of new laws or amendments to the Indian Penal Code 1860, Criminal Procedure Code 1973, and the Indian Evidence Act 1872 compensation for her; and a total prohibition on the sale of acids that were readily available and could be obtained.

In the year 2013, the apex court granted a plea in favour of Laxmi and Rupa. It created a set of restrictions and limitations on the sale of acid. According to the new regulations, the sale of acid is prescribed to any

person who has not attained the age of 18 years. Further, before purchasing an acid, a person is required to provide a photo identity card. The compensation amount was enhanced. Free treatment for the surgeries of the victim of acid attack was also ordered by the court to the government.

Maqbool v. State of UP & Others.[39]

In the instance of an acid assault, if the victim's harm is minor, will Section 326 A of the Indian Penal Code 1860 apply to the accused? The court observed Section 326 A carries the title of 'voluntarily causing grievous hurt by use of acid' whereas Section 326 B does not carry any such indication in the title regarding the nature of the injury as grievous. But on close analysis it can be seen that both sections provide for eight consideration types of injury—(i) permanent damage, (ii) partial damage (iii) deformity (iv) burns (v) maiming (vi) disfigurement (vii) disability (viii) grievous hurt. The first seven injuries are classified based on the normal aftereffect of the acid whereas the eighth one is on the gravity of the effect. Under Sections 326 A and 326 B, grievous hurt is only one of the eight injuries. If the injury referred to under Section 326A or 326B is one among the specified eight injuries, whether the seven of them be simple or grievous, special provisions are attracted. The accused was held liable under Section 326A of the Indian Penal Code 1860 and was awarded 7 years imprisonment.

Provisions concerning acid sales regulation

In 2013, the first measures were taken to restrict acid sales in India. The Supreme Court saw an increase in the number of acid attack cases in the country and believed that efforts needed to be done to curb this crime. As the first step in controlling acid attacks, the Supreme Court issued decrees prohibiting the sale of acid. Following these decisions, the government began working on laws pertaining to selling regulations.

After careful consideration, the Ministry of Home Affairs began advising states on how to limit the sale of acid. The Model Poisons Possession and Sale Rules, 2013,[40] were developed in accordance with

the Poisons Act of 1919. The following are some of the important features of these guidelines and standards.

1. The sale of acid over the counter (without a valid prescription) was forbidden unless the seller kept a logbook/register documenting the sale of acid.
2. This logbook was also expected to contain information about the person to whom the acid was sold, the amount sold, the individual's address, and the buyer's motive for purchasing the acid.
3. The sale will also take place only if the customer shows a photo ID confirming that he or she is over the age of 18, i.e., a minor.
4. Sellers must also notify the relevant Sub-Divisional Magistrate (SDM) of all acid stocks within 15 days, as well as any undeclared acid stock. The Sub-Divisional Magistrate has the ability to seize stock and charge a punishment of up to Rs 50,000 for any infraction of the guidelines.

According to these guidelines, educational institutions, research laboratories, hospitals, government agencies, and departments of Public Sector Undertakings are required to preserve and store acid and also must keep a register of acid usage and file it with the appropriate Sub Divisional Magistrate. A person shall be held accountable for the possession and safekeeping of acid on their premises, according to the rules. The acid must be stored under such supervision that students, workers leaving laboratories, or places of storage where acid is utilized must be checked.

Punishment provisions for failing to register crimes against women

We have already examined the consequences of acid attacks, which are outlined in the Indian Penal Code,1860 but there are several other provisions of law that addresses the punishment for failing to file crimes against women. By virtue of the Criminal Law (Amendment) Act of 2013, Sections 166 A and 166 B were added to the Indian Penal Code.

Section 166 A was later amended in 2018.

Section 166A of the Indian Penal Code, 1860[41] deals with those public servants who knowingly disobey the law. Along with Section 166A, 166 B was also added via the same Amendment. Section 166 B of the Indian Penal Code, 1860[42] outlines the penalty that can be imposed if the victims are not treated by the hospitals.

Conclusion

This antiquated solution of acid attacks has drawn harsh criticism for being the most inhumane and being considered worse than tyranny. Jurists and sociologists agree that this remedy does not create a firm foundation for violating a person's right to privacy and matrimonial equality around the world. Furthermore, because of its antiquated methodology, it has been repealed in the majority of jurisdictions around the world.

Blindness and abnormal scarring that impairs the function of the face and body are two consequences of acid attacks. The victim also experiences excruciating pain as a result of the wounds. The violent act has always sent a message of threat to all women, not just the victim, leaving many in a constant state of fear.

There are many heart-warming tales of acid attack survivors who bravely fought their attackers and refused to give up; these survivors stood up for themselves and also rebuilt their lives. Yet in many cases after the acid attacks, many women still decide to live as outcasts because there are so few opportunities left for them in fact, not even a meagre glimmer of hope. The acid attacks must be addressed as a matter of necessity. The Attacks will continue if attackers are not treated more harshly and the victims benevolently.

Therefore, how can we stop this crime? We can learn from Bangladesh, which experienced a very high number of cases and was able to successfully address the issue to a significant degree.

1. First, a swift trial must be held in the nation's acid attack case. The investigation process must be finished in 30 days. Only two extensions of 15 days are granted if the investigating officer requests more time; any additional requests must be reported to the court. The officer is responsible for punishment if the investigations are not completed or if it is discovered that they were corrupt. The case must be resolved in 90 days.

2. Second, Bangladesh has harsh penalties for crime, including the death penalty.

3. Third, unlicensed creation, importation, movement, storage, sale, and utilization, Acid use and sales are punishable by three to ten years in prison. Attacks decreased from 500 in 2002 to 71 in 2012 thanks to strict laws and their implementation in Bangladesh.

Crimes against women cannot be resolved in a court of law alone. There is a need for holistic approach and change in the system. Also, all stakeholders need to act together, including law makers, Police officers, forensic department, Prosecutors, Judiciary, Medical and Health Department. States should also extend social integration programs to the victims for which non-Governmental organisations (NGO's) could be funded to look after the rehabilitative requirements of acid attack survivors.

■■■

Reference :

[1] Sanford H. Kadish, Encyclopedia of Crime and Justice 1618–1619 (1983).
[2] Niroj Sinha, Women and Violence 32 (1989).
[3] Minakshi Goswami, A Review of Literatures on Acid Attacks in India, 1 MSSV J. Human. Soc. Sci., 1, 1, available at https://www.mssv.co.in/Journal/vol1no2/MSSVJHSS010201.pdf
[4] https://blog.ipleaders.in/acid-attack-punishment-in-india (last visited on 20/04/2023 at 12.00 pm)
[5] ROZLINA HUSSAIN, the most grievous assault acid attack is common in India, why, LEGAL SERVICE INDIA http://www.legalserviceindia.com/legal/article-196-the-most-grievous-assault-acid-attack-is-common-in-india-why.html(Last visited on 3rd April 2019, 8:50 PM)
[6] Elora Halim Chowdhury, Feminist Negotiations Contesting Narratives of the Campaign Against Acid Violence in Bangladesh, 6 Meridians 163, 163 (2005).
[7] Dr. G.B Reddy's Women and the Law including Law relating to Children, Gogia Law publication, Tenth Edition 2021 at p 155.
[8] https://www.rightsofequality.com/acid-attacks-on-women-why-india-fails-to-tackle/ (last visited on 20/04/2023 at 8.50 am)
[9] https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf (last visited on 23/4/2023 at 12.00 am)
[10] https://www.outlookindia.com/national/acid-attack-on-a-young-girl-in-delhi-brings-back-the-spotlight-on-the-awful-reality-of-acid-attacks-news-245041 (last visited on 21/04/2023 at 22.19)
[11] https://blog.ipleaders.in/acid-attack-punishment-in-India (last visited on 23/04/2023 at 11 am)
[12] THE CONSTITUTION OF INDIA,1950, Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.
[13] Criminal Appeal (SJ) No. 42 of 2003, delivered by the High Court of Judicature at Patna on 3 February 2018, available at www.Indiankanoon.org/doc/16877753.
[14] INDIAN PENAL CODE,1860, Sec.320-Grievous Hurt.
[15] INDIAN PENAL CODE,1860, Sec.322- Voluntarily causing grievous hurt.
[16] INDIAN PENAL CODE, 1860, Sec.325.-Punishment for voluntarily causing grievous hurt.

[17]Supra Note 14
[18]INDIAN PENAL CODE,1860. Sec.335- Voluntarily causing grievous hurt on provocation.
[19]INDIAN PENAL CODE,1860.Sec 326- Voluntarily causing grievous hurt by dangerous weapons or means.
[20](2014) 4SCC 427
[21]See Shivani Goswami & Neelu Mehra, Juvenile Justice Systems in United States and India:
Modern Scenario and Much Needed Modifications, 2 J.L. Crim. Justice, 251, 260 (2014).
[22]See, https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/nalsa-legal-services-to-victims-of-acid-attacks-scheme-2016.
[23]See https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/nalsa-legal-services-to-victims-of-acid-attacks-scheme-2016.
[24]Justice J.S. Verma, Report of the Committee on Amendments to Criminal Law, 147, para 5 (January 2013).
[25]INDIAN EVIDENCE ACT,1872, Sec.114- Court may presume existence of certain facts.
[26]INDIAN PENAL CODE,1860, Sec.302-Punishment for Murder
[27]Supra note 13.
[28]THE CODE OF CRIMINAL PROCEDURE, 1973, Sec. 357 A: Victim compensation scheme.
[29]https://www.pib.gov.in/PressReleasePage.aspx?PRID=1812410 (last visited on 23/04/2023)
[33]Supra note 29
[34]Supra note 33
[35]Supra note 35
[36]5(1969) DLT 506.
[37]1998 Bom CR Cri.
[38]Supra note 18
[39]Criminal Appeal No. 1143 of 2018. Judgement by Supreme Court on 7 September 2018 SCC/online/SC/1930
[40]https://www.mha.gov.in/sites/default/files/2022-12/30-08-2013-I%5B1%5D.pdf (last visited on 23/04/2023
at 19.36 pm)
[41]INDIAN PENAL CODE,1860, Sec. 166- A. Public Servant disobeying direction under Law.
[42]INDIAN PENAL CODE,1860, Sec.166 B- Punishment for non-treatment of victim.

Offences Against Women in India: A Study of Laws and Protection

Saumya Verma

"Women face an uphill battle, from sexism and violence to inequality. In some areas, they are forced to deal with a culture that promotes primitive practices that endanger them, not just physically, but emotionally as well." It is truly said by Hagir Elsheikh, Through Tragedy and Triumph: A Life Well Traveled, in the present world when women are facing atrocities and offences against themselves. Just like man, woman is an inseparable part of the society. Any adversity posed to the women community will not only endanger the women community but will also wither out the social fabric of the country. It is essential to study the offences against women in the light of penal laws in India for addressing the offences in proper way for the protection of women. Offences like sexual assault, dowry death, rape, voyeurism, forced prostitution and so on there are umpteen number of offences which are committed against women and requires an urgent attention for the proper relief and rehabilitation of women. This research paper is an earnest effort to describe the offences against women. It deals with meaning and definition of "Offences against women". It incorporates Verma committee report, study of legal and constitutional provisions for the protection of rights of women against offences. It also deals with national initiatives to curb gender violence. The present genesis also sets out suggestions for combating gender violence in India.

Keywords: Offence, Gender Violence, Women Atrocities, Indian Penal Code, Special Laws

Introduction

There were reported 2,28,650 cases of atrocities against women in 2011. It further increased to 2,44,270 cases in 2012 and 3,09,546 cases in the year 2013.[1] According to NCRB, there have been reported around 3,27,394 cases of offences against women in the year 2015 out of which 10% of the total crimes were reported to be committed in Uttar Pradesh and 7.5% of the total was reported to have committed in West Bengal.[2] The statistics show that the atrocities against the women are increasing day by day and year by year. The situation is becoming detrimental despite of regular advisories sent by Union Home Ministry to all States and UTs regarding controlling criminal activities against women. It has been observed that perpetrators go unpunished or are subjected to only less punishment. According to a report of UNICEF the causes of violence against women in India constitutes their lower status in Indian Society.[3] In the patriarchal society like ours, women are considered like a commodity which should also be subordinate to the males and has no role in decision making. Ultimately, they become easy targets for male to exploit them as howsoever they want. Women are deprived of quality education since beginning because of patriarchal set up and thereby they lag behind males in securing powerful positions. This indicates the deplorable plight of women which makes them vulnerable to be targeted easily for violence. The United Nations General Assembly defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in sexual, physical and mental harm to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".[4] The 1993 Declaration on the Elimination of Violence against Women noted that this violence could be perpetrated by assailants of either gender, family members and even the "State" itself.[5] Offences against women in India includes sexual harassment, Acid Attacks, Voyeurism, stalking, domestic violence, dowry-related abuse, human trafficking, sexual assault and rape. Despite laws and provisions in place to protect women,

the offences remain prevalent in the country. The Present Study is a genuine effort to understand the position of women in India which is leading to violence and atrocities towards them. It deals with meaning and definition of "Offences against women". It incorporates Verma committee report, study of legal and constitutional provisions for the protection of rights of women against offences. It also deals with national initiatives to curb gender violence. The present genesis also sets out suggestions for combating gender violence in India.

Meaning and Definition of "Offences Against Women"

The literal meaning of "Offences Against Women" means direct or indirect physical, mental, sexual cruelty or violence committed to women. Offence against women denotes the crimes which are specifically committed against women. Violence against women means physical aggression and abuse against them.

According to Article 1 of Convention on Elimination of All Forms of Discrimination Against Women, 1979, Violence against women means, "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".[6]

Article 2 of CEDAW, 1979 states that "Violence against women shall be understood to encompass, but not be limited to, the following:[7]

a. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

b. Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

c. Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs".

The Article 2 of CEDAW, 1979 has provided the classification of types of offences committed against women. Violence has been classified into physical, sexual, psychological one.

Under Indian Penal Code Sec 40 has defined term offence as a thing which is made punishable under IPC, 1860.[8] As far as offences against women are considered, it is important to note that the offence against women means offence against women of any age as per IPC, 1860.[9]

Constitutional Provisions for Protection of Women's Rights

According to constitutional provisions the dignity, life, liberty and equality has been ensured to women. Following are the constitutional provisions for the protection of human rights of women.

- According to Article 14 Men and Women have equal rights without any discrimination.[10]
- According to Article 15(1) state prohibits discrimination based on sex.[11]
- Article 15(3) states that state is empowered to enact legislations and take initiative for the benefit of women and to make affirmative discrimination in favour of women.[12]
- Article 16 provides for equality of opportunity in public employment to the women.[13]
- Article 23 abolishes trafficking of women and forced labour. Article 39(a) states that "The State shall direct its policy towards securing all citizens men and women, equally, the right to means of livelihood". [14]
- Article 39(d) provides for equal pay for equal work where women are entitled have equal pay as to their male counterparts.[15]
- Article 42 of the constitution states that the state is empowered to make provision for ensuring just and humane conditions of working for women along with maternity leaves. [16]

- Article 51 (A) (e) of the constitution puts obligation on the society to denounce the derogatory and discriminatory practices against women. [17]
- Art. 300 entitles women with legal right to property.[18]
- 73rd and 74th Amendment Act, 1992 provides for reservation of 1/3rd seats in local bodies of panchayat and municipalities for women.[19]

Penal Provisions under IPC, 1860

A. **Rape (Sec. 376 IPC)- Definition**

In literal terms Rape means unlawful sexual intercourse or any penetration to the genitals from foreign object, body part, mouth, or sex organ of another person.[20] Such unlawful intercourse and penetration to the genitals from foreign object, body part, mouth or sex organ of another person should be without the consent of the woman.

According to Sec. 375 of IPC "A man is said to commit "rape" if he-[21]

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person",

There have been provided the following seven descriptions of Rape[22]

1. Against her will.
2. Without her consent.

3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
6. With or without her consent, when she is under eighteen years of age.
7. When she is unable to communicate consent.

There are two explanations to this section as given:[23]

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

There are two exceptions to this section as given:

Exception 1.A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape

Punishment for Rape

- Sec. 376 provides a minimum punishment of 7 Years of Jail and Maximum punishment of imprisonment of life to the offender.[24]

- Under Sec 376 for all aggravated forms of rape the rigorous imprisonment for a term ten years has been provided, but which may extend to imprisonment for life, which mean imprisonment for the remainder of that person's natural life, and is also be liable to fine.[25]
- For committing rape on women of 16 years of age, the punishment of rigorous imprisonment for a term which shall not be less than 20 years and may extend to life imprisonment has been provided. Here life imprisonment means imprisonment for the remainder of that person's natural life.[26]

Under Sec 376 A where a person commits offence of rape by inflicting a grievous injury to the rape victim hence putting her in persistent vegetative state is punishable with rigorous imprisonment for a term of minimum 20 years or life imprisonment or

- death. This is to be noted that in Arunachal Pradesh the ultimate punishment under Sec 376 A by state amendment is death only.[27]
- Under Sec. 376 AB it has been provided that one who commits rape on woman of 12 years of age shall be punished with twenty years of rigorous punishment which may extend to imprisonment for life, which means imprisonment for the remainder of that person's natural life, and with fine or with death.[28]
- Under Sec. 376 B one who commits rape on his wife who is living separately, is punishable with minimum 2 years and maximum 7 years of imprisonment.[29]
- Sec. 376 C provides rape committed by person in authority like police or hospital staff or public servant, shall be punishable with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and

shall also be liable to fine.[30]

- Sec. 376 D is a provision related to Gangrape, one who commits Gangrape is punishable with rigorous imprisonment of 20 years which may extend to life imprisonment. The life imprisonment means imprisonment for remainder of person's life.[31]

a) For Gangrape committed on a woman of 16 years of age, Sec 376 DA provides the punishment of imprisonment of life with fine.

b) For Gangrape committed on a woman of 12 years of age, Sec. 376 DB provides the punishment of minimum punishment of imprisonment of life with fine or maximum punishment of death.

1. **Attempt to commit Rape (Sec 376/511 IPC)**

The attempt to commit an offence begins when the accused commences to do an act with the necessary intention. Section 511 read with Section 376 IPC is punishable with one half of the punishment prescribed under rape provisions.[32] The recent judgement of Supreme Court in Chaitu Lal v. State of Uttarakhand is important to note in this regard.[33]

2. **Kidnapping & Abduction of Women (Section 363, 364, 364A, 365, 366 to 369 IPC)**

A. **Kidnapping and Abduction**

According to Section 359 Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.[34] Section 360 provides for definition of Kidnapping from India. It states that "Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India".[35] Section 361 defines Kidnapping from lawful guardianship.[36] It states that "Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or

person from lawful guardianship".[37] There is one explanation and one exception to this definition for the offence of Kidnapping from lawful guardianship:[38]

Explanation. — The words "lawful guardian" in this section includes any person lawfully entrusted with the care or custody of such minor or other person.

Exception. — This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Therefore, to constitute an offence under this section the following conditions must exist.[39]

1. There must be taking or enticing of a minor, or a person of unsound mind;

2. Such minor must be under 16 years of age, if a male, or under 18 years of age, if a female.

3. Taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind; and

4. Taking or enticing must be without the consent of such guardian.

Section 362 provides for the definition of Abduction. It states that "Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person". [40]

A. **Punishment for Kidnapping-**

1. Section 363 provides for Punishment for kidnapping. It provides that one who kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.[41]
2. Section 364 is captioned as Kidnapping or abducting in order to

murder. This section states that "Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine".[42]

3. Section 364-A provides for punishment in case of Kidnapping for ransom. It states that "Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine".[43]
4. Section 366 captioned as Kidnapping, abducting or inducing woman to compel her marriage is punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[44]
5. Section 366-A provides punishment in case of Procuration of minor girl. It states that such offence shall be punishable with imprisonment of ten years and shall also be liable for fine.[45]
6. Section 366-B in The Indian Penal Code which provides for Importation of girl from foreign country, one who commits the given offence shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.[46]

1. Dowry Death (Section 304B IPC)

According to Sec. 304 B If the death of the woman is resulted by any burns or bodily injury under the circumstances otherwise than the normal within the 7 years of her marriage.[47] In the given case it should be shown that she was subjected to cruelty and harassment by her husband

or any relative of her husband in connection with dowry. Such death of woman under abnormal circumstances is termed as dowry death.[48] Dowry death is punishable with imprisonment for a term which shall not be less than seven year but which may extend to imprisonment for life.[49]

Explanation- For the purpose of this sub-section, Dowry shall have the some meaning as in section 2 of the dowry prohibition Act, 1961.[50]

2. Assault on Woman with Intent to Outrage Her Modesty (Sec. 354 IPC)

According to IPC Sec. 354 whoever assaults or uses criminal force towards a woman in order to outrage her modesty is punishable with imprisonment of minimum one year or maximum 5 years with fine.[51]

5.1. Sexual Harassment (Sec.354A IPC)

Essential elements of offence of sexual harassment constitutes the following:[52]

i) Physical contact and advances which includes unwelcome and sexually explicit remarks.

ii) Demanding sexual favours from women

iii) Showing pornography to the woman

iv) Making sexually coloured remarks

5.2. Section 354B

Sec. 354 B captioned as Assault or use of criminal force to woman with intent to disrobe provides that where any man assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, is punishable with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.[53]

5.3. Voyeurism (Sec. 354C IPC)

Any man who watches a woman naked or dong any private act or in a compromised situation and take images of it and disseminates it is punishable with first conviction with imprisonment of either description

for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.[54]

6. **Insult to the Modesty of women (Sec. 509 IPC)**

This section provides the following "any man -[55]

1. intending to insult the modesty of any woman,
2. utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard,
3. or that such gesture or object shall be seen, by such woman,
4. or intrudes upon the privacy of such woman, is punishable with simple imprisonment for a term which may extend to three years, and also with fine".

7. **Cruelty by husband or his relatives (Sec. 498A IPC)**

Where husband or his relatives commits cruelty or harassment on the woman in relation to dowry and as a result puts woman's life in danger is punishable with three years or imprisonment and shall be liable for fine too.[56]

8. **Acid Attack**

Section 326 A states that one who causes permanent or partial damage or deformity to or burn or disfigures any part of the body of another person with the intention of causing injury to another person is punishable with minimum description of term of ten years and extendable to imprisonment for life and fine.[57] Proviso: Such fine should be enough to meet the medical expenses of the victim. Section 326 B states that one who throws or attempts to throw acid on another person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or disfigurement or disability or grievous hurt to that person is punishable with imprisonment of either description for a term which

shall not be less than five years but which may extend to seven years, and shall also be liable to fine.[58]

Special Laws for the Protection of Women against Violence

- **The Immoral Traffic (Prevention) Act, 1956**

The Suppression of Immoral Traffic in Women and Children Act, 1956 was enacted on 30 Dec, 1956.It extended to whole of India.[59] This Act was made in pursuance of United Nations international Convention for the Suppression of Women in Traffic in Persons and of Exploitation in Others which was signed by India in New York on 9 May, 1950.[60] This Act has undergone change in the name of the Act as Immoral traffic Prevention Act, 1956.Also, two amendments have been carried out in it till date in 1978 and 1986.this Act is gender neutral and aims at suppression of human trafficking and prostitution in India.[61]

- **The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)**

This Act prohibits the giving and taking of dowry of any property or valuable security given or agreed to be given either directly or indirectly by parents of either side at the time of marriage or before the marriage.[62] If any person violates this Act that person may be punished with imprisonment of 5 years and fine of Rs. 15000/- or amount of such dowry, whichever is more.[63] If any person demands dowry from parents, relatives, guardians of bride or bridegroom, that person shall be punished for a term of six months which may extend till two years and fine of ten thousand rupees.[64]

- **The Commission of Sati (Prevention) Act, 1987 (3 of 1988)**

This act aims towards prevention of Sati. It states that whoever does any Act for the glorification of Sati shall be punishable with imprisonment of a term which shall not be less than one year and may extend to seven years and fine which may not be less than five thousand rupees and it may extend to thirty thousand rupees.[65]

· **Protection of Women from Domestic Violence Act, 2005**

Under Section 3 of this Act, the term domestic violence has been defined as any act, commission, omission or conduct of a person harm or injures or endangers the health or safety of an individual or any person related to that individual to meet any unlawful demand would also amount to domestic violence.[66]

· **The Sexual Harassment of Women at Workplace (Prevention, prohibition and Redressal) Act, 2013**

The sexual harassment of women in workplace is a gender-based violence. The subject Act aims at protecting women from sexual harassment at workplace.[67] It aims at preventing and redressing the sexual harassment complaints. This Act came into effect on 9 December, 2015.[68] This Act is in the compliance of Vishakha guidelines given by the apex court in Bhanwari devi case in 1997.[69] Through this case Supreme Court brought the people's attention towards the gender-based violence at workplace.

· **The Criminal Law (Amendment) Act, 2013**

The Criminal law Amendment Act, 2013 was enacted following the brutal rape and murder of a 23-year-old Delhi student on 16 Dec, 2012.the heinous incident paved path for the anti-rape law which is called Nirbhaya Act.[70] This Act imposes stringent punishments to deter the people from committing the heinous crimes like rape on woman.[71] This Act expanded the definition of rape including the insertion of a foreign object, any part of the body or mouth to the private parts of the woman.[72] However, in the older definition only penetration of vagina from penis was included. Under Sec. 354, four more offences were introduced which are - Sexual harassment [Sec. 354 A], Disrobing a woman [Sec. 354 B], Voyeurism [Sec. 354 C] and Stalking [Sec. 354 D].This Act made acid attack punishable by inserting new sections 326 A & B.[73]

Justice J. S. Verma Committee Report

Justice J S Verma Committee was constituted to recommend amendments to the criminal law in order to provide for speedy trial and enhanced punishments for the accused of committing the gender-based violence.[74] It was constituted on 23 Dec, 2012 and included Justice J. S. Verma as its head along with two former Chief justice of Apex Court.[75] Other members were former solicitor general Gopal Subramaniam and Justice Leila Seth.[76] It made the following recommendations regarding rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police and educational reforms:

· The committee recommended that rape should be retained as a separate offence. Any nonconsensual penetration of sexual nature should be included in the definition of rape. It recommended that the exception to marital rape should be removed.[77]

· Committee recommended that all non-penetrative sexual contact should be termed as sexual assault. Sexual gratification should not be the prerequisite for proving the offence.[78]

· Use of criminal force against a woman in order to disrobe her should be punishable with 3 to 7 years of imprisonment.[79]

· The use of words or gestures under the definition of insulting a woman's modesty must be included under sexual assault and should be punishable with 1 year imprisonment or fine or both as per committee's recommendation.[80]

· The committee recommended that under the sexual harassment of women at workplace (prevention, prohibition and redressal) Act, the domestic workers should also be included.[81]

· The committee recommended that the acid attack offence should not be clubbed with grievous hurt rather it should be made a separate offence which should be punishable with 7 years' imprisonment under IPC.[82]

- The committee recommended that when a sexual offence is committed by armed personnel, the sanction requirement for his prosecution should not be a prerequisite.[83]
- The committee recommended punishing the trafficking by threat, force and inducement.[84]
- The Committee recommended that the terms 'harm' and 'health' be defined under the Juvenile Justice Act, 2000 to include mental and physical harm and health caused to the child.[85]
- The committee recommended the discontinuation of two finder test for determining the commission of offence of rape.[86]
- The committee recommended the police reforms to be carried out by establishing Police establishment Board.[87]

Government Initiatives for Safety of Women and Girls

Government has taken following initiatives for the safety of women and girls:

- It has set up Nirbhaya fund for the safety and security of women. This scheme is sponsored by Ministry of Women and Child Development.[88]
- Investigation Tracking System for Sexual offences was launched by government to track and investigate sexual assault cases.[89]
- National Database on Sexual offenders has been made to facilitate the investigation of sexual offences.[90]
- A cyber crime portal has been launched by the government for reporting the obscene content in 2018.[91]
- DNA analysis units have been fortified in central and state forensic science labs.[92]

Conclusion

Protection of women's rights is essential for the social, political and economic growth of the women. Discrimination against women should be eradicated. The necessary judicial and police reforms should be

introduced to combat the women oppression. Constitutional rights must be upheld to safeguard women's rights. However, there are a number of legislations enacted for the protection of rights of women but the mindset of the people still remains patriarchal. They still judge women as a commodity and a subordinate. Woman is considered to be without any voice who has to obey by the regime which has been established by the elder males of this society. Notion behind protection of women's rights is that the woman is equal to man and deserves to live life with dignity. She is not a subordinate but an important and integral part of our society. We cannot imagine our society surviving without women. Yet the rights of women are neglected, they are subjected to atrocities. It is the time to break the silence that the laws are dead letter only if they are not implemented for the protection of women's rights. It is not the duty of the government only to run awareness campaigns for the people tirelessly but it is the responsibility of all individuals to start respecting the women's rights from their families and it will ultimately result in amelioration of the women community at large.

■■■

Reference :

[1]Crimes Against Women - national crime records bureau (2014). Available at https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%202.1A.pdf (Accessed: April 25, 2023).
[2]Table 2.1a violent crimes - national crime records bureau (2015). Available at: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%202.1A.pdf (Accessed: April 25, 2023).
[3]*Gender equality* (no date) *UNICEF India*. Available at: https://www.unicef.org/india/what-we-do/gender-equality (Accessed: April 25, 2023).
[4]Beijing Conference (no date) United Nations. United Nations. Available at: . (Accessed: April 25, 2023).
[5]Declaration on the elimination of violence against women, Available at: https://www.ohchr.org/sites/default/files/eliminationvaw.pdf (Accessed: April 25, 2023).

[6]Ibid.
[7]Supra Note 5.
[8]Section 40 in the Indian Penal Code - Indian Kanoon (no date). Available at: https://indiankanoon.org/doc/886402/ (Accessed: April 25, 2023).
[9]D.R. et al. (2022) Offences against women and provisions for it in the IPC, iPleaders. Available at: https://blog.ipleaders.in/offences-against-women/ (Accessed: April 25, 2023).
[10]Article 14: Protection From Discrimination (no date) Article 14: Protection from discrimination | Equality and Human Rights Commission. Available at: https://www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination (Accessed: April 25, 2023).
[11] The Constitution of India, 1950.
[12]Ibid.
[13]Ibid Note 11.
[14] Ibid Note 11.
[15]Ibid Note 11.
[16]Ibid Note 11.
[17] Ibid Note 11.
[18]Ibid Note 11.
[19] Ibid Note 11.
[20]Rape definition & meaning (no date) Dictionary.com. Dictionary.com. Available at: https://www.dictionary.com/browse/rape (Accessed: April 25, 2023).
[21]The Indian Penal Code, 1860.
[22]Ibid.
[23]Ibid Note 21.
[24]Ibid Note 21.
[25] Ibid Note 21.
[26]Ibid Note 21.
[25]Ibid Note 21.
[28]Ibid Note 21.
[29]Ibid Note 21.
[30]Ibid Note 21.
[31]Ibid Note 21.
[32]Ibid Note 21.
[33]Ibid Note 21.
[34]*Chaitu Lal vs State of Uttarakhand on 20 November, 2019 - Indian kanoon* (no date). Available at: https://indiankanoon.org/doc/131705859/ (Accessed: April 25, 2023).
[35]Ibid Note 21.
[36]Ibid Note 21.
[37]Ibid Note 21.
[38]Ibid Note 21.
[39] *Kidnapping and abduction – Section 359-369 IPC* (no date). Available at: https://old.amu.ac.in/emp/studym/100000881.pdf (Accessed: April 25, 2023).

[40]Ibid Note 21.
[41]Ibid Note 21.
[42]Ibid Note 21.
[43]Ibid Note 21.
[44]Ibid Note 21.
[45]Ibid Note 21.
[46]Ibid Note 21.
[47]Ibid Note 21.
[48]Ibid Note 21.
[49]Ibid Note 21.
[50]Ibid Note 21.
[51]Ibid Note 21.
[52]*IPC section 354A - sexual harassment and punishment for sexual harassment (no date) A Lawyers Reference.* Available at: https://devgan.in/ipc/section/354A/ (Accessed: April 25, 2023).
[53] *IPC section 354B - assault or use of criminal force to woman with intent to disrobe* (no date) *A Lawyers Reference*. Available at: https://devgan.in/ipc/section/354B/ (Accessed: April 25, 2023).
[54] IPC Section 354C - voyeurism, https://devgan.in/ipc/section/354C/ (last visited Apr 25, 2023).
[55] *IPC Section 509 - Word, gesture or act intended to insult the modesty of a woman*. (n.d.). A Lawyers Reference. https://degan.in/ipc//section/509/
[56]*Cruelty to Women [S. 498-A IPC and allied sections] | SCC Blog*. (n.d.). SCC Blog. https://ww .scconline.com/blog/post/2018/12/03/law-for-laaymen-section-498-a-ipc-and-allied-sections-cruelty-to-women/
[57]*Provisions related to Acid Attack | ProBono India*. (n.d.). ProBono India. https://ww .probono-india.in/blog-detail.php?id=214
[58]Ibid.
[59]Social Action Forum for Manvaadhikar. (n.d.). *Research Study on Human Right Violation of Victims of Trafficking*. http://ncw.nic.in/sites/default/files/Human_Right_Violation_of_Victims_of_Trafficking.pdf
[60]Ibid.
[61]Ibid note 60.
[62]*National Institute of Health & Family Welfare*. (n.d.). National Institute of Health & Family Welfare. http://ww .nihfw.org/Legislaations/THE WRYPROHIBITIONACT.html
[63]Ibid.
[64]Ibid.
[65]*The Commission of Sati Prevention Act and rules*. (n.d.). https:// cd.nic.in/commission-saati-evenention--1987-3-1988-excluding-administration-criminal-justiceegard-offences
[66]*The Protection of Women from Domestic Violence Act, 2005 - iPleaders*. (n.d.). iPleaders. https://blog.ipleaders.in/the-protection-of-women-from-domestic-violence-act-2005/
[67]POSH Act, 2013 - iPleaders. (n.d.). iPleaders. https://blog.ipleaders.in/posh-act-2013/
[68]Ibid.
[69]Ibid Note 68.
[70]Nirbhaya Act | Criminal Law (Amendment) Act, 2013 - Getlegal India. (n.d.). Getlegal India. https://getlegalindia.com/nirbhaya-act/
[71]Ibid.
[72]Ibid Note 71.
[73]Ibid Note 71.
[74]*Committee Reports*. (n.d.). PRS Legislative Research. https://prsindia.org/policy/report-

summaries/justice-verma-committee-report-summary#:~:text=Justice%20Verma%20Committee%20was%20constituted,committing%20sexual%20assault%20against%20women.
[75]Ibid.
[76]Ibid Note 75.
[77]Ibid Note 75.
[78]Ibid Note 75.
[79]Ibid Note 75.
[80]Ibid Note 75.
[81]Ibid Note 75.
[82]Ibid Note 75.
[83]Ibid Note 75.
[84]Ibid Note 75.
[85]Ibid Note 75.
[86]Ibid Note 75.
[87]Ibid Note 75.
[88]*Government Initiatives For Women's Safety: Best Practices | Forbes India*. (n.d.). Forbes India. https://www.forbesindia.com/article/brand-connect/government-initiatives-for-womens-safety-best-practices/79383/1
[89]Press Information Bureau Government of India Ministry of Home Affairs. (n.d.). *Safety and Security of Women and Girls*. https://pib.gov.in/Pressreleaseshare.aspx?PRID=1575574
[90]Ibid.
[91]Ibid Note 90.
[92]Ibid Not 90.

Different Religious views on Organ Donations

Shabnam A. Virani
CJJD & JMFC, Karad, Satara

Abstract:

All the major faiths including Islam, Christianity, Hinduism, Judaism and Sikhism support organ donation and transplantation. Recent advances in the field of organ donation and organ transplant have introduced new hope for the treatment of serious diseases. Most of the people of many religions still believe that organ donation is prohibited by religion, but it is not true. This article has tried to focus that organ donation is neither prohibited by Islam nor by any other religion. In fact, each religion encourages people to help each other. This article has also tried to encourage people to donate organs. Basically, discussion is based on Quran and Hadith of Prophet Mohammad (SWA). It is qualitative research. Primary and secondary resources are used in this paper. The information has been taken from many readings, articles, books, and status.

Introduction

Despite of second largest populated country in the world, India has one of the lowest organ donor rates in the world. And the reason behind this is our strong beliefs in religion. Because religion plays a very important role in each individual's life and as mentioned above, it comes to forefront at crucial times like death of our loved ones. The negative attitude towards organ donation is driven by religious beliefs and perceived risk to the donor. Also, there are lot of myths and religious rituals surrounding death that deter people from donating the organ of a

loved one. Organ donation is often misunderstood because people fail to understand the simplicity of its concept. Many people are dying every day for lack of organs. For example, in the year 2000, more than 5,500 Americans died awaiting transplants and there are currently over 80,000 people awaiting transplants. Therefore, most of the government and religious scholars are encouraging people to donate organs.

No religion formally forbids donation or receipt of organs or is against transplantation from living or deceased donors. But organ transplantation is morally acceptable with the consent of the donor and without excessive risks for him/her. For the noble act of organ donation after death, the real death of the donor must be fully ascertained. Your knowledge and action of religious views on organ donation may help alleviate the suffering of the thousands of people who die annually from lack of available donors, organs and tissue while a multitude of healthy organs are being buried every day. This dilemma itself is an ethical issue.

The gift of organ donation enjoys broad support among many religions in the U.S. although there may be differences of opinion even within a particular religious group. The major monotheistic religions of the West (Judaism, Christianity, and Islam), because of their shared origins, have similar conceptions of sanctity of life, and of death and eschatology. Although religious discourse, source (canonical literature), justifications, examples used, emphasis and lines of authority vary. These religions support living organ donation, cadaver organ donation and more recently the establishment of death using brain-death criteria. All three accept that the diagnosis of physical death is best left to the physician. Hinduism and Buddhism both encourage living and post-mortem organ donation.

Views of different religions on organ donation are as follows -

Christianity

Christianity supports organ donation as a generous act. To love one another and to help others in need are the teachings of Jesus Christ.

So, organ donation which can save the life of many people by healing them is the genuine act of love.

Islam

The Fourth Conference of the Islamic Fiqh Council determined that transplantation offers " clear positive results" if practiced"... to achieve the aims of sharee'sh which tries to achieve all that is good and in the best interests of individuals and societies and promotes cooperation, compassion, and selflessness." Provided that "shar'i guidelines and controls that protect human dignity" are met, " It is permissible to transplant an organ from a dead person to a living person whose life or basic essential functions depend on that organ, subject to the condition that permission be given by the deceased before his death, or by his heirs after his death....." Regarding living donation, it is permissible to transplant organs such as a kidney and or a lung" in order to keep the beneficiary alive or to keep some essential or basic function of his body working." (Resolutions of Islamic Fiqh Council of the Organization of the Islamic Conference, Fourth Conference, Jeddah, Kingdom of Saudi Arabia, 18-23 Safar 1408 AH/6-11 February 1988 CE).

The majority of Islamic religious leaders accept organ donation during life (provided it does not harm the donor) and after death in order to save someone's life. Most religious leaders do not accept brain death as a criterion and consider cessation of all signs of life including heart beat as a precondition of declaring death.

Despite this position by Islamic religious leaders, Muslims are oftentimes uncertain about whether or not Islamic tradition considers organ donation to be forbidden. This uncertainty stems from ambiguity caused by conflicting opinions among some Islamic leaders regarding this issue. Moreover, a lack of support along with a generally negative attitude toward organ donation and transplantation has been reflected in surveys of diverse Islamic populations. This overall negativity towards organ donation has resulted in low rates of participation in organ

donation by practicing Muslims even in cases where donation would be considered permissible by religious leaders.

Muslims believe that human do not have ownership of their body or spirit, it is considered to be God's gift. Judges of organ donation ethics question whether the noble act of donating an organ outweighs the desecration of a dead body. Additionally, some Muslims believe that all body parts must be present on the Day of Judgment and organ donations would interfere with that testimony.

Grand Ayatollahs Ali al-Sistani did not approve of posthumous organ donation, while Grand Ayatollahs Abu al-Qasim al-Khoei allowed donation of all organs after death as long as the body could still be recognizable. Practicers of Shia Islam consider minor, regenerative organ donations different than major, non-regenerative organs.

Some points of view that Muslims hold are based on the Prophet Muhammad's teachings. The quote " *whoever helps another will be granted help from Allah in the Hereafter*" has been interpreted by some Muslims in support of organ donation.

Donation by living donors and by cadaveric donors is not only permitted but encouraged. Organ donation should be **c**onsidered as an expression of the believer's altruism, and Islam encourages the virtuous qualities which are supportive of organ donation: generosity, duty, charity, co-operation, etc. Accordingly, the Islamic Code of Medical Ethics stresses that human life is sacred, and it must be preserved by all possible means. It is permissible within the Shariat to remove the organ from one person and transplant it into another person's body in order to save the life of that person on the condition that such a procedure does in no way violate the dignity of the person from whose body the organ was removed. One of the basic aims of the Muslim faith is the saving of life: This is a fundamental aim of the Shariah and Muslims believe that Allah greatly rewards those who save others from death. Violating the human body, whether living or dead, is normally forbidden in Islam. The Shariah, however, waives this prohibition in a number of instances:

firstly in cases of necessity: and secondly in saving another person's life. It is this Islamic legal maxim *al-darurat tubih al-mahzurat (necessities overrule prohibition)* that has great relevance to organ donation. " Whosoever saves the life of one person it would be as if he saved the life of all mankind."[1]

Hinduism

In Hinduism, the physical integrity of the body after death is not considered important. Hindu values reincarnation and prolonging life which allows for many individuals to agree with organ donation. Life after death is a strong belief of Hinduism and is an ongoing process of rebirth. It is a perpetual circle of birth and rebirth of the soul, so the physical body is insignificant.

There are many references that support the concept of organ donation in Hindu scriptures. These include the following- Daan is the original word in Sanskrit for donation meaning selfless giving. In the list of the 10 Niyamas (Virtuous acts) Daan comes third. " Of all the things that it is possible to donate, to donate our own body is infinitely more worthwhile. " The Manusmruti-Life after death is a strong belief of Hindus and is an ongoing process of rebirth. The law of Karma decides which way the soul will go in the next life. The Bhagavad Gita describes the mortal body and the immortal soul in a simple way like the relationship of clothes to a body: " *vasamsi jirnani yatha vihaya navani grhnati naro' parani tatha sarirani vihaya jirnany anyani samyati navandi dehi.*" ("As a person puts on new garments giving up the old ones the soul similarly accepts new material bodies giving up the old and useless ones."[2]

Jainism

In Jainism, compassion and charity are considered to be major virtues. Organ donation has been widely supported by the Jain community leaders and monks. It has been reported that in Mumbai, 85-90% of all organ donations including eye donations, are by Jains and Gujaratis (a significant fraction of them are Jain in Mumbai). Gujarat had

considerable success with the eye donation program due to a significant population of the Jain community, which considers eye donation as a sublime form of charity.

Sikhs

The Sikh philosophy and teachings place great emphasis on the importance of giving and putting others before oneself. " Where self exists, there is no God. Where God exists, there is no self."[3]

Conclusion

Thus, Organ donation itself is a religion. It is a religion of charity. Organ donors don't have any religion. They belong to religion of humanity, love, compassion and altruism.

■■■

Reference :

[1]Holy Qur'an, chapter 5 vs. 32

[2]Bhagavad Gita Chapter 2:22

[3]Guru Nanak, Guru Granth Sahib

धर्मान्तरण विरोधी विधियों की प्रासंगिकता

शारदा प्रसाद शुक्ला
शोध छात्र (विधि)

सारांश -

धर्म से सम्बन्धित विषयों पर विचार विमर्श एक सर्वव्यापी मुद्दा है । धर्म विभिन्न संघर्षों एवं सुधारों की प्रेरक शक्ति रहा है । चूंकि धर्म राष्ट्र के मूल्यों के साथ–साथ नागरिकों के जीवन का एक अविभाज्य अंग रहा है इसलिए धर्म या विश्वास की स्वतंत्रता को प्रमुख मानवाधिकार माना जाता है और विश्व के अधिकांश सभ्य राष्ट्रों के संविधानों एवं अंतर्राष्ट्रीय विधियों में धार्मिक स्वतंत्र से सम्बन्धित विधिक प्रावधानों को सम्मिलित किया गया है । धार्मिक स्वतंत्रता का अधिकार एक सकारात्मक अधिकार होता है जिसमें धर्म तत्व की व्याख्या करके प्रचार का कार्य भी शामिल होता है लेकिन प्रचार की आड में किसी अन्य व्यक्ति को अपने धर्म में प्रविष्ट कराने या धर्मान्तरण करने को विवश करने का अधिकार शामिल नहीं होता क्योंकि जब कोई व्यक्ति अपने धार्मिक विचारों को प्रचार के माध्यम से दूसरे तक संप्रेषित करने के बजाय उसे धर्मान्तरित करने के लिए विवश करता है तो यह उसके अंतःकरण की स्वतंत्रता पर आघात माना जाता है जो असंवैधानिक है और ऐसे धर्मान्तरणों को राज्य विधानमण्डलों द्वारा विधि बनाकर विनियमित किया जा सकता है । धर्मान्तरण विरोधी विधियां उस समय विशेष महत्वपूर्ण होती हैं जब विधि विरूध्द माध्यमों से धार्मिक खतरा उत्पन्न होता है इसलिए यह माना जाता है कि धर्मान्तरण विरोधी भारतीय विधियां अपने स्वरूप एंव क्रियान्वयन द्वारा संविधान द्वारा प्रदत्त धार्मिक स्वतंत्रता के मूल अधिकार की सुरक्षा एवं विकास में सहायक है और मानवाधिकारों की संरक्षा करती हैं ।

मुख्य (सांकेतिक) शब्द – धर्म, धर्मान्तरण, धार्मिक स्वतंत्रता, संविधान

प्रस्तावना –

धार्मिक स्वतंत्रता की अवधाणा के अंतर्गत धर्मान्तरण का विषय हमेशा से एक जटिल एवं विवादास्पद मुद्दा रहा है । यह मुद्दा अंतर्राष्ट्रीय मानवाधिकारों के आंदोलनों में भी सम्मिलित रहा है विश्व के अधिकांश सभ्य राष्ट्रों के संविधानों एवं अंतर्राष्ट्रीय विधियों में धार्मिक स्वतंत्रता से सम्बन्धित विधिक प्रावधानों को शामिल किया गया है यद्यपि धार्मिक स्वतंत्रता के विभिन्न पहलुओं के लिये विभिन्न राष्ट्रों में सभ्यतागत एवं क्षेत्रीय विरोध भी होते है जिसे धार्मिक स्वतंत्रता के मूल आधारों पर

प्रहार होने की संभावना रहती है जैसे धर्मान्तरण के अधिकार के सम्बन्ध में विभिन्न देशों की राष्ट्रीय एवं अंतर्राष्ट्रीय विधियों में विरोधाभास विद्यमान है । अंतर्राष्ट्रीय विधि में मानवाधिकारों की सार्वभौमिक घोषणा, १९४८ के अनुच्छेद १८ में धर्म और विश्वास को बदलने की स्वतंत्रता (धर्मान्तरण का अधिकार) विधिक प्रावधान है जबकि नेपाल के संविधान (२०१५) के अनुच्छेद २६ (३) में एक धर्म के व्यक्ति को दूसरे धर्म में परिवर्तित करने का कार्य दण्डनीय बनाया गया है । भारतीय संविधान के अनुच्छेद २५ के अंतर्गत प्रत्येक व्यक्ति को अपनी पसन्द के धर्म को स्वतंत्र रूप से मानने, अभ्यास करने और प्रचार करने का मूल अधिकार सार्वजनिक व्यवस्था, नैतिकता एवं स्वास्थ्य सहित भाग ३ में वर्णित अन्य मूल अधिकारों के अंतर्गत सशर्त प्रदान किया गया है । अनुच्छेद २५ में उल्लिखित प्रचार शब्द के अंतर्गत किसी अन्य व्यक्ति को अपने धर्म में शामिल कराने या धर्मान्तरण करने का विवश करने का अधिकार शामिल नहीं होता है क्योंकि जब कोई व्यक्ति अपने धार्मिक विचारों को दूसरे तक संप्रेषित करने के बजाय उसे धर्मान्तरण करने के लिए विवश करता है तो यह उसके अंतःकरण की स्वतंत्रता पर आघात माना जाता है जो असंवेधानिक है और ऐसे धर्मान्तरणों को राज्य विधानमण्डलों द्वारा विधि बनाकर रोका जा सकता है ।[1]

धार्मिक स्वतंत्रता का अधिकार एक सकारात्मक अधिकार होता है जिसमें धर्म के तत्व की व्याख्या करके प्रचार किया जाता है । धोखा, प्रलोभन या असम्यक असर आदि का प्रयोग करके कराये जाने वाले धर्मान्तरणों से धार्मिक स्वतंत्रता का मूल अधिकार प्रभावित होता है । भारत एक धर्म निरपेक्ष राज्य है जहां प्रत्येक व्यक्ति को अपना ईश्वर चुनने का अधिकार प्राप्त है और उन्हें किसी विशेष महापुरूष को परमात्मा चुनने के लिए बाध्य नहीं किया जा सकता है ।[1]

धर्मान्तरण का अधिकार किती व्यक्ति द्वारा स्वेच्छया एक धर्म को छोडकर दूसरे धर्म को अपनाने के व्यक्तिगत अधिकार का संकेत करता है । धर्मान्तरण धर्मान्तरित व्यक्ति की इस विचारधारा में परिवर्तन का परिणाम होता है कि वह जिस धर्म में पैदा हुआ था वह उसकी आध्यत्मिक या तार्किक प्रत्याशाओं के अनुरूप नहीं रह गया है । कभी–कभी धर्मान्तरण व्यक्ति की ईश्वर के प्रति पूर्ण आस्था या अस्तित्व में अविश्वास या निरीश्वरवाद का परिणाम भी होता है तो कभी–कभी यह धर्म के मूल सिध्दान्तों एवं आचरणों में कठोरता के कारण अपने निजी धर्म में आस्था खोने के परिणामस्वरूप भी हो सकता है जैसा कि हिमांचल प्रदेश उच्च न्यायालय के भूतपूर्व न्यायमूर्ति श्री एम.एन. राव द्वारा व्यक्त किये गये विचारों से स्पष्ट है ।[2]

धर्मान्तरण के अधिकार का अस्तित्व एक अमूर्त अधिकार के रूप में होता है जिसे न केवल धर्मान्तरित व्यक्ति द्वारा बल्कि धर्मान्तरण से प्रभावित होने वाले व्यक्ति द्वारा भी लागू करवाया जा सकता है क्योंकि धर्मान्तरण के विभिन्न कानूनी परिणाम होते हैं । यह वैवाहिक स्थिति एवं उत्तराधिकार सम्बन्धी अधिकारों के साथ सामाजिक व्यवस्था में आरक्षण आदि से सम्बन्धित विभिन्न अधिकारों को भी प्रभावित करता है । भारत का एक धर्मनिरपेक्ष लोकतंत्र के रूप में लम्बा इतिहास रहा है जहां हर धर्म के धार्मिक समुदायों ने अपना विकास किया । एक ओर जहां भारतीय संविधान स्पष्ट रूप से धार्मिक स्वतंत्रता के अधिकार की गारण्टी देता है वहीं दूसरी ओर स्वतंत्र न्यायपालिका

धार्मिक समुदायों को अपने अधिकार के माध्यम से आवश्यक सुरक्षा प्रदान करती है । भारत में राज्य स्तर पर धर्मान्तरण विरोधी विधियां बल, प्रलोभन, धोखाघडी आदि के आधार पर धर्मान्तरण पर रोक लगाती है, हालांकि अक्सर इन विधियों की संवैधानिकता पर विभिन्न आधारों पर आक्षेप लगाया जाता है और यह व्याख्या की जाती है कि ये विधियां सभी प्रकार के धर्मान्तरणों पर रोक लगाती है चाहे वह स्वैच्छिक हों या नहीं इसलिए धर्मान्तरण के मामलों में बल और प्रलोभन आदि शब्दों की स्पष्ट एवं निश्चित परिभाषा होने के साथ सभी विधियों में एकरूपता होना आवश्यक है जिससे अल्पसंख्यक समुदायों में उत्पीडन की आशंकाओं को कम करने में मदद मिल सके क्यों कि मुस्लिम एवं ईसाई दोनों समुदायों के नेता भी अक्सर ऐसे धर्मान्तरणों का विरोध करते हैं जो जबरन या लालच आदि माध्यमों से कराये जाते है।

धर्मांतरण का अर्थ एवं परिभाषा –

धर्मांतरण मुख्य रूप से एक आध्यात्मिक घटना होती है जिसमें मूल रूप से ईश्वर के साथ सम्बन्धों में परिवर्तन होता है लेकिन आध्यात्मिक परिवर्तन सामाजिक व्यवहार में भी विभिन्न परिवर्तनों को आवश्यक बनाता है । धर्मान्तरण नवजीवन के रूप में होता है क्योंकि यह आन्तरिक शुध्दीकरण और नवीनीकरण के कार्यों को मान्यता देता है ।

भारत के विभिन्न राज्यों में धर्मान्तरण को विनियमित करने वाले विभिन्न अधिनियमों में भी धर्मान्तरण के अर्थ को स्पष्ट करते हुये परिभाषित करने का कार्य किया गया है । स्वतंत्र भारत का पहला धर्मान्तरण विरोधी कानून उडीसा राज्य में वर्ष १९६७ में अधिनियमित हुआ जिसमें धर्मान्तरण का अर्थ – एक धर्म को त्यागना और दूसरे धर्म को अपनाना बताया गया है।१ यद्यपि अरूणांचल प्रदेश में अधिनियमित कानून में धर्मान्तरण का अर्थ–एक धार्मिक विश्वास को त्यागना और दूसरा धार्मिक विश्वास अपनाना बताया गया है ।[१]

हाल के वर्षों में भारत के विभिन्न राज्यों में अधिनियमित कानूनों विशेषतया उत्तर प्रदेश (२०२१), मध्य प्रदेश (२०२१) एवं हरियाणा (२०२२) के हिन्दी पाठों में धर्मान्तरण शब्द के स्थान पर धर्म परिवर्तन या संपरिवर्तन शब्दों का प्रयोग किया गया है ।

धर्मान्तरण की प्रक्रिया –

धर्मान्तरण एक ऐसी प्रक्रिया है जो धार्मिक सम्बध्दता एवं पहचान में बदलाव पर जोर देती है । यह धार्मिक पहचनों एवं क्रिया कलापों के परिवर्तन का प्रतीक होती है । इसमें व्यक्ति या व्यक्तियों का एक समूह अपने व्यक्तिगत धार्मिक विश्वासों एवं मूल्यों को त्यागकर एक नए धार्मिक विश्वास को अपनाता है । कुछ मामलों में धर्मान्तरण एक ही धर्म के अन्दर किसी एक सम्प्रदाय से अन्य सम्प्रदाय में भी हो सकता है जैसे बैपटिस्ट से कैथोलिक, सुन्नी से शिया सम्प्रदाय अुवा हिन्दू धर्म के विभिन्न पंथों या सम्प्रदायों के अन्दर ।

भारत में धर्मान्तरण की प्रक्रिया का विकास तीन कालखण्डों में हुआ । प्राचीन काल हिन्दू शासकों का प्रतिनिधित्व करता है, मध्य युगीन काल मुस्लिम शासकों का जबकि आधुनिक काल

अंग्रेजों द्वारा शासित हुआ जो ईसाई धर्म का पालन करते थे । समय के विभिन्न चरणों में इस धर्मों के प्रचलन के कारण भारतीय संस्कृति का मिश्रण हुआ और इससे प्रभावित होकर कुछ लोगों ने विभिन्न कारणों से अपने पुराने धार्मिक विश्वासों एवं जीवन के तरीकों को बदल दिया और धर्म के उभरते हुये संश्लेषित सांस्कृतिक लक्षणों के साथ स्वयं को जोडना प्रारम्भ कर दिया । समय के साथ प्राचीन भारतीय संस्कृति परम्परा में सुधार हुआ और भेदभावों के विरूध्द हुये सुधार आन्दोलनों के परिणामस्वरूप नये धर्म के रूप में बौध्द धर्म, जैन धर्म एवं सिख धर्म उद्भूत हुये । भारत में इस्लामी शासनकाल में हिन्दुओं का सर्वाधिक धर्मान्तरण हुआ । उसके पश्चात् ब्रिटिश शासनकाल के दौरान ईसाई धर्म का प्रचार करने की आड में धर्मान्तरण का खेल चलता रहा जबकि भारत हमेशा अपनी बहुसांस्कृतिक, बहुभाषी एवं धार्मिक विविधता के लिए जाना जाता रहा है और भारतीय समाज ने प्राचीन काल से ही विश्व के लगभग सभी धर्मों का पोषण किया है ।

सामान्यता धर्मान्तरण की प्रक्रिया को निर्धारित करने वाले २ तरीके होते हैं –

१. धार्मिक नियमों के अनुसार – जैसे ईसाई धर्म में बपतिस्मा, इस्लाम धर्म में शहादा (कलमा पढकर) एवं अन्य धर्मों में उसके विशिष्ट नियमों, या अनुष्ठानों का पालन करके ।

२. विधि अनुसार निर्धारित प्रक्रिया का पालन करके धर्मान्तरण करना – जैसे

धर्मान्तरण करने से पहले (तु कुछ राज्यों में धर्मांन्तरण के पश्चात भी) सम्बन्धित राज्य में प्रचालित कानूनी प्रावधानों के अुसार, निर्धारित अवधि एवं प्रारूप में सक्षम प्राधिकारी को धर्मान्तरण के आशय की सूचना देकर अनुमति प्राप्त करना आवश्यक होता है अन्यथा कथित धर्मान्तरण का प्रभाव अवैध, शून्य एवं/या दण्डनीय माना जाता है । हालांकि धर्मान्तरण को विनियमित करने वाले अधिनियमों में सूचना देने को अनिवार्य बनाये जाने वाले विधिक

प्रावधानों को व्यक्ति की निजता के अधिकार का उल्लंघन मानकर आक्षेपित किया जाता है । हिमांचल प्रदेश धर्म की स्वतंत्रता अधिनियम २००६ में पूर्व सूचना से सम्बन्धित प्रावधानों को वहां के उच्च न्यायालय द्वारा असंवैधानिक माना गया था१ लेकिन वर्ष २०१९ में पुनः हिमांचल प्रदेश राज्य में वर्ष २००६ के पूर्व अधिनियम को निरस्त करते हुये एक नया अधिनियम हिमांचल प्रदेश धर्म की स्वतंत्रता अधिनियम २०१९ प्रतिस्थापित किया गया और इस अधिनियम की धारा ७ में भी अग्रिम सूचना की प्रक्रिया का पालन किय बिना किये गये धर्मान्तरणों के प्रभाव को अवैध एवं शून्य मानने के साथ दण्डनीय बनाया गया है । इसके अलावा उत्तराखण्ड (२०१८) उत्तर प्रदेश (२०२१) मध्य प्रदेश (२०२१) कर्नाटक (२०२२) एवं हरियाणा (२०२२) आदि राज्यों के अधिनियमों में भी इसी प्रकार के प्रावधान शामिल किये गये हैं जिनकी वैधता को माननीय सर्वोच्च न्यायालय के समक्ष चुनौती देते हुए जनहित याचिकायें प्रस्तुत की गई हैं जो अंतिम सुनवाई हेतु विचाराधीन हैं ।

चूंकि धर्मांतरण के विभिन्न सामाजिक एवं विधिक परिणाम होते हैं इसलिए इसे एक सामान्य घटना नहीं माना जा सकता है जिसे केव मौखिक या लिखित घोषणा के माध्यम से किया जा सके बल्कि धर्मांतरण करने का विश्वसनीय साक्ष्य एवं आशय को प्रभावी बनाने के लिए कार्यों के रूप में

प्रकट होना आवश्यक होता है इसलिये धर्मान्तरित व्यक्ति का पश्चातवर्ती आचरण उसके आशय को स्पष्ट करने के लिए महत्वपूर्व होता है क्योंकि सामान्यता धर्मान्तरित व्यक्ति अपनाये गये नये धर्म की सांस्कृतिक एवं आध्यात्मिक परम्पराओं का पालन करना प्रारम्भ कर देता है और उस धर्म की जीवनशैली को ग्रहण कर लेता है जिससे उसके वास्तविक धर्मान्तरण का अनुमान लगाया जा सकता है ।

धर्मान्तरण की प्रक्रिया अक्सर उन लोगों को आकर्षित करती है जो अपने जीवन में स्वयं को असन्तुष्ट एवं अूरा समझते हैं इसलिए अक्सर यह देखा जाता है कि वे लोग या उनका वर्ग जो सामाजिक रूप से पिछडे, राजनीतिक रूप से अज्ञानी एवं आर्थिक रूप से कमजोर होते हैं, धर्मान्तरण जैसे माध्यमों को आत्मसंतुष्टि के लिए सहारा लेते हैं । धर्मान्तरण से सम्बन्धित मुद्दों को राजनीतिक दलों द्वारा भी सत्ता प्राप्त करने हेतु एक उपकरण के रूप में राजनीतिकरण किया जाता है जिससे समाज में तनाव पैदा होता है ।

भारत में धर्मांतरण से सम्बन्धित वैधानिक प्रावधान –

भारतीय संविधान का अनुच्छेद–२५ प्रत्येक व्यक्ति को अन्तःकरण की स्वतंत्रता के साथ धर्म को अबाध रूप से मानने, आचरण करने एवं प्रचार करने की स्वतंत्रता का मूल अधिकार प्रदान करता है । यह अधिकार सार्वजनिक व्यवस्था, नैतिकता एवं स्वास्थ्य सहित, अन्य मूल अधिकारों के अंतर्गत निर्बन्धित होता है । प्रचार शब्द का सामान्य अर्थ अपने विचारों को किसी अन्य व्यक्ति तक संप्रेषित करना होता है लेकिन यदि कोई व्यक्ति अपने धार्मिक विचारों को दूसरों तक सम्प्रेषित, करने के बजाय थोपने का कार्य करता है या लोभ, लालच, डरा–धमकाकर, झूठ बोलकर या धार्मिक पहचान छुपाकर अुवा अंधविश्वास आदि अन्य माध्यमों से धर्मान्तरण के लिये विवश करता है तो ऐसा कार्य अंतःकरण की स्वतंत्रता पर आघात माना जाता है । भारतीय संविधान के निर्माण के समय प्रचार शब्द सबसे विवादास्पद मुद्दों में से एक था क्योंकि धर्म के प्रचार शब्द को धर्मान्तरण से सम्बन्धित माना जाता है और प्रत्येक धर्मान्तरण के प्रचार का परिणाम माना जाता है ।

औपनिवेशिक युग में धर्मान्तरण विरोधी कानून –

धर्मान्तरण के खतरे का अनुमान और इस पर रोक लगाने के प्रयास भारतीय स्वतंत्रता के पहले से ही किये जाने लगे थे और ब्रिटिश औपनिवेशिक युग के दौरान ही अवैध धर्मान्तरणों को विनियमित करने वाले कानून हिन्दू रियासतों द्वारा अधिनियमित किये गये थे । वर्ष १९३६ में रायगढ (मध्य प्रदेश) राज्य द्वारा सर्वप्रथम धर्मान्तरण विरोधी अधिनियम पारित किया गया था । उसके पश्चात वर्ष १९४२ में पटना धर्म स्वतंत्रता अधिनियम, वर्ष १९४५ में सरगुजा राज्य धर्म त्याग अधिनियम और वर्ष १९४६ में उदयपुर राज्य विरोधी धर्मान्तरण अधिनियम पारित किये गये । इन सभी अधिनियमों का मुख्य उद्देश्य धोखाधडी, जबरदस्ती, असम्यक असर एवं लोभ लालच आदि के माध्यम से हिन्दू आबादी को ईसाई मिशनरियों के प्रभाव में आने से बचाना था ।[१]

राष्ट्रीय स्तर पर एक राष्ट्रीय कानून बनाने के प्रयास –

स्वतंत्र भारत में राष्ट्रीय स्तर पर अवैध धर्मान्तरणों को विनियमित करने हेतु कई बार भारतीय संसद में विधेयक प्रस्तुत किये गये लेकिन आज तक केाई भी विधेयक राष्ट्र व्यापी कानून बनने में सफल नहीं रहा । सर्वप्रथम वर्ष १९५४ में इंडियन कन्वर्जन बिल संसद में प्रस्तुत किया गया जिसमें यह प्रावधान था कि जो कोई भी अपना धर्म परिवर्तन कर रहा है उसे निर्धारित प्राधिकारी के समक्ष पंजीकरण कराना होगा । इसके पश्चात वर्ष १९६० में बैकवर्ड कम्यूनिटीज बिल प्रस्तुत किया गया जिसमें ईसाई, इस्लाम, पारसी और यहूदी धर्मों को गैर भारतीय धर्म बताया गया और इसका उद्देश्य इन गैर भारतीय धर्मों में हिन्दुओं के धर्मान्तरण की जानकारी लेना था । इस विधेयक के पश्चात् वर्ष १९७९ में फ्रीडम ऑफ रिलीजन बिल प्रस्तुत हुआ जिसका उद्देश्य धर्मान्तरणों पर रोक लगाना था लेकिन इस विधेयक को भी राजनीतिक समर्थन नही मिलने के कारण यह कानून का रूप नहीं ले सका ।

केन्द्रीय कानून मंत्रालय द्वारा वर्ष २०१५ में यह कहा गया था कि अवैध धर्मान्तरण पर राष्ट्रीय स्तर पर कानून नही बनाया जा सकता है क्योंकि यह शुध्द रूप से राज्य सूची के विधि–व्यवस्था विषय के अंतर्गत राज्यों के संवैधानिक क्षेत्र में आता है और इसलिए राज्य सरकारें संविधान के अनुसार धर्मान्तरण विरोधी कानून बनाने के लिए स्वतंत्र है ।[२]

हालांकि अभी कुछ समय पहले ही सर्वोच्च न्यायालय द्वारा यह चिंता व्यक्त की गई है कि अवैध धर्मान्तरण राष्ट्रीय सुरक्षा और नागरिकों की धार्मिक स्वतंत्रता के अधिकार के लिये गंभीर खतरा है इसलिए केन्द्र सरकार को इसमें हस्तक्षेप करके इसे रोकने का प्रयास करना चाहिए ।[१]

राज्यकानून –

स्वतंत्र भारत में धर्मान्तरण को विनियमित करने वाले कानून को अधिनियमित करने वाला पहला राज्य उडीसा था जहां वर्ष १९६७ में उडीसा धर्म की स्वतंत्रता अधिनियम पारित किया गया । इसके पश्चात मध्य प्रदेश राज्य में वर्ष १९६८ में मध्य प्रदेश धर्म स्वातन्त्रय अधिनियम पारित किया गया जिनमें यह प्रावधान था कि–कोई भी व्यक्ति बल प्रयोग या प्रलोभन द्वारा या किसी कपटपूर्ण साधन द्वारा किसी भी व्यक्ति को एक धर्म से किसी अन्य धर्म में प्रत्यक्षतः या अन्यथा संपरिवर्तित नहीं करेगा या प्रत्यक्षतः या अन्यथा संपरिवर्तित करने का प्रयत्न नहीं करेगा और न ही कोई व्यक्ति किसी ऐसे संपरिवर्तन का दुष्प्रेरण करेगा । इन उपबन्धों का उल्लंघन करने वाला व्यक्ति एक वर्ष तक कारावास या पांच हजार रूपये जुर्माना से या दोनों से दण्डनीय होगा ।[३]

उडीसा एवं मध्य प्रदेश राज्यों के धर्मान्तरण विरोधी कानूनों को सम्बन्धित उच्च न्यायालयों के समक्ष चुनौती दिये जाने पर उडीसा उच्च न्यायालय द्वारा उडीसा राज्य के कानून को अनुचित एवं असंवैधानिक घोषित किया गया ।[३] जबकि मध्य प्रदेश उच्च न्यायालय द्वारा मध्य प्रदेश राज्य के कानून को उचित एवं संवैधानिक माना गया । दानों उच्च न्यायालयों के निर्णयों को भारतीय सर्वोच्च न्यायालय के समक्ष चुनौती दी गई जिसमें १७ जनवरी १९७७ को दोनों राज्यों के कानूनों की

संवैधानिकता की जांच करते हुये संवैधानिक माना गया ।[१]

चूंकि सर्वोच्च न्यायालय द्वारा उडीसा एवं मध्य प्रदेश राज्यों के धर्मान्तरण विरोधी विधियों को संवैधानिक माना गया था इसलिए कई अन्य राज्यों द्वारा भी इससे सम्बन्धित अधिनियम पारित किये गये । वर्तमान समय में भारत के निम्नलिखित राज्यों में निम्न अधिनियम प्रभावी है ।

१.	उडीसा राज्य में	–	उडीसा धर्म की स्वतंत्रता अधिनियम १९६७
२.	अरूणांचल प्रदेश में	–	अरूणांचल प्रदेश धर्म की स्वतंत्रता अधनियम, १९७८
३.	गुजरात राज्य में	–	गुजरात धर्म की स्वतंत्रता अधिनियम २००३
४.	छत्तीसगढ राज्य में	–	छत्तीसगढ धर्म की स्वतंत्र अधिनियम १९६८ एवं छत्तीसगढ धर्म स्वतंत्रता (संशोधन) अधिनियम २००६
५.	झारखण्ड राज्य में	–	झारखण्ड धर्म की स्वतंत्रय अधिनियम २०१७
६.	उत्तराखण्ड राज्य में	–	उत्तराखण्ड धर्म की स्वतंत्रय अधिनियम २०१८
७.	हिमांचल प्रदेश में	–	हिमांचल प्रदेश धर्म की स्वतंत्रता अधिनियम २०१९
८.	उत्तर प्रदेश में	–	उत्तर प्रदेश विधि विरूध्द धर्म संपरिवर्तन प्रतिषेध अधिनियम २०२१
९.	मध्य प्रदेश में	–	मध्य प्रदेश धार्मिक स्वतंत्रता अधिनियम, २०२१
१०.	कर्नाटक राज्य में	–	धर्म की स्वतंत्रता के अधिकार का कर्नाटक संरक्षण अधिनियम २०२२
११.	हरियाणा राज्य में	–	हरियाणा धर्म परिवर्तन की रोकथाम अधिनियम, २०२२

वर्ष २००२ में इसी प्रकार का अधिनियम तमिलनाडु राज्य में पारित किया गया था जिसे वर्ष २००६ में भूतलक्षी प्रभाव देते हुए निरस्त कर दिया गया । वर्ष २००६ में ही राजस्थान राज्य के विधानमण्डल द्वारा राजस्थान धर्म स्वतंत्रता विधेयक २००६ पारित किया गया था लेकिन विधेयक को तत्कालीन राज्यपाल द्वारा मंजूरी नहीं दी गई ।

भारत के विभिन्न राज्यों में लगभग एक समान धर्मान्तरण विरोधी विधियां प्रभावी है जिनमें बलपूर्वक या कपटपूर्ण आदि माध्यमों से कराये जाने वाले धर्मान्तरणों पर प्रतिबंध लगाया गया है

हालांकि उत्तराखण्ड, उत्तर प्रदेश, मध्य प्रदेश, हिमांचल प्रदेश, कर्नाटक एवं हरियाणा राज्यों की विधियों में विवाह (लव जिहाद) के माध्यम से कराये जाने वाले धर्मान्तरणों पर भी रोक लगाई गई है । झारखण्ड, उत्तराखण्ड, हिमांचल प्रदेश, उत्तर प्रदेश, कर्नाटक एवं हरियाणा राज्यों में प्रचलित धर्मान्तरण विरोधी विधियों में अनुसूचित जाति, जनजाति, अन्य पिछडे वर्ग, महिलाओं, बच्चों एवं नाबालिगों के धर्मान्तरण के किसी भी प्रयास के लिए दोषी पाये जाने पर अधिक जुर्माना लगाने का प्रावधान भी किया गया है । इन विधियों में कठोर दण्डात्मक प्रावधान किये गये है हालांकि कुछ राज्यों की विधियों में हिन्दू धर्म में पुर्नधर्मान्तरण (घर वापसी) को आपराधिक नहीं माना जाता है ।

धर्मान्तरण विरोधी विधियों की संवैधानिकता –

प्रत्येक विधिक प्रावधान की प्रभावशीलता के लिये यह अनिवार्यता होती है कि वह संवैधानिक वैधता की कसौटी में खरा उतरे क्योंकि संवैधानिक प्रावधानों के विरूध्द अधिनियमित कोई भी विधि अधिकारातीत होने के कारण शून्य होती है संविधान के अंतर्गत प्रत्येक व्यक्ति को विभिन्न प्रकार के आधारभूत मौलिक अधिकार भी प्रदान किये जाते हैं जिनके विरूध्द भी कोई विधिक प्रावधान निर्मित नहीं किये जा सकते हैं अन्यथा उन्हें भी असंवैधानिक माना जाता है ।

धर्मान्तरण विरोधी विधियों की संवैधानिकता के सम्बन्ध में माननीय सर्वोच्च न्यायालय द्वारा निर्णित महत्वपूर्ण मामला रेव सैनिस्लास बनाम मध्य प्रदेश राज्य और अन्य ए.आई.आर. १९७७ सुप्रीम कोर्ट पेज संख्या ९०८, का है जिसमें उडीसा एवं मध्यप्रदेश राज्यों द्वारा पारित किये गये धर्म स्वतंत्रता अधिनियमों के सम्बन्ध में राज्य सरकारों की विधायी क्षमता को चुनौती दी गई थी । उपरोक्त मामले में यह अभिनिर्धारित किया गया था कि –

''भारतीय संविधान का अनुच्छेद २५ जो अंतःकरण (विवेक) के मुक्त अभ्यास और धर्म के प्रचार का मूल अधिकार प्रदान करता है वह अन्य व्यक्ति को अपने धर्म में परिवर्तित करने का अधिकार प्रदान नहीं करता बल्कि केवल अपने धर्म केा उसके सिध्दांतों की व्याख्या द्वारा प्रचारित या प्रसारित करने का अधिकार देता है । यह अनुच्छेद प्रत्येक व्यक्ति को अंतरात्मा की स्वतंत्रता की प्रत्यभूति देता है वह दूसरे के लिये भी समान रूप से स्वतंत्रता है और किसी व्यक्ति को अपने धर्म में परिवर्तित करने के मूल अधिकार जैसी कोई चीज नहीं हो सकती है । चूंकि अवैध धर्मान्तरण केवल एक व्यक्ति को प्रभावित नहीं करता है बल्कि यह सार्वजनिक व्यवस्था को भी प्रभावित करता है इसलिये भारतीय संविधान की सातवी अनुसूची की द्वितीय सूची (राज्य सूची) की प्रविष्टि सार्वजनिक व्यवस्था एवं धार्मिक स्वतंत्रता के मूल अधिकार के साथ वर्णित अपवाद सार्वजनिक व्यवस्था के अंतर्गत राज्यों द्वारा अधिनियमित धर्मांतरण विरोधी विधियां संवैधानिक मानी जाती है ।[१]

धर्मांतरण विरोधी विधियों की संवैधानिकता को अक्सर विभिन्न आधारों पर आक्षेपित किया जाता है । सर्वप्रथम यह आक्षेप लगाया जाता है कि इन विधियों में प्रयोग की जाने वाली भाषा असाधारण रूप से व्यापक एवं अस्पष्ट होती है जो धार्मिक स्वतंत्रता के मूल अधिकार को गम्भीर रूप

से प्रभावित करती है क्योंकि इन विधियों में बल, धोखाधडी, प्रलोभन जैसे अनिश्चित एवं अस्पष्ट शब्दों का प्रयोग किया गया है जो इनके दुरूप्रयोग का अवसर प्रदान करते है और अत्याचार एवं भेदभाव को बढावा देते हैं । इन विधियों के आलोचकों का यह तर्क रहता है कि धर्मान्तरण विरोधी विधियां हिन्दू राष्ट्र से प्रेरित है और धार्मिक अल्पसंख्यकों की विरोधी है जबकि वास्तविकता यह है कि धर्मान्तरण विरोधी विधियों के समर्थक एवं आलोचक अपने अपने दृष्टिकोण से व्याख्या करते है ।

धर्मांतरण विरोधी विधियों की संवैधानिकता को इस आधार पर भी आक्षेपित किया जाता है कि उपरोक्त विधियां व्यक्तियों की निजता एवं स्वतंत्र पसंद के मूल अधिकार का उल्लंघन करती हैं क्योंकि विभिन्न राज्यों के धार्मिक स्वतंत्रता कानूनों में यह प्रावधान समाहित किये गये है कि अंतरधार्मिक विवाहों में या अपनी स्वेच्छ्या से दूसरा धर्म स्वीकार करने से पहले निर्धारित अवधि पूर्व सक्षम प्राधिकारियों (समान्यतया संबंधित जिले के जिला मजिस्ट्रेट) को सुचित करना अनिवार्य होता है । अन्यथा कारावास एवं दण्ड का प्रावधान है और कुछ राज्यों में ऐसा विवाह या धर्मातरण शून्य होता है । जबकि वर्ष २०१७ में माननीय सर्वोच्च न्यायालय द्वारा यह अभिनिर्धारित किया जा चुका है कि जीवन के तरीके को नियंत्रित करने वाले व्यक्तिगत विकल्प निजता के आंतरिक भाग हैं जिसमें किसी व्यक्ति की आस्था का चुनाव भी शामिल हो सकता है । धार्मिक स्वतंत्रता के अधिकार में एक व्यक्ति को अपनी आस्था चुनने और सार्वजनिक रूप से व्यक्त करने या नहीं करने की स्वतंत्रता भी शामिल है ।१ यद्यपि निजता के अधिकार को विधि द्वारा प्रतिबंधित किया जा सकता है यदि तीन शर्तों की पूर्ति होती है – १) एक वैध सार्वजनिक उद्देश्य २) इस प्रकार के उद्देश्य के साथ कानून का तर्कसंगत संबंध और ३) निजता का उल्लंघन आवश्यक आनुपातिक उद्देश्य के लिये होना चाहिए । विशेष विवाह अधिनियम १९५४ में सार्वजनिक सूचना की समान आवश्यकता वाले प्रावधान की व्याख्या करते हुये माननीय इलाहाबाद उच्च न्यायालय द्वारा सार्वजनिक सूचना के संबंध में संज्ञान लेते हुये यह अभिनिर्धारित किया गया कि – विवाह एक व्यक्तिगत मामला है इसलिए सार्वजनिक सूचना का प्रावधान स्वैच्छिक है अनिवार्य नहीं ।[१]

धर्मांतरण के लिये सार्वजनिक सूचना की आवश्यकता को सार्वजनिक व्यवस्था को बनाए रखने के हित में आवश्यक माना जाता है जबकि अधिकांश मामलों में धर्मांतरण की पूर्व सूचना से साम्प्रदायिक अशान्ति फैलने की आशंका रहती है और यह सार्वजनिक व्यवस्था को बनाए रखने के बजाय उसे प्रतिकूल रूप से प्रभावित कर सकती है जैसा कि हिमाचल प्रदेश उच्च न्यायालय द्वारा हिमांचल प्रदेश धर्म की स्वतंत्रता अधिनियम २००६ की संवैधानिकता की जांच करते समय इसी प्रकार का विचार व्यक्त किया गया था, जिसके लिए किसी धर्म को परिवर्तित करने से पूर्व सार्वजनिक सूचना देने की आवश्यकता थी ।[२]

इसी (इवैंजिकल फैलोशिप) मामले में हिमांचल प्रदेश उच्च न्यायालय द्वारा हिमांचल प्रदेश धर्म की स्वतंत्रता अधिनियम २००६ के उस प्रावधान को समानता के अधिकार का उल्लंघन माने हुये

निरस्त कर दिया गया जो ऐसे लोगो को छूट प्रदान करता था जो अपने मूल धर्म में वापस आ गए हैं और उनके सम्बन्ध में अधिनियम के प्रावधानों को लागू नहीं किया जाना था । इसके पश्चात हिमांचल प्रदेश सरकार द्वारा वर्ष २००६ के अधिनियम को निरस्त करते हुये वर्ष २०१९ में ''हिमांचल प्रदेश धर्म की स्वतंत्रता अधिनियम'' पारित किया गया जिसमें धर्मान्तरण के लिये सार्वजनिक सूचना देने की आवश्यकता नहीं है । यद्यपि धर्मान्तरण के कार्य को एक निजी मामला नहीं माना जा सकता है और न ही इससे व्यक्ति की गोपनीयता भंग होती है क्योंकि जब कोई व्यक्ति धर्मान्तरित होता है तो उसके विभिन्न सामाजिक, साम्पात्तिक एवं संवैधानिक अधिकारों के साथ सार्वजनिक व्यवस्था प्रभावित होती है और स्वयं धर्मान्तररित व्यक्ति को अपनी बदली हुई पहचान के अनुसार सार्वजनिक अभिलेखों में सुधार हेतु सूचित करना आवश्यक हो जाता है, इसलिए धर्मान्तरण से पूर्व जिला प्रशासन को दी जाने वाली सूचना के प्रावधान को उचित प्रतिबंधों के साथ लागू किया जा सकता है रेव स्टेनिस्लास बनाम मध्य प्रदेश राज्य और अन्य (१९७७) के मामल में भी सर्वोच्च न्यायालय द्वारा एक पूर्व निर्णय पर आधारित होते हुये यह अभिनिर्धारित किया गया था कि – यदि कोई चीज समुदाय के जीवन की वर्तमान धारा को परेशान करती है तो यह केवल एक व्यक्ति को प्रभावित नहीं करता बल्कि यह सार्वजनिक व्यवस्था की गडबडी के बराबर होता है ।[३]

हाल के वर्षो में भारत धर्मांतरण को विनियमित करने वाले कानूनों में अक्सर लव जिहाद एवं घर वापसी की धारणा केन्द्रित होने का आरोप लगाया जाता है । लव जिहाद का विचार मुस्लिम पुरूषों द्वारा गैर–मुस्लिम लडकियों से विवाह के माध्यम से इस्लाम धर्म में परिवर्तित करने की प्रथा को संदर्भित करता है । प्रिया चाको द्वारा अपनी पुस्तक३ में लव जिहाद के सम्बन्ध में यह लिखा गया है कि–(हिन्दू महिलायें) दावा करती है कि मुस्लिम पुरूष बहकाते हैं, धर्म परिवर्तन करते हैं शादी करते है और गैर मुस्लिम महिलाओं के साथ बच्चे पैदा करते हैं ताकि यह सुनिश्चित हो सके कि भारत में मुस्लिम अल्पसंख्यक, बहुसंख्यक बन जाएं । जबकि हिन्दुत्ववादी विचारधारा के अन्तर्गत घर वापसी को धर्मान्तरण के बजाय पुनर्धमान्तरण के रूप में परिभाषित किया जाता है । इसीलिए हाल के वर्षों में राज्यों द्वारा बनाये गये धर्मान्तरण से सम्बन्धित कानूनों में विवाह के विषय को भी सम्मिलित करते हुये प्रावधान बनाये जा रहे है हालांकि इन कानुनों में स्पष्ट रूप से लव जिहाद या इस्लाम धर्म शब्दों का प्रयोग नहीं किया गया है लेकिन इसके प्रावधान इन शब्दों की ओर संकेत एवं ध्यान आकर्षित करते है । जैसे उत्तराखण्ड धर्म की स्वतंत्रता अधिनियम–२०१८ में यह प्रावधान किया गया है कि–

कोई भी विवाह जो एक धर्म के पुरूष द्वारा दूसरे धर्म की महिला के साथ या तो विवाह से पूर्व या बाद में स्वयं को या महिला को परिवर्तित करके किया गया हो, परिवार द्वारा शून्य घोषित किया जा सकता है ।१ इसी प्रकार का प्रावधान हिमांचल प्रदेश, उत्तर प्रदेश, मध्य प्रदेश, कर्नाट एवं हरियाणा राज्यों द्वारा पारित या संशोधित किये गये धर्मान्तरण विरोधी कानूनों में प्रावधानित है । इन प्रावधानों के विरूध्द यह आरोप लगाया जाता है कि ये प्रावधान अन्तरधार्मिक विवाहों में रूकावट पैदा करते हैं

जबकि दो सहमत व्यवस्कों के बीच वैवाहिक सम्बन्धों को विनियमित करने के लिए अनावश्यक कानूनी हस्ताक्षेप उनके संवैधानिक अधिकारों चुनाव के अधिकार (राइट टू च्वाइस) एवं निजता के अधिकार (राइट टू प्राइवेसी) एवं आधारभूत स्वतंत्रताओं को क्षति पहुँचाते हैं । वहीं दूसरी ओर कुछ संगठनों का आरोप है कि अंतरधार्मिक विवाहों के माध्यम से जबरन धर्मान्तरण कराने का प्रयास किया जाता है । इसके अलावा धर्मान्तरण के माध्यम से बहुविवाह किया जाता है क्योंकि हिन्दू विवाह अधिनियम के अंतर्गत एक विवाह की अनुमति हैं इसलिए दूसरा विवाह करने के उद्देश्य से लोग धर्मान्तरण विशेषकर इस्लाम धर्म में जहां चार विवाह तक की अनुमति हैं का मार्ग चुनते हैं जो गलत एवं अनुचित है जैसा कि माननीय सर्वोच्च न्यायालय द्वारा सरला मुदगल बनाम भारत संघ और अन्य[२] के मामले में यह माननीय सर्वोच्च न्यायालय द्वारा सरला मुदगल बनाम भारत संघ और अन्य२ के मामले में यह अभिनिर्धारित किया गया था कि एक हिन्दू पति के इस्लाम धर्म में धर्मांतरण करने के बावजूद भी दूसरा विवाह भा.द.स. ४९४ के संदर्भ में शून्य विवाह माना जायेगा । मात्र इस्लाम धर्म स्वीकार कर लेने से हिन्दू विवाह अधिनियम १९५५ के अनुसार हुआ पूर्व विवाह का विच्छेद नहीं होता है । उपरोक्त सरला मुदगल के निर्णीत मामले में समान नागरिक संहिता की आवश्यकता बताते हुये जस्टिस आर.एम. सहाय द्वारा यह अभिनिर्धारित किया गया था कि– सरकार किसी भी व्यक्ति को धर्म के बारे में चेतावनी देने के लिए तत्काल धर्म परिवर्तन अधिनियम बनाने के लिए एक समिती को अधिकृत करने पर भी विचार कर सकती है और कानून यह प्रावधान कर सकता है कि प्रत्येक व्यक्ति जिसका अपना धर्म बदल रहा है वह दूसरी पत्नी से तब तक विवाह नहीं कर सकता जब तक कि वह अपनी पहली पत्नी को विधितः तलाक नहीं देता । यह प्रावधान प्रत्येक व्यक्ति पर लागू होना चाहिए चाहे वह हिन्दू हो या मुस्लिम, ईसाई या सिख या जैन या बौध्द । लिली थामस बनाम भारत संघ[१] के मामले में भी माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित सिध्दान्त का संदर्भ उल्लिखित किया गया जिसमें यह अभिनिर्धारित किया गया था कि – जहाँ एक गैर मुस्लिम पुरूष विश्वास के किसी भी वास्तविक परिवर्तन के बिना मुस्लिम धर्म में परिवर्तित हो जाता है और केवल किसी भी पूर्व विवाह से बचने या दूसरे विवाह में प्रवेश करने उद्देश्य से ही धर्मांतरण किया गया है तो धर्मान्तरण के बाद किया गया कोई भी विवाह शून्य होगा । वर्ष २०२० में इलाहाबाद उच्च न्यायालय के न्यायमूर्ति एम.सी. त्रिपाठी द्वारा प्रियांशी उर्फ समरीन और अन्य बनाम राज्य उत्तर प्रदेश और अन्य, (रिट पिटिशन संख्या–सी १४२८८ सन् २०२० निणर्य दिनांक २३ सितम्बर २०२०) के मामले में पूर्व निर्णयों का संदर्भ देते हुये यह अभिनिर्धारित किया गया कि बिना आस्था एवं विश्वास के मात्र विवाह के लिये धर्मान्तरण करना उचित नहीं है । उपरोक्त मामले में नूरजहां बेगम उर्फ अंजलि मिश्रा और अन्य बनाम राज्य उत्तर प्रदेश और अन्य[२] के निर्णय का संदर्भ दिया गया जिसमें उच्च न्यायालय द्वारा शादी के लिए धर्म बदलने को मान्य नहीं किया गया था । उपरोक्त मामले में हिन्दू लडकियों ने धर्म बदलकर मुस्लिम लडकों से विवाह किया था । न्यायालय के समक्ष यह प्रश्न

था कि क्या हिन्दू लडकी धर्म बदलकर मुस्लिम लडकों से विवाह कर सकती है और क्या विवाह मान्य होगा ? उपरोक्त नूरजहां एवं अन्य के मामले में माननीय उच्च न्यायालय के न्यायमूर्ति एस.पी. केसरवानी द्वारा कुरान एवं हदीसों का संदर्भ देते हुये यह अभिनिर्धारित किया गया कि – इस्लाम धर्म को जाने बिना और बिना किसी आस्था या विश्वास के धर्म बदलना मान्य नहीं है । उक्त मामले में यह भी अभिनिर्धारित किया गया कि – ''धार्मिक आस्था एवं भक्ति आसानी से परिवर्तन योग्य नहीं होती है । यदि कोई व्यक्ति केवल सांसारिक लाभ या अन्य लाभों के लिए किसी अन्य धर्म को अपनाने का दिखावा करता है तो यह धार्मिक कट्टरता होगी ।''

यद्यापि इलाहाबाद उच्च न्यायालय के दो न्यायमूर्तियों पंकज नकवी एवं विवेक अग्रवाल द्वारा दिनांक ११ नवम्बर २०२० को सलामत अंसारी और अन्य बनाम राज्य उत्तर प्रदेश और अन्य[१] के मामले में प्रियांशी उर्फ समरीन, (२०२०) एवं नूरजहां बेगम उर्फ अंजलि मिश्रा (२०१४) के मामलों में एकल पीठ द्वारा पारित किये गये निर्णयों पर विचार करते हुये यह अभिनिर्धारित किया कि– ''इनमें से किसी निर्णयों में दो परिपक्व व्यक्तियों के जीवन और स्वतंत्रता के मुद्दों पर एक साथी चुनने या उनकी पसंद की स्वतंत्रता के अधिकार के बारे में नहीं बताया गया है कि वे किसके साथ रहना चाहते हैं, इसलिए हम नूरजहां और प्रियांशी के निर्णयों को अच्छा कानून नहीं बनाने के रूप में मानते है । वयस्कता प्राप्त करने पर एक व्यक्ति को वैधानिक रूप से एक साथी चुनने का अधिकार प्रदान किया जाता है जो न केवल उसके मानव अधिकार को प्रभावित करेगा बल्कि भारतीय संविधान के अनुच्छेद २१ के अंतर्गत गारण्टीकृत उसके जीवन और व्यक्तिगत स्वतंत्रता के अधिकार को भी प्रभावित करेगा ।'' यह ध्यान रखने योग्य तथ्य है कि उच्च न्यायालय की युगल पीठ द्वारा सलामत अंसारी के मामले में कथित विवाहों एवं धर्मान्तरणों की वैधता पर कोई टिप्पणी नहीं की गई थी जैसा कि निर्णय के पैरा संख्या १७ से स्पष्ट है और मात्र वयसकता की आयु को आधार मानकर ही निर्णय दिया गया था । लता सिंह बनाम राज्य उत्तर प्रदेश आदि[३] के मामले में माननीय सर्वोच्च न्यायालय द्वारा अन्तरजातीय विवाह से सम्बन्धित एक मामले का अवधारणा करते हुए यह अभिनिर्धारित किया गया कि ''यह एक स्वतंत्र और लोकतांत्रिक देश है, और जब एक बार कोई व्यक्ति बालिग हो जाता है तो वह जिससे चाहे शादी कर सकता है । यदि लडके या लडकी के माता–पिता इस तरह के अंतरजातीय या अंतरधार्मिक विवाह को मंजूरी नहीं देते हैं तो वे अधिक से अधिक यह कर सकते हैं कि वे अपने बेटा या बेटी के साथ सामाजिक सम्बन्ध तोड सकते हैं लेकिन वे धमकी नहीं दे सकते और न ही हिंसा का कार्य कर सकते हैं ।'' इसी प्रकार एक ऑनर किलिंग से सम्बन्धित मामले में माननीय सर्वोच्च न्यायालय द्वारा अभिनिर्धारित किया गया है कि –

''किसी व्यक्ति की पसंद गरिमा का एक निश्चित हिस्सा होता है क्योंकि गरिमा के बारे में कुछ भी नहीं सोचा जा सकता है जहां पसंद की जा सकती है । यह सच है, यह संवैधानिक सीमा के सिध्दान्त से बंधा हुआ है, लेकिन ऐसी सीमा के अभाव में, किसी को भी वांछित पसंद के पालन में

हस्तक्षेप करने की अनुमति नहीं दी जायेगी । जब दो वयस्क अपनी इच्छा से विवाह करते हैं तो वे अपना मार्ग चुनते हैं वे अपने रिश्ते पूरे करते हैं, उन्हें लगता है कि यह उनका लक्ष्य है और उन्हें ऐसा करने का अधिकार है और यह स्पष्ट रूप से कहा जा सकता है कि उनके पास अधिकार है और अधिकार का कोई भी उल्लंघन अनुचित है ।२ इसी प्रकार शफीन जहां बनाम अशोकन के.एम. (२०१८) (हादिया बंदी प्रत्यक्षीकरण मामला) में माननीय सर्वोच्च न्यायालय द्वारा अभिनिर्धारित किया गया है कि ''संविधान प्रत्येक व्यक्ति में निहित स्वतंत्रता और स्वायत्तता को मान्यता देता है । इसमें उन पहलुओं पर निर्णय लेने की क्षमता शामिल है जो किसी के व्यक्तित्व और पहचान को परिभाषित करते हैं । विवाह की अंतरंगता गोपनीयता के एक मुख्य क्षेत्र के भीतर होती है, जो अनुल्लंघनीय है । किसी व्यक्ति का जीवन साथी चुनने का पूर्ण अधिकार विश्वास के मामलों से प्रभावित नही होता । संविधान प्रत्येक को धर्म का स्वतंत्र रूप से अभ्यास करने, मानने और प्रचार करने के अधिकार की गारण्टी देता है । विश्वास के विकल्प वास्तव में विवाह के मामलों में विकल्प एक ऐसे क्षेत्र के भीतर है, जहां व्यक्तिगत स्वायत्तता सर्वोच्च है।[१]

धर्मनिरपेक्षता के संदर्भ में सामान्यतया हिन्दू महिला एंव मुस्लिम पुरूष के विवाह को ''अंतर धार्मिक विवाह'' का नाम दिया जाता है और इसे प्रेमविवाह की अवधारप्पा से जोडा जाता है किन्तु यह धारणा अनुचित है क्योंकि प्रेम विवाह और लव जिहाद में अन्तर होता है। प्रेम विवाह में वर एवं वधू के मध्य एक दूसरे के प्रति निष्ठा एवं समर्पण का भाव होता है जबकि 'लव जिहाद' में सामान्यतया प्रेम के स्थान पर आक्रोश एंव विद्वेष का भाव होता है, इस प्रकार यह माना जा सकता है कि 'लव जिहाद' छल करने वाला अन्तरधार्मिक शारीरिक सम्बन्ध है ।[२]

भारत में धर्मान्तरण की समस्या दिन–प्रतिदिन गंभीर होती जा रही है । धर्म पालन एवं धार्मिक प्रचार की स्वतंत्रता से सम्बन्धित संवैधानिक प्रावधानों की आड में धर्मान्तरण के अभियान भी चलाये जाते हैं जबकि संविधान जबरन अथवा प्रलोभन देकर धर्मान्तरण की अनुमति नहीं देता । कुछ राज्यों में धर्मान्तरण के विरूध्द अधिनियम पारित किये गये हैं जिसके कारण कुछ नियंत्रण हुआ है लेकिन केंन्द्रीय स्तर पर कानून नहीं होने के कारण ठोस समाधान नहीं निकल सका है । संविधान रीतियों का अधिकार देता है, कुरीतियों का नहीं । संविधान में प्रथा के पालन का अधिकार है, कुप्रथा का नहीं । राज्यवार कानूनों का दुष्प्रभाव यह है कि उत्तर प्रदेश में धर्मान्तरण विरोधी कानून है इसलिये दिल्ली से लगे हुये गाजियाबाद एवं नोएडा शहरों में जबरन धर्मान्तरण अपराध है जबकि दिल्ली में यह अपराध नहीं है जिसका अर्थ है कि यदि उत्तर प्रदेश में कोई व्यक्ति जबरन धर्मान्तरण करने का अपराध करेगा तो उसे अपराधी माना जायेगा और सजा मिलेगी जबकि कोई व्यक्ति यही कार्य दिल्ली में करे तो वह अपराधी नहीं माना जायेगा । जबरन या प्रलोभन से धर्मान्तरण किसी एक राज्य या जिले की समस्या नहीं है बल्कि यह देशव्यापी एवं राष्ट्रीय समस्या है इसलिये माननीय सर्वोच्च न्यायालय के न्यायमूर्ति एम.आर. शाह तथा सी.टी. रवि कुमार की दो सदस्यीय पीठ द्वारा अश्विनी कुमार उपाध्याय बनाम

भारत संघ[१] के मामले में सुनवाई करते हुये धोखा, लालच एवं दबाव में जबरन धर्मान्तरण को गंभीर मुद्दा बताते हुये चिंता व्यक्त की गई है और जबरन धर्मान्तरण को खतरनाक बताते हुये संविधान के विरूध्द बताया गया है । सर्वोच्च न्यायालय का मानना है कि चैरिटी का उद्देश्य मतांतरण नहीं होना चाहिये । यदि मदद का उद्देश्य अच्छा है तो उसका स्वागत है, लेकिन इसके पीछे की मंशा पर विचार किये जाने की आवश्यकता है । भारत में रहने वालों को यहां की संस्कृति के अनुरूप काम करना होगा ।[२]

निष्कर्ष एवं सुझाव

बल एवं प्रलोभन आदि और माध्यमों से कराए गए धर्मान्तरणों को किसी भी दशा में न्यायोचित नहीं ठहराया जा सकता है क्योंकि इस प्रकार के धर्मान्तरण अंतरात्मा की स्वतंत्रता के मूल अधिकार का उल्लंघन करते हैं और यह मानवाधिकारों के सबसे गंभीर उल्लंघनों में से एक है इसलिए अवैध तरीको से किए जाने वाले धर्मान्तरणों को रोकने के उद्देश्य से विधियां बनाने हेतु राज्यों को न्यायसंगत, संवैधानिक शक्ति प्राप्त है । धर्मान्तरण विरोधी विधियां धार्मिक स्वतंत्रता के लिए आवश्यक सुरक्षा उपायों का प्रावधान करती हैं और अपने स्वरूप एवं क्रियान्वयन द्वारा संविधान प्रदत्त धार्मिक स्वतंत्रता के मूल अधिकार के सुरक्षा एवं विकास में सहायक है यद्यपि भारत के कुछ राज्यों में धर्मान्तरण विरोधी विधियां पचास वर्षों से अधिक समय से लागू हैं लेकिन इसके बावजून आज भी विभिन्न मामले दर्ज किये जाते हैं इसलिए कहा जाता है कि धर्मान्तरण विरोधी विधियां अभी तक उन उद्देश्यों को प्राप्त करने में सफल नहीं हुई हैं जिनके लिए उन्हें अधिनियमित किया गया था । अवैध धर्मान्तरणों को रोकने के लिए धर्मान्तरण विरोधी विधियों को अधिक मजबूत एवं सही होना चाहिए लेकिन अपराधियों की पहचान करते समय विभिन्न धर्मों के बीच भेदभाव नहीं करना चाहिए । चूंकि धर्म व्यक्तिगत पसंद का विषय होता है इसलिए लोगों को इसमें राजनीति नहीं करनी चाहिए । प्रत्येक व्यक्ति को अपने धार्मिक विश्वास की समझ के लिए दूसरों को आमंत्रित करने एवं प्रचार का अधिकार है लेकिन इसका प्रयोग दूसरों के अधिकारों एवं धार्मिक संवेदनाओं का उल्लंघन करके नहीं किया जाना चाहिए । धर्मान्तरण विरोधी विधियों को ऐसे संदर्भ में समझा जाना चाहिए जिसमें धर्मनिरपेक्षता और सहिष्णुता के सिध्दान्तों के प्रति राजनीतिक एवं न्यायिक प्रश्न चिन्ह न उठ सके । भारतीय संविधान के अनुच्छेद २५ के अंतर्गत संरक्षित अधिकार बहुधार्मिक समाज के लिए महत्वपूर्ण है इसलिए इन अधिकारों की दृढता के साथ रक्षा किया जाना आवश्यक है।

संदर्भ -

१. बसु, दुर्गा दास, कमेन्ट्री ऑन कांस्टीट्यूशन ऑफ इण्डिया (२०१६) नौवां संस्करण लेक्सिस नेक्सिस प्रकाशन ।

२. राव, श्री. शिवा द फ्रेमिंग ऑफ इंण्डियाज कांस्टीट्यूशन सिलेक्ट डॉक्यूमेंट्स (२०२१) लॉ एण्ड जस्टिस पब्लिशिंग कम्पनी ।

३. ओसुरी गोल्डी, रिलीजियस फ्रीडम इन इण्डिया सॉवरेन्टी एण्ड एन्टी कन्वर्जन, (२०१३) पहला संस्करण, रूटलेज द्वारा प्रकाशित ।

४. श्रीवास्तव, धीरेन्द्र कुमार, रिलीजियस फ्रीडम इन इण्डिया अ हिस्टारिकल एण्ड कांस्टीट्यूशनल स्टडी (१९८२) दीप एण्ड दीप पब्लिकेशन

५. बनर्जी, ब्रजेन्द्र नाथ, रिलीजियस कन्वर्जन इन इण्डिया (१९८२) हरनाम पब्लिकेशन्स, नई दिल्ली ।

६. मुस्तफा, फैजान एवं शर्मा, अनुराग, कन्वर्जन–कांस्टीट्यूशनल एण्ड लीगल इम्पलकेशन्स (२००३) कनिष्क पब्लिशर्स, डिस्ट्रीब्यूटर्स ।

७. जस्टिस् एम.एन. राव फ्रीडम ऑफ रिलीजन एण्ड राइट टू कन्वर्जन, ईस्टर्न बुक कम्पनी (२००३) पी.एल. वेव जर्नल 19, https://www.ebc-india.com/lawyer/aricles/706.html पर उपलब्ध ।

८. शादिया सुलेमान, फ्रीडम ऑफ रिलीजन एण्ड एंटी कन्वर्जन लॉज इन इंण्डियाः एन ओवरव्यू : आई.एल.आई. लॉ रिव्यू, वाल्यूम १:१ (२०१०)

९. नेहा चौहान, रिलीजियास कन्वर्जन एण्ड फ्रीडम ऑफ रिलीजन इन इण्डिया : डिबेट्स एण्ड डिलेमाज, आई.एल.आई. ला रिव्यू, वाल्यूम – १ (२०१७) समर इश्यू।

१०. आस्था प्रतीक, रिलीजियस फ्रीडम अकेडमिक आर्टिकल्स् आन लीगल इश्यूज (२०१५) https://www.lawctopus.com/academicc/reeligious-conversion

११. पूर्णेश पाठक, रिलीजियस कन्वर्जन इन्टरनेशनल जर्नल ऑफ रिसर्च (आनलाइन) https://internationaljournalofresearch.com/2020/07/24/religiousconversion

[१]रेव स्टैनिस्लास बनाम मध्य प्रदेश राज्य और अन्य ए०आई०आर० १९७७ सुप्रीम कोर्ट पृष्ठ सं०–९०८

[१] उपेन्द्र नाथ दलाई बनाम आल इण्डिया प्रेसीडेन्ट भारतीय जनता पार्टी और अन्य, रिट पिटीशन (सिविल) संख्या–८७५ सन् २०२२, मा. सर्वोच्च न्यायालय द्वारा निर्णीत दिनांक – ०५ दिसम्बर २०२२

[२]धर्म की स्वतंत्रता और धर्मान्तरण का अधिकार, जस्टिस एम. एन. राव २२–०३–२००३ को हैदराबाद में आयोजित अल्लादी स्मृति व्याख्यान

[१]धारा २(ख), अरूणांचल प्रदेश धर्म की स्वतंत्रता अधिनियम १९७८

[१]इवैंजिकल फैलोशिप बनाम हिमांचल प्रदेश राज्य, रिट पिटीशन (सिविल) सं ०–४३८ सन २०११, हिमांचल प्रदेश उच्च न्यायालय, निर्णीत दिनांक – ३० आगस्त २०१२

[१]शादिया सुलेमान, फ्रीडम ऑफ रिलीजन एण्ड एन्टीकन्वर्जन लॉ इन इण्डिया : एन ओवर व्यू, आई.एल.आई. लों रिव्यू (२०१०)

[२]राकेश दीक्षित धर्मान्तरण विरोधी कानूनों का दुरूपयोग रोकने के लिए समान कानून समय की जरूरत टी.वी. ९ हिन्दी. १५ नवम्बर २०२२

[१]जबरन मतांतरण राष्ट्रीय सुरक्षा के लिए खतरा : दैनिक जागरण, लखनऊ, १५ नवम्बर २०२२

[२]धारा ३ एवं ४, मध्य प्रदेश धर्म स्वातन्त्रय अधिनियम १९६८

[३]श्रीमती गुलिथा हाइड और अन्य बनाम उडीसा राज्य और अन्य ए.आई.आर. १९७३ उडीसा उच्च न्यायालय पेज संव–११६

[१]रेव स्टैनिस्लास बनाम मध्य प्रदेश राज्य और अन्य ए.आई.आर. १९७७ सुप्रीम कोर्ट पेज सं. ९०८

[१]न्यायमूर्ति के.एस. पुट्टा स्वामी सेवानिवृत्त बनाम भारत संघ (२०१७) १०, एस.सी.सी. पेज संख्या–१

[१]साफिया सुल्ताना बनाम उत्तर प्रदेश राज्य रिट पिटिशन सिविल संख्या १६९० सन २०२० इलाहाबाद उच्च न्यायालय, निर्णय दिनांक १२ जनवरी २०२१

[२]इवैंजिकल फैलोशिप बनाम हिमांचल प्रदेश राज्य रिट पिटिशन (सिविल) सं.–४३८ सन २०११ हिमांचल प्रदेश उच्च न्यायालय निर्णय दिनांक ३० अगस्त २०१२ (२०१२ एस.सी.सी. आन लाइन हिमांचल प्रदेश ५५५४)

[१]अरूण घोष बनाम पश्चिम बंगाल राज्य रिट पिटीशन संख्या–२८७ सन १९६९ निर्णय दिनांक दिसम्बर १९५९

[२]ए.आई.आर. १९७७ सुप्रीम कोर्ट पेज संख्या–९०८

[३]प्रिया चाको, (२०२०) लिंग और अधिनायकवाही लोक लुभावनवाद : भारत में सशक्तीकरण, संरक्षण और द्वेषपूर्ण आकांक्षा की राजनीति, गंभीर एशियाई अध्ययन (गूगल स्कालर)

[१]धारा ६, उत्तराखण्ड धर्म की स्वतंत्रता अधिनियम २०१८

[२](१९९५) ३ एस.सी.सी. पेज संख्या–६३५

[१]२००० (६) एस.सी.सी. पेज संख्या २२४

[२]नूरजहाँ बेगम उर्फ अंजलि मिश्रा और अन्य बनाम राज्य उत्तर प्रदेश एण्ड अन्य रिट पिटिशन संख्या–५७०६८ सन २०१४ इलाहाबाद उच्च न्यायालय निर्णित दिनांक १६ दिसम्बर २०१४

[१]क्रिमिनल मिसले नियस रिट पिटिशन संख्या–११३६७ सन २०२० इलाहाबाद उच्च न्यायालय, निर्णय दिनांक ११ नवम्बर २०२०

[१]क्रिमिनल रिट याचिका संख्या–२०८ सन २००४ निर्णय दिनांक ०७ जुलाई २००६ (२००६) ५ एस.सी.सी. पेज संख्या–४७५

[२]शावित वाहिनी बनाम भारत संघ और अन्य (२०१८) ७ एस.सी.सी. पेज सं. १९२ निर्णय दिनांक २७ मार्च २०१८

[१]शाफीन जहां बनाम अशोकन के.एम. (२०१८) १६ एस.सी.सी. पेज सं. ३६८ निर्णय दिनांक ०९ अप्रैल २०१८

[२]श्री गौतम गडेकर, लव जिहाद, पेज सं. ४ आई.एस.बी.ए.एन. ९७८–९३–८५५७५–६६–२

[१]रिट पिटीशन (सिविल) सं.–६३ सन २०२२ सर्वोच्च न्यायालय सुनवाई तिथि ०५ दिसम्बर २०२२

[२]दैनिक जागरण, लखनऊ, ६ दिसम्बर २०२२ पेज सं. ११

Good Governance in India: An Overview

Sanjay Aher
Assistant Professor
BV's New Law College, Sangli
Dr. Sanjeev Shinde
Assistant Professor
Vivekanand College, Aurangabad.

Introduction:

The concept of good governance has evolved in the context of globalization. The concept of good governance is being studied as the best and ideal gift of the twenty-first century. In modern times, most of the nations of the world have adopted the democratic system of government. In a democratic system of government, the government system works with the objective of decentralization and public welfare. Governments in every country based on a democratic system, apart from administrative and political functions, also perform public welfare functions. The purpose of government in every country is to create good governance by working for people's welfare. That is why the concept of good governance is of special importance in a country with a democratic system of governance. India is the largest democratic country in the world, good governance is also being created in India under public welfare by providing social, economic, political justice and many other important facilities to the people.

Good governance is a utopian concept. It is not easy to implement practically, there are different concepts at many levels. Despite this, the best form of governance in the current situation is good governance. Which includes the welfare state through which the country and the society can be taken forward in the direction of development. Good governance refers to inclusive development, which generally means

governance that has quality, accountability, efficient and transparent administration, good governance is more efficient, so that its internal and external credibility increases. Governance is a decision-making process, which includes policymaking and policymaking. Good governance is used in many contexts such as corporate governance, international governance, national governance, and local governance. Therefore, the main objective of this research paper is to understand the theoretical perspective of the concept of good governance, as well as to discuss the efforts made to create good governance in India.

What is good governance?

The first use of the word good governance was by Earl Rivers in AD. In the year 1477.[1] In the modern era, after 1990, the concept of good governance came into more discussion on the global stage. The word "Governance" was used for the first time in the year 1989 by the World Bank in its report. Further, in the year 1992, the World Bank discussed the concept of good governance in detail in its report "Governance and Development".[2]

The English equivalent of the word *Sushasan* is Good Governance. Good Governance is a combination of two words. 'Su' and 'governance' where "su" means good or auspicious and govt means government, obviously means "good governance". Good governance is a system of governance, in which works of public interest are done for the benefit of the people. In a well-governed system, there is no discrimination of any kind. Good governance frees one from corruption and red tape. It also makes the administration transparent, accountable, ethical and smart. A system of governance that upholds the democratic values of liberty, equality and fraternity is called good governance.[3]

The World Bank in its 1992 report titled 'Governance and Development' explained that developing the environmental component for robust development is only possible through good governance. The World Bank is of the clear view that good economic policy must be consistently supported by good governance. The World Bank has defined eight key

characteristics of good governance as Participatory, Consensus, Accountable, Transparent, Accountable, Effective and Efficient, Fair and Inclusive and 'Rule of Law'.[4]

Key Features of Good Governance:

1) Public Participation:

Public participation is one of the most important features of a democratic system of governance. Public participation means the direct and indirect participation of citizens in governance and administration.[5] Due to the electoral system in Indian politics, the elected representatives forget their duty towards the people after the election. Also, the common citizens ignore it and behave inefficiently, hence good governance is not established. If ordinary citizens pay attention to the work done by public representatives or get information about what policies and plans the government is implementing and register their participation in all those processes, efficiency is created in government and administrative work. Political parties and their representatives discharge their responsibilities towards the people and follow the constitution, creating an environment conducive to good governance.

2) Rule of law

Rule of law is a principle of governance. The rule of law means that all are equal before the law and everyone is protected by the law, no one is greater than the law. According to Mrs. Indira Gandhi, "Law is the king of kings"[6] the legal framework of the law should be implemented impartially, with reference to human rights. The concept of rule of law implies that all individuals, organizations, and institutions, public and private, including the state itself, are accountable to publicly promulgated, equally enforced and independently decided laws, and which are consistent with international human rights norms and standards. Measures are needed to ensure compliance with the principles of rule of law, equality before law, accountability of law, impartiality in law enforcement, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness. The process of good

governance is accelerated through the rule of law.

3) Transparency

Transparency means openness in governance and administration work.[7] If the government works openly for the public interest that is useful in the development of the country, then we can call that governance as transparent governance. In which the public can see a glimpse of every work of the government. The essential information of every function of government and administration should reach the common people and it is very important to check and monitor the work done. The people should be aware of all the work and discussions that take place in the Parliament and Legislature. Whatever work the government is doing should be transparent. If there is transparency in the work of the administration, efficiency in the government system can be created and problems like office delay and corruption can be prevented to some extent, which leads to the completion of the work of administration and government in the direction of good governance.

4) Consensus-oriented

Any work of governance and administration requires the consent of the common people, i.e., in taking consensus decisions, care is taken to ensure that the common minimum needs of everyone are met without harming anyone. You consent, which serves the best interests of the community and mediates various interests with broad consensus. While deciding the goals and policies of the country, if the people's needs and aspirations are taken into consideration and their main consent is taken, then that policy gets the support of the citizens, thus increasing the participation of the citizens in the government and administration work helps in the success of every policy of the government.

5) Inclusivity

Inclusiveness is an important feature of good governance. In this, comprehensive and developmental work is done by the government system to raise the standard of living of the citizens. Good governance cannot be imagined without building an egalitarian society. Every

person should have the opportunity to improve and maintain his standard of living.

6) Responsibility

Government institutions should be accountable to the public, so that the people can have a better standard of living, that is, every government institution, private institution, cooperative society and civil society must be accountable to the public and institutional stakeholders.

7) Effectiveness

Every work of government and administration must have a positive and transformative effect. Rather than accepting any handouts to cling to power. It is essential that various organizations are able to deliver results to the common people by meeting the needs and wants of the communities and effectively and transparently use the resources by the community for maximum output. Representatives should work with self-confidence. They should work with tolerance and sense of responsibility towards the public.

8) Sense of humanity

It is important for the government and administrative system to take decisions in the broad interest of the public with an honourable approach. Government action is necessary to raise the standard of living of the citizens by preserving the democratic values of equality, brotherhood, and justice. A democratic governance system should not have any kind of discrimination with the citizens and every citizen should have equal opportunity in every work at the government level. Respectful approach in the democratic governance system to create good governance. Doing, corruption, superstition, nepotism, bigotry, communalism, casteism, etc. by destroying the sentiments of regionalism and developing the sense of humanity, good governance can also be established.

Good Governance in India:

In India, the concept of good governance cannot be seen as a gift of the

present, but the concept of good governance has been around since time immemorial. How to implement the process of good governance in India today? Basically, the concept of "Ram Rajya", which has been going on since ancient times, seems synonymous with the current concept of good governance. The chances of achieving good governance in the present state of the country are better. But the challenges are equally numerous. Today, the government system in India is going beyond the concept of police state and taking steps towards good governance, responsible governance, transparency, social justice, accountability, prevention of corruption etc.[8]

Good governance in India can be understood at two levels. The first phase is before the adoption of liberalization policies (1947 to 1991) and the second phase is after the adoption of liberalization policies (1991 to date). After India gained independence in 1947, India had set a goal of establishing a welfare state. For this a policy of controlled economy and closed market was adopted. During this period, the people of the country are seen to be completely dependent on the government for their development. The government was fulfilling its developmental role to create employment in proportion to the population in the country, meet the vital needs of the citizens and raise the standard of living of the citizens.

The period of liberalization, privatization and globalization started from the year 1970. Liberalized open market achievements have since emerged in many countries around the world, with developed countries and several regional organizations such as ASEAN being the most successful. In such a situation, India also started moving with the times. As a result, India adopted a policy of liberalization, privatization, and globalization in 1991. It then adopted the World Bank's structural and operational plan, under which India's market was opened to the rest of the world. The new economic policy adopted by India has not only boosted the country's economy but is also greatly helping to raise the standard of living of the citizens. Today, three decades have passed since

the adoption of the New Economic Policy and India has achieved its unique position among the major economies of the world. Although India is a developing country, the economy of India today is known as a dynamic economy. The main reason for this is that the government system in India is supporting the creation of good governance by adopting the principles of transparency, customer orientation, public welfare, proactive governance, smart governance. At present the government is able to fulfil the aspirations of the citizens. The formation of good governance in India has greatly strengthened the three components of market, government, and civil society. Good governance is the step taken to make the governance of the country transparent and accountable.

Efforts for good governance in India

Democratic system of governance was adopted in India after independence. Since 1947, many strategic efforts have been made to create good governance with the aim of creating a welfare state in the country, which has helped in creating good governance in the country in a broad way. Efforts made to create good governance through the government system in the country are as follows.

1) Decentralization of Power: With the aim of decentralizing power in India, the three-tier Panchayat Raj system was adopted on 2 October 1959. Panchayati Raj institutions and civic bodies were given constitutional powers by the 73rd and 74th constitutions of 1992-93. Due to this, decentralization of power took place in the country.[10] In the year 2015, Niti Aayog was established by abolishing the centralized 'Planning Commission'. Also, efforts have been made to increase cooperative federalism by establishing the 14th Finance Commission. Raised tax transfer limit to states from 32% of their income to 42% by 2020.[11]

2) Right to Information: Right to information is the right to get information about every function of the government. The Central Right to Information Act was passed in the year 2005 with the aim of introducing a democratic republic in the country and creating

transparency in the governance and administration system. According to Anna Hazare, it is the fundamental right of every citizen to know about the work being done by the government. In democracy, people's representatives and officers are servants of the people but they are the owners, this is changing due to the Right to Information Act.[12]

3) Citizens' Charter: Citizens' Charter concept came forward to make the services provided by the government more responsive and customer oriented. A citizen's charter is a document that promotes and makes transparent the organizational efforts to maintain or develop the integrity or public accountability of an institution or organization. In India, in 1996, a conference of Chief Ministers of various States and Union Territories was held under the chairmanship of the Prime Minister, in which an action plan for effective and responsive government at the Central and State levels was approved and it was decided that the Central and State Governments should also issue Citizen Charters. Citizen's Charter was prepared and started its implementation.[13]

4) Social Audit: The Ministry of Social Justice and Empowerment has launched a scheme called Information-Monitoring, Evaluation and Social Audit (I-MESA) in the financial year 2021-22. Under this scheme, all schemes in the department will be subject to social audit from the financial year 2021-22. This social monitoring is done through the Social Monitoring Department (SAU) of the states and the National Institute for Rural Development and Panchayati Raj. Investigating all people involved in a project or work, as well as the quality of the work, specific achievements, the parties benefiting from it and the workplace. It has been helpful in solving the problem of corruption. Through the social audit process, efforts are being made to develop collective decision-making, capacity, and sense of responsibility among the people and to empower civil society.[14]

5) E-Governance: E-Governance is a broad concept, which is beneficial for transparency, accountability, citizen empowerment and public policy. Its aim is to provide better services to the citizens. Citizens get

maximum facilities through a single window i.e., computer. It saves time, energy, and money. Government of India itself has arranged for this through reliable networks, secure data centres, managed information storage, integration of services, service delivery gateways etc. In this direction, the government has launched the Digital India programme.[15]

6) Police Reforms: At present, to speed up police work and increase public convenience, the First Information Reporting (FIR) system has been reformed, including registration of e-FIRs for minor offenses and emergency security needs. A nationwide emergency number has been established for the common citizens.

7) Lokpal: Lokpal is an anti-corruption authority. The first Lokpal in the world was established in Sweden in 1809. The Lokpal Bill was introduced in Parliament in 1967 to establish the Lokpal (Lokpal) in India, followed by 1977, 1985, 1989 and the fifth time in 1998. At present, systems like Lokayukta and Lokpal have been implemented in India. People involved in corruption, embezzlement, nepotism, maladministration, or other forms of malpractice are investigated through the Lokpal. Good governance is being established in the Indian government system through the Lokpal.[16]

8) Legal Reforms: Laws in India are constantly being reformed and around 1500 outdated rules and regulations have been repealed to bring transparency and increase efficiency. Efforts are being made to reform the procedural laws in the country by paying attention to the mediation by various organizations in the tax process. Efforts are being made to create good governance by amending the constitution or laws.

Challenges in the way of good governance

1) Centralized Administrative System: Since India has a strong centre, all processes are ultimately dependent on the centre, thus showing apathy at the state level. Process funds at the state level, with less resources, create difficulties in their way.

2) Gender and Class Inequality: There is huge inequality in the country. India has two levels of gender and class inequality, in which every class

does not get a chance to be represented. To ensure good governance, there is a need to embrace equality at various levels.

3) Complex Bureaucracy: Bureaucracy in India is hampered by complexity and inaction in the way of good governance. Citizens have to face difficulties as government offices do not work quickly. A wide gap is observed in the formulation and implementation of all major schemes. Due to this, citizens have to suffer due to increased administrative laxity. It is necessary to include integrity, ethics in governance, to ensure adherence to procedures. Increase public confidence in government processes. Public servants should be honest and minimize the possibility of corruption.

4) Corruption: The problem of corruption is the biggest obstacle. India lags far behind developed countries in terms of corruption. Corruption affects the quality of governance. It is necessary to make honest efforts at the government level to eliminate corruption.

In short, although many different efforts have been made to create good governance in the country, many problems such as centralized administrative system, gender and class equality, complicated bureaucratic corruption have arisen, and challenges have arisen in the way of good governance.

Conclusion:

The various efforts made by the government to create good governance after the independence of India are remarkable. But at the same time many challenges have arisen in the process of creating good governance. To create good governance in the country, it is necessary to develop political consciousness in the society and try to inculcate democratic values at every level of the society. It is necessary to study the wishes, aspirations and problems of the citizens and prepare the goals policies and plans of the government on a large scale. Citizens should have the right to recall their representatives. It is necessary to solve basic problems like illiteracy, poverty, health, water, electricity, and roads in the society. Also, the current education is like the British education

system, good governance can be created by creating educational awareness among the people. For that, a new education system should be created by radically changing the education system which is based on the traditional and British system. Strict measures should be taken to prevent corruption in government and administration system. Also, the responsibility of public representatives, officers and citizens should be determined. Radical changes should be brought about in the electoral process by creating political awareness in the society. Elections in the country should be conducted in a fair and peaceful atmosphere. Equal opportunities should be provided to every citizen by eliminating inequality at every level in the country. The government should reduce unemployment by creating employment. Customs and traditions that fuel superstition in the country should be stopped. Government schemes should be properly and successfully implemented in the society. Efforts should be made to increase the participation of citizens in every function of the government. If this happens, the process of good governance will accelerate, promoting inclusive and sustainable development in the country.

■■■

Reference :

[1]Upadhye Mamata, "*Sushan ki Dharana Ewam Sthaniya Prashashan*," Lokprashashan Shodh Patrika, June 2014, New Delhi.

[2]Bora and Sirsath, (2013) Lokprashashan, Vidya Book Publishers, Aurangabad.

[3]Ibid

[4]Gupta Sunil and Kamal Kumar Sinh (2012) Public Administration, National Book Trust India.

[5]Dube Ashok Kumar (2008), Public Administration in 21st Century, Tata Magna Hill Pub. Comp. New Delhi.

[6]Katariya Surendra (2000), Public Administration in India, RBS Publishers, Jaypur.

[7]Ibid

[8]Ibid

[9]Katariya Surendra (2000), Arthik Niti Ewam Prashashan, RBS Publishers, Jaypur.

[10] Mathur Kuldeep (2013), Panchayati Raj, Oxford University Press, New Delhi,

[11]Ibid

[12]Hazare Anna (2006), Mahiticha Adhikar 2005, Brashtachar Virodhi Andolan Nyas, Ahamadnagar.

[13]Ibid

[14]Retrieved from https://www.drishtiias.com

[15]Ibid

[16]Ibid

EDUCATION AND UNEMPLOYMENT IN INDIA

Shivnandini Dube

Abstract

Education is very important for society as well as for the betterment of oneself. The goal of education to make society and citizens better seems to be missing in the current scenario. In our rush to get everybody educated, we do not consider it important to ask individuals why we need education. Education and employment rely on each other. India had different levels and types of education since the ancient times. Education is the key source of making a country powerful. During Ancient times, India had a system of Gurukul where there were Guru and Shishya. It is still debatable that the gurukuls came under which category according to the modern perspective of the education system. Unemployment is the result of the craze among the educated youth for 'white collar jobs'. Lack of education and vocational guidance facilities are some of the other factors which contribute to unemployment. There is a keen struggle for survival going on in the world.

Unemployment is the biggest concern for India. According to National Sample Survey agency which is the most important agency in India observes that the unemployment is leading to the educated unemployment in the country. As if there is a degree but there is no job. A major benefit of education is the lower risk of unemployment at higher educational levels.

We can say that it is the backbone of the country. Education leads to the employment in India. Education and employment both rely on each other. As both lead to the social control and development in the society

and there is the development in the country which can make it more successful. Education skills the person and given the moralities which are important as a citizen of one's country. Education brings employment. Employment leads to an increase in the economy of the country and leads to the betterment of the state. The statistics on unemployment in India are taken in every ten years by the Ministry of Labour and Unemployment. Due to the lack of resources and education India is still lacking with the employed people.

We will see how the background of the education was and how the India led to the unemployment. We will also observe the initiatives by the government to raise the awareness and to suppress the unemployment.

Introduction

The Education System in India is usually run by the state body. The government is divided into three levels local, state, and central. Education is compulsory as per the various articles of the constitution and the Right of Children to Free and Compulsory Education Act,2009. It is provided as a fundamental right to the citizen of India. Due to poor resources, some parts of the country are still not able to get an education. After the 42nd Amendment, education was made a concurrent subject. India has 28 states and eight union territories there are various policies implemented to spread education in every part of the country.

Background of Education in India

There are different styles followed in India since the ancient times. During the ancient times, there were educational institutions known as "Gurukul" where there were Guru and students known as Shishya was a very important part of the education. Takshsila is one of the examples of the ancient education system in India. If we see through the modern perspective, it can't be defined as a high school or university. Secular institutions cropped up along Buddhist monasteries. They imparted the practical education. Several urban learning centres became increasingly visible in the period between 500 BCE to 400 CE. The important urban centres of learning were Nalanda (in modern-day Bihar) and Manassa in

Nagpur, among others.[1]

They added foreign topics such as the founding of the Mauryan empire, the Pali language, Buddhist Pali literature, and so on. This type of education system attracted to the foreign students. During the Islamic period, there was a religious knowledge given to the students. British rule subsequently brought the English medium into the education system of India and there was a change in the pattern of the educational institutions.

Initiatives taken by the government of India

After the independence, the initiatives were usually taken to uplift the backward classes. As they were having no rights to the education and were known as untouchables in the society. Mahila Samakhya Scheme was initiated for the upliftment of the remote, underdeveloped, or the weaker section group of various states for raising awareness by holding meetings and making efforts to educate them with some basic things. The government allowed ₹340 million (US$4.3 million) during 2007–08 to carry out this scheme over 83 districts including more than 21,000 villages. There are 68 Bal Bhavans and 10 Bal Kendra affiliated with the National Bal Bhavan.

India's minorities, especially the ones considered 'educationally backward' by the government, are provided for in the 1992 amendment of the Indian National Policy on Education (NPE). The government initiated the Scheme of Area Intensive Programme for Educationally Backward Minorities and the Scheme of Financial Assistance or Modernisation of Madarsa Education as part of its revised Programme of Action (1992). Both these schemes were started nationwide by 1994. In 2004 the Indian parliament passed an act which enabled minority education establishments to seek university affiliations if they passed the required norms.[2]

As a Mission Mode Project under the National e-Governance Plan (NeGP), the online service enlists more than 50 scholarship programs every year including the renowned Ministry of Minority Affairs

(MOMA) Scholarships for Post-Matric and Pre-Matric studies. In the academic year 2017–18, the MOMA Scholarships facilitated the studies of 116,452 students with scholarships worth ₹3165.7 million. The National Scholarship continues to enlist scholarship programs managed by AICTE (All India Council for Technical Education), UGC (University Grants Commission), and respective state governments.

When we talk about the initiatives from the legal perspective, the first and the foremost comes the fundamental rights provided by the Indian Constitution to the citizen to live with the freedom and get multiple opportunities to develop themselves.

Article 45 of the Indian Constitution states that the free and compulsory education would be given by the state over a period of ten years.

Article 21A of the Indian Constitution states that The State shall provide free and compulsory education to all children of the age of six to fourteen years in a such manner as the State may, by law, determine.

Article 45 of the Indian Constitution states that Provision for early childhood care and education to children below the age of six years: The State shall endeavour to provide early childhood care and education for all children until they complete the age of sixteen years.

Article 51A of the Indian Constitution states that a parent or guardian [shall] provide opportunities for education to his child or, as the case may be, [a] ward between the age of six to fourteen years.

Unemployment in India

The statistics on unemployment in India are taken in every ten years by the Ministry of Labour and Unemployment. Due to the lack of resources and education India is still lacking with the employed people. Some of the regions of India still need to get realized the importance of education. The National Sample Survey office is one of the most important agencies in India as it studies the employment, unemployment, and unemployment rates of the state through the surveys.[3]

Unemployment and under-employment have been the long-standing

problem in India. The Indian labour force is divided into three categories by the government: -

- Rural sector, which includes the farm labour.
- Urban formal sector, which includes factory and service industry labour with periodic salaries and coverage per Indian labour laws.
- Urban informal sector, which includes self-employment and casual wage workers.

Learned Unemployment in India

First, we need to understand the meaning of unemployment. Unemployment can be defined as the people who are educated and are willing to do the job at a pay but could not find the work. The working class is usually counted from the age group 15 to 59. In India, educated unemployment has been a particular problem due to some of the reasons listed as follows:

Distribution of manpower - In India, there are some places where it is a surplus of manpower; while there are also places where is a shortage of manpower. In many sectors, there's a huge shortage of labour, while there are other sectors where saturation is reached.

Population– With the increase in population, overpopulation has been a problem for the employment as there are limitations to hiring people in certain areas.

Lack of skilled people– There is a lack of skilled force in our country. In India, unemployment is seen among the technically qualified persons as their technical knowledge is not as per the industry standard. Thus, due to the lack of skilled people, they are facing unemployment. People of the country must upgrade their skills as per the industry standard, but this is not happening in the country. There are no basic skills in man for the job.[4]

Poor standard of education - Education is one of the parameters to judge the quality of people in the country. Unfortunately, India is failing

in the field of education. Education is not provided of the highest quality, and this can be one of the major reasons for the unemployment.[5]

Gender Gap– The gender gap leads to the discrimination of women in the workplace. This discrimination leads to the unwillingness of doing work or leads to the fear among people of being rejected.[6]

Consequences of Unemployment in India: - the consequences of unemployment are as follows:

- Unemployment leads to a depressed economy in the country.
- Unemployment causes the wastage of work resources.
- Due to the unemployment the economy is being burdened.
- It causes social unrest in the country.

Conclusion

Education is one of the most important parts of the country. We can say that it is the backbone of the country. Education leads to the employment in India. Education and employment both rely on each other. As both lead to the social control and development in the society and there is the development in the country which can make it more successful. Education skills the person and given the moralities which are important as a citizen of one's country. Education brings employment. Employment leads to an increase in the economy of the country and leads to the betterment of the state. It suppresses the social unrest in the country. Education balances out the employment. Without education there would be no employment and without employment there would be no progress in the country.

■■■

Reference :

[1] https://en.m.wikipedia.org/wiki/Education_in_India#Initiatives
[2]https://en.m.wikipedia.org/wiki/Education_in_India#Initiatives
[3] https://en.wikipedia.org/wiki/Unemployment_in_India
[4]https://www.geeksforgeeks.org/what-is-educated-unemployment-and-reasons-for-itsprevalence-in-india/
https://www.henryharvin.com/blog/educated-unemployment-india/
[5]https://www.sciencedirect.com-digital literacy an overview
[6]https://www.legalserviceindia.com/legal/article-3342-human-rights-in-the-digital-age.

HUMAN RIGHTS IN DIGITAL AGE

Shreeshma V K

Introduction

Human rights are fundamental to our existence as human beings, and they have been enshrined in international law through treaties and declarations. Focusing on human rights in the digital age is key to a better world. As we are moving forward in our daily day to day life our all activities are being record used and misused. Just think that in today's world everyone is having a smart phone and has digital access to everything around the globe. If a person wants to know something in today's time he just has to give a view and type it on and he will get the results of everything what he wants and even more than that. Many benefits have been already provided to us through the digital world. The digital age has given us enormous value to human rights and its development. Nowadays, digital literacy has been trending during the last couple of days.[1] Hence, the dark side of the digital world cannot be ignored. The digital revolution is a major risk to the human right issue.

As we know that there are a number of benefits of digitalization around us but cannot ignore the risk which it carries. We cannot neglect the cyber world and cyberspace as an ungoverned platform. Rights are the same as offline or online. There should not be the feeling of overwhelm due to the pace and large-scale development of digital age, but understanding the specific need of the risk that is with the digital age is very much important and one must be very curious about it.[2] This paper will explore the

intersection of human rights and the digital age, with a particular focus on the Right to Privacy, Freedom of Expression, Intellectual Property Rights, the Right to Access Information and Discrimination etc.

The Right to Privacy

In the digital world, human rights have to be given importance for the benefit of society as a whole. Privacy has to be given importance like the importance was given to other rights like freedom of speech and expression. This will enrich the society, and this will create no fear among people that their thought process will be disclosed in the world, or they will be a part of the criticism of the world.[3]

The Universal Declaration of Human Rights and other international human rights treaties acknowledge the right to privacy as a fundamental human right. As people exchange more and more private information online in the modern day, this right has gained importance. Through the use of digital technology, businesses and governments a mass enormous amounts of personal data, and there is rising concern over how this data is being utilised. The problem of surveillance is one of the main obstacles to the right to privacy in the digital era. Governments and businesses are able to keep an eye on people's internet activities, follow their whereabouts using geo location information, and even listen in on their private communications. As a result, people may feel less free to express themselves.

The Supreme Court of India has repeatedly tried to elaborate on the concept of right to privacy and detail it in a definitive structure since the 1960s or even earlier, which has resulted in a hard environment for fundamental rights, most crucially the right to private. In Kharak Singh v. State of Uttar Pradesh,[4] in the wake of being assailed in 1941 for a case of dacoity, the accused was released in absence of proof. However, the police had built up “history sheet” against the accused. Regulation 228 of Chapter XX of the Uttar Pradesh Police Regulations defined “History sheet” as “the individual records of crooks under observation”. The accused, who was constantly being watched, including through the

midnight knocks, went to the Supreme Court and asked for a ruling that his fundamental rights had been violated. The Supreme Court found that the 12 PM knock on the petitioner's door in the aforementioned case did not infringe upon his or her right to freedom of movement across the entirety of India as guaranteed by Article 19(1)(d) of the Indian Constitution

At the point when the case of Kharak Singh was decided, the decision in A. K. Gopalan v. State of Madras[5] was governing relation between rights under Article 19 and Article 21 of the Constitution. In **A.K Gopalan Case**, the Apex Court took into consideration all the provisions in the Chapter on fundamental rights as epitomizing unmistakable instead of over-lapping freedoms. Therefore, in Kharak Singh, the Apex Court considered the elaborate discussions made in the Gopalan case.

The decision in Mr X v. Hospital Z[6], has dealt with the convergence among privacy and medical jurisprudence. This ruling focused on the Article 21-posited right to privacy as well as other constitutional clauses relating to fundamental rights and Directive Principles listed in the Constitution itself. Even though Article 21 states that the right to privacy is a crucial component of the right to life, the court noted that sometimes disclosing true private information could upset a person's mental stability and that it is not always legal to impose restrictions when it comes to preventing crime or defending the rights of others.[7]

In recent years, there have been several high-profile instances of government monitoring, notably Edward Snowden's revelations about the US government's extensive surveillance programme. As a result, there is a rising understanding of the necessity of defending the right to privacy in the digital age. Individuals' privacy rights must be protected, and governments and businesses must be held responsible for how they use personal data. The problem of data breaches is one more barrier to the right to privacy in the digital era. There is always a chance that the enormous volumes of personal data that businesses collect will be stolen or compromised. As people's personal information might be made

public, this can result in major privacy can result in major privacy violations**.** The first practical step to take in protecting human rights in the digital realm is to generate global support for the creation of a "special rapporteur" (essentially an international human rights law expert) for the right to privacy at the UN Human Rights Council.[8]

Freedom of Expression

Another fundamental human right that is necessary for a functioning democracy is freedom of expression. The opportunity for people to voice their thoughts on a worldwide scale through social media and other online channels has made this right even more crucial in the digital age. The right to free speech is jeopardised in the digital age, though Online information can be restricted by governments and businesses, either directly or by algorithmic filtering. While people could be hesitant to express their thoughts online if they worry that their content will be controlled, this may chill freedom of expression.

For a democratic country, where the decision of the masses is supreme, mass media is in instrumental in ensuring that the people make informed decisions. Further, it is through the media that the masses are able to voice their opinions. Appreciation of the role of media in good governance is essential to societal development. Freedom of Speech and Expression should, therefore, receive generous support from all those who believe in the participation of people in the administration. The emergence of social media has dramatically reshaped the ways in which during which we tend to are able to express ideas. However, the technological evolution of free expression isn't merely restricted to the emergence of Face book and Twitter. Anyone can simply establish a blog and begin communication with a potential audience of over 2 billion people.

In earlier decades the power to speak concepts to a large audience was dependent upon having the ability to publish. Anyone's work was so moderated through an established system with rules and pointers. The consequence of this old method of accessing concepts is that the prospect

of encountering radical ideas was dramatically reduced. This can be no longer the case; instead, there's a huge quantity of original and distinctive work that has not gone through a rigorous editing method. Therefore, technology has allowed space for a previously unimaginable amount of freedom of expression. The ease with that technology permits for freedom of expression has brought with it an improper conflation of public and personal expression. So as to own the freedom of expression we tend to don't necessarily need to have the ability to share that expression. Writing a piece of literature that may never be read could be a kind of style. However, the internet permits such style to be shared. Consequently, technology has transformed freedom of expression from a largely private phenomenon into a predominantly public one.[9] Online censorship has been the subject of several high-profile incidents in recent years, including the removal of protest-related information and the country-specific blocking of social networking sites. As a result, there is a rising understanding of the necessity of defending the right to free expression in the digital age.

Intellectual Property Rights

Intellectual property rights (IPR) are legal protections for works of art, inventions, literary and artistic works, as well as logos, names, and other symbols used in commerce. IPR has grown in importance as a component of human rights in the digital era as more and more intellectual property is produced and shared online. One of the most significant impacts of the digital age on IP law has been the growth of digital piracy. With the ease of copying and distributing digital content, piracy has become a significant concern for creators and owners of intellectual property. This has led to an increased need for more robust IP protection and new methods for detecting and preventing piracy.[10]

The ease with which Intellectual Property can be distributed and duplicated in the digital era presents another problem for IPR. It is challenging to regulate the dissemination of intellectual property since digital data, unlike tangible items, are simple to duplicate and distribute

online. Numerous nations have passed laws and regulations to safeguard IPR in the digital age in order to solve these issues. Commonly, these rules and regulations set penalties for individuals who breach these protections while also offering legal protections for those who create intellectual property, such as copyrights and patents.

In the digital age, IPR is a crucial component of human rights, but it's also critical to find a balance between safeguarding IPR and fostering access to information and cultural expression. For instance, while some contend that overly stringent IPR regulations might impede innovation and creativity, others contend that robust IPR protections are required to encourage such behaviours.

As a result of protecting mental works of art and encouraging invention and creativity, IPR is a crucial component of human rights in the digital age. IPR in the digital age is, however, seriously hampered by piracy and the simplicity of copying and disseminating digital files. juggling the demands of information access and cultural expression with the requirement for robust IPR safeguards.

Access to Information

A fundamental human right, access to knowledge is necessary for the exercise of many other rights. With the internet serving as the primary source of information for individuals all over the world in the digital age, access to information has taken on even more importance. We now access and share information in a way that has undergone tremendous change as a result of the digital age. A great amount of information from all around the world is accessible to users of the internet, frequently for no cost. The ability to obtain the same information as those in more developed places has been made available by this, which has democratised access to information. Information availability in the digital age is not without its difficulties, though. The difference between those who have access to the internet and those who do not is known as the "digital divide," and it is one of the major problems. Even though access to the internet has spread over most of the world, there are still

numerous places where it is either extremely limited or non-existent. Because those without internet access might not have access to the same information and opportunities as those who have, this might worsen the problem of online censorship and surveillance is another obstacle to information access in the digital era. Certain governments and groups may impose access restrictions or keep track on online behaviour, which could restrict the free flow of information and violate people's right to privacy and freedom of expression.

It is crucial to support policies and efforts that encourage internet access for all people and safeguard the free flow of information in order to address these concerns. This includes putting money into the necessary infrastructure to increase internet access, encouraging the development of digital literacy and skill sets, and pushing laws that safeguard users' online privacy and freedom of expression. The internet has evolved into a major source of information for individuals all over the world, making access to information an essential human right in the digital era. While maintaining the free flow of information and ensuring universal access to the internet are difficult tasks, they should be prioritised by politicians and society at large to guarantee that everyone has access to knowledge and the opportunities it offers.

Discrimination

In the digital era, discrimination can take many different forms and is a violation of human rights. Discrimination has grown to be a major worry for many people due to our greater reliance on technology and the internet. Online harassment and hate speech are two of the most common examples of discrimination in the digital era. People can be targeted based on their race, ethnicity, gender, sexual orientation, religion, or other personal qualities and hateful comments can be distributed using social media platforms and other online places. The psychological and physical well-being of those who are targeted may be significantly impacted by this. In the wake of the #MeToo and Time's Up movements, employers are facing increased public pressure to diversify their

workforce and implement best practices to solve persistent gender inequities that limit women's access to positions of power and influence. As one possible approach, many employers have embraced advancements in artificial intelligence (AI) and machine learning technologies to introduce "objective" decision making into the hiring process. However, the data is often based on historical hiring data at a company, which can serve to replicate prior interpersonal, institutional bias.[11]

The digital divide is one more way that people are discriminated against in today's world. Anyone without access to technology or the internet may be at a disadvantage when more services and information are made available online, restricting their opportunities and access to resources. It is crucial to support laws and programmes that advance inclusion and equality online in order to combat discrimination in the digital era. For everyone to have access to technology and the internet, it is important to design and enforce anti-discrimination laws and policies. It is also important to promote digital literacy and skill training and to support the creation of transparent, impartial, and fair AI and other technologies.

Conclusion

Let's sum up by saying that prejudice is a human rights violation that, in the digital era, can manifest itself in a variety of ways. To ensure that everyone has access to technology and the internet equally and may use them to exercise their human rights without fear of discrimination or harassment, policymakers and society must recognise and address various forms of discrimination.

Strong data protection laws and regulations are becoming more and more important in order to handle these issues. The use of personal data by businesses must be regulated, and governments must apply severe fines for data breaches. Additionally, people need to be informed about their rights to privacy and given the means to exercise those rights if they are violated.

Strong internet protections for freedom of expression are becoming

more and more necessary in order to deal with these issues. Governments must make sure that online censorship is only applied in specific situations and must respect people's freedoms of expression online. Businesses must be held responsible for their part in online censorship and make sure that their platforms don't enable it. Online human rights should not be diminished it should now be protected in a better way. Stricter laws should be made for the protection of human rights globally. This will help us to preserve human qualities like equality, freedom, dignity, respect, etc. This will help us in the survival of a healthy democracy without any partiality. So, every citizen, government, private organisations and companies should come forward for protecting human values and democracy in digital platform and in this process, it will help us to create a healthy digital age with strong human rights.

■■■

Reference :

[1] https://www.sciencedirect.com-digital literacy an overview
[2]https://www.legalserviceindia.com/legal/article-3342-human-rights-in-the-digital-age.
[3]Ibid
[4]AIR 1999 SC 495: (1998) 8 SCC 296: 1998 AIR SCW 3662
https://shodhganga.inflibnet.ac.in:8443/jspui/bitstream/10603/454832/7/12_chapter3.pdf
https://www.hrw.org/news/2014/12/23/human-rights-digital-age
[5]AIR 1950 SC 27
[6]AIR 1999 SC 495: (1998) 8 SCC 296: 1998 AIR SCW 3662
[7]https://shodhganga.inflibnet.ac.in:8443/jspui/bitstream/10603/454832/7/12_chapter3.pdf
[8]https://www.hrw.org/news/2014/12/23/human-rights-digital-age
[9]Dr. Geetali Tilak, *Freedom of expression in the digital age*, Vol.9, Issue.6, INDIAN JOURNAL OF APPLIED RESEARCH, pp-1-3(June2019)
[10]https://www.otto.law/blog/2023/01/the-impact-of-the-digital-age-on-intellectual-property/
[11]https://www.law.georgetown.edu/gender-journal/online/volume-xxi-online/employment-discrimination-in-the-digital-age/

LEGAL PRACTICE IN ANCIENT INDIA

Suraj Amit
Research Scholar
Department of Law, Patna University, Patna
Dr. Birendra Kumar Gupta
Associate Professor
Faculty of Law, Patna University, Patna

Abstract

The purpose of this research article is to know and trace about the existence of legal practice in ancient Indian society. To find out the facts of Legal practice (Advocacy) in the Ancient (Vedic) Indian society then we should also know about the system of education in Ancient Vedic period. This is why because if we talk about the legal practice then it means Advocacy of those peoples who suffered some problems related to their society or their family and they were not able to plead or defend through his/her manner in front of the Raja and court of justice (Rajadarbar). They hadn't knowledge about law as well as that eligibility, which was essential for legal proceeding, but they used to go to the court of justice for Nyaya and ask the court representative to defend or plead their issues. To be the court representative what kind of eligibility required that time for any person? Were all people able to take that kind of education and authority to be the representative of any people? In the same manner today's legal practice are happen in Indian society or not? As we know that India is a land of wonders. The fame of Indian culture, as well as its educational practices have spread far and wide. The education system of ancient times was regarded as a source for the knowledge, traditions and practices that guide and encourage us. This article focused on what kind of legal Practice was found in Ancient India society.

Introduction

India has been the centre of wonder since the beginning. It has been quite famous all over the world for its education system and administrative actions. The matter is that if a country has good education system, then why they need to administration for any kind of action or procedure? When we trace the facts of the ancient legal system or legal practice then we find that earlier there were no such things as dishonesty among people, people loved to help each other without any selfishness. But we have read as well as listen many stories in which even in ancient times people used to commit mistakes and they were also punished for their mistakes. That kind of mistakes were judge by the authority of that state and their mistakes were presented by the king's man who stand in front of the king and delivered his voice on behalf of the person with whom something went wrong, and they wanted to justice from the king. As for example we have two great epics Ramayana and Mahabharata which was written by Valmiki Rishi and Ved Vyasa Rishi who are highly respected in the society, have included the most important principles of religion accepted and practiced in the society in their respective times in the context in which they become relevant, by narrating the stories. As a result, the authors of Dharma Sastras began to consider it as an authentic source on the issues of law. As for example Ramayana is quoted as an authority in the work Rajaniti Ratnakara of Chandeswara.[1] There are about 66 verses in Ramayana which is Rajdharma and it tells that the duties and responsibilities of the king are present in it. However, in Mahabharata also many verses are found in matters of law, especially in the Shantiparva, which sets out elaborately the law relating to constitution and the organization of a kingdom, and the Dharma required to be followed by kings in administering their kingdom, under the title Rajadharma. Which elaborately lays down the constitution and laws relating to the organization of a state and the religion required by kings to administer their kingdom under the title Rajdharma. Some examples are like "Coronation" it means crown ceremony of king (Shantiparva),

badness of lawlessness (Anarchy), Rajadharma, Importance of punishment (Dandastuti), Penalties (Prayaschita), Marriage (Vivaha) and sonship (Putras) and Inheritance. These two great epics have been the source of Dharma for later jurists, this is evident from their references in later works on dharmashastras.[2] In this article we see some aspects of legal practice in ancient India. There are so many subject matters come in this article like approaches of different jurist's view regarding legal practice in ancient India. If we see the upper written statements and we find the conclusion of this research article, then we can say that there was the existence of legal practice in ancient India. To prove this statement, we need to search for legal practice in ancient period requirement of a court system and court room, and for judging the matters which is entered in court rooms need an authority to give the judgements.

Dharma (Law)

If we are going to define Dharma, then it is very difficult to define Dharma. The meaning of Dharma is not complete in a single sentence it will take many of many aspects who concern with the welfare of humanity and all the living beings as well as non-living beings. So, which ensures welfare of the living beings as well as non-living being is obviously it may be the meaning of Dharma.

Dharma has different meaning as per situation create by the god, human, nature, to the person who face that type of situation. The meaning of Dharma is uncertain. According to Manu,[3] "Dharma is a path where any people lived and follow with sacred heart, by the wish and the learned, who knows of Vedas, and whose dealing ensure to the standard of Dharma.

Dharma Shastra

On the study of Ancient Dharmashastra it shows that Dharma means Law was binding on the king. When we study it found in two parts Rajadharma and Vyavaharadharma. Bhishmacharya gives the information about the origin of state and origin of kingship that in the past time there had well stablished society and every person doing his

own work according to dharma. Everyone was also protecting each other but as strong people they encroached on the life, freedom as well as wealth and property of the week peoples. King was created with the duty to protect the people and punish that kind of people who dared to do this. Narada speaks in his first memory's verse that When people used to be habitually truthful, then there was no legal action at that time. But as soon as business declined, due to the introduction of rights or mistakes, it was necessary to establish a system of law, or the king was appointed to enforce the law, because the king had the power to enforce the law. or the power to punish for mistakes. We can say that it was the stage of the beginning of human society in India when positive civil and criminal law (Rajadharma means the law with the powers, duties, and responsibilities of the king) including the law regarding establishment of courts and their powers, functions and their procedure as a part of the Dharma was fixed which mark the commencement of its of its legal and constitutional history. Consequently, the system of legal action /legal proceedings, the positive criminal and civil law and origin of kingship, as well as law regarding the organization of Rajya, the power and their duties of the Raja were fixed as a part of Dharma and also known as Vyavaharadharma and Rajadharma.[4]

Roles of Smritikars for Development

When we talk about the Smritikars they only deal with a few salient features of kingship. They were generally interested in formulating a system of rules for the welfare of the whole society. With the help of Varnashrama Smritikaras want to be working out the vision social welfare and social good. Varnashrama treat like Dharma and it had some targets to maintain peace and harmony in our society and next purpose of it was to discipline the individuals according to their capacities in order to prepare them to follow their cherished pursuits in life.[5] There are some Smritikaras like Manu, Brihaspati, Yajnavalkya, Narada, and Katyayana had played a vital role in making rules for the governing of religious and social life of the people which were accepted as authoritative in the

administration of justice and the prescription of duty.[6]

Manu

When we talk about Manu then we reach that point where Manu gives code of Law which was the first ever civil or Criminal code of Law. Manu was one of the great Smritikaras as well as well most eminent lawgiver in the Indian society. Manu in his Manusmriti elaborate the upcoming advancement of social and political need in ancient India. What was extra effort to regulate the nature and conduct of ancient Indian society to continue the Manu code of law after his life that was very necessary to know the further facts. Manu had dealt the things which is related to our Hindu Law. He was known as a great lawgiver and thinkers of that time refer his Code as a authoritative work. Manu's code of Law Book consisting of 2694[7] verses and 12 chapters which elaborate the "Institute of Sacred Law" and explained by the prior sages of ancient time. Manusmriti is written in a simple style some commentaries written in Sanskrit language. The headings of twelve chapters are clearing all the concept regarding law.

First chapter deals with Creation of Universe. Second chapter elaborate the Definition of Dharma and Sources of Dharma. Third chapter deals with Celebacy, Studentship, Marriage. Fourth chapter speak about Mode of life– Means of subsistence and householder's code of conduct. Fifth chapter deals with Rule governing food. Sixth chapter explains Rules governing forest hermit. Seventh chapter elaborate Rajadharma. Eighth chapter explain king's duty relating to administration of justice it is also elaborate in seven points. First one was 18 titles of law. Second one was King and Judges. Third one was other person as judge. Fourth one was Constitution of Sabha. Fifth one was Duty to restore stolen wealth. Sixth one was Creditors means to recover debts. Seventh and last point was Grounds on which the plaintiff may fail in his suit. Now we continue with the Ninth chapter heading with Duties of husband and wife, partition, sonship, impartible estate, gains of learning, the five major sings, the punishments. Tenth chapter deals with Rule of conduct for all. Eleventh

chapter explains the Seven proper mode of livelihood on gift. Twelve and final chapter deals about Karma, the knowledge of self, the highest means of bliss.

One more aspect about Manu code of Law (Manusmriti) was when it was assembled the concept of our Hindu Law was "Law is the King of Kings.[8] Manu also followed this concept that the King is subordinate to Law as well as Dharma, to the Rule of Law.[9] Manu set some chapters regarding such agendas as king and the State, and their nature and origin, duty of ministers and king, sources of Law and the judiciary, role of judges and classification of law, punishments and other society welfare works. Manu thinks and apply that Dharma was the highest power in the welfare state and the king was only a mode to consider the aim of Dharma.

Brihaspati

According to Brihaspati when he was finding the ancient judicial system as if he was very similar to Manu and his works were observed by that time of people totally based on the Manusmriti. Brihaspati say that Manu's code is precious. He always elaborates the terms which is not able to understand in Manu's code. He never hesitates to amplify and modification in his code on any topic of Law. According to Brihaspati in previous time people were very religious and they free from mischievous tendencies but it was not to be continue they take advantage of the people whom gullible so for this reason judicial proceedings had been established. For the court of justice Brihaspati added Narada's ten members of court of justice including King. Brihaspati introduce of seven courts and divide it into four and three ratios. The four types of courts were fixed in nature runs in village or town, and movable in nature it had no fixed seat. It was fitted with the King's seal ring supervised by the Chief Justice and the directed by the King himself. When we talk about next three other courts included one for forest dwellers, one for soldiers held in camps, and one for caravan traders.

Yajnavalkya

When we talk about contribution of Yajanavalkya. He was the first to specifically mention the three popular courts, namely, KULA, SRENI, and PUGA. Kula for the small matters and being lowest court for arbitration. This kind of courts we compare from today's era village family panchayat. Yajanavalkya plays an important role to concise and systematically arrange the code of Manusmriti. Yajanavalkya also explain the systematic process of that time judicial procedure. He speaks about the four stages in a lawsuit, but he does not mention them by name. Evidence was based according to Yajanavalkya was three mode which was document, witnesses, and possession. He advocates four kinds of punishments like soft warning, stern rebuke, carnal punishment with fine.

Narada

Narada gives the first legal commentary one who is not bound by the precepts of religion and morality. His all things were based on the foundation of Dharma. Narada also added the Devine law has complex in nature and not easy to understand. When we talk about the judicial procedure pleaded by Narada is also very complex one. A plaintiff first filed a suit stating the exactness of his claim, and the statement of the plaintiff was to be recorded in writing. The complaint can be amended at any time before the respondent files its reply. The plaintiff may arrest the accused or appeal to the king to restrict his freedom of movement until a legal summons is issued. Not all promises were accepted. Narada declared that those suits which deal with irrelevant subjects or are vague, meaningless, lacking in justification, deficient in writing or unnecessary and damaged should be dismissed. After the plaintiff has preferred his claim, the defendant must file his reply in four different ways—denial, admission, opposition, or a special pleading and pleading of the previous judgement, says Narada. Narada, like Yajnavalkya, speaks of three types of evidence, namely document, witness, and possession.[10] Narada elaborate the documents in two parts one who writing by the executant himself and he also elaborate the points of Manu,s code of law regarding witnesses and categories into eleven classes like a subscribing witness.

He is subject matter with a minimum number of three witnesses. Lastly all the judicial proceedings finished with the judgement given by the sabhyas. Narada also speaks about the punishment under two modes first one was manual and second one was fine with money.

Katyayana

When we talk about the katyayana. He explains about the constitution of the court system in ancient time. He desires the king to entertain the disputed matters in the presence of the judges, Brahmanas, Purohitas, Ministers, and sabhyas. Katyayana approved state of courts as given by both Narada and Brihaspati.

Sources of Law

There are mainly four sources of Law[11] which are-

1. Shruti or Vedas
2. Smriti or Dharmasastras
3. Commentaries and Digest
4. Purans

Administration of Justice

In ancient India, the king was considered the soul of justice. It was his ultimate duty to protect his subjects. He was revered as the lord of dharma and was entrusted with the supreme authority of administration of justice in his kingdom. The King's Court was the highest court of appeal as well as an original court in matters of vital importance to the state. In the king's court, the king was advised by learned brahmins, the chief justice and other judges, ministers, elders, and representatives of the trading community. Next to the king was the court of the chief judge. In villages, local village councils or kulanis, similar to modern panchayats, were a board of five or more members to administer justice to villagers. It dealt with all matters relating to settlement, irrigation, cultivable land, punishment of crime, etc. The village councils dealt with simple civil and criminal matters.

Judicial Procedure

Judicial procedure was very elaborate. According to Brihaspati a suit or trial (vyavahara) consisted of four parts:

1) the plaint (poor va-paksha),

2) the reply (uttar),

3) the trial and investigation of dispute by the court (kriyaa), and

4) the verdict or decision (nirnaya).

Institution of Lawyers

The Smritis do not mention the existence of any separate body of lawyers in the ancient Hindu jurisprudence. According to Kane, this does not preclude the idea that persons well versed in the law of memory and the procedure of the courts were appointed to represent a party and to present its case before the court. The procedure laid down by Naradasmriti, Brihaspati's Smriti and Katyayana's Smriti reaches a very high level of technology, and the liturgy will often require skilled assistance. After considering Kane's comments and other historical material it becomes quite clear that the organization of lawyers as it exists today did not exist in ancient Hindu times.

Conclusion

As we know that we are tracing about the topic Legal Practice in Ancient India. During the study of all the phases of development of law in the ancient Indian society we study all the law makers whose contribution in making of law and well social order for the Indian society they give so many laws relating to justice in the society. Through this article we can say that legal practice in ancient Indian was in existence in the society and they were practicing their matters in the court of justice for the people who suffered. All the law givers like Manu, Brihaspati, Yajanavalkya, Narada, and Katyayana played a vital role for the establishment and making of law for the well fare society. Manu was the sole law giver to whom all law makers follow and explain his code of law. We also find the court system in ancient period like puga, sreni,

gana. We also find the mode of evidence and punishment also. We trace that king was the sole authority of his state. For the kingship he passed from so many steps like they take such kind of education which was help them for making justice among the peoples. Hence, we can say that legal education in ancient India was present in society then they able to legal practice in the court of justice.

■■■

Reference :

[1]Jois M. Rama Legal and Constitutional History of India Universal Law Publishing First Edition 1984 Reprint 2015.
[2]Kane P.V, "History of Dharmasastras", Vol-1, Part-1 pp.349-408.
[3]Murthy H.V. Sreenivasa, "History of India Part-1" Eastern Book Company, Edition 1993, Reprint 2022, p-186.
[4]Jois. M. Rama "Legal and Constitutional History of India", Universal Law Publishing, First Edition 1984 Reprint,
2015 p-9.
[5]Sharma. S.D, "Administration of Justice in Ancient India", First Edition p-41-42.
[6]Murthy. H.V. Sreenivasa, "History of India Part-1" Eastern Book Company, Edition 1993, Reprint 2022, p-168.
[7]Diwan Dr. Paras," Modern Hindu Law", Allahabad Law Agency, 25th edition,
Reprint 2022, p-33.
[8]Jois M. Rama, "Legal and Constitutional History of India" Universal Law Publishing First Edition 1984 Reprint
2015, p-10.
[9]Dr. S. Radhakrishnan (Former President of India), The Principal Upanishads. P-170.
[10]Murthy. H.V. Sreenivasa, "History of India Part-1" Eastern Book Company, Edition 1993, Reprint 2022, p-177.
[11]Jain.P. C., "Hindu Law", University Book House Pvt. Ltd., Jaipur, 3rd Edition 2019, p4.

NEED FOR PRISON REFORMS WITH SPECIAL REFERENCE TO JUVENILES IN INDIA

VINU SREE G
Department of Intellectual Property Law
Dr. Ambedkar Law University,
Chennai, Tamilnadu

Abstract

Any national plan for the development of human resources must consider the development of children as the nation's wellbeing rests solely on the younger population. They must grow up to become physically fit, mentally alert and morally healthy citizens. They must be endowed with skills and motivations needed by society. Therefore, nourishing young minds is of paramount importance. The aim of the Juvenile justice system is to reform and rehabilitate the errant juvenile, whereas criminal trial aims at finding guilt or innocence with an intention to punish the guilt. In this paper, the author intends to analyze the existing principal legislation pertaining to the juvenile justice system, methodologies and procedure involved, reformative and rehabilitative measures available. Also, to analyze the extent to which the provisions are implemented and to suggest a few measures that can reform the juvenile justice system.

Keywords: Juvenile Justice system, Children, Rehabilitation, Legislations

Introduction

Any national plan for the development of human resources must consider the development of children as the nation's wellbeing rests

solely on the younger population. They must grow up to become physically fit, mentally alert and morally healthy citizens. They must be endowed with skills and motivations needed by society. Therefore, nourishing young minds is of paramount importance. Crime can be defined as any wrongful act and that is not just done by adults but also by juveniles. Juveniles commit crimes because of several factors. In Indian context, policy makers as well as the courts have taken a stand to aid in reformation of juvenile delinquents. The aim of the Juvenile justice system is to reform and rehabilitate the errant juvenile, whereas criminal trial aims at finding guilt or innocence with an intention to punish the guilt. This was further reiterated in the case of **Subramanian Swamy v. Raju**,[1] where the apex court has stated that Juvenile Justice system and criminal justice system are different.

In this paper, the author intends to analyze the existing principal legislation pertaining to the juvenile justice system, methodologies and procedure involved, reformative and rehabilitative measures available. Also, to analyze the extent to which the provisions are implemented and to suggest a few measures that can reform the juvenile justice system.

Juvenile Justice System in India

The Children Act, 1960 was the first legislation in the independent India, which provided for a spate criminal justice system especially for juvenile delinquency. This Act considered a boy who has not yet attained the age of 16 years and a girl who has not yet attained the age of 18 years as a "child". This legislation was not uniformly extended to all Indian states as they were free to formulate their own laws, which resulted in differential treatment of cases regarding juvenile delinquency by the court of law. To ensure uniformity, The Juvenile Justice Act, 1986 was enacted. This Act was applicable throughout India except the state of Jammu and Kashmir. The definition and other aspects regarding the age of the juveniles were carried forward from the 1960 Act.

Later, in 1992 India signed the United Nations Convention on the

Rights of The Child, 1989 which is popularly known as CRC. To ensure compliance with CRC, The Juvenile Justice (Care and Protection of Children) Act,2000 was enacted. Only after this enactment, the age of juveniles was fixed to be below 18 years, and this was irrespective of any gender-based considerations. Under this Act, the maximum punishment that could be awarded to a juvenile was three years of detention in remand home, irrespective of the nature and the gravity of the offence. In the case of **Prerana v. state of maharashtra**,[2] the Bombay high court held that minor girls rescued in a raid as children in need of care and protection. The "Nirbhaya Delhi Gang Rape Case" that occurred on December 16th, 2012, shook the entire nation, as one of the accused was a seventeen-year-old juvenile. This created a huge public outcry and people demanded lowering of the age limit and stricter punishment for juveniles involved in heinous crimes. This eventually led to the formulation of the Verma Committee, headed by Justice J.S. Verma. The committee, after taking into consideration the statistical data regarding recidivism, recommended for a stricter implementation of existing laws. The committee emphasized that lowering of age limit would not alone serve the purpose.

The government, however ignoring the recommendations came up with The Juvenile Justice (Care and Protection of Children) Act, 2015(hereinafter referred to as The JJAct) which repealed The Juvenile Justice (Care and Protection of Children) Act,2000 . This Act, differentiates petty, serious and heinous offences and it also demands to treat juvenile offenders between the age of 16-18, who commit heinous crimes as adults and put them to trial at adult courts, if the Juvenile Justice Board decides that the concerned juvenile had the level of maturity so as to understand the consequences of the act. Thereby, the 2015 Act established a link between the gravity of the offence and the level of maturity of the juvenile. The JJAct, 2015 prescribes different kinds of institutions for Children in need of care and protection (CNCP) and also for Children in conflict with the Law (CICL). These institutions

are required to be established and maintained by the respective state governments, either by themselves, or through voluntary or non-governmental organizations.

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, which sought to amend the Juvenile Justice (Care and Protection of Children) Act, 2015, was passed in the Rajya Sabha, on 28 July 2021. The 2015 Act was further amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 which has come into force from 1st September 2022. The new amendment provides that instead of the court, the district magistrate shall issue adoption orders.

As per the 2015 Act, offences committed by juveniles are categorized as heinous offences, serious offences, and petty offences. Serious offences include offences with three to seven years of imprisonment. The new amendment adds that serious offences will also include non-heinous offences for which maximum punishment is imprisonment of more than seven years, and minimum punishment is not prescribed or is less than seven years.

The Juvenile Justice (Care and Protection of Children) Act, 2015

The JJ Act, 2015 is a comprehensive piece of legislation which provides a detailed procedural setup regarding juvenile delinquency. It also provides for the establishment of different institutions to facilitate reformation and rehabilitation of juvenile offenders. Thereby it paves way for their social re-integration rather than making them habitual offenders.

Institutional Mechanisms

The JJ Act, 2015 has established different structures and institutional mechanisms to ensure juvenile justice. It is also evident that most of the Indian states and the Union Territories have effectively implemented these structural mechanisms in accordance with law. Every state government will constitute a Child Protection Society for the state and

Child Protection Unit for every district, to assist in maintenance of childcare institutions and for effective implementation of the Act.[3] The state government shall also establish a special juvenile police unit in every district. Also, in every police station, at least one officer must be designated as a Child Welfare Police Officer to exclusively deal with children.[4]

Child Care Institutions

The JJAct, 2015 prescribes different kinds of institutions for Children in need of care and protection (CNCP) and also for Children in conflict with the Law (CICL). These institutions are required to be established and maintained by the respective state governments, either by themselves, or through voluntary or non- governmental organizations. The state government has created Juvenile Justice Fund for the purpose of welfare and rehabilitation of children.[5]

All institutions, whether run by a State Government or by voluntary or non-governmental organizations, which are meant, either wholly or partially, for housing children in need of care and protection or children in conflict with law, shall, be registered under this Act. At the time of registration, the State Government shall determine and record the capacity and purpose of the institution and shall register the institution as a Children's Home or open shelter or Specialized Adoption Agency or observation home or special home or place of safety, as the case may be.[6]

Of these, observation homes, special homes and children's homes must be installed in every district and in some cases, it is sufficient to have one such home for a group of districts. Every state and Union Territory must have at least one place of safety. Other institutions such as open shelters and fit facilities will be installed depending upon the need. Every institution shall have a Management Committee, to be set up in a manner as may be prescribed, to manage the institution and monitor the progress of every child. The officer in-charge of every institution, housing children above six years of age, shall facilitate setting up of children's committees for participating in such activities as may be prescribed, for

the safety and well-being of children in the institution.[7]

Institutions for Children in Conflict with Law

Chapter-III and IV of The JJ Act, 2015 deals exclusively with Children in conflict with the Law (CICL). It provides for the establishment of the Juvenile Justice Board (JJB) by the state government in every district. If a child alleged to be in conflict with law is apprehended by the police, immediately the child will be placed under the charge of special juvenile police unit or the designated Child Welfare Police Officer. Thereafter, within 24 hours the child will be produced before the Board. A child in no circumstances will be placed in a police lock-up or in jail. The inquiry has to be expeditiously completed by the board. The child can be released on bail or sent to observation homes or places of safety as per the order. In case of heinous offences preliminary assessment has to be done by the Board to ascertain the physical and mental capacity of the juvenile. The report will be forwarded to the Children's court where the final order will be made. Thereafter, the child will be sent to place of safety till he attains twenty-one years and thereafter, transferred to the jail after considering the progress records of the child.[8]

Special Homes

Special homes established in every district, or a group of districts is utilized for rehabilitation of those children in conflict with law who are found to have committed an offence. The State Government may, by rules, provide for the management and monitoring of special homes, including the standards and various types of services to be provided by them which are necessary for the social re-integration of a child. Segregation and separation of children found to be in conflict with law can be done on the basis of age, gender, the nature of offence committed by them and the child's mental and physical status.[9]

Place of Safety

Each state is supposed to have at least one place of safety so as to place a person above the age of eighteen years or child in conflict with law

(between the age of sixteen to eighteen years) and is accused of or convicted for committing a heinous offence. Every place of safety shall have separate arrangement and facilities for stay of such children or persons during the process of inquiry and children or persons convicted of committing an offence.[10]

Observation Homes

Observation homes are to be established and maintained in every district or a group of districts, for temporary reception, care and rehabilitation of any child alleged to conflict with law, during the pendency of any inquiry under this Act. Every child alleged to conflict with law who is not placed under the charge of parent or guardian and is sent to an observation home shall be segregated according to the child's age and gender, after giving due consideration to physical and mental status of the child and degree of the offence committed.[11]

Institutions for Children in Need of Care and Protection

Child Welfare Committee must be established in every district so as to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. It will direct the Child Welfare Officers or probation officers or District Child Protection Unit, or non-governmental organizations to conduct social investigation and submit a report before the Committee. Any child in need of care and protection may be produced before the Committee by any person. A parent or guardian, who for physical, emotional, and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee. In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption. It will also decide issues connected with foster care, fit facilities etc.,[12]

Foster Care

Foster care basically involves placing a child in a family which does not include the child's biological or adoptive parents or in an unrelated family recognized as suitable for the purpose by the State Government, for a period of time. The selection of the foster family shall be based on the family's ability, intent, capacity and prior experience of taking care of children. All efforts shall be made to keep siblings together in foster families, unless it is in their best interest not to be kept together. The State Government shall provide monthly funding for such foster care through District Child Protection Unit to ensure wellbeing of the children. The foster family shall be responsible for providing education, health and nutrition to the child and shall ensure the overall wellbeing of the child. The inspection of foster families shall be conducted every month by the Committee in the form as may be prescribed to check the well-being of the child and whenever a foster family is found lacking in taking care of the child, the child shall be removed from that foster family and shifted to another foster family as the Committee may deem fit.[13]

Children's Home

Children's Home in every district or group of districts is for the placement of children in need of care and protection. The objective is to provide them with care, treatment, education, training, development and rehabilitation. The State Government shall designate any Children's Home as a home fit for children with special needs delivering specialized services, depending on requirement. The State Government may, by rules, provide for the monitoring and management of Children's Homes including the standards and the nature of services to be provided by them, based on individual care plans for each child.[14]

Fit Facility and Fit Persons

The Board or the Committee shall, after due verification of credentials, recognize any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period.[15] Similarly, they may recognize any facility run by Governmental organization or a

voluntary or non-governmental organization registered under any law for the time being in force to be fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organization.[16] The Board or Committee, as the case may be, may withdraw the recognition granted for reasons to be recorded in writing.

Open Shelters

The state government must establish and maintain open shelters and it would function as a safe place for children in need of residential support. The main objective of such shelters is to protect them from abuse and to keep them away from a life on the streets. The open shelters shall send every month information regarding children availing the services of the shelter, to the District Child Protection Unit and the Committee.[17]

Adoption

Chapter- VII of The JJ Act, 2015 elaborately explains about the procedures regarding adoption. In the case of **Shabnam Hashmi v. Union of India,**[18] the court held that adoption by any person irrespective of religion, race, caste, creed etc., to be permissible. Thus, it reiterated that The JJ Act is a secular law. Provided, the adoption must be in accordance with the procedure established by law. As per The JJ Act (2015), Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered. The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him. The Specialized Adoption Agency in every district assists in providing rehabilitation of orphan, abandoned or surrendered children, through adoption and non-institutional care. The State Agency shall furnish the name, address, and contact details of the Specialized Adoption Agencies along with copies of certificate or letter of recognition or renewal to Authority, as soon as the recognition or renewal is granted to such agencies. The State Government shall get every Specialized Adoption Agency inspected at least once in a year and take necessary remedial

measures, if required.[19]

As of July 2018, there were 629 adoption cases pending in various courts across the courts. This instigated the need to amend the provisions regarding adoption in The JJ Act, 2015. The 2015 Act was amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 which has come into force from 1st September 2022. The new amendment provides that instead of the court, the district magistrate shall issue adoption orders.

Training and Awareness Programs

Police officials being the first official contact point for both Children in need of care and protection (CNCP) as well as for children in conflict with law (CICL), is required to undergo extensive training activities and sensitization programmers to treat them delicately. Members and staff of the Child Welfare Committee, Juvenile Justice Board, Child Care Institutions and other stakeholders in the child protection system has to be adequately trained.

The JJ Act mandates induction training for newly appointed chairperson and members of Child Welfare Committee, Principal Magistrate and social workers who are members of Juvenile Justice Boards within 60 days of their appointment. Most states and Union territories in India has complied with this requirement. The training agencies are in most cases State legal services authorities, National Law Universities, state institutes of Public Administration and UNICEF. Grass root level scrutiny of the psychological and emotional wellbeing of the children is required. Children are not aware of their rights and privileges. Only through effective and nationwide awareness programs children can be protected to some extent.

Various methods are employed to spread awareness about juvenile welfare legislation as well as about the Integrated Child Protection Scheme (ICPS). Advertisements must also be done regarding the existing Child Care Institutions, list of homes and rehabilitation institutions available and regarding adoption procedures. All these

awareness programs ought to be made in vernacular language either by issuance of pamphlets or by public display of wall posters and banners. In most cases, information and other related messages such as emergency helpline numbers are broadcasted through mass media. With respect to other key issues such as drug addiction, specific dead diction camps, seminars and insightful result-oriented workshops has to be conducted.

Suggestions for Prevention of Juvenile Delinquency

Juvenile delinquency is a complex phenomenon, and it involves significant involvement of different societal institutions such as family, educational institutions, non- governmental organizations etc., All these machineries must work together so as to develop and implement prevention measures. In recent years, we could see juveniles being involved in several heinous offences. The provisions of The JJAct, 2015 has to be properly and effectively implemented so as to confer maximum benefits for the juveniles. The right measure has to be taken at the right time. Careful and delicate handling of juvenile offenders is very important.

The JJAct provides for various institutional mechanisms labeled as childcare institutions. Apart from mere constructional safeguards, it is essential to have a continuous and constant check as to whether the children are properly getting accommodated there or not. In most cases, we come across instances where children are kept in police custody, even though those are prohibited under The JJ Act. During such retention, they tend to mingle with under trial prisons, which can result in greater risk of them becoming habitual offenders in the near future. Therefore, there is a lacuna in effective implementation of laws related to the children and also maintenance of abovementioned institutional mechanisms.

Adolescent juvenile delinquency is yet again a major issue. It can be curtailed to a a larger extent through constant and effective supervision. Educational institutions play a major role in shaping the character of a

child. The Indian Constitution confers unfettered right to free education on all children below the age of fourteen.[20] Consistent measures and schemes such as Mid-Day Meal Scheme, if properly implemented can effectively increase the enrollment ratio. Special concentration has to be given, especially to children at school and regular meetings has to be conducted among the teachers and parents, so as to discuss and give necessary awareness about the physical and the mental wellbeing of the child. Along with these initiatives, the societal responsibility also plays a pivotal role in curbing adolescent delinquency. The government must concentrate only on the ultimate benefit and welfare of the juveniles while framing any piece of legislation.

Need For Rehabilitative and Social Re-Integration Measures

Eradication of root cause is a first and foremost tool to prevent juvenile delinquency. A juvenile could commit a crime because of his/her psychological instability, early life experience, socioeconomic conditions, poverty, male dominance, domestic violence, illiteracy, poor educational background, lack of support, ineffective supervision, constant abuse and torture. In certain cases, children raised by distressed and unsupportive caregivers in unstable families also results in greater chance of developing problematic behavior in them. Apart from this, emotional pressure and frustration can result in delinquent behavior. Therefore, it is a herculean task to find out the right cause behind the crime.

The JJ Act, 2015 mandates the institutions registered under the Act to provide for basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards, skill development, occupational therapy, de-addiction, treatment of diseases where required mental health interventions, including counseling specific to the need of the child, recreational activities including sports and cultural activities, equipment such as wheel-chairs, prosthetic devices, hearing aids, Braille kits, or any other suitable aids and appliances as

required, for children with special needs, appropriate education, including supplementary education, special education, and appropriate education for children with special needs. For children between the age of six to fourteen years, the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall apply.[21] In case if a child leaves the childcare institution on completion of 18 years of age, the child has to be given with adequate financial support in order to facilitate the child's reintegration into the mainstream of the society.[22]

Conclusion

The existing legislations in India, are so carefully drafted in facilitating the rehabilitation of juvenile offenders. The extent to which it is practically implemented is yet again a big question mark. The institutional mechanisms constituted under The Juvenile Justice Act, 2015 has to be properly maintained. The judiciary has helped to some extent in effective implementation of the legislations through judicial activism, that is accomplished through public interest litigation. Along with this JJ act, other penalizing legislations like CrPC and IPC have got a lighter view on juvenile offenders. The CrPC also mandates young offenders below the age of 15 could be sent to reformatory schools established by the state government. The Indian Penal code, 1860 exempts children under the age of seven from prosecution for criminal acts. At certain instances, this age limit relaxation is permissible up to 12 years.

■■■

Reference :

[1]Subramanian Swamy v. Raju, (2014) 8 SCC 390.

[2]Prerana v. State of Maharashtra, (2003)1 ILD 438(Bom).

[3]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 106, No.2, Acts of Parliament,2016 (India).

[4]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 106, No.2, Acts of Parliament,2016 (India).

[5]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 106, No.2, Acts of Parliament,2016 (India).

[6]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 106, No.2, Acts of Parliament,2016 (India).

[7]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 107, No.2, Acts of Parliament,2016 (India).

[8]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 105, No.2, Acts of Parliament,2016 (India).

[9]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 41, No.2, Acts of Parliament,2016 (India).

[10]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 53, No.2, Acts of Parliament,2016 (India).

[11]The Juvenile Justice (Care and Protection of Children) Act, 2015, Chapter III and IV, No.2, Acts of Parliament, 2016 (India).

[12]The Juvenile Justice (Care and Protection of Children) Act, 2015, Chapter V and VI, No.2, Acts of Parliament,2016 (India).

[13]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 44, No.2, Acts of Parliament,2016 (India).

[14]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 50, No.2, Acts of Parliament,2016 (India).

[15]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 52, No.2, Acts of Parliament,2016 (India).

[16]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 51, No.2, Acts of Parliament,2016 (India).

[17]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 43, No.2, Acts of Parliament,2016 (India).

[18]Shabnam Hashmi v. Union of India, (2014) 4 SCC 1.

[19]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 65, No.2, Acts of Parliament,2016 (India).

[20]INDIA CONST. art.21A.

[21]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 53, No.2, Acts of Parliament,2016 (India).

[22]The Juvenile Justice (Care and Protection of Children) Act, 2015, § 46, No.2, Acts of Parliament,2016 (India).

UNDERSTANDING THE LEGALITIES, RIGHTS, AND OBLIGATIONS OF LIVE-IN RELATIONSHIPS

Mr. Prashant Jarandikar,
Asst. Professor,
BV New Law College Sangli
Mr. Sajeevkumar Sable
Asst. Professor,
BV New Law College Sangli

Introduction

Live-in-relationship means where two persons of opposite sex live together as husband and wife without getting married. We are the Indians who are well known in the entire world for our culture, tradition usages, customs etc. We always feel proud to say that we are strictly adhered to our cultural values, morals. The concept of a live-in relationship is not digestible to our traditional mindset. Though the rate of divorce is going to increase day by day, still we believe in the institution of marriage.

Nowadays some movies are also based on this concept. On individual level we have strong belief in the system of marriage but when we hear about live-in-relationship, persons especially women indulge in such relations it shakes the mind and provoked to think why persons get entered into such relations even there is age old strong system of marriage. Married couples get social status in society as husband and wife, then what about the person involved in such relations? What are the reasons behind it? It is firm thinking that a child born out of valid wedlock can considered as legitimate child. What will be the future of a child born out of a live-in relationship? if stigma of illegitimacy stamped on his/her head for lifetime even though there is no wrong on his part.

As a person belonging to legal fraternity and social sciences the author has faith in the concept of balance between continuity and change. In order to stable social life, there must be continuity in the customs, usages, and practices

followed by society but at the same time society must accept certain changes for sake of progress. Society must allow the fresh air of thought. Till the last century to think about remarriage of widows, women education, family planning, inter-caste marriage etc. was considered as sin but nowadays it has become regular practice with changing period of time, these concepts came in our society and now become the part of social life. Whether it would be same in case of live-in-relationship?

Through this research paper, the researcher has tried to focus on understanding legalities, rights, and obligations of live-in-relationship and also tried to analyze the social, cultural aspects of live-in-relationship with the legislative and judicial approaches.

The Causes of live- in relations

For Hindus marriage is considered as a necessary sacrament i.e., samskara for begetting a son for performance of religious and spiritual duties. Hindus took the view of indissolubility of marriage. Marriage tie can't be dissolved by death also. Among the Muslims, Parasi and Christian marriage is considered as civil contract. Even under the Special Marriage Act,1954 marriage is essentially a civil contract. Marriage has so many objectives such as fulfillment of sexual need, procreation, and to maintain the moral standard of society. Among the Hindus marriage is considered as necessary samskara every Hindu must marry2.But when we eulogized our marriage system, we cannot close our eyes and ignore yet another concept which now days stand as parallel to the system of marriage i.e. concept of live-in-relationship. Being a Human, people always need mental, emotional as well as physical support from others. This leads them towards the "Live-in-Relationship". Initially, Live-in-Relationship may be in the form of residing together and sharing tress or pleasure, but gradually this intimacy may result into physical relations also.

As we have explained above, each and every person strives hard for success. Besides, their success is scrutinized in the shadow of another person's success. This cultivates seeds of competition inside them from their very childhood. They are ready to sacrifice everything to win the competition. As we know, marriage calls for some responsibility in both the partners. This responsibility

may create hurdles in their path of success. So, they resist taking responsibility but at the same time they need mental, emotional and physical support from others, which leads them towards a relationship without any restrictions called Live-in-Relationship. Live-in-Relationship can be described as under:

Why live-in relationships?

The basic idea of cohabitation or conducting a live-in relationship is that the interested couple wanted to test their compatibility for each other before going for some commitment; the other reasons are some financial concerns or homosexuality. In some parts of world these types of relationships are valid, but some countries are highly strict about accepting the concept. It has been found that the younger generation is wider to accept the live in relationships "A living arrangement in which an unmarried couple lives together in long term relationship that resembles a marriage is known as Live-in-Relationship". The legal definition of live in relationship is "an arrangement of living under which the couples which are unmarried live together to conduct a long-going relationship similarly as in marriage.

Why do the people choose Live in relationship?

a. To check compatibilities.

The prime and easily ascertained reason behind live-in-relationship is to check compatibilities of will be spouse. Many people want to ascertain before marriage that can a particular person suit them as a life partner. In such cases we can say that live-in is trial and error method.

b. Economic factor

Another important reason behind live-in-relationship is the economic factor. When we look into the condition in bigger cities, the so-called high standards. People may prefer to share a house with another person and if it is convenient to at workplace by the same vehicle then they may prefer it. This may lead to live-in among the persons who are in employment and young.

c. Emotional need

Senior citizens, particularly heirs of any deceased pension holder, disabled person prefer live-in because if they marry or remarry then there are the

possibilities that they may lose the economic benefits, pension allotted by Government. But at the same time as they are human beings they also are in need of emotional and mental support from another person.

d. Laxity of social control

Nowadays we are becoming too individualistic. We are least bothered about society; rather, no one has time to look into the personal matters of others. Lack of control of society in the personal life of individual is also another factor behind live-in

e. Interreligious or interracial issues

In India there are certain religious communities which are very rigid, conservative in the matters like marriage. They do not allow inter-caste, interreligious marriages even though there is Special Marriage Act,1955.

f. Impact of media

Cinema, drama literature is nothing but the reflection of what is happening in society at that relevant time and vice versa is also true. Cinema may bring any particular trend or may promote any particular way of thinking in society. Films like Ijajat (Nasiruddin Shah and Rekha), Salam-Namaste (Saif Ali Khan and Priety Zinta; etc.are based on the concept of live-in-relationship. The minds of youth may be influenced by such cinemas. There is a natural tendency among adolescents to believe on whatever is shown in cinema they are away from the realities of life so by watching such cinemas.

g. Complications in getting divorce.

To get divorce is a very lengthy process that involves a lot of paperwork, court procedure etc. so many people think that it is easy to be separate in the case of live-in-relationship rather than marriage which involves very time-consuming process of divorce.

h. Tendency to avoid responsibilities.

People are very alert about their rights but show scant regard towards the performance of duties. Marriage which brings so many incidences of sharing and caring some people look toward it as 'bundle of obligations' or 'institutionalized shackle.'

Live-in-Relationship in India

No law at present deals with the concept of live-in-relationships and their legality. Still even in the absence of a specific legislation on the subject, it is praise-worthy that under The Protection of Women from Domestic Violence Act, 2005, all benefits are bestowed on woman living in such kind of arrangement by reason of being covered within the term "**domestic relationship**" under Section 2(f). If we propose to enact a law to regulate live-in-relationships, it will grant rights to parties to it but at the same time it would also impose obligations on them. However, the idea like Live-in-Relationship has to pass a long way in India. Indian culture may resist growing such ideas, it may strongly oppose by Indian Society because of its strong ethical and moral value. The following news may clear the situation.

Pros and Cons of Live-in-Relationship

With a live to live a very liberal lifestyle and to know their partners better, the younger generation have been denouncing the age-old ethics and getting down to different living together agreements. Couples are choosing Live-in-Relationship, rather than marriage, for one or more of the following reasons.

- Some couples may want to spend more time together for the sake of testing their compatibility before making a lifetime commitment-marriage.
- Some couples, especially senior citizens, may want to maintain their single status and not to get married for financial or any other reasons.
- Some couples who live together do not want to get married, because they feel that marriage is unnecessary.
- Some couple such as gay or lesbian couples, o individuals already married to another person, is prevented by law from marrying.
- Some couples who are engaged and soon to be married also decide to move in together before the wedding.
- It does not restrict them for the extended period of time, and it is easier to establish and dissolve.

- Some couples may wish to prepare for what married life will be like before actually getting married.
- Some couples want to enjoy independence and privacy offered by such relationships.
- Live-in-Relationships make women active agents of their own security and freedom. The French surrealist poet Arthur Rimbaud has quoted that "a live-in relationship might help us reinvent love".
- If a married couple want to get a divorce they have to go through an endless, painful ritual of explanations, paperwork and even coercion. On the other hand, a couple in Live-in-Relationships can simply walk out without much familial and legal pressure.

Present Issues in Case of Live-In -Relationship:

The following are some serious issues to be considered in the case of living-in relationships. In India it is prohibited. In India, still it is illegal and prohibited for unmarried people to live together live-in relationships. Since it is still a new concept in India, people around might look at live-in relationship couples with suspicious, which might often cause embarrassment to cohabiting couples. In case of any disputes between cohabiting couples, or differences between cohabiting couples, it is possible that their reputation and integrity might get spoiled. A woman who live-in relationship, getting pregnant may face harsh situation because she has to take care of a child having not a legal father Mostly the laws are in favor of marriage: The law reserves many rights and privileges to married persons. Cohabitating couples carry none of those rights and privileges. It has been generally said that cohabitation has all the headaches of marriage, without any of the benefits. Cohabiting couples have little guidance regarding their legal rights in such areas as property ownership, responsibility for debts, custody, access to health care and benefits, and survivorship.

Legislative Approach

The Maharashtra Government in oct. 2008 approved a proposal suggesting a woman involved in such a relationship for a 'reasonable period' should get status of a wife. The National Commission for women recommended to

ministry of women and child development o June 30, 2008, that definition of wife as described in Sec.125 of Cr. P. C. which deals maintenance, suggested that it include women involved in a live in relationship. Aim of the recommendation was to harmonizing other sections of law with protection of women from Domestic Violence Act that a live in couple's relationship on a par with that between a legally married husband and wife. The move has come after justice Malimath committee of the SC recommended that all states turn into this law. The committee observed that "if man and woman are living together as husband and wife for a reasonable long period, the man shall be deemed to have married the woman." The **Malimath committee** had also suggested that the word 'wife' under Cr. P. C. be amended to include a 'woman living with the man like his wife' which means the woman would also be entitled to alimony.

Judicial Approach

The Supreme Court talked of the similar kind of presumption of legitimacy when it ruled that in case of long span of cohabitation, marriage has to be presumed and the party challenging the marriage has to prove its case and not the other way round. So, if a couple has been living together for sufficiently long period of time, those who wish to challenge the relationship on any ground- assuming that such a ground is available- would be required to prove that the marriage did not take place. The presumption of law would stand for marriage and the couple would not be asked to prove the fact of marriage. Naturally, it is an arduous task to prove that marriage did not take place, and the presumption of law in favour of marriage is clearly to protect live-in relationships against needless moralistic assaults by busybodies.

The Supreme Court ruling in itself has its precedent in a 1927 judgment made by Privy Council, the Supreme Court's predecessor in pre-independent India. In a Dinohamy v. WL Blahamy, the council laid down a general principle: "Where man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of valid marriage and not in a state of concubinage."

The Council made significant additions to the 1927 ruling in 1929 **in** Mohabhat Ali v. Mohammad Ibrahim Khan. **It said: "the law presumes in favor of**

marriage and against concubinage when a man and woman have cohabited continuously for a number of years." For a Live-in couple to be considered validly married, the Court wanted evidence of cohabitation for number of years, without specifying the minimum number of years. In Badri Prasad, the Supreme Court recognized a live-in-relationship as a valid marriage, accusing the authorities of questioning a relationship 50 years after the couple had begun living together, and were treated as married couple even by their relatives. **Parameshwari bai vs. U. O. I**[1] The presumption was stated in very strong term by the Madras High Court in a **Rajagopal Pillai v. Pakkiam Ammal**.[2] The marriage state being the chief foundation on which the super structure of society rests, presumption of marriage arising from cohabitation is a very strong presumption. Where a man and woman had lived together as a man and wife, the law will presume until contrary is proved, that they were living together by virtue of legal marriage. The Supreme Court has validated long live-in-relationship as marriage. And the children born out of such liaisons will no more be called nullius fillius or by blow. They will enjoy the same status as that of any kid born after marriage. Society is changing for the good of course. The recent verdict by the Supreme Court that long term relationships are acknowledged as legalized marriage is an apparent example of such a social reform. The making that was always in absolute antagonism of live-in-relationship has finally green lighted it, only if it has bricked with firm underpinning. The **Supreme Court Bench headed by Justice Ajit Pasayat** declared that children born out of such a relationship will no more be called illegitimate**. "Law inclines in the interest of legitimacy and thumps down 'whoreson' or 'fruit of adultery", it added**. In further statement, the court proclaimed that even though the assumption of marriage is rebuttable, heavy burden lies on the person who seeks to question the legality of relationship to ascertain that no marriage transpired. **In Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others** ,[3] the Allahabad High Court ruled out that "a lady of about 21 years of age being a major, has right to go anywhere and that anyone –man and woman even without getting married can live together if they wish". In Patel and others case[4] the apex court observed that

live- in –relation between two adult without formal marriage cannot be construed as an offence.

In Radhika v. State of M.P.[5] the SC observed that a man and woman are involved in live in relationship for a long period, they will treat as a married couple and their child would be called legitimate.

In Abhijit Bhikaseth Auti v.State Of Maharashtra and Others on 16.09.2009, the SC also observed that it is not necessary for woman to strictly establish the marriage to claim maintenance under sec. 125 of Cr.P.C. A woman living in relationship may also claim maintenance under Sec.125 Cr.P.C. On 23.03.2010 the honorable SC in khushboo's case, was of the opinion that entering into live in relationship cannot be an offence. A three judge bench comprising Chief Justice K.G.Balakrishnan, Deepak Verma and B.S.Chauhan said that "when two adult people want to live together, what is the offence. Does it amount to an offence? Living together is not an offence; it cannot be an offence. Living together is a fundamental right under Article 21, Constitution of India". In a first kind of a judgment under Domestic Violence Act, a Mumbai Local court has directed a city-based businessman to shell out a monthly maintenance of Rs.10,000/-to a bar singer whom he deserted after a live-in relationship. Earlier the Honorable Apex Court ruled that that if a man and woman are involved in a live-in relationship for a long period, they will be treated as a married couple and their child would be called legitimate.

Recently, Honorable Supreme Court in its verdict delivered on 21.10.2010, observed that a woman in a live-in relationship is not entitled to maintenance unless she fulfills certain parameters and merely spending weekends together or a one-night stand would not make it a domestic relationship. In order to get maintenance, a woman, even if not married, has to fulfill certain requirements. The Supreme Court threw its weight behind live in relationships on 22.03.2010, observing that for a man and woman in love, to live together is part of the right to life, and not a "criminal offence". "If two people, man and woman, want to live together, who can oppose them? What is the offence they commit here? This happens because of the cultural exchange between people," a special three-judge bench of Chief Justice of India (CJI) K.G. Balakrishnan, Justices

Deepak Verma and B. S. Chauhan observed. The court was hearing a batch of petitions filed by actress Khusboo to quash 22 FIRs filed against her by Tamil activist groups and forums for her alleged comments on premarital sex in interviews five years ago. "If living together is an offence, then the first complaint should be filed against the Supreme Court, because we have permitted living together," the court said. The bench was referring to a 2006 judgment in which the Supreme Court directed the administration and police throughout the country to protect runaway couples from harassment, and to initiate action against those resorting to violence. "It is part of the right to life to go away with someone you love," the bench said. The Supreme Court had earlier stayed a Madras High Court order of April 2008, which allowed criminal proceedings against the actress. Khusboo was alleged to have said there was nothing wrong in "sex before marriage", provided girls were careful about pregnancy and sexually transmitted diseases. Her detractors argued that the implied advice to the educated male to not expect virginity from modern girls was "offensive" and a source of "public nuisance". The Supreme Court pruned the scope of live-in relationships under Domestic Violence Act, 2005, thus preventing many women who have been dumped by their partners from claiming maintenance. The SC hinged its judgment on the fact that Parliament, while enacting the DV Act, had mentioned "relationships in the nature of marriage" and not "live-in relationships" and said both were quite different from each other. A Bench comprising Justices Markandey Katju and T S Thakur culled out four important grounds from the definition of `common law marriage' posted on the web pages of Wikipedia and said that arrangements commonly understood as live-in relationship must satisfy these conditions to be recognized as a "relationship in the nature of marriage" under the DV Act. When live-in partners satisfied these four conditions in addition to living together under one roof, only then could a deserted woman move an application before the concerned area magistrate seeking maintenance from the man who deserted her, said the court. The conditions are that the couple must hold themselves out to society as being akin to spouses. They must be of legal age to marry. They must be otherwise qualified to enter into a legal marriage, including being unmarried. They must have voluntarily cohabited and held

themselves out to the world as being akin to spouses for a significant period of time.

The SC was aware that laying down these conditions would exclude a lot of live-in partners from claiming maintenance from their male partners in case of desertion.

"No doubt the view we are taking would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for this court to legislate or amend the law," said Justice Katju, who wrote the judgment for the Bench.

The SC also stated that "merely spending weekends together or a one-night stand would not make it a domestic relationship" under the DV Act. Moreover, "if a man has a `keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant, it would not, in our opinion, be a relationship in the nature of marriage" under the Act.

Live-in relationship has got strong opposition in India. Legal acceptance is also not for such issues. Hence in India, although some couples may find living together easy, but lot of others may find themselves attacked by angry family members excluded from faith communities, baffled by how to introduce each other and discriminated against because they are not married. In some situation unmarried partners can get certain legal protections but in other situations, they are considered legal strangers with no rights, even if they have lived together for decades. This situation calls for reviving and legalizing Live-in relationships through the various amendments in privileges law. Recently, Maharashtra cabinet has taken a step towards legalizing Live-in relationship by approving a proposal suggesting a woman involved in such a relationship for a "reasonable period" should get status of a wife.

Conclusion

Even though there is opposition to the concept of live-in couples is increasing day by day in metropolitan cities. We can't close our eyes towards this reality. For legalizing live-in relationships there is so much opposition from religious and cultural groups. But steps taken by supreme are well-coming. Marriage demands commitment while in case of live-in level of commitment is less, so

today's era of cutthroat competition one may say that it is right relationship but from the viewpoint of stable, secure society, family, wellbeing of children it is not right option. Women and children are the ultimate sufferers of this relationship opinions regarding live-in-relationship are differ from person to person, but it is not right option to create physically healthy and morally upright society.

Suggestions

India is country which slowly opens its doors for any change. The concept of live-in-relationship is well known & well spread in the western countries. But in India still it is new and many of us are opposing it because we still believe in the age old. Prosperous institution of marriage which provides security and stability to our life. But by closing our closers we cannot stop the changes happens in the world. In India also number of live-in couples going to increase.

Institution of marriage is based on the commitment but in case of live –in-relationship level of commitment is less. There are so many disadvantages in live-in-relationship. But in order to protect the interest of women deserted by her live-in partner & child born out of this relationship there is need to do something.

1) The ultimate sufferer are women & children so women should make aware (Particularly adolescent girls)

2) They should be made aware that there is no specific law on maintenance, succession, right of child, custody relating to live-in relation.

3) In such a relationship rights, responsibilities and obligations of parties are not defined. Even though there are disadvantages some people are going to prefer it over marriage so there is need to protect the interest of women, but present situation in India or our cultural, traditional mind set is such that we cannot allow or tolerate to legalize it, but as like any other western countries, it may be legalized in India. In coming days so there is need to suggest something –

4) Clear provision should be made regarding the distribution of property among the live-in partners in case of separation.

5) Provision should be made for the custody of children. Because innocent children suffer.

6) What is reasonable time when parties should be treated as husband and wife should make clear.

7) Child should get the right of succession in the ancestral property also.

8) As the Supreme Court confers the status of legitimacy of such children the word 'illegitimate' in sec. 125 of Cr.P.C. should be removed.

9) Maintenance given to women in case of live-in relationship should not be given for lifetime, but for certain limited period. It should be given only to enable her to become independent; when she became economically independent, she should not claim maintenance. Otherwise, there are possibilities to misuse this provision.

■■■

Reference :

[1]AIR 1981 Kant 40.

[2](1968) to Mad. L. J. 411

[3]AIR 2002 All H.C

[4](2006) 8 SCC 726

[5]AIR 2008,