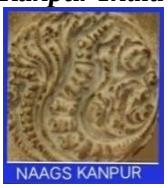
Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

PUBLIC ACCOUNTABILITY IN THE INDIAN DEMOCRATIC PERSPECTIVE

MRS. JUSTICE JYOTSNA SHARMA
The High Court of Judicature at Allahabad
Prayagraj India

Responsibility in the Indian polity is divided into legislature, executive, judiciary. Responsibility assumes that each part will perform work independently in its allotted area. In this perspective, the executive is made up of political and permanent executive. The political executive is made up of elected representatives. India is a sovereign, democratic republic, so the ultimate power rests with the people who elect their representatives to rule the country. In the parliamentary democratic system in India, trust has been placed on the elected representative for governance, but they need an efficient support system that can implement and administer the policies that the political executive decides. It is available in the form of bur. Therefore, the administrative system of the nation is an important base structure on which the executive functioning depends. It is a permanent institution. So it functions efficiently, without being affected by changes in political influence. For this, it takes the support of constitutional value system and code of conduct. It is fully responsible for its responsibility. It is aware that it is the motivator of the nation's progress. It is accepted as the most important system, that is why it has been given a place in the constitution, where the constitutional provisions regarding higher civil service were mentioned, Article 311 (1) clarifies that "any person who joins the Union / All India Service or is a member of the civil service of a State or holds a civil post in the Union or a State. He cannot be dismissed or removed by an authority which is inferior to the authority of appointment.

Such aforesaid person shall be dismissed or removed from office or reduced in rank except after an inquiry in which he shall be informed of the charges

against him and shall be given a reasonable opportunity of being heard in respect of these charges.[1]

It is an important constitutional provision which secures the service conditions of the permanent executive so that the administrator can function independently.

This concept is important in the All India Service context, it has been elaborated widely at the constitutional level.312(2) clarifies that "at the commencement of the Constitution the services such as the All India Services, the Indian Police Service shall be deemed to have been established by the Constitution in these articles." The establishment of other All India Services has also been vested in the Parliament. This makes it clear that an important role has been assigned to the higher bureaucracy. Along with this it is necessary to understand that the accountability of bureaucracy is essential for democracy, good governance and development administration. It is hoped that the concept of good governance will execute its functions in the absolute best possible way. Despite this belief, many rules have been imposed on bureaucracy by various means. In which bureaucracy, legislature, executive regulation is included. Their main objective is to ensure accountability, accountability in the permanent executive.

Regulation and control of the administrative structure are broad terms, many aspects can be included in them, but in the theoretical context "control" means an objective and the process of setting the process in the right direction to achieve an objective. Internal control is defined as a process by which public servants raise their concerns about corruption and impropriety in administration, whether public servants consider that internal accounting was carried out efficiently, whether the organization whether the organization's attitude is negative or positive towards people who raise their voice against corruption, whether the security system for people who raise their voice against corruption is implemented properly in practice and whether the leadership of the organization has an active desire to eliminate corruption. External controls are defined as whether investigations, reports, objections are made easily available, whether corruption or impropriety is handled appropriately by external audit channels, whether the reporting of corruption by the media is accurate and fair. Whether civic organizations actively participate in the corruption control process, whether judicial decisions are properly implemented and punishment is effective.

Control over administrators is an important concept in public administration, which is necessary to make administration more accountable and responsible. Accountability is an important concept in public administration. “Public accountability is the central principle of a democratic government. Accountability provides legitimacy to government action and ensures that the government serves the national interest.

[1] K.S. Subramaniyan, Indian Administration : Ethics Policies and Prospects 2006, Social Change, Vol. 37, No. 3, 2007

Good governance demands that the government should be responsible and sensitive towards its citizens. In this context, public organizations and political leadership are the treasury of the nation, who promise to work in the interest of the society. In the context of public administration, responsibility and accountability take on a special meaning because public organizations and individual officials are duty-bound to implement public policy in a clear and transparent manner. Civil servants are expected to fulfill their duties based on professional standards and ethical code of conduct, while standards and values are essential in public administration, which ensure satisfactory performance with great difficulty. Many governments enforce fair dealing through various control measures. Tries to deal with administrative abuse of tax power. Whereas accountability is actually a multidimensional concept. Two important distinctions can be made. One approach considers the accountability structure from the context. Here public administration is charged with converting inputs (policies, programs and resources) into output goods and services. In this approach, organizations, resources and personnel are rationally protected according to the standard of efficiency and effectiveness. The second approach views accountability in terms of process and emphasizes internal, external administrative actions and procedures. From this point of view, accountability is tested in terms of internal control and external control system.

Accountability and administrative control are intertwined. It means that accountability is ensured when administrative control is established. Control over administration is ensured in every political system but its role has increased in developing countries. Whereas in the past, due to development administration, administration has expanded by implementing development processes. This fact is also true for Indian administration where the role of contemporary administration has become related to working effectively in the development process. Indian administration is governed by the same measures as the administration of other countries. "The techniques of internal control are budgeting, survey, business level, hierarchical structure, investigation, pressure group, press, annual secret report. External control over administration is exercised by legislative control, executive control, judicial control. The measures of legislative control in India are- Questions, Motions, Zero Hour Conversation, Adjournment Motion, Criticism Motion, Budget and Parliamentary Committee, Public Accounts Committee, Estimates Committee, Public Institutions Committee, Lower Legislation Committee and Futures Committee. In this way, control over administration takes many forms (and) measures of executive control include the power to appoint and remove public servants, law-making power, ordinances, civil service code, staff agency, budget, appeal to public opinion (and) judicial control. The primary objective of the Act is the protection of private rights. Legal control over administrative functions emanates from the rule of law. Courts can intervene in any abuse of power, jurisdiction, error of law, error in finding facts, administrative error.

This control is ensured and enhanced by the system of selection at the primary level. "Though in strict technical terms it is not included in the definition of

control, but it is the right people in administration who have the right amount of knowledge and value structure and are able to perform their tasks. Is the basis of selection for those who want to implement the most responsible and appropriate. The selection of the higher civil service is done by the Union Public Service Commission. Which is an autonomous constitutional body. It is established to ensure that the best minds with a set of high moral values should enter these services.

The status of autonomy of the Union Public Service Commission is ensured by the constitution. According to Article 315(1), "Subject to this article, there shall be established a Public Service Commission for the Union and for every State."

Similarly, another article defines the main functions of the Union Public Service Commission. According to Article 320(1), "It shall be the duty of the Union and State Public Service Commissions to organize examinations for appointment to the services of the Union and the services of each State, respectively." The Union Public Service Commission conducts the examination as per the constitutional provision. It explained in its 61st Report that "The Commission conducted 14 examinations for selection by examination methods, 10 for civil services/posts and 4 for defense services, a total of 18,93,030 applications were received and processed; 5,342 candidates were interviewed for civil services/posts (interviewed by Services Selection Board of Ministry of Defense for Defense Services) and 4896 candidates for various posts, 3079 (358 candidates from reservation list) 3079 civil services/posts and 1817 defense They were recommended for services/posts.

Union Public Service Commission seeks to maintain the highest standards of transparency. For this, it established many arrangements. Its main objective is to bring the best candidates in the government selection system. So it maintains its own standards for such transparency. It acknowledged that "with a view to enhance transparency in the working of the Commission, the existing policies, procedures and practices were re-examined and it was decided on several occasions that information relating to policies and procedures should be made available to the public/candidates/under RTI Act". To be shared with the candidates seeking the information. Some of these areas are name in the reservation list, minimum required marks for selection, standards for test recommendation for a particular category of candidate, etc."[2]

It is true that the selection process is corruption free in the country. The basis of autonomous selection system is constitutional, in addition to this, the basis of higher administrative service is also constitutional system and it has been controlled in various ways. But the sad thing is that despite this it has not been able to save itself from unethical activities. Its expressed form comes in the form of corruption. The major factor that calls for analysis is what are the

[2] P. Bilmoria, J. Prabhu, R.M. Sharma, Indian Ethics : Classical Traditions and Cotemporary Challenges, Vol. 1, Ashgate Publishing Ltd., New Delhi, 2007

factors that lead to the collapse of the value system and value structure of the administrative system. Have happened

These can be understood in terms of three major frameworks, environmental, nature of corrupt practices, role of political pressure. It can be helpful in knowing the real character status of bureaucracy and the downfall of value system. In developing countries like India, bureaucracy is the main instrument of change. In the words of FW Riggs, this society is a reflection of the prismatic sala model. Where the explained values have their effect. These societies create special environmental cover. Which separates them from western liberal democracy society.

Bureaucracy in these countries is full of various evils in which red-tapism, insanity of considering oneself bigger than the system, misuse of power etc. are found in sufficient quantity. The environment of a developing country is a symbol of poverty, malnutrition, lack of social and economic infrastructure. To counter these shortcomings, developing countries like India have adopted a new development model to provide service to their citizens.

Instead of working towards the targeted objectives, the development administration in the nation has been dynamic in another area where the cause of degeneration in the value system has developed into a major blocker of development. "Inadequacy of governance is considered to be the most important obstacle to development in many developing countries. Perhaps a more serious constraint than the lack of capital or foreign aid, Herbert Emerick, an important researcher and administrator, estimates that 80 percent of the world's unfulfilled projects are due to governance."

The administration has failed to achieve its goal in terms of development outlook in the country. It is a global experience that "the developing bureaucracy has at least stood against the image of Babelism, efficiency, rationality, functional specialization, impersonality, non-political bureaucratic hierarchy, which is associated with the image of Western industrial nations. These developed bureaucracies may appear to be good when they are compared to the same level of bureaucracy or imitators in the developing countries, but the bureaucracies of the developing countries certainly did not invent corruption, irrationality, inefficiency, but these evils affected more and less able to bear them. Whatever the approach to the Weberian norm in its proper context, students of development administration with it inevitably focus on the less than ideal situation as their particular problem."

The Indian administrative system is riddled with many such problems. The common man in India looks at bureaucracy with awe. Indian society looks at the administrative services as a place of power. In this perspective the Indian bureaucracy expresses the omnipotent position of the nation. In this specific environmental framework, a serious problem and shortcoming in this has arisen in the form of corruption in the organizational structure which takes various forms.

Although administrative corruption is difficult to define, it has been defined in different ways by different experts. According to Mr. Shawn, "The definition

of corruption is classified into definitions that can be centered around public office, market principles, and public interest. Apart from this, the conceptual approach of corruption analysis, considering corruption as a complex social pathological phenomenon, can be a major tool for defining, explaining, predicting and controlling corruption. Examples of viewpoint approach can include ethical, systematic, market and exchange related, power, functional, social and cultural viewpoints. In this the definition focused on public situation is accepted. It means that public officials, in the process of public administrative duties, use public status to fulfill their personal interests."

This means that administrative corruption is the misuse of power by the official by virtue of his official position. The developing administration has used a leviathan. They are service providers, but instead of providing service in a normal way, they misuse their position and even become blockers of availability if proper bribe is not available to them. Bhattacharya has defined it in this context. According to him, "Administrative corruption consists in delaying or obstructing the delivery of a service, unless a bribe is given."

The network of corruption is wide spread all over the world. Mainly where the structure of development has been based on the public welfare system of development and bureaucracy has been given an effective role. This organization has collected more money at the individual level. It is a general acceptance that "trillions of dollars are given in bribes all over the world. India is a major contributor to this as it is a major economy and one of the most corrupt."

Indian bureaucracy has not been able to do a good job on corruption issue. The situation here is pathetic. According to a study by Transparency International, based in Berlin, "Corruption in India has further degenerated in the past year. In Transparency International, India has received 3.1 points on a scale of zero to this. India has been ranked 95th in the list, which is below China. In the South Asia region, India has performed worse than both Sri Lanka (86th) and Bhutan (38th). India-based Political and Economic Risk Group, a consultancy agency, has asserted that the Indian bureaucracy is the worst in South Asia. Dealing with the Indian bureaucracy was a slow and painful process. Indian bureaucracy is difficult to reform. Indian bureaucracy is given good salary after 6th pay commission. This has inclined the interest of Indian youth towards Indian administration. Its social prestige, job security and good salary structure have attracted more students. Despite all these factors, there are many instances when the Indian bureaucracy has been found involved in corrupt practices.

There are many reasons for the decline of the Indian bureaucracy, due to which this decline has occurred and due to which it has become one of the most corrupt in the world. The theoretical framework of these factors can be understood as a networked complex phenomenon. "Corruption emanates from three distinct and usually interrelated levels, namely the functioning of individuals in an organization, the organization itself and most importantly the external environment. Under which both individual and bureaucratic

organizations work. First is the development of corruption at the individual level. In this context, public choice theory views corruption as a form of limited rational decision-making that leads to pre-determined outcomes."

Another view in this context observes that bureaucrats who engage in corruption weigh the risks and benefits. In the context of the corruption process, "scholars including Robert Kilt Gard and Susan Rose Ackerman claim that public officials are corrupt only for one simple reason: they perceive the potential benefits of corruption as outweighing the inherent dangers of corruption."

The role of organization is important in corruption. The Indian bureaucracy functions in an ecological model where the social welfare environment is dynamic. Bureaucracy is considered to be the master of its functions which is empowered. As a result, the administrative system provides opportunities for corruption. The individual bureaucrat should have the opportunity to become corrupt within the organization. It depends on many factors such as the extent to which his official activities are supervised by his higher authority and the intensity of his relations with the public. The level of transparency and accountability in the organization and its privileged powers in the organization and here the issue of corruption in the organization assumes relevance."

In this context, the role of the system in promoting corruption cannot be underestimated. Indian bureaucracy has been found to be affected by this as it is generally found that the bureaucratic system in India is so complex and guarded that it helps bureaucracy to siphon off money as a common feature.

"In the words of GE Cadden and NJ Cadden who are of the opinion that corruption is systemic in nature. They have come up with a new type of corruption which can be termed as 'systematic corruption' which creates situations where wrongdoing has become the norm and standard acceptable behavior serves the purpose of the organization according to the accountability idea. becomes necessary and belief becomes the exception rather than the rule. In such circumstances, corruption appears to be so routine and institutionalized that wrongdoing is supported by organizations from behind and in reality individuals who live by the old rules are punished. Systematic corruption arises whenever the administrative system itself establishes the hoped-for objectives of the organization by transferring it from one place to another and forcing the participants to follow it."

When this theoretical understanding is applied, the factors of corruption in the Indian bureaucracy emerge more clearly. There is no doubt that it is very difficult to get a government job in India, those who are more interested in it make connections with people who have power. In this way, this nepotism helps in creating corruption. In many instances, it has been seen that the bureaucracy has discretionary powers for this, such as in the case of seasonal Amin for revenue collection in a district, the appointment is to be in the hands of the District Magistrate, it can open a path of corruption, in addition to the appointment There is evidence that bureaucracy has a direct role in creating conditions for bribery and related benefits. And nepotism is born."

India being a developing country, sets every task in another perspective. “The individual seeks to widen his social network, which is based on deep primary relationships. In modern bureaucracy where impersonality is demanded, intimate personal relationships sometimes interfere with the attainment of the goals of the organization.”21 Such interactions are different from the interaction concept of less intimate relationships with the public. Instead of using this platform to involve the citizens in the development process, the bureaucrats misuse this platform and indulge in corruption by providing benefits such as contracts, allotment shares and allotting construction resources to inefficient people and in return S demands. It is a kind of systematic corruption.

Another factor that has contributed to the growth of corruption in the Indian bureaucracy is the nexus between the bureaucrat and the general public, their interaction can reinforce the feeling that "the civil servant and the public are transactions that that does not meet the requirements, yet it can be processed, legal issues can be easily settled and jobs can be ensured to the eligible workers.” Following one corrupt act leads to another. It's like a hair-opening effect. The Central Commission of Inquiry in its report on an IAS officer has explained the process of fighting corruption. In fact, "disproportionate assets" have been found to be associated with bribery and its demand. The abuse of position has not been accidental or unnatural but has been related to negligence of duty.” This clearly shows that such cascading effect exists in the Indian administrative system as one form of corruption is deeply intertwined with the other.

Another related factor which has led to the decline of administrative system moral values is linked to the cultural and attitudinal set up of the wider society, in some or the other way the statement is true that it affects the entire administrative psychology in the country and leads to corrupt practices. may be born. The cultural value system is also responsible for the rise of corruption in bureaucracy. “The weight of tradition is such that even when the bureaucrat himself does not practice his belief in traditional values, he is still under constant pressure to bow down to these values.”

These values connect the bureaucrat psychologically with the family, kin and the wider society in many instances. Sometimes these affect his work culture and nepotism, money collection activities are born.

The structural structure of the Indian bureaucracy is very rigid. There is excessive centralization of power in a few hands. There are about 15000 bureaucrats in various departments which include P. P. P. P. P. T. J. P. T. J. P. T. J. P. J. etc. This small group of people is responsible for decision making and departmental policy making. There are less than 6000 Indian Administrative Service officers in the country who run the general administration in the country. This type of organization structure has certainly contributed to the rise of corruption in the Indian bureaucracy. "Over-centralised decision-making structure and rigidity of process many a times lead to delay of official works, as a result those who want to speed up the

transaction resort to methods like bribery, profiteering which eliminate complex regulation and indecision". can be done."25

This cultural aspect of the rise of corruption has been widely analyzed in developing countries including India. In one such analysis it is found that it is difficult to define corruption and understand its real meaning in many countries. Gift giving in India is often not included in corrupt practice which makes its study extremely complicated. "The question of what constitutes corruption in a particular nation therefore remains unresolved and the definition incomplete. Even in societies where the social and legal concepts of corruption are relatively established and common to a point, many definitions of the term exclude many of the actions that many people see as corrupt, even many. The more frequently used definition, abuse of public office for some personal gain (Treisman 2000), may be erroneous due to the oversimplification of the context.

It is true that social, economic factors and types of institutions also help in determining the extent and possibility of corruption in a country, although it is a very difficult task to identify these interrelationships in a country specific study. In the case of India, however, this statement is true that many socio-economic factors are intertwined with the institutional arrangements which have helped in the germination of corruption. "It is interesting to look at nation-specific institutional arrangements as they relate to corruption, but we do study national culture and social institutions and their relationship to various institutional environments on the side of corruption, but we believe this would be of academic interest." . The national culture of a nation is characterized by various variables such as hierarchical order, decision-making ability, level of privilege exercise, degree of entrepreneurship, socio-economic factors and others."

There is another factor related to this which is related to political culture. In a developing country like India, the situation is not encouraging in this regard because by and large people have accepted the political culture in the form in which it is available. The political culture of the nation is a part of the nation. India does not do well in this "The lack of accountability that is related to corruption prevalence can be related to the political culture of the nation if the political culture is conducive to corruption. makes power easier, individuals are more likely to use power for personal gain (Shung 2002). Furthermore, nations with a long colonial history often tend to have political structures that are insensitive and unaccountable (Lodge 1999, Mavuso and Ballia 1999). In these contexts, public office is used for personal gain. becomes expected. In this way, the political culture of a nation, in a part of its political culture, a causal relationship is established between the lack of accountability and the prevalence of corruption. Fighting corruption by limiting privileges,

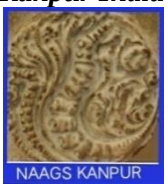
establishing democratic and transparent procedures in such societies is stopped by corrupt political legacies."[3]

Political cultural value system is also related to the new concept of power distance which has been popularized by Hofstede. This concept explains many points such as the institutionalization of the rules of privilege power, illegal behavior and corruption in power structures. "The power distance (PD) aspect of Hockstead (1980) refers to the extent to which less powerful members of organizations and institutions accept that power will be unequally distributed. Power distance is an important factor in corruption because critical power-distances provide fewer deterrents and balances against abuse of power. Examples of countries with high power-distance include India, Mexico, Poland, South Korea, Pakistan, and Kenya (to mention just a few)."

It is used in these societies "In such societies, rigid respect for authority and centralized organization is the rule, and inequality in power provides a cultural framework in which corruption is possible to occur." According to Gurgar and Shah, the control-oriented structure of bureaucracy in developing countries creates a situation for civil servants and elected officials in which autonomy is achieved to a great extent through public pressure. This autonomy means that the essence of discretion is high and that improper functioning is important."

[3] Rumki Basu, Public Administration : Concepts and Theories, Sterling Publishers, New Delhi, 1994

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

PARLIAMENTARY DEMOCRACY AND PUBLIC ADMINISTRATION IN INDIA

DR. RAJESH SINGH
Principal Secretary, Vidhan Parishad
Government of Uttar Pradesh
Lucknow India

Public administration is one of the important subjects related to human life. Administrator is an important component of this dynamic subject. He implements the public policies of the government. The government conceives policies, formulates them, implements them and then supervises them. The implementation of the policies is in the hands of the administrators. Various factors that help in the implementation of these public policies, in this the value system of the administrators cannot be given less importance. If these levels diverge from the moral values, it is highly possible that the entire objective of the government policies will be defeated.Therefore it is necessary that the administrators should possess the highest standards of universal moral values. "This value embodies what an organization exists for and should be the basis for the behavior of its members. Values determine what is right and what is wrong, and what is right to do and what is wrong to do. To behave ethically is to behave in accordance with what is right or moral in general. Ethical behavior is the basic foundation of mutual trust." [1]Administrators express this mutual trust with the public and they also behave with confidence with the government. This belief increases when moral values spread in the administrative environment. Such a value system which is based on the faith of the public, the faith of the government and personal value system, then it is the main basis of the administrative system that gives successful results.In this perspective, it is necessary to understand and define the real meaning of values "There are many approaches to define values in administration, many scholars extend it to the administrative structure while others consider its source in the supreme law of the land. York Wilburn has

[1] B.D. Mathur, Combating Corruption - The Ethical Dimension, Mainstream Weekly, Vol. XLIX, No. 36, August 27, 2011

explained the basic concept of these administrative values in one of his articles 'Types and Levels of Public Morality'. In his view, these values include "fundamental honesty, working according to the law, avoiding conflict of interest, service orientation, correct performance at the procedural level, ethics of democratic responsibility, ethics of public policy maker and ethics of social integration and compromise". may be included[2]. This value is essential for all members of private and public administration. Many scholars have studied the real meaning of ethics in public administration. The moral values of bureaucracy are very important, they are the main components of human life and soul.

According to Donald Manzel, "Public administrators cannot ignore the moral values while providing service to the public and these values form the body and soul of the public administrator."[3]

J. Rohr has studied the role of moral values in America. He has given a special place to ethics in American bureaucracy. According to him, "ethics in public administration is a better word than ethics, policy science. This is due to the fact that it contains the code of character and ethics of a public servant."

Against this background, the role of values in Indian administration cannot be given a low place. In fact, it is true in developing countries that public administrators play an important role in implementing public policies. India is a developing society "where bureaucracy plays an important role in establishing a social welfare framework for the general public. So that basic facilities can be provided to them and they can grow on the path of development which they have to achieve, it provides the constitutional framework which is available in the form of structures and organs at different levels of government. Apart from this, it also explains the rights and duties of the citizen, therefore, these are the basis of the governance of the country, to be considered as the basis in terms of aims and objectives and structures and functions. India is a democratic country where some part of the constitution was accepted on 26 November 1949. It was fully implemented on 26 January 1950. It is a legal document that not only establishes the political structure at the governance level, but it also contains a philosophy. This philosophy is the personification of the basis of the social and economic environment of the nation. It is also the base source of the basic infrastructure value system of every citizen of India.

The Preamble is the main source of the philosophy of the constitution. It contains certain elements which have universal value. It is the director of the basic structure of the people of India. It is also the basic foundation of administrative ethics and administrative value system of the nation. Every administrative person is expected to base his administrative work on these values.The Preamble is the key to the Constitution. Whatever is broadly

[2] Camilla Steners, The Listening Bureaucrat : Responsiveness in Public Administration, Public Administration Review, Vol. 54, No. 4, 1994

[3] David Johnson, Thinking Government, UTP, 2011

explained in the Constitution is minutely expressed in the Preamble. "The preamble includes the ideals, goals and basic principles of the constitution. The main features of the Constitution have been developed directly and indirectly from these objectives mentioned in the Preamble. "6 In the same sense, a learned person has said that it is the source of the value system and the spirit of Indianness. "Pandit Thakur Das has described it as the best glorious part of the constitution, the soul of the constitution, the key to the constitution, a great prose poem."

Every word of the constitution is important for the administrator. That particular person is the soul and spirit of the nation. It makes it the most integral part of India, of which it is not only an integral part, but also the main driver for development, growth, reform and development and implementation of development-based social public welfare system.

The elements of the Preamble are based on the Statement of Objectives presented by Pandit Nehru in the Constituent Assembly on 22 January 1947. These elements are complete in themselves but there are other areas from which administrators can derive the main elements of administrative ethics.

One can derive the value elements of an administrator from other philosophical underpinnings of the constitution, many and varied in the constitution. In these, fundamental rights, policy-directive elements of the state and fundamental duties are included. Fundamental rights are the personification of the fact that the makers of the Indian constitution have given special importance to individualism. He thought that the most important goal for an individual should be personality development so that a quality life can be built. Full individualization of personality can be possible only when freedom and equal equality are provided to the individual by the state. When a person can be given equality in the society. Therefore, the fundamental rights ensure that every person of the nation can work while exercising full freedom, except for the reasonable restrictions mentioned in the constitution, which are imposed on every person by the constitution. These clever restrictions have given complete immunity to the nation and the constitution from undesirable activities. It has helped in keeping the nation unbroken and maintaining unity and integrity. No administrator is beyond these limits. Everyone has to work within these rights and reasonable restrictions, because the administrator is going to implement the law in the nation, so it is necessary that the administrator will also give respect to these rights and implement all the policies within the constitutional limits. . The administrator will also respect the fundamental rights of the citizens. These rights are fundamental to the governance of the nation for the administrator. No governance structure is an exception to this. These rights form the basic structure on which the liberal environment of Indian society is built.

The second source of value system of an individual originates from the policy-directive element of the state. It is a policy direction for the ruling government that it should formulate policy under the direction of the policy direction of the state. These are important because they describe what is to be achieved. It

includes those goals of our social, economic and political life which are still distant dreams.

In this perspective, it becomes a duty for an administrator to exercise his administrative competence in such a way that these ideals are achieved. It is not possible for the administrator to make new laws to implement the directive principles of the state because this work is done by the legislature. Despite these limitations, administration derives its essence and core from the policy-directing element of the state. After relying on these provisions, the administrator gets a better idea of what are the real areas of administration where the administration has to work. Another source of value system of the administrator is also available in the form of fundamental duties which were added after the 42nd constitutional amendment. This amendment was included in the constitution as 51(a) by Mrs. Indira Gandhi government. Which has to be done by every citizen of the nation in his life by adding the new provision to the basic duties in the constitution.

An administrator is not a specific person of the nation. He is a citizen first. Along with this, he is also an administrator who has been given an important task by the public and the government to discharge the responsibility of his tasks and duties.In this background the role of the administrator is important. The administrator not only preserves it, discharges it, but also takes many new elements from these basic duties. On complete study it can be said that it is the constitution which has given values to the citizen and the administrator. No administrative system can function without them. The constitutional basis of administration is the ultimate truth in a democracy and a free nation. Values are the key to run the nation's governance. It assumes different forms under different administrative circumstances. In reality, it derives its life from the constitutional background itself.

An administration not only implements the government policy but it also continuously develops new plans and programs which are meant for the public. In this context he is a creator. Different thinkers have tried to see it from this point of view. Charles Goodsell "constructed the administrator as an artist" that provides the basis for an approach that focuses on the functions of government at the "micro level". Borrowing from the field of aesthetics and theory of art, the working style, nature and creativity of the administrator have been expressed. Goodsell expresses this vision in the form of a normative principle, which supports such terms as efficiency, economy and accountability.In this perspective the administrator has to plan like an artist who creates a work of art. The administrator can do this when he values. without moral The administrator on the basis cannot do this.

The art of public administration considers it necessary to imbibe these values. “Integration of these values helps in developing an overall efficiency which is

obtained as a single suggestion for the problems arising in good governance and self-governance."[4]

Good governance is an urgent need for the developing country India. It demands that the bureaucracy work against this background of the value system. Values can be local and universal but universal values are those values which are enshrined in our constitution and are embedded in the work culture of proper administrative set up. These universal values determine integration in every social structure and cultural structure, in a plural society as we experience in our nation. These diversities of the nation are respected and regulated by the universal value framework which the administrative and state functionaries express through their actions.

Therefore it is accepted that "though at the core of all value systems there is some specific universal value which is universally accepted. It leads the complete humanity towards a better state. In a given culture some variation in the value system may however occur due to circumstances." This variation may occur in a pluralistic society like India but the administration in the nation is based on universal value framework, the constitution of which is the main personification, hence these variations. Can never cross the constitutional values because these are the reflection of the minds of great philosophers.

These values are necessary for the administrator because they are established by the constitution but in certain instances it can take new form and approach, for example, the administrator wants to achieve decentralized governance. In that situation, new values are born, which though will be related to a certain constitutional situation. Administrative values are a subset of political values. A decentralized democratic system which is found in India, local government has been established at the village and city level after the 73rd and 74th constitutional amendment. Here the role of administrative values becomes very important. The political values that are derived from the constitution and the great national tradition play an important role in this context. For example, the use of political values and decentralized political systems are linked to democratic values on a large scale and enable these systems to contribute to them. "Decentralization of power in the most important political value of decentralized governance system, direct participation in policy-making and solving them by reducing differences, respecting difference of opinion, preserving minority opinion and encouraging consensus in decision making" Doing can be included." Administrative value system cannot remain separate from political value system as it is an important component of it. The role of administrative value system becomes more intense in this context and contributes to the implementation of decentralized governance. India is a rural country where decentralization of power has taken place.

In this system, the role of administrative system is important enough that it can be fulfilled only by interweaving constitutional values, universal values and

[4] Eran Vigoda, Public Administration : An Interdisciplinary Crincal Analysis, CRC Press, 2001

politico-administrative values and if need arises then inventing new values, which though have their origin in the country. Keeps in the method of Indian administrators are the mainstay of the whole country, he has to implement public policies and superintend the government programs and schemes for the upliftment of the public, if his value system is not proper, it is very likely that these policies will not be implemented properly. cannot be done and the ultimate goal is lost. Therefore it becomes necessary to understand the value system in administrative practice.It is sad that in the present times there has been a big erosion in the value system of the administrator. It is a serious problem in developing countries that many of them do not follow the value system enshrined in their constitution. They have succumbed to social and corrupt evils on most occasions. They are more focused towards their personal interests than the national interest. As a result, the larger objectives of the nation have almost been defeated. It has also influenced the nation building process in these nations. In this background it becomes necessary to find out the major factors which have eroded these values in Indian administration.

There are many aspects of the decline of values in the administrative system. At the primary level, its deficiency is related to psychological factors, while its manifestation is expressed in the form of corruption, especially in the form of misappropriation of funds. Psychologically every administrator is a human being who has to survive in the available environment which consists of material things. The allure of money is more in developing countries. In comparatively developed countries where minimum standard of living has been achieved, while the people of developing countries are trapped in the vicious cycle of poverty, they are not in a position to solve their problems. Especially financial problems, so it is very possible for the administrator to be easily attracted to greed. person hobbes on the psychological level Manav or Machiavelli is in human form. Both philosophies conclude that humans are governed by self-interest. Machiavelli goes so far as to say that one would not grieve as much at the death of one's father as at the loss of one's ancestral property. The person of Hobbes is also very self-centered. Bureaucrats also belong to the human race, so getting trapped in corruption and the possibility of root erosion can easily happen. It also includes bribery, giving unethical contracts to wrong people, supporting unethical work in administrative structures such as getting undue benefits from big industrial houses, industrialists at the official site. An updated work has been done on this aspect of administrative corruption, which has come to know that "the low officials and politicians steal from the state and cheat the people because such environment is available among the people, such permission is given in the spirit that if The officials immediately above them steal and cheat, the lower government officials and security personnel will believe that they also have permission to make themselves rich by wrong means. Thus when it is known that such corrupt practices are acceptable, those seeking to maximize profits based on self-interest will hardly miss a good opportunity by which they can use their position of authority to make personal gains. Whatever one's view of

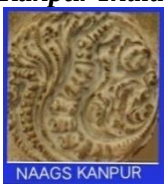
human nature and human fallibility, if the political culture as found today tolerates corruption, then everyone will try to grab the opportunity to be corrupt." Indian administration can be called a mixed administration, it has absorbed the constitutional values, yet it has the values and sentiments of British colonial rule, in which belief in the supremacy, non-relationship with the common people of the nation and involvement in corrupt activities are the main factors of this belief. Also, this is not an unusual action. Although corrupt practices are not accepted at any point in a democratic constitution-based society because the sovereignty of the people is supreme and the bureaucrats are the servants of the people. Not above the public. Despite these concepts and philosophical acceptances, Indian bureaucrats have not been successful in converting them into public servants. It is still expressed in the form of bureaucracy and control of the people-owner. It was a colonial tradition which is still found alive in the Indian bureaucracy. As a result, bureaucracy gets involved in corrupt practices. "The bureaucracy is out of control. The colonial traditions of bureaucrats that they are the rulers and the people are the ruled, are still continuing. Corruption has increased even to the local level of administration that they are unable to get even 1/4th of the funds allocated from the Parliament and State Legislature. Rajiv Gandhi's statement was that the public could get only 16% of the funds allocated in the budget, which are allocated for them in the budget. The public has failed to stop it. It has reached the village panchayat level, the police have become more repressive. Lathicharge and firing by the police have become a common occurrence. Even the Left government in West Bengal is no exception to this after the Nandigram incident. In 2005 alone, 44 people were killed by police firing. Between 1990-1999, 5994 shots were fired in which 1753 people died and 683 were injured. The same police failed to control the criminals who rule the cities. Children are kidnapped, killed for not paying ransom. Women are not safe in Union capital Delhi. Gone are the days of Pattam Thanu Pillai, when he was forced to resign on charges of firing. Politicians are its partners. There is a general feeling that all politicians except a few are making money. The old respect for politicians has ended. Such is the feeling towards the political parties that they do not go to them to solve the problems of the people. These are the most dangerous symptoms because politicians and political parties are essential for the strength of democracy. Legislature members change parties for personal gains. Politicians behave as if they want to prove that they have no ideology."

The above statement reflects the insensitivity of the police and general administration. This is a sad reflection of the low level of political parties and the dubious alliance that develops between politicians and administration. The fact is that there has been a massive erosion in the values of the administrative system. This system reflects the spirit of colonial administrative administration on many points which makes the development of the nation extremely problematic. In this perspective, it is necessary to understand and identify the major factors that encourage the erosion of the value system of administration.

The truth is that value collapse, corruption of wealth in the form of individualization which is inherent in the human species has been induced by scarcity but these values are not a sufficient reason for the collapse of the system. It is accepted at this point that the Indian administration has adopted many of its values from the colonial administrative system, but after the adoption of the constitution, it can be logically expected that the administration should perform its tasks with constitutional sentiments. Despite this, in this context, instead of maintaining the values, it has displayed degeneration.

The points to be considered are in the context that the administration has to work within the theoretical framework. Despite this, administrative There is a deep price collapse in the system. Its effect has come to the fore in the form of inferiority in the service delivery system of the government on which the social welfare system depends. India is a democratic nation which has accepted the socialist pattern of system keeping in mind the lower class people of the society which will take care of the deprived section of the society, be it existing as social or economic underprivileged. The upliftment of this class will depend on the prior activism of the administration. However, the biggest threat to this philosophy and work of the government will come from the role of a passive or less efficient administrative system. This will happen if governance is not based on values. This value is the mainstay of the Indian state.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

75 YEARS OF INDIAN DEMOCRACY : AN APPRAISAL

PROF. R. K. PANDEY
Professor of Law
V.S.S.D.College, Kanpur India

When we think about 75 years of Indian Democracy, first we have to ponder over the reasons of origin of Democracy as modern political system. The foremost example of modern democracy before us is United States of America which have constitutional supremacy like India. However, British Parliament is said to be Mother Parliament though instead of constitutional supremacy, there exists parliamentary supremacy. Although there are many facets of Democracy but when we think of it as a citizen liberty seems to be the most valuable essential of this system. Liberty of the people as an essential ingredient of governance owe its credit to Jhon Locke a jurist of the Natural Law School. Constitutionalism inspired by Locke reflects in American Constitution.

After independence while Indian constituent assembly under Dr. Rajendra Prasad was busy in framing our constitution, world community was pondering over the impact of two world Wars and the future courses of action for peace and stability under the umbrella of United Nations.

As far as liberty or regime of rights is concerned, Universal declaration of Human Rights was made on 10th December, 1948.

Indian Constitution from its inception incorporated liberty as its goal in preamble, as justiciable rights under fundamental rights and a guidance in directive principles of State Policy.

In A.K. Gopalan Vs. State of Madras[5] our apex court interpreted the liberty in its literal sense under the impact of British Parliamentary Supremacy. However, the journey from A. K.Gopalan to Maneka Gandhi[6] changed the concept of procedure established by law into due process of law. Caravan moved ahead and Article 21 of Indian constitution become the repository of rights.

[5] AIR 1950 SC27.
[6] AIR 1978 SC597.

So far as accountability of various organsor agencies of state is concerned, initially only judicial decisions were required to be reasoned & fair but after A. K. Kraipak[7] , even administrative authorities are mandated to follow the principles of Natural Justice.

Now, the concept of right has been expanded manifold. There are generation of Human rights and specific regimes like Women's right and Children's right jurisprudence. In these situations of hue & cry of rights everywhere in the world, let us ponder over the concepts of right. If we see the basic premise of the world in its antiquity, ancient India having duty oriented and western world having right oriented society.

In Geeta we learn about deZ.;s ok f/kdkjsLrq. Even Kelsen & Duguit define the right in terms of duty. In 1976, Fundamental Duties were added in our constitution. Rights & duty are correlative of each other. Only those rights are perfect rights which have their correlative duties meaning thereby no right can be a perfect right unless it has a correlative duty.

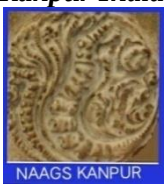
Many of these issues were thought of much before India became free. Even as India fought for its independence from British colonialism a vision of what Indian democracy ought to look like emerged. As far back as in 1928, Motilal Nehru and eight other Congress leaders drafted a constitution for India. In 1931, the resolution at the Karachi session of the Indian National Congress dwelt on how independent India's constitution should look like. The Karachi Resolution reflects a vision of democracy that meant not just formal holding of elections but a substantive reworking of the Indian social structure in order to have a genuine democratic society. The Karachi Resolution clearly spells out the vision of democracy that the nationalist movement in India had. It articulates the values that were further given full expression in the Indian Constitution. We notice how the Preamble of the Indian Constitution seeks to ensure not just political justice but also social and economic justice. We likewise notice that equality is not just about equal political rights but also of status and opportunity. In 1939, Gandhiji wrote an article in the 'Harijan' called 'The Only Way' in which he said "… the Constituent Assembly alone can produce a constitution indigenous to the country and truly and fully representing the will of the people" one based on "unadulterated adult franchise for both men and women". The popular demand in 1939 for a Constituent Assembly was, after several ups and downs conceded by Imperialist Britain in 1945. In July 1946, the elections were held. In August 1946, The Indian National Congress' Expert Committee moved a resolution in the Constituent Assembly. This contained the declaration that India shall be a Republic where the declared social, economic and political justice will be guaranteed to all the people of India. On matters of social justice, there were lively debates on whether government functions should be prescribed and the state should be bound down to them. Issues debated ranged from right to

[7] AIR 1970 SC150.

employment, to social security, land reforms to property rights, to the organisation of panchayats.

K.T. Shah said that the right to useful employment could and should be made real by a categoric obligation on the part of the state to provide useful work to every citizen who was able and qualified. B. Das spoke against classifying the functions of the government as justiciable and non justiciable, "I think it is the primary duty of Government to remove hunger and render social justice to every citizen and to secure social security". The teeming millions do not find any hope that the Union Constitution will ensure them freedom from hunger, will secure them social justice, will ensure them a minimum standard of living and a minimum standard of public health". Ambedkar's answer was as follows: " The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these Instruments of Instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a court of law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realised better when the forces of right contrive to capture power." On land reform Nehru said, that the social forces were such that law could not stand in the way of reform, an interesting reflection on the dynamics between the two. "If law and Parliaments do not fit themselves into the changing picture, they cannot control the situation". On the protection of the tribal people and their interests, leaders like Jaipal Singh were assured by Nehru in the following words during the Constituent Assembly debates: "It is our intention and our fixed desire to help them as possible; in as efficient a way as possible to protect them from possibly their rapacious neighbours occasionally and to make them advance" Even as the Constituent Assembly adopted the title Directive Principles of State Policy to the rights that courts could not enforce, additional principles were added with unanimous acceptance. These included K. Santhanam's clause that the state shall organise village panchayats and endow them with the powers and authority to be effective units of local self government. T. A. Ramalingam Chettiar added the clause for promotion of cottage industries on co-operative lines in rural areas. Veteran parlimentarian Thakurdas Bhargava added that the state should organise agriculture and animal husbandry on modern lines

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

CASCADING ROLE OF GOVERNANCE IN ENSURING JUDICIAL ACTIVISM IN INDIA

JIVANTIKA GULATI
Assistant Professor of Law
Symbiosis Law School, Pune
Symbiosis International (Deemed University)
Vimannagar, Pune, Maharashtra India
RADHA RANJAN
Ph.D. Research Scholar
School of Law and Governance
Central University of South Bihar, Gaya India

ABSTRACT
In our nation, the three pillars of democracy are the legislature, which enacts laws, the executive branch, which puts laws into effect, and the judiciary, which interprets laws and rules to guarantee that all three branches of government operate effectively. The enchanting words of Dr. A.S. Anand points out, *it* is crucial that all three branches of government work in unison if the country is to advance.
[1]But the situation today is worrying. The legislature and the executive either struggle to carry out their responsibilities with the utmost earnestness or try to dodge them. Therefore, the judiciary, the third institution, is the only one left to use judicial activism to address the complaints of the public. There has been activist approach by the judiciary especially for the disadvantaged or downtrodden sections of the society. On the other hand, the judges may have crossed the line and forgotten what was acceptable. However, the judicial inventiveness that hasn't been focused on and used by the other machinery is what the general public sees and views as the judiciary overstepping the other organs.
Key words: Judicial activism, Judiciary and Governance.

[1]Ranjan Sudhanshu, *Justice, Judocracy and Democracy in India: Boundaries and Breaches*, Routledge Taylor and Francis Group, 2016.

INTRODUCTION

When the judiciary performs in the form of an activist, performs its duties and functions for betterment of the society, it is referred to as Judicial activism. The Judicial activism is defined by the Black's Law dictionary as: Judicial decision-making theory where judges use personal opinions on public policy, among other things, drive their judgements. Judicial activism is also referred to as the court's innovative, creative, and law-making role contrasts with its mechanical, conservative, and static vision and its reliance on past precedents.[2]

The judiciary, which makes up the third pillar of democracy, protects citizens' rights and liberties by ruling laws invalid when they have an impact on society as a whole. What constitutes judicial activism is fiercely disputed in this nation. Some people think that the judiciary is abusing its authority and moving too far beyond its bounds. The similar explanation is given by detractors who argue that the judiciary has frequently surpassed the authority of other government agencies. As a result, it is clear that the legislative and executive branches failed to influence the judicial branch.

When it comes to working system of the higher judiciary, it has come as a saviour to the people in ensuring rights and protection to them. In ***Keshavananda Bharti v State of Kerala***[3] it states that any constitutional amendment which hampers the basic structure of the Constitution will be declared and null and void. In ***Maneka Gandhi v Union of India***[4] declared that procedure followed by the court should not be only fair, just and reasonable but also not denying the liberty to the individual.

In the abovementioned case laws, the creativity of the judiciary is very much evident which shows the judiciary is ensuring good governance at the national level. However, there are certain interference made by the higher judiciary in the smooth functioning of the legislature and the executive.

Historical Background

The doctrine of separation of powers is not of recent origin. It can be dated back during the era of Aristotle. In the later part, James Harrington and John Locke opined this concept. However, the much of the credit goes to Montesquieu for bringing this concept in concrete form in his book "*Spirit of Laws"*[5] which states, there can be no liberty when the legislative and executive powers are combined in one person or in one body of magistrates... If the judicial powers are not distinct from the legislative and executive powers, there is no such thing as liberty. If the same guy or the same body... used three abilities of three different organs, everything would come to an

---

[2]Aiyer, (2009)Concise Law Dictionary 636 Lexis Nexis Butterworths. *Wadhwa Nagpur*(3rd ed.).
[3]AIR 1973 SC 1461.
[4]AIR 1978 SCC 1461.
[5]*Supra* Note 2 at 1

end.[6] Article 50 of the Indian Constitution[7] under Part IV Directive Principles of State policy calls for separation of the judicial and executive branches. However, the reality is that the President of India, performs the judicial functions. It can be highlighted under Article 103(1) of the Constitution,[8] where the question arises regarding disqualification of member belonging to the either house of the parliament under Article 102(1)[9], in those matters the final call will be taken by the Hon'ble President of India for approval. There is one more instance where the executive is performing legislative functions as reflected in Articles 124[10], 126[11], and 127[12] of the Constitution in appointment of judges. Under Article 56[13], dealing with President's resignation, will be communicated by the Vice President to the Hon'ble Speaker of the Lok Sabha.

Opinion of Judiciary on Separation of Powers

The following cases try to explain about aspect separation of powers within India. In the case of ***Re Delhi Law Act case***[14]it was held by Hon'ble then Chief Justice Kania of the Supreme Court, although there is no explicit mention of the division of powers in the Indian Constitution, it is obvious that a legislative is established by the document, and specific guidelines are set forth for requiring that legislature to adopt laws. Does it not indicate that other organisations, such as the executive or the judiciary, are not designed to carry out legislative functions unless it is clear from other articles of the constitution? As per the Biblical apologue, Francis Bacon in his *"Essay of Judicature* "has expressed his desire by emphasising importance on 'Temple of Justice'.

Solomon's throne emphasises on majesty of justice system, the word 'Lions' denote the legislative and executive organs of the government. The *'Majesty of Justice system'* is been supported from both sides, the legislature and the executive. As far as the concept of 'Sovereignty' is concerned, it is pertinent to state that democracy vests with the will of the people.

In the case of ***Indira Nehru Gandhi v. Raj Narain***[15]it was stated by Hon'ble Justice Y.V. Chandrachud where the American Constitution establishes a strict division of political functions into the executive, legislative, and judicial branches. A fundamental tenet of that Constitution is that no department should use the authority granted to it for any other purpose. The distribution of powers is the same as the Australian constitution. The Indian Constitution, in

---

[6] Chatterjee S, *Separation of Powers and Judicial Activism in India*, Indian Advocate, vol. 34-35, 2006-2007.

[7]The Constitution of India, art 50

[8]The Constitution of India, art 103(1)

[9]The Constitution of India, art 102(1)

[10]The Constitution of India, art 124

[11]The Constitution of India, art 126

[12]The Constitution of India, art 127

[13]The Constitution of India, art 56

[14] AIR 1951 SC 332

[15] AIR 1975 SC 2299.

contrast to previous constitutions, does not explicitly grant the three types of power to three distinct State agencies. The State Government cannot evade from its functions to provide welfare and services to the citizens of the society. Also, they cannot give an excuse of getting over-burdened in its work.

JUDICIAL REVIEW AND JUDICIAL ACTIVISM

Judicial Review

Judicial Review in common parlance is referred to as the power given to struck down provision(s) of law which is not in consonance with the Fundamental Rights enshrined under Part III of the Constitution. Article 13(1)[16] states that laws in force within India before the commencement of the Constitution, if they are not in consonance with the Fundamental Rights, till that extent it is declared as void. Article 13(2)[17] states, that a particular State shall not make any rule or legislation which abridges or takes away rights under Part III of Constitution, and any deviation is made it is will be held as void. The Higher judiciary, i.e. the High Courts and the Supreme Court have the power of Judicial Review under Articles 226[18] and 32[19] of the Constitution respectively. At the later stage, it became a part of Basic structure which is itself an initiative of the Supreme Court judgment which now its unamendable by the parliament. The former Chief Justice of India and the Former Chairperson of Human Rights Commission of India, Justice Dr. AS Anand, on "judicial review' and 'judicial activism- need for caution"emphasised the state is composed of three coordinated organs: the legislative, executive, and judicial branches. The aspect of Judicial Review came into existence with the landmark case of ***Marbury v. Madison***[20]which there was a paradigm shift from judicial opposition to judicial omnipotence. In the case of ***Brown v Board of Education***[21]the Hon'ble Supreme Court of U.S.A struck down the laws which called for segregation of the Negros in the arena of public education. By this we can decipher that such aspect is not new to India but also has a global acceptance and recognition.

Judicial Activism

As per the Black's Law Dictionary, Sixty Edition, [Centennial Edition (1891-1991] defines Judicial Activism as the Judicial decision-making theory wherein judges permit their own personal ideas about public policy, among other things, to govern their choices.This concept means when the judiciary is active and plays a prominent role in dissemination of justice. Sir Ronald Dworkin does not consider the *"strict interpretation"* of constitutional text because it put restrictions on constitutional rights to those acknowledged at a specific historical time by a small group of people.

[16]The Constitution of India, art 13(1)
[17]The Constitution of India, art 13(2)
[18]The Constitution of India, art 26
[19]The Constitution of India, art 32
[20] 1 Cranch 137 (1803).
[21] 347 U.S. 483

Former Chief Justice of India A.M. Ahmadi in the Dr. Zakir Hussain Memorial Lecture stated, Public dissatisfaction with the political process has grown in recent years as the incumbents of Parliament have become less representative of the wishes of the people. This is the reason the (Supreme) Court had to enlarge its jurisdiction by, occasionally, giving the administration new instructions.

The characteristics of Good governance as highlighted by UN Economic and Social Commission for Asia and Pacificis, good governance consists of eight key elements. It adheres to the rule of law and is participative, consensus-oriented, responsible, transparent, responsive, effective, and efficient. It ensures that corruption is kept to a minimum, minorities' opinions are considered, and the voices of the most vulnerable members of society are heard during the decision-making process. Additionally, it responds to the requirements of society, both now and in the future.[22]

Democracy is considered to be the most approved form of good governance, which is been refined since time immemorial, as per the Article 25 of the International Covenant of Civil and Political Rights[23], Article 3 Protocol I of European Convention on Human Rights,[24] Article 23 of the International American Convention of Human Rights[25] share the similar idea that every individual has right to make decisions and policy to ensure harmony and equilibrium in the society. Effective good governance is enshrined in both Part III of the Indian Constitution's Fundamental Rights and Part IV's Directive Principles of State Policy. As a protector of the Indian Constitution and all of its rights, the court has frequently been essential in upholding them. It acts as a watchdog when there are rights abuses through sanctions and a set of regulations. It is admirable that the judiciary contributes to preserving the balance between citizens' equality and freedom. Therefore, preserving the court's independence is essential to ensure that it operates effectively and fairly, notably for the advantage of society's most disadvantaged groups.

LANDMARK CASES ON JUDICIARY AND GOOD GOVERNANCE

In the case of ***Randhir Singh v UOI[26],*** came for equal pay for equal work will be considered as a fundamental right enshrined under Article 14 and 16 of the Constitution. Justice P.N.Bhagwati in case of ***Hussainara Khatoon[27]***it was highlighted the provision of free legal services which is essential for reasonable, fair and just procedure which comes under ambit of Article 21 of the Indian Constitution. [28] But however, time and again, the Judiciary has overreached its limits and making interference with the legislature and the

[22]UN Economic and Social Commission for Asia and Pacific.
[23]International Covenant on Civil and Political Rights, art. 25.
[24] European Convention on Human Rights, art. 3 Protocol I.
[25]International American Convention of Human Rights, art. 23.
[26] AIR 1082 SC 879
[27]**AIR 1979 SC 1369**
[28] The Constitution of India, art. 21.

executives. In ***Maneka Gandhi v Union of India***[29] dwelled upon overruling the A.K. Gopalan case while propagating the idea of due process in law.

Hon'ble Mrs Justice Nagarathna, Judge of Supreme Court highlighted the judiciary's role in ensuring good governance derives from its guarantee to the average person. The most important factor in attaining good government under the Constitution is the independence of judges. Every constitutional functionary, public official, and citizen must work to ensure good governance, but the judiciary plays a crucial role in doing so by giving the general people the comfort that they may still turn to constitutional courts to have their rights upheld.In order to prevent injustice, courts will continue to act with compassion, inventiveness, and fairness (superficial). The protection of civil and political rights, as well as the equality and dignity of all people, are essential components of the rule of law, which is upheld by an independent court."[30]

In the famous case of ***Vishakha v State of Rajasthan***[31]There was a gap in the law or regulations regarding sexual harassment at the time the instance of sexual harassment took place. In this instance, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redress) Act, 2013, was implemented in addition to the sexual harassment standards.

In ***Re Networking of Rivers***The Honourable Supreme Court placed focus on the interlinking of rivers because it is associated with several issues, including land, the environment, etc. Additionally, it urged lawmakers to pass legislation governing river interlinking.

In ***Shakti Vahini v Union of India***[32]The court reaffirmed the crime of honour killing and outlined specific rules to address this problem. Despite being a terrible crime, honour killing is not covered by the IPC or any other relevant legislation. Another reason for hostility to judicial activism is the issues with employing the court's directives as a sort of governmental policy targeting social minorities. The court may be asked to monitor the continuous activity that has a major influence on many individuals as a result of this so-called constructive activism. Due to this, it frequently imposes onerous authoritative requirements on the court. Despite this, the court proposes dubious government projects involving social minority who want a long lifespan for an itemised organisation and ongoing legal oversight. In India, actions like the ongoing investigation into the "Jain-Hawala-Dairies Scam," the ***Vineet Narain v. UOI***[33] by the Apex Court in drafting another writ known as a *"Continuing Mandamus,"* the setting up of positive headings relating to the removal of contaminating businesses that cause harm to the Taj Mahal and their

[29] AIR 1978 SC 593

[31]AIR 1997 SC 3011

[32] 2018 7 SCC 192

[33]1 SCC 226

termination, and the banning of the employment of vehicles over 15 years old and over 15 miles long in the National Capital Region.

CONCLUSION

Judicial activism entails being engaged in a matter and using one's own judgment. It includes every facet of judicial review and the fundamental rights of residents of the country. Without a doubt, the concept of judicial activism is not different from standard legal procedures.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

A SOCIO -LEGAL STUDY ON RESERVATION WITH SPECIAL REFERENCE TO CREAMY LAYER IN INDIA: A CRITICAL ANALYSIS

DHWANI MISHRA
Vth year B.A.LL.B. (Hons)
Law College Dehradun
Uttaranchal University Dehradun India
DR. KANCHAN KISHOR RAWAT
Assistant Professor of Law
Law College Dehradun
Uttaranchal University Dehradun India

Abstract

The Reservation was implemented for ending the caste-based system and gave equality to every community of the society who was not attain the equality in the society. The main idea of implementing reservation is to represent the backward class of the society which was continuously exploited by the upper class of the society. Undoubtedly Provisions of the reservation is now only benefitted by the political parties. Political parties increasing reservation day by day for their own vote gaining policy. Ones who really needs the benefits of the reservation they can't get because of the caste-based reservation policy. Reservation is not a bad policy until and unless it is benefited by those who really needs. Caste-based reservation shall be abolished and Provides benefits of reservation not only the backward classes but to those who is really deprived and need upliftment in the society. Reservation was only a temporary provision but so-called political parties enlarged the provisions of reservation. Reservation system can be made to those who are really poor. It should be based on economic condition. Governments could collect the data of the people who were under the poverty line and assist them with provisions of reservation either the belongs to any caste or religion. Also, Reservation policy worsen the level of education system the deserving candidate cannot attain the good position because of reserving seats to undeserving people who secured very less numbers. This article consists many constitutional provisions regarding the reservation, debates on reservation, doctrines, also creamy layer is discussed. The main question arose that really the reservation boosts

deprived classes. The motive of implementing reservation is being fulfilled or not, or really the backward classes can take up the benefits of reservation.

Keywords: Scheduled castes(SCs), Scheduled Tribes(STs), and other backward classes(OBCs), Reservation, Economic weaker section, Socially Backward classes, Creamy layer

INTRODUCTION:

Reservation in India is a controversial and complex topic that has been a source for a debate from many years. The reservation system in India is a policy that grants a certain percentage of seats in education, employment, and politics to people from historically disadvantaged groups. The system was introduced in the Indian Constitution to address the issue of social inequality and to provide equal opportunities to people who have been historically marginalizedThe origins of the reservation system can be tracked back to the British colonial period when the government introduced policies to give preferential treatment to certain communities in order to promote social and economic progress. However, it was only after independence that the reservation system was formalized and extended to all citizens of India. The policy of reservation is based on the principle of affirmative action, which is a method of providing positive discrimination to underprivileged sections of society to promote their social and economic progress The policies of reservation in India covers several categories of disadvantaged groups, including Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), and Economically Weaker Sections (EWS). The reservation policy in India has been a topic of much debate and controversy, with both proponents and opponents of the policy presenting compelling arguments. . Opponents of the policy argued that the reservation policy is a form of discrimination against people who do not belong to the reserved categories. They argue that the reservation policy has led to a situation where merit is often overlooked in favor of caste and community considerations. They also argue that the reservation policy has created a culture of entitlement among the reserved categories, which has led to a lack of motivation and a sense of dependency. Despite the controversies surrounding the reservation system, it has been a significant force in promotion of social justice and equality in India. Reservation system has helped to create a more diverse and inclusive society, where people from different backgrounds have an equal chance to succeed. It has also helped to reduce the gap between the privileged and the underprivileged, and has contributed to the social and economic progress of the country. After India's freedom, the authenticity of the Indian government firmly connects to its capacity to coordinate the enormous, generally minimized populace into the Indian political establishment. Before the Freedom of Indians, pioneers inclined toward particular treatment for bunches that accomplished social segregation because of the standing frame work. The reservation policy is an old age policy for providing equal status to every one in society. In our constitution, special provisions were in corporate for the betterment of the Scheduled caste and Scheduled tribes. Also, many provisions

were mentioned for the abolition of untouchability in society. There were many pronouncements of the Indian judiciary which helps backward classes for having equal status and provide equal opportunity in society. The foremost reason for providing reservations to the Scheduled Caste and Scheduled Tribes is to heighten the social and educational status of the Scheduled Caste and Scheduled Tribes.

HISTORICAL DEVELOPMENT OF RESERVATION IN INDIA

Ancient India

The approach of reservation in ancient India was primarily established on the caste system, where people were divide into various castes based on their birth. The caste system had a significant impact on social and economic relations in ancient India, and it was believed that the caste one was born into determined their profession, social status, and even their access to education. The reservation system in ancient India was practiced in various forms, with different reservations made for different castes. For example, reservations were made for the Brahmins, who were the priests class, and the Kshatriyas, who were the trooper. The reservation system was also extended to the lower castes, such as the Shudras, who were considered to be the lowest in the social hierarchy. The Shudras were often banned to get education and were not allowed to perform certain jobs. The reservation system in ancient India was primarily based on the principle of social justice. It was believed that certain castes were disadvantaged and needed to be uplifted. The reservations were made to provide these disadvantaged castes with better opportunities and improve their overall social and economic conditions. The reservation system in ancient India was also aimed at promoting social harmony and ensuring that all castes were represented in various spheres of life. The reservation system in ancient India was not without its drawbacks. The reservations made for certain castes often created resentment among the other castes. The Brahmins, who were considered the most privileged caste, often resented the reservations made for the lower castes.

In ancient India the policy of reservation was also criticized for perpetuating the caste system. The reservations made for the lower castes were often viewed as a way to reinforce the social hierarchy, rather than to break it down. The reservations made for the lower castes were often seen as a way to ensure that they remained in their place and did not rise above their station.

The reservation system in ancient India was a complex and multifaceted practice that had both positive and negative aspects. The reservation system was primarily based on the caste system and was aimed at promoting social justice and equality.However, the reservation system also had its drawbacks, such as creating resentment among the other castes and perpetuating the caste system. Overall, the reservation system in ancient India played a significant role in shaping the social and economic relations of the time, and its legacy is still felt in modern India.

In medieval India the policys of reservation is a topic that is still being discussed and debated by scholars and historians. The practice of reserving

certain positions in the ruling hierarchy for specific castes or classes of people has been present in India since ancient times. However, it was during the medieval period that this practice became more institutionalized and widespread. In the medieval period, reservations were primarily made for certain castes or classes of people in the ruling hierarchy. This was done to ensure that the interests of all sections of the society were represented in the ruling class. The practice of reservations was not based on merit or competence but on the person's birth in a particular caste or class.

In the early medieval period, reservations were made for the Brahmins, who were considered the apical caste in the Hindu social hierarchy. The apical caste were considered the custodians of knowledge and wisdom and were responsible for performing religious rituals and ceremonies. They were also the advisors to the ruling class and enjoyed significant power and influence.

The practice of reservations in medieval India was not without its controversies. Those who were excluded from the reserved positions often protested against the system. They argued that it was unfair to give positions based on birth and not on merit or competence. They also argued that the system perpetuated social inequality and prevented social mobility.

Despite the debates and controversies, the practice of reservations in medieval India continued. The system evolved and changed over time, but the basic idea of reserving positions for specific castes or classes remained. The practice of reservations in India today has its roots in this medieval practice.

Reservation in medieval India was a practice that aimed to ensure that all sections of the society were represented in the ruling class. The practice was based on birth rather than merit or competence and was not without its controversies. Despite the debates and criticisms, the practice of reservations continued and has had a significant impact on the social and political structures of India today.

In the year of 1882, William Hunter and Jyoti Rao Phule gave the concept of caste-based reservations.

In 1902, Shahu Maharaj introduced the reservation in the field of education for non- brahmins.

Then, in the year of 1933, The Prime minister of british, Ramsay MacDonald provides a communal award also known as the MacDonald award. This award provides a separate electorate for the Scheduled caste, Scheduled tribes, and other minority class of the society. Mahatma Gandhi and many other Indian were against this communal award. But on the otherside, Dr. B.R. Ambedkar who came from the minority classes and other minority leaders was in the favor of this system. In September 1932, both Dr. B.R. Ambedkar and Gandhiji mutually signs the Poona pact. The main objective of this pact was to uplift the deprived classes or minority sections of society. In the year of 1990, V.P. Singh who was the Prime Minister announced that the reservation of twenty-seven percent was implemented for the other backward classes in government and other public jobs.

CONSTITUTIONAL ASSEMBLY DEBATES

K.T. Shah on providing Reservations to the scheduled castes or backward tribes said: ...it is no secret that they have been neglected in the past. So, they must be given, special treatment at the stages of their education, which provides opportunity for employment to other cases where their backwardness is the hindrance to the development of the nation. (Debates, 1948)

He further stated that it is just to provide a reservation to bring the backward classes up-to-date to the current scenario. (Debates, 1948)

P.S.Deshmukh asked for fair representation from all the castes whoever is backward.

Quote:'...all I want is that the parliament and the legislature should be free to see that there isa fair proportion of representation from all the classes and communities in India. (Debates, volume IX, 1949).

Dr. B.R. Ambedkar who was the chairman of the drafting committee stated that the provision of Reservation, the drafting committee introduced the word 'backward'. (Debates, Volume VII , 1948).

The word 'backward', was introduced to reflect that the constituion framers are providing the Reservation benefits not to the specific class or castes System but to the backward section of the society. Hence the Reservation is not exclusively provided to a section of class based on caste but based on backwardness or inability to represent in the system.

Firstly, we have to understand the meaning of the "Creamy layer" and what it talks about, "Creamy layer" refers to the people of the backward class who were progressive in society educationally, socially as well as economically.

In 1971, the concept of a creamy layer was introduced by the "Sattanathan Commission", in which the creamy layer OBC was exempted from the reservation the criterion for the creamy layer was fixed at Rs 1,00,000(1lakh) for people whose parent's total income is 1lakh. They came under the provision of a creamy layer. Subsequently, it was again amended in 2004, and the gross amount became 2. 5 lakhs. Then, In the year "2008", the gross amount was 4.5 lakh. In 2013" it became 6lakhs, then the year 2017 gross amount was again revised, and it became Rs8 lakhs.

The judgement of State of Kerala v NM Thomas is the first case regarding the Creamy Layer. The Supreme court upheld that the backward class get the reservation promotion of government jobs. (State of Kerala v. N M Thomas, 1975) In 1990, V.P. Singh's government proposed a 27% reservation for OBC in All India Services. It was challenged in court and said that it violates Articles 14,15 &16. In the case, Indra Sawhney v Union of India 1993 Mandal commission constitutes a second backward class commission. Its main objective is to identify how to give reservations to other backward classes or economically backward class. (Sawhney v Union of India, 1992)

In 1991, P.V Narasimha Rao's government implemented a 27% reservation to OBC's . As soon as these criteria were implemented and challenged in court.

The petitioner said that caste-based reservation is not the sole criterion for giving reservations. The reservations was also given to socially and educationally backward people. Also, it cannot exceeds the 50% cap. The

petitioner also mentioned that our Constitution only allows reservations for the socially and educationally backward class, not the economically backward classes. Additionally, he asked if it is a 16 (1) exception to 16 (4).

The bench of 9 judges is led by "B.P. Jewaan Reddy" while giving its verdict 27% The judgment was in Favor of both the petitioner and the government. 27% quota for the OBC has also declare the concept of creamy layer and applied it in the matter of OBC. In M. Nagraj v Union of India, the court said that the concept of a creamy layer only applied to the OBCs, not to the SCs and STs. (M. Nagraj v Union of India, 2006).

Jarnail Singh v Lachhmi Narain Gupta 2018 (Jarnail Singh v Lachhmi Narain Gupta 2018, 2018).

A five-judge bench formed to analyze the statutory potency of the Nagraj case. The honorable court said that SC/ST who came under the Creamy layer should be excluded from the reservation but the state denied it and said that the M. Nagraj case should need not to be abstracted.

In B.K Pavitra v Union of India (B.K Pavitra v Union of India, 2019) 2018, the honorable Court said that Reservations are not permanent right. It is based on the data that if any class is inadequately represented then only reservations should be given. Then In 2022, Jarnail Singh versus Lachmi Narain Gupta (Jarnail Singh v Lachhmi Narain Gupta 2018, 2018) · M.Nagaraj v union of India was again challenged by numerous centre and states and the main issue was raised whether creamy layer SC and ST shall barred from prevailing reservations in the promotion. The court laid down in its judgment that the state should commensurate data that shows that a particular class is Inadequately represented in society.Also,the court said the exclusion of the creamy layer in SC's and ST's shall be fulfil the motive of Article 14 that every person should be treated equally, the person who shall be uplifted in society so that the motive of the reservations should be fulfilled. The court further said that according to Article 41 Presidential list (backward classes) can be defined, but the court cannot alter that list and only exclude that person who came out of the Untouchability and backwardness and belongs to the creamy layer.

CONSTITUTIONAL PROVISION: -

The main Objective of providing reservation to the Scheduled castes(SCs), Scheduled Tribes(STs), and other backward classes (OBCs) was not only to giving the jobs to these communities but also empowering and enriching their status in the law making policy for the state. There are so many constitutional provision that have been incorporated to promote and safeguards the rights of the backward classes to involve in the national mainstream. The general look of constitutional provision regarding reservation are as follow:-

The people who benefited through reservation they wanted that the system shall be continued for their generation too. The reservation system is only the self-perpetuating mechanism for the reserved community but the person who really needs upliftment who were really deprived in the society they can't get that benefits. Caste based reservation cannot be appropriate in the society because it

only benefited the particulars caste but not the needy one. Almost 90 years have passed, and the reservation is the same, although it has increased more and more with time. However, the concept of reservation can fulfil its motives, to uplift the backward classes in society. The reservation put into practice was a temporary provision. In 1950 when our Constitution had set in a frame, it became a mandatory provision. After the Constitution was encased, the government only broadened the concept of reservation. It also became a vote-gaining policy for the political parties. In today's era, we need to focus on this crucial matter, that the one who is Deprived and admittedly necessitates reservation only can get the benefits of the reservation instead of any respective community.

In nut shell if we talk about the history of litigation, it is as follows :

- In the year 1962, (southern railways v. Rangachari, 1961) Honorable Supreme court of India can permitted reservation in the matter of promotions.
- In the year 1992, (Sawhney v Union of India, 1992) Supreme court of India reverse the decision of Southern railways v Rangachari case and said reservation would not be applied under article 16(4) in the matter of promotion.
- In the year 2016 ,(Rajeev Kumar Gupta v uoi, 2016) This case is mainly concerned about that in Indra Sawhney v union of India that mainly talk about the‘’Backwardclasses’’as under article16(4)of Indian constitution. It completely ignored the disabled person.
- In the year 2020 (Siddaraju v State of Karnataka, 2021)This case overruled the judgement of Rajeev Kumar Gupta and held that the person who have been disabled they also have right to get reservation in the matter of promotions.

CONCLUSION:-

The policy of reservation was implemented to control the atrocities of upper-class people and the upliftment of the backward classes of the society. But main motive for implementing this policy lost some where. The quota system in the State of Tamil Nadu proved to be a disaster for society since the Brahmans had successfully positioned themselves on the band wagon of the underprivileged and had benefited greatly from it.

Reservation is good or bad is always a matter of debate. Undoubtedly, the person who is benefiting from the benefits of the reservation says the reservation is good, while the person who is not benefited criticizes the reservation. The issue is not whether the reservation is good or bad, the issue is that the purpose for which the reservation was brought has been lost. The reservation was implemented to improve the backwardness, but to get a lot of benefits, reservations for upper-class people also go backward.

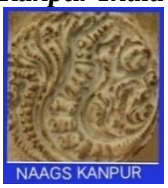
Speaking, the landmark judgment of Ashok k Thakur v. Union of India (Ashok k Thakur v. Union of India , 2008) clearly states that if a caste-based reservation exists in our country, then surely our nation will go in backwardness instead of forwardness.

Undoubtedly, the reservation is good as long as it provides for the deserving candidate who is deprived or either belongs to any caste or community. The caste-based reservation should be abolished and the benefits of the reservation should be given to those who need it for the disadvantageous community reservation is a way to provide equality The government is free to implement any methods which fits to increase opportunities for disadvantaged groups in society.Lastly, in concluding my words, the reservation policy becomes a ladder through which reserved people can climb that ladder easily and achieve their goals. This ladder should be given to everyone who needs it, whether they belong to any caste or community. Caste-based reservation system shall be abolished and instead of this economic-based reservation system shall be applied. The state government collects all the data relating to the person who is under the below poverty line either belongs to any caste. The creamy layer concept shall apply to every community of the nation whether they belongs to SC/ST or General.

References:

1. Air India statutory corporation v. united labour union (Supreme Court November 06, 1996).
2. Ashok k Thakur v. Union of India , Writ Petition (civil) 265 of 2006 (Supreme Court April 10, 2008).
3. B.K Pavitra v Union of India, Civil Appeal No. 2369 of 2011 (Supreme Court May 10, 2019)..
4. Janhit Abhiyan v. Union of India, Writ Petition (civil) no. 55 of 2019 (Supreme Court November 07, 2022).
5. Jarnail Singh v Lachhmi Narain Gupta 2018, Special Leave Petition (civil) no. 30621 of 2011 (Supreme Court September 26, 2018).
6. Mukesh Kumar v. The State of Uttrakhand (Supreme Court february 07, 2020).
7. Prithvi Raj Chauhan v. Union of India, writ petition (civil) no. 1015 of 2018 (Supreme Court February 10, 2020).
8. southern railways v. Rangachari (Supreme Court April 28, 1961).
9. state of Kerala v. Leesamma joseph, Civil Appeal No. 59 of 2021 (Supreme Court June 24, 2021).

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

A REVISIT TO THE LEGISLATIONS AND POLICIES RELATED TO ELDERLY PEOPLE AT BOTH NATIONAL & INTERNATIONAL LEVEL

MUSKAN SRIVASTAVA
Xth Semester B.A.LL.B. (Hons)
Law College Dehradun
Uttaranchal University Dehradun India
DR. SANDHYA VERMA
Assistant Professor of Law
Law College Dehradun
Uttaranchal University Dehradun India

Abstract: Elder Abuse is the growing concern and multifaceted public issue, which in present scenario requires an adequate societal response as well as an effective legal instrument in order to address this emerging problem in right manner. In International sphere, Madrid Plan of Action on Ageing, 2002 came in light with context of securing basic human rights of elderly people, similarly at national level the Maintenance & Welfare of Parents & Senior Citizens Act, 2007 plays vital role. The international efforts have proved to be a torchbearer that has provided a basic idea to the government for framing the policies with similar provisions inserted in it. The objective of the article is to analyze various legislations & policies at both national and international level, in respect of growing concern regarding elder abuse in society, and to find out, how far has these legislations been effective in dealing the issue.

Keywords: Elder Abuse, Maintenance, Dignity, Well- Being, Elderly people.

Introduction:

"Elder Abuse, is a single or repeated act, or lack of appropriate action, that occurs in any relationship where there is an expectation of trust, which leads to harm or distress to an older person". 'Abuse' embraces not only corporal abuse but also mental as well as psychological harm caused to the elderly people. It has wider ambit that includes other realms within its scope such as emotional, sexual, financial, or material abuse as well. Abandonment and

neglect of elder people poses a serious threat to their right that leads to their loss of dignity and respect to live. Securing rights of elder people falls in the category of the human rights protection. The age group that falls within the category of elderly people is 65 years or more.

Factors for determination of elderly people in India is based on sociological factors, like in case of marriage- the unmarried ones are considered as young while the married ones are considered to be mature. Similarly, the people with older children are considered of old age. A woman's old age is taken with regard to her social relation while for a man it is considered with respect of his retiring age, ones a man procures his retirement he is considered of old age. [1]

Currently in recent years we have witnessed that there has been occurrence of the demographic transition that has increased the responsibility for the upkeep of old age people, the major fluctuation has been observed in the percentage of elderly people. As per recent report submitted by WHO, exploitation of old age people in civic society, stated by elder people in the category of overall prevalence is 15.7% while ill- treatment of older people in formalized institution settings stated by the staff is 64.2%.[2] As per last Census of 2011, India has 104 million elderly citizens (60+years), forming 8.6% of total population.[3]

Elderly or old age people are considered as vulnerable section in the society as they become easy target for tormenting and target to the offenders as well, because till reaching in that age group they are already hit by many chronic and bed-ridden disease which in consequence depreciates their mental as well as physical capacity. Elder abuse is now declared as global issue still it goes unbothered or of least concern, for many victims do not wish to retaliate as well as availability of scant data or absence of uniform reporting system regarding it. International paradigm encompasses several treaties and conventions that identify the common issue of the ageing population such as physical or mental incapacity, and financial vulnerability at such age, which demands for an effective legal recognition along with legal right protection. International efforts have been endorsed to create a binding treaty that makes the government of various countries accountable for the mistreatment of elderly people in their country. United Nation is constantly shifting towards the area of methods for minimizing elder abuse, serving as a guide to other member nation as well as it serves to be the first institution that assures human rights vis-à-vis basic rights to the elderly people. Various such conventions and international treaties that are operating at international sphere are discussed further such as:

---

[1] K L Sharma, "Impact of Membership to groups on subjective Well- being & Spiritual Intelligence in Elderly" 32 No. 3, J. Gerontol 232 (2018).

[2] Supra note 1.

[3] Help Age India, 2022 Report on "Bridge the Gap: Understanding the Elder needs" (June, 2022).

A. *Madrid International Plan of action on Ageing (2002*):

The plan took place in the second World Assembly on Ageing in the city of Madrid, the plan of action was apprehended in order to encounter the problems of population who are growing old as well as opportunities to the same. To implement the action at all levels, three priority direction have been set up:

1. Older person & advancement.
2. Progressing health & welfare into old age.
3. Safeguarding empowering & supporting environment.

Intended for the proper implementation of action, international cooperation is required thus, the international community steps forward to further promote cooperation among all the signatories.[4] There are total 19 articles mentioned on the action plan for ageing. India became signatory to Madrid Protocol, on April 08th 2013 and has become the 90th member of the Madrid protocol. The action plan is also beneficial to strengthen solidarity among generation and intergenerational stage, emphasizing on the needs of both the generation older as well as younger ones in order to build up more mutual responsive relationship between both the generations.[5]The objectives and commitment linked to the goals of this Plan are:

1. Complete attainment of civil liberties and essential rights of elderly people.
2. Elimination of poverty at old age along with provision of secure ageing.
3. Empowerment of elderly people for full-fledged growth in their social, political, economic aspect of their community.
4. Chances for self-development, self-realization and security all over their life.
5. Securing all economic, cultural and social rights, along with civil and political rights.
6. To completely eradicate violence, in addition discrimination as well towards older citizens.
7. Elimination of gender-based differences among elder persons.
8. Focus on main challenges such as inter-generational independence, solidarity and mutuality for social development, importance of family.
9. Availibility of all health care facilities, support and social protection towards these elderly people.
10. Facilitating all sorts of arrangements between civil society and government, between private and public sector for applicability of this international plan of action in practical aspect.
11. Promoting scientific research and expertise along with technology to focus on all the implication of ageing especially in developing countries.
12. Effectively dealing with ageing of indigenous people and their critical situations of health.

B. *United Nations Principles for Older Persons*:

[4] *Id*. Art.4

[5] *Id*. Art. 16

Recognizing the enormous variability in older people's circumstances, both within and across countries as well as between individuals, which necessitates a range of policy solutions, a resolution was adopted by General Assembly on 16th December 1991. It included five core principles in order to encourage Government for including them in their nationwide implemented programmes, which are:

1. Independence- Elder people should have proper availability to adequate amount of food, water, housing, dress, and medical care, and also to be provided with income generating opportunities to work, for becoming self-reliant.

2. Participation: The main central theme is to ascertain that senior citizen remain intact to the society, participating actively in the implementation of all plans and programmes, that makes them capable enough to form the association of older people for representing their own needs and interests.

3. Care: Older person should have the benefit of family care & protection, also the support and assistance of social and legal service to be provide to them, which is the need of the hour. Care to be provided to the older person including wholesome respect to their thoughts, opinion, belief, speech, wisdom.

4. Self- Fulfilment: This principle deals with main concept of self-growth and development of their inner potential.

5. Dignity: Refers to protection from mental as well as physical abuse both, and to treat them all equally without any discrimination with care and comfort.

National Policies & Legislation:

Ensuing upon the international efforts, various legislations and national welfare policies have been framed for addressing the elderly rights. Such policies and programmes have been mandated under Article 41 of the Constitution of India, in which the State Government is to make effective provision for ensuring assistance in the old age. Legislations for the protection and maintenance of senior citizen in the country is built on the principle of equality and distributive justice that strives for the interest of the weaker section especially old age group. Such laws and policies are discussed below in general.

A. *Maintenance and Welfare of Parents & Senior Citizens Act, 2007*

One of the main traditional values preserved in India is to respect the elderly people in a joint family and give importance to the elderly member in the family. The Act was enacted by the Parliament on 29th December 2007. It contains total 7 chapters and 32 sections. The term 'senior citizen' stands for any person who has been citizen of India and has completed the age of sixty years or above.[6] The need for the legislation is out of necessity for providing safe and secure old age period to the elderly people. The Act contains provision for no legal representative requirement to approach the tribunal, this

[6] Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (Act no. 56 of 2007), s. 2 (h)

relaxation is provided so that the aggrieved elderly person can approach for legal assistance swiftly without getting into any complicated legal procedure court.[7] However, the Act lags behind due to the failure in the implementation policy and also due to several other factors, some of which are mentioned below:

1. Unawareness: Many elderly people are unaware that even a civil suit can be filed by them if their maintenance is neglected in any manner, against the family member or the person who is to be held liable or any other institution as well, if there is any breach of contract to proper care and maintenance, even though the contract is not written &registered.[8]
2. Conflict with provisions of Mental Health Care Act, (MHCA) 2017: As per MHCA, an elderly person can have any person as Nominated Representative (NR) for his care, however as per MWP Act, 2007 only close kith and kin is to be recognized for caregiving role like spouse, children[9]. Thus, there is immense need for addressing this problem as well.
3. Financial constraint: Only amount of 1000 rupees can be claimed for maintenance per month, which is a meagre sum in present time for one's maintenance, putting a cap over the amount is arbitrary creating a barrier to claim a relief under this Act.[10]

New *Amendment bill* has been introduced in 2019 for amending and substituting certain provisions in the abovementioned Act.[11] Objective of this bill was to enhance the maintenance amount for the citizens and fix it uniformly over all the states. Also, the bill includes provision for standardization of the old age homecare services, to extend the scope of the definition for 'children' in the Act, in order to include daughter-in-law and son-in-law accountable for inflicting abuse on the ageing population, to make appointment of Nodal officer in every district for senior citizens in all the Police Stations and to provide for harsh punishment to those liable for abuse or abandonment of parents or senior citizens. All the amendments are proposed with one main objective that is, to let the elderly residents living a life of self-esteem, and to provide immediate relief to the senior citizens above 80 years of age more expeditiously.

B. *Maintenance under Section 125 of Criminal Procedure Code*, Section 488 provides for the maintenance of wives, and children only, while the new Criminal Procedure Code, 1973 provides maintenance[12] to

[7] *Id.* at Section 17

[8] Mala Kapur Shankardass, "Addressing elder Abuse: review of societal Responses in India & Selected Asian Countries," Int. Psychogeriatr., 1233 (2013).

[9] Thomas Gregor Issac, "Maintenance & Welfare of Parents & Senior Citizens Act, 2007: A critical Appraisal" 43 (5s) Indian J Psychol Med, 111 (2021).

[10] *Id.* at 108.

[11] The Maintenance & Welfare of Parents and Senior Citizens (Amendment) Bill, 2019

[12] Criminal Procedure Code, 1973 (Act no. 2 of 1974), s. 125

parents as well, they can claim maintenance directly under this Section as well.

Object and Scope of section 125:

The word 'maintenance' is not defined anywhere in the code. The term maintenance can be understood as "The upkeep or preservation of condition of property, including cost of ordinary repairs necessary and proper from time to time for that purpose."[13]Maintenance not only refers to food, shelter, and clothing but it also refers to all the necessary and reasonable expenses including transportation, medicines and drugs, expenses for other utilities along with household expenses.[14] The main object of this provision is to serve the social interest of the society, to assure that every women, children, aged parents are maintained by them upon whom they are dependent irrespective of any caste, creed, or religion, also proceeding under section 125 is of summary in nature.[15]

The main drawback under this section is that the procedure falls under criminal jurisdiction that turns it into more complex and tedious legal procedure, which makes the court unapproachable by the infirm old aged parents.

C. H*indu Law*:

As per Section 20[16], a person who is Hindu, is bound to Maintain his aged or weak father and mother during his or her entire lifetime. This obligation only extends in cases so far where parents are unable to maintain himself or herself out of his or her own earnings or other property.[17] To widened the ambit of this section it also includes the child-less stepmother in the term 'parent.'

D. *Muslim Law*: In Muslim personal law the privy council held that, it is sole responsibility of son as well as daughter to fulfil basic needs of their parents and to take care of them, provided that means and sources are available to them, if the progenies are themselves deprived then the responsibility for maintenance falls on those who have circumstances to do so.[18] Thus, in Muslim personal law the duty of maintenance depends upon the financial capacity of the person, maintenance of old aged-parents can also be provided from the income out of waqf property as per waqf deed signed by them, as per the Hanafi law.[19]

E. National Policy on Older People: 1999

Main objective of this policy is well-being of the older citizens, the policy is mandated under Article 41[20], as per the article, State is directed to make

[13] Bogan vs. Postlewait, 130 Ill., 1970, App. 2d 729.
[14] Hughes v. Hughes, 326 So., 1976 La. Ct. App. 2d 877.
[15] Md. Ahmed Khan v. Shah Bano Begum, A.I.R. 1985 SC 945.
[16] Hindu Adoption and Maintenance Act, 1956 (Act no. 78 of 1956), s.20
[17] *Id.* at s.20(3).
[18] Kasim v. Sadiq, AIR 1938 PC 169.
[19] Ramesh Kumar & Dr. Mithilesh Vishwakarma, "Maintenance of Elderly People: A Critical Analysis of the Existing Legal Provision in India", Vol. 6, Issue 1, IJRAR, i491 (2019).
[20] The Constitution of India, Art. 41

effective policy and schemes for improving the standard of living of its senior citizens & to protect senior citizens from the identity crisis. The policy directs all the associated and recognized institutions as well as organization, both governmental and non-governmental to assist the State in granting protection to the senior citizens. Policy covers all the areas to ensure the fulfilment of the main objective of the policy. The core areas are finance, food security, health care & nutrition, shelter, education, welfare, safeguarding both life and property. Policy also extends to include institutions such as family, training of manpower especially in medical field to deal with geriatrics, media, initiating research in universities & colleges in gerontological studies and other ageing challenges.Supreme Court has been an essential tier in addressing the legal question of law taken up as an appeal matter or in original jurisdiction. In the case of protection of rights of elderly citizens Supreme Court has laid down clear picture in various question of law relating to their rights and interests. It has applied harmonious construction between the Acts that clashes with the Act, 2007. Supreme Court has applied liberal interpretation in many cases and widened the ambit of the legislations related to the elderly people as far as possible. Court additionally urges Central government to issue suitable instructions to the State governments for the operative application of the requirements of the Act, 2007, and also to swot the advancement of such operation. The Court, also directs that the arrangements for the senior citizens are old and need a modification and refurbishment by the government.

Conclusion:

Analysing both national and international instruments and policies for senior citizens, one common issue identified is lack of scientific evidence, and improper review of these various government policies and programmes as to how far have been successful in its implementation. The crimes and abuse against these elder citizens have been neglected, it failed to attain the attention & coverage of mass and media respectively. Recent studies lead to an essential finding of relation between the elderly abuse and depression. Due to rapid increase in population and increase in crime at severe rate has brought forward the issue among general masses. In India because of the deteriorating value system of joint family with rapid industrialization and modernization, families are reclining towards nuclear family structure. The need of the hour is, to directly tackle the old age problems, by setting up recreation centre for assistance to the elder people on daily basis, by allotment of primary health care member for support and care of older people in their locality. Other important thing that could be done is to strengthen the review mechanism in the arena of implementing these policies for elder citizens. Administration should grant more funds for the research work to be carried, in order to find out about new chronic disease and psychological imbalance occurring in the elder people and method for its cure. The administration should also function at its own level to make sure that no such elder person should fall victim to any kind of abuse.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

INDIAN PENAL CODE: ISSUES AND CHALLENGES

DR. GURPREET KAUR
Associate Professor of Law
Faculty of Law
Guru Kashi University
Talwandi Sabo, Bathinda Punjab India
RAJNISH BISHNOI
Assistant Professor of Law
Faculty of Law
Guru Kashi University
Talwandi Sabo, Bathinda Punjab India

Abstract:
Indian Penal code (IPC) is the criminal code of India, which cover all substantive aspect of criminal law. It was drafted in 1860 in the wake of the 1st law commission (British India) chaired by Lord Thomas Babington Macaulay, established in 1834 under the charter Act 1833 [1]. It came into force in India (British India) in 1 January 1862. The code is universally acknowledged as a cogently drafted code, far ahead of its time. Indian Penal Code replaced Mohammedan Criminal Law, so it can be said that Indian Penal code laid the foundation of secularism. Indeed it was first codified criminal law during the British Empire. From 1860 to 2023, it does not change much. Most of the amendments were reactive in response to immediate circumstances like amendment 2013 after the Delhi gang rape case[2]. So it required revision to meet the needs of the 21st century.

Introduction:
The main objective of Indian Penal Code is to provide a general penal code for country which consists of a list of all the punishments and cases that a person who commits any kind of crime is to be held liable and charged with. The code is recognized as a germanely drafted code, relatively revolutionary, which has survived for approximately 165 plus years in a jurisdiction without

[1] It is also known as the Saint Helena Act 1833 or Government of India Act 1833.
[2] Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

major amendments. Although this code consolidate the whole of the law on the subject and is exhaustive on the matters in respect of which it declares the law, many more penal statues and acts governing various offences have been created in addition to the code.

The Indian penal code (Act 45 of 1860) is divided into 23 chapters which comprises 511 sections. The code starts with an introduction, provides general explanation and exactions used in it and covers a wide range of offences like: - Offences against the state, Offences against public, Offences against armed forces, Offences affecting the public health and safety, Offences affecting the human body, Offences against Property, Offences relating to marriage, Offence of Cruelty by husband or relatives of husband etc. Five categories of the punishments are classified in the code which are: Death, Life Imprisonment, General Imprisonment, forfeiture of Property and Fine.

The Indian Penal code applies to all Indian citizens or a person who commit any offence (act or omission) in a way that is misconduct in Indian Territory. This code applies to ships as well as aircraft operating in Indian Oceans and air space. It serves as a standard document for all decision-making and penalizing norms in cases of crimes or misconduct. The impartial nature of the code is the most important feature. Every person is liable under this code without distention as to caste, sex, creed, status etc. if the offence is committed in the jurisdiction of the county. If a foreign National commits adultery in India, he can't be allowed to plead that adultery is not an offence in his county. Similarly, Two Italian Marines were being charged under sections of the Indian Penal Code, related to murder, attempt to murder, mischief and common intent to shoot fisherman. However, the president of India, The Governors of States under Article 361 of the Indian constitution enjoys special privilege and immunity for criminal liability. In addition to it, the following persons are also, privileged not liable under the Indian penal code: - Foreign Sovereigns, Ambassadors and other Diplomatic Agents, Aliens Enemies, Foreign Armed Force Persons and Warships.

Amendments of the Code

According to the Indian Judicial Interpretation, the Legal provisions are tend to change time to time. All the laws don't have a natural and structural ability to absorb such changes. The need therefore, to contextualize the code in wake of new challenges in axiomatic. From the date of enforce of the code till now (year 1870- 2023) only 75 plus amendments had been made. The latest amendment was related to the Jammu and Kashmir reorganization act, 2019 in the Code. Following are the important amendments of all time:

- **The information Technology act, 2000**

  This act was enacted by the Parliament of India in 2000. It is the primary law in country for matters related to cybercrime and e-commerce. It was enacted to give legal sanction to electronic commerce and electronic transactions, to enable e-governance, and also to prevent cybercrime. After the enactment of the IT act 2000 following sections either be inserted or

amended: 29A 167, 172173, 175,192, 204,463,464, 466, 468,469,470,471, 474, 476,477A

- **The information Technology (amendment) act, 2008**

The IT Act 2000 was developed to promote the IT industry, regulate e-commerce, facilitate e-governance and prevent cybercrime. However, IT (amendment) act 2008 sought to foster security practices within India that would serve the country in a global context. Following sections were amended in IPC after this act: 4, 118, and 119

- **The criminal law (amendment) act, 2013**

This act, also called the anti-rape bill, was passed after the Nirbhaya Case[3] wherein a female student was gang-raped in December 2012. The Act not only amended existing sections to make them more stringent but also inserted several new offenses into the Indian Penal Code like acid attack (Section 326 A & B), voyeurism (Section 354C), stalking (Section 354D), attempt to disrobe a woman (Section 354B), sexual harassment (Section 354A), and sexual assault which causes death or injury causing a person to be in persistent vegetative state (Section 376A)

- **The criminal law (amendment) act, 2018**

This Act was to strengthen the rape laws in India. It increased the punishment from 7 years to 10 years. Rape and gang rape of girls below the age of 12 years will carry minimum imprisonment of twenty years and is extendable to life imprisonment or death.

Need to restructure Indian Penal Code

IPC is a well-written code. When IPC was enacted in 1860 by the British , the main objective was to rule India. The nature of the code was Master and Servant. It was based on colonial approach of Britishers but now with the changes in society, stand points of people, and the nature of crimes, the laws also need to evolve as well. Although the Code was far ahead of its time and has been in India for one and a half-century but somewhere failed to serve people in present time. Restructure of IPC is required to shift the power/control from the rulers to the people. The restructuring of IPC is needed because many of its provisions have become obsolete with changing economic developments and technological advances. Many Crimes like mob lynching, financial crimes, white-collar crimes, economic crimes, etc, don't have proper recognition in the Code. Supreme Court has declared many sections unconstitutional because of these are not relevant in modern time. Similarly many sections are either declared invalid or still questionable in current context.

Unconstitutional Sections

- **Sec. 303, Punishment for murder by life-convict[4].**

In year 1983, section 303 of the IPC was struck down. This section provided capital punishment for murder by a person serving a life term in another

[3] Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

[4] Mithu, Etc., Etc vs State Of Punjab Etc. Etc on 7 April, 1983

case. It violates article 14 rights to equality and Article 21 right to life and personal liberty of the Indian Constitution and It was held unconstitutional. The Apex court explained that the punishment was not based on rational principle as no judicial discretion was available to a life convict.

- **Sec. 377, Unnatural offences**[5]

In 2018, Supreme Court overruled the judgment of Suresh Kumar Koushal vs. Naz Foundation and struck down section 377 (Unnatural offences) of IPC criminalizing "unnatural sex " as being unconstitutional.

- **Sec. 497, Adultery**[6]

This section has been criticized on the one size allegedly treating woman as the personal property of husband and on the other size for giving complete protection against punishment for adultery. In year 2018, supreme court held that adultery U/S 497 of the IPC as being manifestly arbitrary, discriminatory and violation of the dignity of a woman and therefore unconstitutional. It can be a ground of divorce in civil court but no longer crime in country. On January 31st 2023, the Court clarified that decriminalizing adultery did not impact members of the Armed Forces.

Relevancy (Ambiguity) of sections today

Definition of many sections is not clear in the Code. Higher Courts interpretate the definition of offence time to time. Similarly in many sections punishment is uneven for crimes. It is not sufficient in the modern time especially Fine.

- **Section 57**: Life Imprisonment as a punishment is at the discretion of the court as to the number of years. It depends on the nature of the crime that has been committed. But, when it comes to the calculation of time of punishment, it is fixed for 20 years. This takes away the discretionary power of court and differences arise upon choosing the approach of giving punishments.
- **Section 120B:** In absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120B of IPC Hon'ble Supreme Court in the matter of Parveen vs. State of Haryana in Criminal Appeal No. 1571 of 2020 has held, vide their Order dated 07th December, 2021
- **Section 124 A, (Sedition)** of the IPC was inserted in 1898 to control the uprisings against British rule and to suppress the freedom movements. However, in recent times this section is often misused against people who criticize the government.
- **Section 294**, the act of annoying someone by performing any obscene act in public places is punishable. However, the word 'obscene' is not defined under the Code and this is often misused.

[5] Navtej Singh Johar & Ors. v. Union of India, 2018

[6] Joseph Shine vs Union of India, 2018 SC 1676

- **Section 309,** After the new mental healthcare act of India in 2017, committing suicide is a presumption of mental illness and not be tried and punish under the code.
- **Section 375**, A gender-neutral definition of rape is required in present time. Section 375 of the code does not include man, transgender, and boys as the victims of rape. Only women are considered as victims of rape.
- **Section 498A**[7]**,** The key guideline issued is that after lodging of the F.I.R. or the complaint case without exhausting the "Cooling-Period" of two months, no arrest or any coercive action shall be taken against the husband or his family members in order to derail the proceedings
- **Section 510,** 24 hours imprisonment or 10 rupees fine is insufficient in today's context.

In the code many sections have provision of capital punishment / death penalty but Supreme Court already held that capital punishment will be given only in the rarest of the rare cases. This is a topic of debate in the society that capital punishment should be abolished or not.

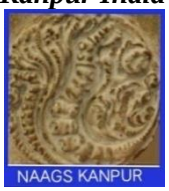
The Union Home Ministry proposed the idea to make comprehensive changes in the criminal laws of the country because these laws were designed keeping in mind the circumstances of the time. But now, after the 160 years, the ways of committing crimes have changed, punishment is not sufficient and procedure is quite time consuming. Now Government wants to rebuild this law to fulfill the democratic aspirations of the people and to ensure speedy justice and simplify legal procedures. IPC is the basic criminal law in the country that applies to all people and changes are surely required the Code.

Conclusion

Indian Penal Code is a well structured code and it was futuristic when it was enacted but after the one and half century it requires some changes as well. Although it was amended not too many times but now many issues has been arised. Many offences in the Code were according to the need of British Rule. It was based on the deterrent theory. This type of offences is not required today. India is a Independent Nation and reformative system is required instead of deterrent system. Many offences are declared either unconstitutional or void by the Supreme Court because it is the need of present time, for example, Section 303 377, 497 etc. Reforming the criminal justice system is not just a one-step process. Restructuring IPC is a major step to modernize the criminal law of India and make it in accordance with the democracy. Restructuring IPC will ensure that the criminal system will become more reliable and have the potential to understand and answer the reasons behind today's crimes. Earlier, amendments made to code were fragmented and failed to bring about a significant change to the IPC as a whole. Although restructuring IPC will lead to reforming the criminal justice system, additional changes in the police structure are also needed

[7] Mukesh Bansal vs State Of U.P. And Another

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

WOMEN PARTICIPATION IN INDIAN POLITICS: INCLUSION AND CHALLENGES

DR. BIBEKANANDA NAYAK
Assistant Professor
Center for Study of Social Exclusion and Inclusive Policy
B.B. Ambedkar University, Lucknow India

Abstract:

The participation of women and their engagement in electoral process is an important market of the maturity and efficacy of democracy in any country. It can be defined not only in terms of the equality and freedom with which they share political power with men, but also in terms of the liberty and space provided for women in the democratic framework of electoral politics. The Constitution of Indiapromulgates promised "to secure to all its citizens justice, social, economic and political' and "equality of status and of opportunity". Despite the constitutional promulgation, women in the Indian subcontinent continue to be grossly under-represented in the legislature, both at the national and the state level. Female representation in the lower house (Lok Sabha) and legislative bodies in most of the state in India is below the 20 percentage which reflecting a pan-Indian gender exclusion from electoral participation and quality representation.

Political participation is a process by which people take part in political activities. Political participation is not just casting vote. It includes wide range of other activities- like membership of political party, electoral campaigning, attending party meetings, demonstrations, communication with leaders, holding party positions, contesting elections, membership in representative bodies, influencing decision making and other related activities. With this understanding of political participation, the evidence shows that participation of women is not impressive as the number of women participating in active politics is smaller compared to men and simultaneously it give Women to acquire decision-making power. Large mass of women are kept out of political arena due to various reasons. There was no serious attempt to accommodate women in politics.

This paper is tries to explore, assesses female participation in elections from a historical point of view; factor that act as barriers and obstacles in female

participation and women issues in electoral politics; interlink political participation and empowerment and suggest the way ahead for enhanced participation of women in an electoral process that will pave the way for correcting the present gender inequalities in Indian politics.

Key Concepts: Indian politics; Political Participation; Empowerment

Introduction

Democracy implies equality for all human persons, men and women. Asagainst this basic notion of democracy what is normally seen is that women areexcluded from different walks of life, more visibly in Politics. The U.N. observesthat women constitute "world's largest excluded category". For the attainment oftrue democratic sprit shall be ensured better political participation. "In thestruggle for gender justice", Usha Narayanan argues, "Political participation constitutes the first and foremost step in that direction." [1]

Equal treatment to women in political life, to be meaningful and effectiveshould start from the grassroots level. To provide training and practice in theprocess of decision-making, the rural democratic institutions are the idealstructures to begin with. One of the aims of the 73rdConstitutional AmendmentAct is to accomplish this purpose. "The question of political empowerment ofwomen in rural India has assumed considerable significance recently because ofthe 73rdConstitutional Amendment Act. The amendment provides reservation ofseats and posts of chairperson tor women in all grassroots level democraticinstitutions in the countryside known as panchayats. This is a historic step of farreaching implications and significant repercussions on the political process in rural India."[2]

This paper seek to explore, assesses female participation in elections from a historical point of view; factor that act as barriers and obstacles in female participation and women issues in electoral politics; interlink political participation and empowerment.

Women and Indian society

The status of women in India has been subject to many great changes over the past few millennia. From equal status with men in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been eventful.

Ancient India

According to scholars, women in ancient India enjoyed equal status with men in all aspects of life. Works by ancient Indian grammarians such as *Patanjali* and *Katyayana* suggest that women were educated in the early Vedic period. Rig-Vedic verses suggest that women married at a mature

[1] Usha Narayanan, "Women's Political Empowerment: Imperatives and Challenges", *Mainstream*, April 10, 1999, p.7.

[2] Prabhat Datta, Major Issues in the Development Debate: Lessons in Empowerment form India, kanishka Publishers, New Delhi, 1998, p. 40

age and were probably free to select their own husbands.[3] Scriptures such as the Rig Veda and Upanishads mention several women sages and seers, notably Gargi and Maitreyi.According to studies, women enjoyed equal status and rights during the early Vedic period. However in approximately 500 B.C., the status of women began to decline, and with the Islamic invasion of Babur and the Mughal empire and Christianity later worsened women's freedom and rights. Although reform movements such as Jainism allowed women to be admitted to religious orders, by and large women in India faced confinement and restrictions.[16] The practice of child marriages is believed to have started around the sixth century.

Medieval period

Indian women's position in society further deteriorated during the medieval period,[4] when child marriages and a ban on remarriage by widows became part of social life in some communities in India. The Muslim conquest in the Indian subcontinent brought *purdah* to Indian society. Among the*Rajputs* of Rajasthan, the *Jauhar*was practiced. In some parts of India, some of Devadasis were sexually exploited. Polygamy was practiced among Hindu *Kshatriya* rulers for some political reasons. In many Muslim families, women were restricted to *Zenana* areas of the house.

In spite of these conditions, women often became prominent in the fields of politics, literature, education and religion.*Razia Sultana*became the only woman monarch to have ever ruled Delhi. The *Gond* queen *Durgavatii* ruled for fifteen years before losing her life in a battle with *Mughal* emperor Akbar's general Asaf Khan in 1564. Chand Bibi was defended Ahmed Nagar against the powerful Mughalforces of Akbar in the 1590s. Jehangir's wife Nur Jehan effectively wielded imperial power, and was recognized as the real power behind the Mughal throne. The Mughal princesses *Jahanara* and *Zebunnissa* were well-known poets, and also influenced the ruling powers. Shivaji's mother, Jijabai, was queen regent because of her ability as a warrior and an administrator. In South India, many women administered villages, towns, and divisions, and ushered in new social and religious institutions.

The *Bhakti* movements tried to restore women's status and questioned certain forms of oppression.*Mirabai*, a female saint-poet, was one of the most important Bhakti movement figures. Other female saint-poets from this period included Akka Mahadevi, Rami Janabai and Lal Ded. Bhakti sects within Hinduism such as the Mahanubhav, Varkari and many others were principle movements within the Hindu fold openly advocating social justice and equality between men and women.

Immediately following the Bhakti movements, Guru Nanak, the first Guru of Sikhs, preached equality between men and women. He advocated that

[3]R. C. Maunder and A. D. Pusalker (editors): The history and culture of the Indian people. Volume I, The Vedic age. Bombay: Bharatiya Vidya Bhavan 1951, p.394

[4]the Danger of Gender: Caste, Class and Gender in Contemporary Indian Women's Writing" by Clara Nubile, p.9

women be allowed to lead religious assemblies; to lead congregational hymn singing called Kirtan or Bhajan; to become members of religious management committees; to lead armies on the battlefield; to have equality in marriage, and to have equality in *Amrit* (Baptism). Other Sikh Gurus also preached the same, but their practices were often regarded to be a breach of women rights.

Independent India

Women in India now participate fully in areas such as education, sports, politics, media, art and culture, service sectors, science and technology, etc. Indira Gandhi, who served as Prime Minister of India for an aggregate period of fifteen years, is the world's longest serving woman Prime Minister.

The Constitution of India guarantees to all Indian women equality (Article 14), no discrimination by the State (Article 15(1)), equality of opportunity (Article 16), and equal pay for equal work (Article 39(d)). In addition, it allows special provisions to be made by the State in favor of women and children (Article 15(3)), renounces practices derogatory to the dignity of women (Article 51(A)(e)), and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief. (Article 42).

Feminist activism in India gained momentum in the late 1970s. One of the first national-level issues that brought women's groups together was the Mathura rape case. The acquittal of policemen accused of raping a young girl Mathura in a police station led to country-wide protests in 1979-1980. The protests, widely covered by the national media, forced the Government to amend the Evidence Act, the Criminal Procedure Code, and the Indian Penal Code; and created a new offence, custodial rape. Female activists also united over issues such as female infanticide, gender bias, women's health, women's safety, and women's literacy.Since alcoholism is often associated with violence against women in India, many women groups launched anti-liquor campaigns in Andhra Pradesh, HimachalPradesh, Haryana, Odisha, Madhya Pradesh and other states. Many Indian Muslim women have questioned the fundamentalleaders' interpretation of women's rights under the *Shariat* law and have criticized the triple *talaq* system.

In 1990s, grants from foreign donor agencies enabled the formation of new women-oriented NGOs. Self-help groups and NGOs such as *Self Employed Women's Association (SEWA)* have played a major role in the advancement of women's rights in India. Many women have emerged as leaders of local movements; for example, *Medha Patkar* of the *Narmada Bachao Andolan.*

The Government of India declared 2001 as the Year of Women's Empowerment (*Swashakti*). The National Policy for the Empowerment of Women came was passed in 2001.

In 2006, the case of *Imrana*, a Muslim rape victim, was highlighted by the media. *Imrana* was raped by her father-in-law. The pronouncement of some Muslim clerics that Imrana should marry her father-in-law led to widespread protests, and finally *Imrana's* father-in-law was sentenced to 10 years in prison. The verdict was welcomed by many women's groups and the All India Muslim Personal Law Board.

According to a report by Thomson Reuters, India is the "fourth most dangerous country" in the world for women, India was also noted as the worst country for women among the G20 countries, and however, this report has faced criticism for its inaccuracy.[38] In 9 March 2010, one day after International Women's day, Rajya Sabha passed the Women's Reservation Bill requiring that 33% of seats in India's Parliament and state legislative bodies be reserved for women. The Indian society is full of paradox. On the one hand, the scripture put those (women) on high pedestal. An old Sanskrit proverb is that, whether the women are held in relevance there do the gods reside. The traditional belief in the Indian society is that, a society grows if the women grow, if they partake of the spirit of progress, for they are proverbial domestic legislators, they are the matrix of social life.[5]

Women Empowerment:

Empowerment is an aid to help women to achieve equality with men or, at least, to reduce gender gap considerably. Women play a very strategic role in the development of society in particular and development of economy in general. Since empowerment is considering a multidimensional concept, it is determined by many socio-economic, political factor and cultural norms.

Women in India are divided in caste, class, rural, educational, occupational and linguistic group.[6]The term 'women empowerment' has been popular in the development field since 1980s. It is brilliantly recognize that women empowerment is essential for women sustainable economic growth and Reduction in poverty in developing country.[7] Women empowerment is central to human development. Human development as a process of enlarging people choice of half of the humanity is restricted. Target action aimed at empowering the women and righting the gender inequalities in the social and economic share, as well as in term of social and political right, must be taken alongside effort to en-gender the development in the country is largely determined by three factors, economic, social and political identity.

Women play an important role in all the fields of development. Women contribute directly and indirectly for development of nation. Over the years women has been treated as the soul property of husband, brother not given any choice for or freedom of her own.

Representative of Women in Lok Sabha and Rajya Sabha (1952-2009)

Sl. No	Lok Sabha	Total No of Seat	No of Elected Women	Percentage of Total	Rajya Sabha (Total)	Rajya Sabha (Percentage)
1	1952*	499	22	4.4	16	7.3
2	1957	500	27	5.4	18	7.6
3	1962	503	34	6.7	18	7.6
4	1967	523	31	5.9	20	8.3

[5] Shusma Sood, Violence Against women, Arihant Publishers, Jaipur, 1990, p. 12

[6] Kumar, H. (2005), Women empowerment issues, challenges and strategies: A sources book, New Delhi, Regency publisher

[7] Chaudhari, I.S. (2009). The determinants of women empowerment in southern Punjab: An empirical analysis, Europian Journal of Social Science, pp. 216-229

5	1971	521	22	4.2	17	7
6	1977	544	19	3.4	25	10.2
7	1980	544	28	5.1	24	9.8
8	1984	544	44	7.7	28	11.4
9	1989	517	27	5.3	24	9.7
10	1991	544	39	6.7	38	16.5
11	1996	544	39+1**	7.1	18	7.3
12	1998	543	43	7.9	18	7.3
13	1999	543	49	9.2	-	-
14	2004	542	45	8.1	-	-
15	2009	545	59	10.8	21	9

Source: statistical report on general election Sinha (2006: 168-170; 198); Basu (2010: 172-173); Chopra (1993:23). Key: * Gender-wise breakdown for the 1952 election is not available.

**in the Eleventh Lok Sabha, one member was nominated by the president

It has observed that women representation in the LokSabhahas doubled in last 60 years .it has not sufficient in proportionto their composition in the state. It may be neglected because of patriarchal structure and not pro-women to context in election. Historically they are marginalized in the form of participation. In Rajya Sabha, it looks like stagnate situation. This shows women are considered not equally capable in politics. The political parties talks about women empowerment but in reality it is myth. The women representation in parliament out of which how many are active participated in the debate is important. They are dived in terms of political party ideology. Even thou issues related to women but they cannot raise the voice unless it has pro to their party. Sometimes by force they have to defend their party stand with out own choice.

Representation of women in State Legislative Assemblies (91952-97) in percent

Sate	1954	1957	1962-65	1966-69	1975-75	1977-78	1979-83	1984-88	1989-92	1993-97	*State average*
Andhra Pradesh	2.9	3.7	3.3	3.8	9.1	3.4	4.1	3.4	3.7	2.7	*4.0*
Arunachal Pradesh	-	-	-	-	-	0.0	3.3	6.7	3.3	3.3	*3.3*
Assam	0.5	4.6	3.8	4.0	7.0	0.8	0.8	4.0	4.0	4.8	*3.2*
Bihar	3.6	9.4	7.9	2.2*	3.8	4.0	3.7	4.6	2.8	3.4	*4.3*
Goa	-	-	-	6.7	3.3	3.3	0.0	0.0	5.0	10.0	*4.3*
Gujarat	-	-	8.4	4.8	3.2	NE	2.7	8.8	2.2	1.1	*4.2*
Haryana	-	-	-	7.4*	5.9	4.4	7.8	5.6	6.7	4.4	*6.2*
Himachal Pradesh	-	-	-	0.0	5.9	4.4	7.8	5.6	6.7	4.4	*6.2*
Jammu & Kashmir	-	NE	0.0	0.0	5.3	1.3	0.0	1.3	NE	2.3	*1.5*
Karnataka	2.0	8.7	8.7	3.2	5.1	4.0	0.9	3.6	4.5	3.1	*4.5*
Kerala	-	4.8	3.9*	0.8	1.5	0.7	3.2	5.7	5.7	9.3	*3.6*
Madhya	2.1	10.8	4.9	3.4	5.4	3.1	5.6	9.7	3.4	3.8	*5.1*

Pradesh											
Maharashtra	1.9	6.3	4.9	3.3	9.3	2.8	6.6	5.6	2.1	3.8	*4.7*
Manipur	-	NE	NE	0.0	0.0	NE	0.0	0.0	1.7	0.0	*0.3*
Meghalaya	-	-	-	-	1.7	1.7	0.0	3.3	NE	1.7	*1.7*
Mizoram	-	-	-	-	0.0	3.3	3.3	2.5	0.0	0.0	*1.4*
Nagaland	-	-	0.0	0.0	NE	0.0	0.0	1.7	0.0	0.0	*0.5*
Odisha	9.6	3.6	1.4	3.6	1.4*	4.8	3.4	6.1	4.8	5.4	*4.0*
Punjab	2.2	5.8	5.2	1.0*	5.8	2.6	5.1	3.4	5.1	6.0	*4.0*
Rajasthan	0.0	5.1	4.5	3.3	7.1	4.0	5.0	8.0	5.5	4.5	*4.8*
Sikkim	-	-	-	-	-	-	0.0	0.0	6.3	3.1	*2.3*
Tamil Nadu	0.3	5.9	3.9	1.7	2.1	0.9	2.1	3.4	9.0	3.8	*3.6*
Tripura	-	NE	NE	0.0	3.3	1.7	6.7	3.3	NE	1.7	*3.0*
Uttar Pradesh	1.2	5.8	4.4	2.8*	5.9	2.6	5.6	7.3	3.3*	4.0*	*4.1*
West Bengal	0.8	3.6	4.8	2.9	1.6*	1.4	2.4	4.4	7.1	6.8	*3.4*
Delhi	4.2	NA	NE	NE	7.1	7.1	7.1	NE	NE	4.3	*5.9*
Puducherry	-	-	6.7	3.3	0.0	0.0	3.3	3.3	1.7	3.3	*2.6*
Period average	*1.8*	*6.3*	*4.9*	*2.9*	*4.4*	*2.8*	*3.8*	*5.3*	*4.5*	*4.0*	*4.0*

Source: Sinha (2006: 171-172), cited De (2010: 192 f), Omen (2014: 170-171).

Key: 1. (-) state did not exist

2. NE: No elections held in that year/period

3. *Two elections held during this period. The figure given here is an average of the two

4. In 1952, the Election Commission did not recognize women as a separate category. The figure given here are based on name recognition and hence liable to under-reporting of women representative

5. NA: data not available

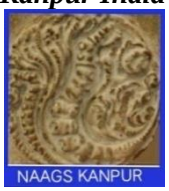
The above data on state representation in state legislative assembly shows that comparing to parliament in state assemblies are less participation. In the state legislative assembly it varies from 0.3 to 6.2. The Manipur is least representation on average 0.3 compared to highest Haryana & Himachal Pradesh 6.2. If you see all over India, the average is 3.72. It reflects that regional parties are lagging behind to promote women representation. So, women representation has to increase in order to see welfare state. Indian political system has marginalized women in present context. There should be women reservation in order to women participation in political institution. This will promote women participation in decision making process.

Conclusion:

Thepolitical participation and representation of women in Indian politics has marginalized in number. The political marginalization could be achieved

through the political interest of the group and political assimilation of the society. The political participation in decision making process in the grass root/ panchayat level has increased due to policy implication such as women reservation in pachayat raj system. It has observed that the level of women representation in the parliament or state assembly has not improved due to multiple factors such as political parties are not encouraging women participation as well as societal patriarchal structure. It has shows themarginalization of women is depending on political involvement orintegration and political interest and/or political trust. Political participation isinterlinked with the cultural dimension of the communities and education and incomelevel of the household. Even though constitution has ensured equality in political process but there is cultural lag in participation. The political marginalization women could be promoted through the policy formulation. It could be achieved through political empowerment in forms of affirmative action and political engagement. The women should have trust on political system such as politician and political institution. In ancient period women participated in decision making process is more compare to later stage. The government should circulate more information on contemporary political issues.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

86TH AMENDMENT OF INDIAN CONSTITUTION: RIGHT TO EDUCATION ACT- 2009

PROF. SURENDRA PAL
Department of Teacher Education
D.A.V. (P.G.) College
Muzaffarnagar (U.P.) India
DR. CHAMAN KAUR
Assistant Professor B.Ed. Department
Sri Lal Bahadur Shastri Degree College
Gonda (U.P.) India

Abstract
Education is the most crucial investment for a developing and economically prosperous society which leads to social justice and equality. In this regard the 86th amendment act 2002, also known as Right of Children to Free and Compulsory Education (RTE), mainly added provisions regarding the Fundamental Right of a child to free and compulsory education. The amendment also imposes new responsibilities upon the state governments, local authorities and all other persons.The Right to Education Act 2009, also known as the RTE Act 2009, was enacted by the Parliament of India on 4 August 2009. It describes modalities of the importance of free and compulsory education for children aged between 6-14 years in India.. This act came into effect on 1 April 2010 and made India one of the 135 countries to have made education a fundamental right for every child. The major aim of this research paper is to study the issues and challenges of the RTE Act-2009, and analyze the impact of the provisions in the present day context for the promotion and protection of Child Rights in India. The present paper begins with a historical perspective, outlines salient features of the Act, throws light on the challenges ahead and suggests ways to overcome them.

Key Words: Educational Development, Fundamental Rights, Constitution, Free and Compulsory Education.

INTRODUCTION:

Over the years, the demand for children's education has grown by leaps and bounds. Everybody has acknowledged the value of education in the overall development of children. Basically, the objectives of education are threefold i.e. physical, mental and spiritual. A perfect system of education must do full justice to all these three above. If we take into consideration the Indian post-independence Education Scenario, we would find that, in this period, the pace of educational development has been unprecedented by any standards. The Govt. was committed to ensuring universal elementary education (primary and upper primary) education for all children aged 6-14 years of age through its flagship programme, *Sarva Shiksha Abhikyan* (SSA). The chief aim of such an education must have been just to fit one to earn a living. It is called "Bread and Butter" system of education, as well. With the above situation and concept in mind, the Constitutional 86th Amendment Act 2002 making elementary education a Fundamental Right and its consequential legislation, the Right of Children to Free and Compulsory Education (RTE) Act 2009, comes into force. As a result of it on April 1, 2010, India has reached a historic milestone in country's struggle for Children's Right to Education.The Right to Free and Compulsory Education Act, 2009, is a landmark legislation that concretizes the judicial and constitutional status accorded to publicly supported education for children between six and fourteen years.**:**

Education is a powerful instrument that begins from birth and is responsible for the development and success of any country. Due to this very particular reason Right to education is a central right of each child under part III of Indian Constitution. It is also perceived as standard freedom all around in different International Conventions and Declarations. As a result of it, reformative legislation in Indian education system through RTE Act-2009 has been made.The detail discussions with respect to RTE Act 2009 are classified in the following heads:

Historical Perspectives:

The Right to Education Legislation has a long history. It was discussed extensively during the drafting of the Constitution. The constituent Sub-Committee on Fundamental Rights includes the right to primary education as a Fundamental right. However, the Advisory Committee of the Constituent Assembly rejected this proposal and placed it in the category of Directive Principles of State Policy. The following lines depict the development of Indian Education system in this direction:

- The recommendation of a common school system by Indian Education Commission (Kothari Commission) 1964-1966 was with a view to eliminating inequality in education opportunities.
- The National Policy on Education (NPE), 1968 emphasis on requirement of special schools to provide a proportion of free studentships to prevent social segregation in schools.
- The National Policy on Education,1986, re-affirmed the goal of universalisation of school education and promised to take measures to achieve a common school system.

- The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the *Acharya Ramamurti Committee*.
- The country witnessed an increase international focus on its initiatives regardingFree and Compulsory educationafter its participation in the World Conference on Education for All in 1990. India also ratified the UNCRC (UN Convention On the Rights of the Child) in 1992.
- A great legal breakthrough was achieved in 1992 when the Supreme Court of India held in *Mohini Jain* Case, that "the Right to Education is concomitant to fundamental Rights enshrined under Part III of the Constitution" and that "every citizen has a right to education under the Constitution".
- The Supreme Court subsequently reconsider the above mentioned judgment in the case of *Unnikrishnan* in 1993. The Court held that "though right to education is not stated expressly as a fundamental right, it is implicit in and flows the right to life guaranteed under Article 21 and 45 must be construed in the light of the Directive Principles of the Constitution.

Thus, *Unnikrishnan*Judgment empowered people with legal claim to free and compulsory education. A combination of force from different area i.e., support from the judiciary, greater international attention and increased civil society and grass-root level campaigns exerted tremendous pressure on the Government to introduce a fundamental right to education. A Constitutional Amendment bill for the inclusion of a fundamental right to education was moved in the parliament amidst much criticism and debate regarding the contents of the Act. Despite continued criticism against the altered version, the Bill was passed in 2002 as the 86th Constitutional Amendment Act. As a result of this amendment RTE Act 2009 came into force. The Right to education Act 2009 maps out the roles and responsibilities for the centre, state and all local bodies to rectify gaps in their education system in order to enhance the quality of education in the country.

Salient Features of RTE Act-2009:

The salient features of the Right of Children for Free and Compulsory Education Act 2009 are:

- Free and compulsory education to all children of India in the age group 6 to 14.
- No child shall be held back, expelled, or required to pass a board examination untilcompletion of elementary education.
- A child above six years of age has not been admitted in any school or thoughadmitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others,

have a right to receive special training, in such manner, and within such time limits, as may be prescribed: Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

- Proof of age for admission: For the purposes of admission to elementary education.¬ The age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births. Deaths and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed. No child shall be denied admission in a school for lack of age proof.
- A child who completes elementary education shall be awarded a certificate.
- Calls for a fixed student-teacher ratio.
- Will apply to all of India except Jammu and Kashmir.
- Provides for 25 percent reservation for economically disadvantaged communities inadmission to Class One in all private schools.
- Mandates improvement in quality of education.
- School teachers will need adequate professional degree within five years or else willlose job.
- School infrastructure (where there is problem) to be improved in three years, elserecognition cancelled.
- Financial burden will be shared between state and central government.

Anomalies in RTE Act 2009:

The actual implementation of RTE Act 2009 is actually far from easy and even after more than ten years, there is much more to be seen in terms of changes brought about by the act. There are many reasons for this, few of them are:

- On age criteria, the act allows only children between the ages 6-14 to get the privileges.It leaves out 0-6 years and 14-18 years despite India has signed the U.N. charter which states clearly that free education should be made compulsory to children of 0-18 years old.
- Both the Central and State Government have the duty to provide free and compulsory elementary education. Sharing of this duty may lead to neither government being held accountable.
- The Bill provides for the right to schooling and physical infrastructure but does not guarantee that children learn. It exempts government schools from any consequences if they do not meet the specified norms.
- The act talks about 25% seat reservation in private/public unaided school for lesser privileged children. The constitutional validity of reservations of seats in private schools for economically weaker sections could be challenged.
- Minority schools are not exempt from provisions in this Bill. It is possible that this will conflict with Article 30 of the Constitution,

which allows minorities to set up and administer educational institutions.

- The Bill legitimizes the practice of multi-grade teaching. The number of teachers shall be based on the number of students rather than by grade.
- The fees of these students will be borne by state government. The fee will be reimbursed at government rate. There will be a wide gap between the cost of education per child and the reimbursement by the government. There comes the question of who will bear this deficit portion?
- Moreover, what about the overhead expenses such as uniform, books, stationery, etc of attending a private school? The chances are high that the parents themselves would feel intimidated at the thought of sending their kids to private schools.
- Further the kids will be suddenly exposed to a different living standard. Will they be treated with dignity and equality by their peers and teachers? Will it not be traumatic for the poor kids to cope with that?
- Lack of awareness about the Act, inability to meet the distance criteria and difficulty in obtaining necessary certificates from government authorities could be some of the reasons for the poor response from the public.
- The act stipulates that the child should be assigned the class according to age, which is a good step because wasted years can be saved; but no bridge course is suggested that can prepare the child to adjust to the admitted class.
- Every student will be passed to the next class. This can promote indolence and insincerity among children towards their studies and carelessness and laxity among the teachers.
- The Act will create a system with no incentive for students to try to improve themselves, or to behave with a modicum of restraint. It compromises their ability to withstand pressure and compete harder in order to excel. This will create a generation of drifters who have never tasted hard work or competition.
- The act requires every government and aided school to form a **School Management Committee (SMC)** which will be most comprised of parents and will be responsible for planning managing the operations of the school. SMC members are required to volunteer their time and effort. This can be a burden for the poor parents. And for the aided schools, the SMC rule will lead to a breakdown of their existing management structures.
- Above all, there are no specific penalties if the authorities fail to provide the right to elementary education

Major Challenges for RTE Act, 2009:

The major challenges in the implementation are:

- **Lack of Funds**: The first thing that immediately comes up is the glaring deficit of funds in order to implement every aspect of this Act as efficiently as possible. Despite the state and central governments coordinating it is not a small amount that is required to educate such a large population. Many state governments initially came out and said that they would require additional funds in order to implement the Act
- **Infrastructural Challenges**: The Act aims for schools to keep up a minimum standard of infrastructure for students. Basically, making sure that with free education there is no lack of necessary student amenities such as availability of drinking water, clean kitchens for midday meals, number of classrooms and their capacities, playgrounds and finally separate toilets for boys and girls. The underlying reality is that most schools still do not meet such basic requirements and come up short in many aspects.
- **Shortage of Qualified Teachers**:A much less evident problem is the lack of qualified teachers in most schools across India. It is predominant in the government schools in rural areas, but private schools are also susceptible to the same problem. Even where there are qualified teachers, the average teacher-student ratio is much higher than the prescribed 1:30 in the Act. This disappointing shortage of teachers is very detrimental to the cause of educating such a big population.
- **No Detention Policy**:The policy of not detaining students in a class as prescribed by the Act is one that has proved to be a loophole. What this means is that, there is no insistence on a formal examination that a student must write and pass before being promoted to the next class. The measure was taken to reduce the chances of a student dropping out of school in case they were detained. A direct offshoot of this is that it fails to examine a students' knowledge base. Students also do not have the drive to learn and compete. This policy overall promotes carelessness and a laid-back attitude amongst teachers as well. Simply because there is no possibility of detention, there is no definite need for them to ensure their students gain as much knowledge.
- **Language barrier in Primary Education:**The RTE Act allows the children of multiple entries and exit options and empowers the children to get their transfer certificate to continue their studies in any part of the country;the issue is here that the migrants who migrate from different parts of the country need to continue their studies in the regional language because of which many children discontinue their studies because of the various reasons.
- **National Education Policy 2020 and RTE Act 2009:** The National Education Policy 2020 has been tremendous change and growth in the education system in India. NEP is considered the first legislation in the 21 century in the Indian education system. Where the education of the

children is considered to be from 3 years to 18 years of age and the structure of children's education has been changed, there is no clarity of implementation of the policies, the area of concern is that the RTE specifies that the education of the children from 6 to 14 but NEP speaks about the education of the children from 3 to 18 years age.

SUGGESTIONS:

- To acquire more transparency in the framework, each state ought to set up many model principles to execute the right to instruction, with the interest of the local area and different partners.
- More grounded administrative casing for non-public schools is required. Guarantee straightforwardness and responsibility measures are established. Lack of certified teachers must be appointed together by the suitable Government to provide food quality training to the youngsters in Government schools.
- Rather than shutting the unnoticed schools, programmes need to be initiated to help such schools to work on their offices by asset support and furnishing linkages with monetary organizations.
- Provisions and policies have to be made to bring the youngsters younger than six years or more to 14 years to acquire the ambit of this Act. This should be possible by reporting grants to the exemplary understudies who can't bear the cost of private schooling.
- Financial assistance must be given to the school for the developmental projects and with collaborating with the different legal bodies like the Human Resource Development Ministry, Labour Ministry, Women and Child Development Ministry, Panchayati Raj Ministry and Rural Development Ministry to guarantee the legitimate execution of the relative multitude of honourable arrangements of the Act and for the accomplishment of the shared objective.
- There is a desperate requirement for the audit of the educational program and course readings in the schools to guarantee they are of a level equivalent to the absolute learning levels of the understudies.
- Set up an excellent administrative system for non-public schools to guarantee their consistency with the RTE standards, guidelines, and arrangements and on issues like the guideline of expenses through a focal enactment on the equivalent.
- Taking consideration of the institutions and the management who run their institutions at the local level and taking into confidence regarding the practical issues in implementing the rules and the regulation in implementing the RTE Act in the state.

CONCLUSION:

The right to education is a fundamental human right and there is no denying that it enables the upliftment of many communities across the globe. In order to meet the challenges regardless of its restrictions and

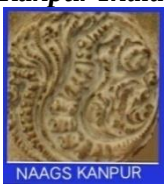
hurdles that stand in the way of implementing RTE Act, 2009, it is needful to concentrate all efforts with full dedication and commitment. Much work must be done at the ground level. An endeavour ought to be made to give a stage to collaborators and common society associations from different States to meet up and hold the Government - both Centre and State- responsible for its execution. Various states remain at multiple levels as far as elementary education, and stateexplicit issues should be tended to.

The Act must now focus on better funding and improving the quality of education at a deeper level. Not only the central and state governments but the nation as a whole should take responsibility in this regard. Community participation and support can make marked difference in achieving this goal. There exists a need for greater coordination amongst different agencies and functionaries involved in this task. To overcome population pressures and budgetary constraints, cost effectiveness and accountability must be ascertained at every level. Efforts should be focused on qualitative improvement of the whole programme.

References:

1. The Right of Children to free and Compulsory Education Act, 2009 (RTE Act, 2009)
2. Challenges of Education-A Policy Perspective, Ministry of Education, Govt. of India, New Delhi, August 1985.
3. National Policy on Education-1986, Ministry of Human Resource Development, Govt. of India, Dept. of Education, New Delhi, May, 1986.
4. Towards an Enlightened and Human Society, Report of the Committee for Review of National Policy on Education 1986, Final report, 26th Dec. 1990.
5. National policy on Education 1986, Programme of Action, 1992.
6. Education for All The Indian Scene, Department of Education, Ministry of Human Resource Development, Govt. of India, Dec. 1993
7. Dr Niranjanaradhya and Kashyap, Aruna, The 'Fundamentals' of the Fundamental Right to Education in India, 2006.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

75 YEARS OF PARLIAMENTARY DEMOCRACY AND ROLE OF ELECTION COMMISSION

DR. SHIV KAILASH
Assistant Professor of Law
Maharaj Balwant Singh P.G. College
Gangapur, Varanasi India

"At the stroke of the mid night hour when the world sleeps, India awake to life and freedom."
[1]

As India celebrates 75 year of Independence, Indians will see this as an occasion to recall J.L. Neharu's immortal speech. Seventy five years ago India gained Independence from British rule and successfully went on to become one of the largest democracies in the world. India is valued the world over for a great many things, but for three over all others:

1. The Taj Mahal
2. Mahatma Gandhi
3. India's electoral democracy.

The Credit for the last of the three fames goes to the people of India who have embodied that achievement and given it utterance.

The role of people is important in a democracy. Democracy gives an opportunity to people to participate in the process of governance which is essential for human existence since the interference of state in human affairs has increased manifold, However democracy can not be a direct process for participation in the government in view of huge population and huge territories of different state in other words. people select their representations to rule over themselves. These election becomes an effective instrument of choosing ones representatives at various levels in any political setup.[2]

"Democracy is sustained by free and fair elections only, only free and fair elections to the various legislative bodies in the country can guarantee the

[1] Pt. Jawahar Lal Neharu's Tryst With Destiny Speech, August 1947
[2] Dr. R.S. Rajput, " Dynamics of Democratic Politics in India",1986

growth of a democratic polity. It is cherished privilege of a citizen to participate in the electoral process which place persons in the seats of power."[3] "Democracy is a Basic feature of the constitution" and election conducted at regular prescribed intervals is essential to the Democratic system envisaged in the constitution. So is the need to protect and sustain the purity of electoral process. That my take within it the quality efficiency and adequacy of the machinery for resolution of electoral disputes.[4]

"Democracy and free and fair election are inseparable twins. There is almost an in severable umbilical cord joining them. The little man's ballot and not the bullet of those who want to capture power, is the heart beat of democracy".[5]

The constitution of India establish the Election Commission to ensure free fair and impartial election but the process of election in any political system does not necessarily guarantee representative form of government . It is the free and fair electoral system which is sine qua non of any good government which is profess to be based on peoples will.

Article 324 of the Constitution of India provides for the appointment of an election commission to superintendence, direct and control of election The election commission is an independent autonomous body, and the constitution enounces as in the case of supreme court and High court, that it may be able to function freely without any executive interference constitution of election commission. The election commission shall consist of the chief election commissioner on the president may from time to time fix. The chief election commissioner and other election commissioner are appointed by the president. subject to the provisions of any law made by parliament for the purpose.[6]

Issues with appointment of election commission and upholding the autonomy of election commission

Recently, A constitution bench of the Supreme court heard a crucial case about the method by the election commission of India is constituted and election commissioner. A constitution bench of Supreme court on march 2,2023 directed in a landmark Judgment The chief election commissioner and commissioners will be appointed by the president on the advice tendered by a committee of prime- minister, Leader of opposition (LOP) in the Lok Sabha or the leader of single largest party in opposition and the chief justice of India.

.The court held[7], "Fierce, independence, neutrality and honesty" envisaged in the institution of the election commission of India (ECI) requires an end to government monopoly and "exclusive control" over appointment to the highest poll body.

---

[3] TN Seshan Vs. UOI (1995) 4 SCC 611

[4] Kihoto Hollohon V Zachilhu & others AIR 1993 SC 412

[5] Justice Pasayat , In "special reference No.-1 of 2002, in re

[6] Article 324 (2) The Constitution of India

[7] Anoop Barnawal Vs. Union of India (2023) on 2 March 2023 (The Hindu) March 3, 2023, Edition

The people of country lookup the election commissioner. A person who is weak kneed before the powers that cannot be appointed as an election commissioner. Such a person cannot have a place in the conduct of elections which forms the foundation of democracy. An election commissioner should be one who holds the scale evenly in the stormiest of times by not being servile the powerful and by coming to the rescue of the weak and wronged, who are otherwise in the right would qualify as true independence. As justice Joseph held that fate of democracy rests in the hands of election and the buck stops at the table of chief election commissioner and the election commissioners. In a Substantive Democracy the power to vote in more potent than the most powerful people depend on an honest commissioner, blessed with extra ordinary powers to guard the purity of electoral process.

Concluding, Mitchel states, ' where all of this happens, is India, and a greater than 1/10 of humanity gets ready to vote, it is an inspiration to all the world.'

Election in India are not a new phenomenon or a new concept born in modern times. Taking decisions to run their affairs, be they at the level of individual families or at the community level, collectively and with the consensus of all concerned, has been the pervading philosophy of Indian way of life from times immemorial. Our ancient scriptures dating back to the Vedic age are filled with references to republics and democracies prevailing in various parts of ancient India. Ancient historians have recorded graphic details of the people choosing their won heads, ganapaties, of the great Vaishali Ganarajya, thousands of years back, to lead them in times of peace and war. They were assisted by other wise men and nobles in their decision making, like the present council of ministers.

Tracing the history of elections and evolution, of representative governments in India, the Election Commission of India observed in its report after the first general elections in independent India in 1951-52[8]:... republican forms of government existed in many parts of ancient India. There are numerous references to such Governments in the Buddhist literature. Even in the 4th Century BC, there was a republican federation known as the Kshudrak-Malta Sangha, which offered strong resistance to Alexander the Great. The Greeks have left description of many other republican states in India, some of which were described by them as pure democracies while others were said to be 'aristocratic republics'.Although complete details of the working of the republican forms of government in ancient India are not available, it is known that in some of these republics, every adult male member had the right to vote and to be present in the general assembly, which decided all public affairs. With the increase of population and the growing complexities of the social structure, it became increasingly difficult for all citizens to assemble at one place for the purpose of deliberation on state affairs, and gradually this

[8] V.S. Ramadevi and S.K., Mendiratta How India vote Election Laws, Practice and Procedure, Edition 2014, PP3-4

resulted in the evolution of some kind of representative government. We find numerous references to election, referendum, voting, ballot papers, etc, in the history of the Hindu polity.

The nature of franchise for election to the popular assemblies is not fully known. While in the aristocratic republics, the basis appears to have been a family, in other states, all adult male persons, who were not otherwise disqualified, appear to have had the right to vote. By naturalization, even foreigners could become citizens, and acquire the right to vote.

A vote was known as chhanda', which literally means a wish'. This expressive term was used to convey the idea that by voting a member was expressing his free will and choice. We also find description of the methods of collection of votes of citizens who could not be present at the meeting of the assembly. For purposes of voting in the assembly, there used to be multi-coloured voting tickets, called shalakas' (pins). These were distributed to Members when a division was called and were collected by a special officer of the assembly, known as shalaka grahak' (collector of pins). This officer was appointed by the assembly as a whole. It was his duty to take the vote, which could be either secret or open.

Apart from the evolution of the democratic form of government in sovereign states in ancient India as described above, the genius of India also evolved, as a natural growth, the system of autonomous and almost self-sufficient village communities, under every system of government.

These communities, which lasted through the ages, were run on truly democratic lines without, of course, the outward trappings of the vote and the ballot box. In later days, they went by the name of village panchayats and were a vital force in the social life of the countryside.

Even after the republican states were absorbed within empires, the system of regulating the local corporate life through popular assemblies survived for a very long time. Almost every imperial conqueror left the conquered states and communities to carry on their administrative and social system in their own way as before. During the Muslim period, the affairs of the trade corporations and the villages continued to be carried on by popular assemblies. A fundamental change came with the British administration when revenue, judicial and legal affairs were centralized and conducted away from the villages. This factor, coupled with the consequent decay of the agricultural and industrial economy of the country side, resulted in the deterioration of the corporate life of the rural communities and gradually the organizations based on popular will faded out.

In the context of history, therefore, the establishment by the Constitution of the democratic and parliamentary form of government in the country on the basis of adult franchise was like the rejoining of a historic thread that had been snapped by alien rule. Franchise on a liberal scale had been common in various parts of ancient India, and by providing for universal

adult suffrage, the country boldly achieved the consummation of its electoral aspirations on a national basis[9].

The constitution of India establish the Election Commission to ensure free fair and impartial election but the process of election in any political system does not necessarily guarantee representative form of government . It is the free and fair electoral system which is sine qua non of any good government which is profess to be based on peoples will.Article 324 of the Constitution of India provides for the appointment of an election commission to superintendence, direct and control of election The election commission is an independent autonomous body, and the constitution enounces as in the case of supreme court and High court, that it may be able to function freely without any executive interference constitution of election commission. The election commission shall consist of the chief election commissioner on the president may from time to time fix.The chief election commissioner and other election commissioner are appointed by the president. subject to the provisions of any law made by parliament for the purpose.[10]

Issues with appointment of election commission and upholding the autonomy of election commission

Recently, A constitution bench of the Supreme court heard a crucial case about the method by the election commission of India is constituted and election commissioner. A constitution bench of Supreme court on march 2,2023 directed in a landmark Judgment The chief election commissioner and commissioners will be appointed by the president on the advice tendered by a committee of prime- minister, Leader of opposition (LOP) in the Lok Sabha or the leader of single largest party in opposition and the chief justice of India.

The court held[11], "Fierce, independence, neutrality and honesty" envisaged in the institution of the election commission of India (ECI) requires an end to government monopoly and "exclusive control" over appointment to the highest poll body.

The people of country lookup the election commissioner. A person who is weak kneed before the powers that cannot be appointed as an election commissioner. Such a person cannot have a place in the conduct of elections which forms the foundation of democracy.

An election commissioner should be one who holds the scale evenly in the stormiest of times by not being servile the powerful and by coming to the rescue of the weak and wronged, who are otherwise in the right would qualify as true independence. As justice Joseph held that fate of democracy rests in the hands of election and the buck stops at the table of chief election commissioner and the election commissioners. In a Substantive Democracy

[9] V.S. Ramadevi and S.K., Mendiratta How India vote Election Laws, Practice and Procedure, Edition 2014

[10] Article 324 (2) The Constitution of India

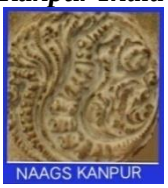
[11] Anoop Barnawal Vs. Union of India (2023) on 2 March 2023 (The Hindu) March 3, 2023, Edition

the power to vote in more potent than the most powerful people depend on an honest commissioner, blessed with extra ordinary powers to guard the purity of electoral process.

Conclusion:-

Elections are the essence of democracy because they allow people to exercise their fundamental power of voting to elect their representatives. Holding periodic, free and fair elections one essentials of a democratic system and a part of the basic structure of the constitution. The Election Commission is regard as the guardian of elections in the country. The election commission of India has contributed significantly to make India a democratic nation. Hence, for a robust democracy, an independent election commission is the need of the hour.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

ISSUE OF WATER POLLUTION IN FURTHERANCE OF CO-OPERATIVE FEDERALISM IN INDIA

SANDEEP KUMAR SUMAN
Assistant Professor of Law
Assam University (a Central University)
Silchar, Assam India

Abstract:
Water pollution is a critical issue that affects the health of individuals, communities, and ecosystems worldwide. The problem is compounded by the complexity of water resource management, which involves multiple levels of government and various stakeholders. Cooperative federalism has emerged as a viable solution to address the challenges of water pollution. This approach encourages collaboration and cooperation among federal, state, and local governments to address water pollution through shared responsibility, resources, and decision-making. While cooperative federalism has played a role in addressing water pollution in India, continued efforts are needed to ensure effective implementation of regulations and greater public participation in addressing this critical environmental challenge. After 75 years of parliamentary democracy in India, this paper provides an overview of water pollution and cooperative federalism, highlighting the benefits and challenges associated with this approach. The paper concludes by offering recommendations for policymakers to promote effective implementation of cooperative federalism to address water pollution.

Key words: democracy, water pollution, water resource management, cooperative federalism, environmental challenge

Introduction

India is country governed by the constitution which believes in co operative federalism. Water is the state subject and in the context of water governance some intervention from the side of centre is very much inevitable. This is more visible when the government is different in centre and states. With the water scarcity and problem there is always great dispute between states the very recent examples are dispute between Delhi, Punjab and Haryana. In this context the frequent disputes create threat to co operative federalism in India.

Sometime in the dispute there is favour or intervention from the side of centre, this all is depicting the picture which is against the principle of cooperation between centre and states.

Recently Honourable Prime Minister Shri Narendra Modi Ji observed that "***The Ganga is the holiest river in the sub-continent and its rejuvenation should embody a shining example of cooperative federalism***".

On the same line pollution of river water running across the states create threat to peace and harmony between the states, because water security is a political issue directly related with vote. Extreme water scarcity between different regions has resulted in recurring interstate water disputes not just between states within India's federal framework, but also districts and communities. In this context the paper has been authored.

Water pollution is an issue that has both local and national implications, and it requires collaboration between different levels of government to effectively address. Cooperative federalism refers to a system of government in which power and responsibilities are shared between the federal and state governments.

Cooperative federalism can also facilitate coordination and collaboration between different levels of government, as well as with stakeholders such as industry, environmental groups, and the public. This can help to ensure that water pollution control efforts are effective, efficient, and equitable, and that the benefits of clean water are shared by all.

Problem of Water Pollution and Democracy

Water pollution is a significant issue in India, and it poses a significant threat to public health, the environment, and the country's economic development. India is a democratic country, and as such, addressing the issue of water pollution requires the participation and cooperation of various stakeholders, including the government, civil society organizations, and the general public.

There is a complex relationship between water pollution and democracy. In general, democracies tend to be more effective at addressing environmental problems, including water pollution, than non-democratic countries. This is because democratic governments are more accountable to their citizens and more responsive to public pressure for environmental protection.

Democratic governments should be more transparent and open to public participation, which can help to ensure that environmental policies and regulations are developed and enforced in a way that protects water quality. Democracies are also more likely to have independent institutions such as the judiciary, which can act as a check on government and ensure that environmental laws are properly enforced.

Co-operative Federalism in Democracy

Cooperative federalism is a system of governance in which power is shared between the central government and the state governments. In this system, the central government sets policies and guidelines, but the state governments are responsible for implementing them.

Cooperative federalism can enhance democracy in several ways. First, it promotes cooperation and coordination between the central government and state governments, which can lead to more efficient and effective governance. This can help ensure that citizens' needs are met in a timely and effective manner.

Second, cooperative federalism can enhance democratic accountability. By giving states more power to implement policies and make decisions, citizens can hold their state governments accountable for the success or failure of those policies. This creates a more responsive and accountable government.

Finally, cooperative federalism can promote greater participation and engagement from citizens. By giving states more power and autonomy, citizens have more opportunities to get involved in the decision-making process at the state level. This can lead to greater civic engagement and a more vibrant democracy.

In the context of water pollution, cooperative federalism is important because the federal government sets national standards for water quality and pollution control, while state and local governments have the primary responsibility for enforcing those standards within their jurisdictions. This division of responsibilities allows for the flexibility needed to address the specific water pollution issues that are unique to each state or locality, while also ensuring that there is a consistent and comprehensive approach to protecting the nation's water resources. But in India there is problem of coordination between central and state and this problem is more inevitable when there is different government at central and state level.

Threat to Co-operative Federalism due to Water Pollution

There have been several instances of disputes between states in India over water pollution, particularly related to shared river systems. One example is the dispute between the states of Tamil Nadu and Karnataka over the Cauvery River, which flows through both states.

The dispute centers around the sharing of water from the river, which is a critical source of irrigation and drinking water for both states. Tamil Nadu has accused Karnataka of releasing untreated sewage and industrial effluents into the river, leading to water pollution that has had severe health impacts on downstream communities.

The two states have been unable to reach a consensus on water sharing and pollution control measures, despite the involvement of the central government and various tribunals. The dispute has led to violent clashes between farmers and protesters from both sides, as well as legal battles in the Supreme Court of India.

Other examples of water pollution disputes between states in India include the conflict between Odisha and Chhattisgarh over the Mahanadi River, and the conflict between Telangana and Andhra Pradesh over the Krishna River. These disputes highlight the need for better water management and pollution control measures, as well as stronger interstate cooperation and conflict resolution mechanisms.

Co-operative federalism and Issue of Water Pollution in India

Water pollution is a significant environmental problem that can have serious consequences for human health, wildlife, and ecosystems. The issue of water pollution is often addressed in the context of cooperative federalism, which refers to the sharing of responsibilities between the federal government and state governments. It is a critical environmental issue in India, and the responsibility of addressing it is shared between the central and state governments under the framework of cooperative federalism.

Cooperative federalism in India refers to the sharing of powers and responsibilities between the central and state governments. The Indian Constitution divides powers between the central and state governments, and both are responsible for protecting the environment and preventing water pollution.

The central government is responsible for framing laws and policies related to water pollution control, such as the Water (Prevention and Control of Pollution) Act, 1974, and the Water (Prevention and Control of Pollution) Cess Act, 1977. The central government also sets up the Central Pollution Control Board (CPCB), which monitors and regulates pollution control activities in the country.

At the state level, the State Pollution Control Boards (SPCBs) are responsible for implementing the laws and policies related to water pollution control. They monitor and regulate the discharge of effluents and other pollutants from industries, municipal sewage treatment plants, and other sources. They also issue consent to operate to industries based on their compliance with pollution control norms.

However, the implementation of pollution control measures is often hampered by several factors, such as inadequate resources, lack of political will, and poor enforcement mechanisms. The effectiveness of cooperative federalism in addressing water pollution in India also depends on the willingness of both the central and state governments to work together and coordinate their efforts.

Water Pollution Laws and Co-operative Federalism in India

India has several laws and regulations related to water pollution that are aimed at protecting water resources and promoting sustainable development. These laws are enforced through a system of cooperative federalism, which involves the collaboration between the central government, state governments, and local authorities.

One of the primary laws related to water pollution in India is the Water (Prevention and Control of Pollution) Act, 1974. This act provides for the prevention and control of water pollution, as well as the establishment of central and state pollution control boards to monitor and regulate water pollution. The act also provides for the establishment of effluent standards and the imposition of penalties for non-compliance.

Another important law related to water pollution in India is the National Green Tribunal Act, 2010. This act provides for the establishment of a specialized

court, the National Green Tribunal, which has the power to hear cases related to environmental disputes, including water pollution.

In addition to these laws, India has also implemented several policies and programs aimed at promoting sustainable water use and reducing water pollution. These include the National River Conservation Plan, the National Lake Conservation Plan, and the National Wetland Conservation Program.

Cooperative federalism plays a critical role in the implementation of these laws and policies. Under this system, the central government and state governments work together to ensure that environmental regulations are effectively enforced and those resources are allocated efficiently. The central government provides guidance and support to the state governments, while the state governments have the responsibility of implementing and enforcing environmental regulations at the local level. This system helps to ensure that environmental protection is prioritized across all levels of government, and that resources are effectively utilized to promote sustainable development.

Judicial Approach to Issue of Water Pollution in Co-operative Federalism

One important case relating to cooperative federalism and water pollution in India is the M.C. Mehta v. Union of India [1] case. This case addressed the issue of pollution in the Ganga River and the role of the central and state governments in addressing the problem. The Supreme Court held that the central government had the power to take action to control pollution in the Ganga, but it also recognized the role of state governments in implementing pollution control measures.

Another important case is the Cauvery Water Dispute[2] case, which involved a dispute between the states of Karnataka and Tamil Nadu over the sharing of water from the Cauvery river. The case required the court to balance the interests of the two states with the need to ensure equitable distribution of water resources. The Supreme Court's decision in this case emphasized the need for cooperative federalism and called on both states to work together to find a solution to the dispute.

In addition, the Subramanian Swamy v. Union of India[3] case addressed the issue of pollution in the Yamuna river, which flows through several states in India. The Supreme Court in this case emphasized the need for cooperation between the central and state governments to address the problem of pollution and protect the river's ecosystem.

Water pollution is a significant environmental issue in India, and the responsibility for preventing and controlling water pollution is shared by the central and state governments under the federal system. Here are a few notable cases relating to water pollution and federalism in India. In M.C. Mehta v. Union of India[4], a writ petition filed by environmental activist M.C. Mehta

[1] AIR 1988 SC 1037
[2] AIR 1992 SC 522
[3] Writ Petition(s)(Civil) No(s).198/2022 (SC)
[4] (1987) 4 SCC 463

seeking court intervention to address the pollution of the Ganga river. The Supreme Court of India ordered the closure of all industries located along the Ganga that were discharging untreated effluent into the river. This case highlighted the role of the central government in protecting the environment and controlling pollution, even in cases where the state government failed to act.

In Narmada Bachao Andolan v. Union of India[5], this case involved a challenge to the construction of the Sardar Sarovar Dam on the Narmada River in Gujarat, which would displace thousands of people and have significant environmental impacts. The Supreme Court of India upheld the construction of the dam but imposed a range of environmental and social conditions to mitigate its impacts. This case demonstrated the need for a balance between development and environmental protection under the federal system.

Subhash Kumar v. State of Bihar[6], this case involved a writ petition filed by a public interest group seeking court intervention to address the pollution of the river Ganga in the state of Bihar. The Supreme Court of India directed the state government to take steps to prevent and control water pollution and to set up a monitoring mechanism. This case highlighted the role of state governments in addressing water pollution and their duty to protect the environment.

Vellore Citizens' Welfare Forum v. Union of India[7], this case involved a petition filed by a citizens' group seeking court intervention to address the pollution of the Palar River in Tamil Nadu. The Supreme Court of India directed the state government to take measures to control pollution and imposed strict liability on polluting industries for damage caused to the environment. This case demonstrated the importance of holding polluters accountable for environmental damage.

These cases show that under the federal system in India, both the central and state governments have a role to play in preventing and controlling water pollution. The courts have also played a significant role in ensuring that environmental laws are enforced and that polluters are held accountable.

These cases demonstrate the importance of cooperative federalism in addressing environmental issues in India and highlight the need for collaboration between the central and state governments to ensure sustainable use of water resources.

Way Forward to Address the Issue of Water Pollution in Co-operative Federalism in India

Water pollution is a serious issue in India, and addressing it requires a cooperative effort between the central government, state governments, and local bodies. The cooperative federalism approach can be an effective way forward to address this issue.

[5] AIR 2000 SC 3751
[6] AIR 1991SC420
[7] AIR1996SC 2715

Here are some steps that could be taken:

- Strengthening the legal framework: The government should work on strengthening the legal framework related to water pollution control. This could include revising the existing laws related to water pollution and ensuring their proper implementation. This will require coordination between the central and state governments.
- Encouraging state-level initiatives: The state governments should be encouraged to take initiatives to control water pollution. This could include setting up effluent treatment plants, enforcing pollution control laws, and promoting sustainable industrial practices. The central government could provide technical and financial assistance to the states.
- Promoting public participation: The government should promote public participation in water pollution control. This could involve creating awareness among the public about the impact of water pollution and involving them in monitoring and reporting water pollution incidents.
- Strengthening monitoring and reporting mechanisms: The government should strengthen monitoring and reporting mechanisms to track water pollution incidents. This could include setting up a centralized database of water pollution incidents and ensuring regular reporting by industries and other stakeholders.
- Promoting research and development: The government should encourage research and development in water pollution control technologies. This could include providing funding for research and development initiatives and collaborating with academic institutions and private sector entities.
- Coordination and collaboration between government agencies: The central and state government agencies responsible for water pollution control should coordinate and collaborate to ensure effective implementation of policies and programs. This could involve regular meetings, sharing of best practices, and joint initiatives.

Conclusion

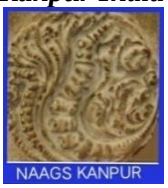
Water pollution continues to be a significant environmental challenge in India, with various sources of pollution affecting water bodies across the country. The government has implemented various policies and regulations to address this issue, including the Water (Prevention and Control of Pollution) Act, 1974 and the National River Conservation Plan, among others.

Cooperative federalism, which refers to the sharing of power and responsibilities between the central government and state governments, has played a significant role in addressing water pollution in India. The central government has provided policy guidance and financial support, while state governments have implemented and enforced regulations at the local level.

The Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) are responsible for enforcing water pollution regulations in India. The CPCB sets national standards for water quality and monitors compliance, while the SPCBs implement these standards at the state level.

In recent years, the government has taken steps to strengthen cooperative federalism in the context of water pollution. For example, the National Green Tribunal was established in 2010 to provide a forum for resolving environmental disputes, and state governments have been encouraged to establish their own tribunals to address local issues. However, challenges remain in implementing and enforcing water pollution regulations, particularly in rural areas where monitoring and enforcement capacity is limited. Additionally, there is a need for greater public awareness and participation in addressing water pollution.While cooperative federalism has played a role in addressing water pollution in India, continued efforts are needed to ensure effective implementation of regulations and greater public participation in addressing this critical environmental challenge.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

CYBER CRIMES AGAINST WOMEN IN CYBERSPACE: A CRITICAL ANALYSIS of INDIAN LEGISLATIONS

RADHA RANJAN
Ph.D. Research Scholar
School of Law and Governance
Central University of South Bihar
Gaya India
DR. PALLAVI SINGH
Assistant Professor of Law
School of Law and Governance
Central University of South Bihar
Gaya India

Abstract
With the advent of Information Technology, the world is getting advanced at a rapid scale, technologically and digitally. It has made day to day tasks smoother and easier for the society as a whole. However, it is said, with power comes responsibility and when such responsibility is violated, its gives birth to crimes and punishment. One such contemporary field is Cyber Harassment against women in the cyberspace. In the cyberspace there are various offences committed against women such as cyber defamation, email spoofing, hacking, doxing, sexual harassment etc. There are various means through which the cybercriminals resort to attack victims on cyberspace. Although we have Information Technology Act, 2000 in place to tackle the cybercrimes, but the question arises that, till what extent the IT Act, 2000 is sufficient to curb such offences. There are various reasons for the sudden upsurge of these cybercrimes, which is, women are hesitant to report cyber offences due to fear of reputation in society (sociological reason), lacunas within the IT Act, 2000 and non-implementation of laws (legal reason), and the cybercriminals remain anonymous and hence it becomes difficult to track the down to curb the cyber offences (technical reason). Cybercrimes against women is an emerging area of criminality which is needed to be resolved on top priority.

Keywords: *Cybercrimes, Women, Cyberspace, Technology and Cyber harassment*

Introduction

यत्रनार्यस्तुपूज्यन्तेरमन्तेतत्रदेवताः। यत्रैतास्तुनपूज्यन्तेसर्वास्तत्राफलाःक्रियाः।।

"Where women are honored, there the deities are pleased;
but where they are not honored, no sacred rite yields rewards.
God dwells where women worship".
-Manusmriti Shloka 3.56

India in the last two decades has seen a magnificent technological growth especially after the advent of the Internet. There is higher dependency of the people towards the cyber world for smooth completion of day-to-day tasks. However, it is rightly stated every aspect has its negative side as well, hence it is the sexual cybercrime and particularly referring to the women. There is plethora of sexual cybercrimes committed against women i.e., cyberstalking, revenge porn, cyber defamation, morphing, etc. As per Article 1 of Declaration on the Elimination of violence against women, defined *violence* as: *"any act of gender-based violence that results in, or is likely to result in physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private place."*[1]The cyber criminals adopt new modes and mechanisms to attack the victims as computers and laptops have become an essence of an individual's life thereby making women an easy target.During the ancient era, the status of the women was equivalent to Goddess and powerful rulers who held important positions in the society.[2] However, the irony is, although they held important positions in the society, yet they are one of the vulnerable populations. In the modern times, women have been excelling in various fields, i.e., politics, Doctors, Engineers, Lawyers, etc and making their mark in the own field worldwide. They are raising their voices and helping to greater extent in decision making process not only for our country but also worldwide also. The International Women's Day is globally celebrated on 8th March as an initiative by the United Nations. The theme for the year 2022 is *"Gender equality today for a sustainable tomorrow"*[3] The Nirbhaya Fund came out with a project named, *"Cybercrime Prevention against Women and Children"* which lays emphasis on providing awareness and strengthening the capacity building program through regular training of judicial officers, prosecutors, etc.

When the entire world came under the grip of unprecedented wave of COVID-19 pandemic, working via online mode became a new normal. However, the matter of utter dismay remains, this period also witnessed some of the serious cybercrimes against women. As per Akancha Srivastava, a victim of cyberstalking and founder of Akancha Foundation in 2017, which focuses on combatting online harassment against women, states during the period between 25th March-25th April, 2020, 412 cases were reported to them, out of

[1] Declaration on the Elimination of Violence against Women, 1993, art. 1.

[2] Dr. Geet Lamba, The Role and Position of Women Ancient Society to Modern Society in India, *Development and Change in Agrarian Society* 127-141 (Twenty First Century Publications, Patiala, 2017).

[3]Al Jazeera, International Women's Day 2022: *What's the theme and when is it? 2022*

which 396 cases pertained to circulating unsolicited online pictures, blackmailing, etc. As per 2021 report of National Crimes Records Bureau, 2597 incidences of women centric crimes, 1896 cases of publishing or transmitting sexual content and 701 incidences of other women centric offences, i.e., fake avatars, blackmailing, morphing, etc have been reported. As per the Chairperson of NCW, 98% of cybercrimes are committed against women. Although, the Information Technology Act, 2000 is the pioneer Act to deal with IT offences, however, it is not free from defects. Our country lacks a special legislative framework on combating cybercrimes against women.

There are various reasons of growth of such crimes such as fear of reputation and hesitation to report the incident *(sociological reason)*, lacunas within the IT Act, non-implementation of laws *(legal reason*), no proper technology to track the cybercriminals due to her anonymity *(technical reason).* In the arena of cyber socialization, different sexual cyber offences have come into existence like morphing, cyberstalking, cyber defamation, to name a few. The researcher also seeks to analyse the technological and legal gap to protect the rights of women. The famous *Bulli App incident* in the year 2022, the second version of *Sulli deals* in 2021 had shocked the entire nation when online auction of women of Muslim community was made.[4] Moreover,sexual harassment of women through cyberspace is one of the new crimes that has evolved because of the continued rise of computer and internet usage. Any group in society could be the target of these crimes, although most victims are women. Women in Indian society are the true victims of cybercrimes that involve sexual harassment. Hence, it is an emerging area of criminality which is needed to be researched, analysed, and solved.

Cyber stalking**:** According to the Oxford Dictionary, it is known as *"pursuing surreptitiously."* A person's online activity is tracked by publishing frequently threatening postings and messages, bombarding the victim with emails, etc. A person who *"monitors the use by a woman of the internet, email, or any other kind of electronic communication, commits the offence of stalking,".* [5]

Doxing: This word comes from *"dropping box"* or *"files,"* respectively. Doxing is seen as a sort of cyberbullying that involves exposing the victim(s)' private and sensitive information through online harassment, name and shaming, and other tactics for personal or monetary benefit.[6]

Revenge Porn: It involves a former partner posting, showing, or disseminating pornographic images or videos online without the agreement of the current partner in an effort to exact retribution, humiliate them, or otherwise exploit their psychological state.[7]

Cyber flashing:It occurs after sending the victim unsolicited media in the form of digital photos or videos. It could involve mailing pornographic material or

[4]BBC News, "Delhi Court grants bail to Bulli Bai, Sulli Deals creators"

[5]The Information Technology Act, 2000 (Act 21 of 2000), s.66A

[6]Definition of doxing from the Cambridge Advanced Learner's Dictionary & Thesaurus © Cambridge University Press)

[7] The Indian Penal Code, 1860 (Act 45 of 1860), s.354C.

one's own genitalia, which could make the victim or person receiving it feel repulsed. As far as the Indian situation is concerned, the law is not truly developed, but under the Online Safety Bill 121 2022–2023 it will become a full-fledged offence in the U.K.

Phishing:Is a type of psychological manipulation wherein which the cybercriminal sends a deceptive message to the victim and in order to reveal sensitive information for ulterior motives.[8]

India has a number of regulations in place to fight crimes against women committed online. Among the most important laws are:

Information Technology Act 2000:[9] The IT Act was passed in order to provide electronic transactions legal legitimacy and to stop cybercrime. It has measures to deal withVoyeurism, cyberstalking, identity theft, and cyber morphing, among other cybercrimes.

Indian Penal Code 1860:[10]The IPC, India's main criminal code, has various clauses that address cybercrimes. For instance, stalking by electronic communication is covered by Section 354D of the IPC, whereas online sexual harassment is covered by Section 509.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013:[11] This Legislation attempts to stop and address workplace sexual harassment, including that which occurs online.

The Indecent Representation of Women (Prohibition) Act, 1986:[12] Forbids the indecent representation of women in any media, including electronic media.

The National Commission for Women Act, 1990:[13] This Act creates the National Commission for Women (NCW), which is tasked with defending and advancing Indian women's rights, particularly those pertaining to cybercrime.

In addition to these laws, the Indian government has also started a number of programmes including the Cyber Crime Prevention Against Women and Children (CCPWC) project to prevent cybercrimes against women. The programme aims to support cybercrime victims and raise public knowledge about online safety. The government has also established a special cybercrime unit to look into and stop online crimes against women.

Role of the judiciary

Through its judicial activism and intervention, the judiciary has played a crucial part in preventing crimes perpetrated online. It has repeatedly forced required intervention to protect people's rights and liberties in society, particularly those of women and children who are the most vulnerable groups. The following are some of them:

[8]The Information Technology Act, 2000 (Act 21 of 2000), s.43.
[9]The Information Technology Act, 2000 (Act 21 of 2000)
[10] Indian Penal Code 1860
[11] The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013
[12] The Indecent Representation of Women (Prohibition) Act, 1986:
[13] The National Commission for Women Act, 1990

State of Tamil Nadu v. SuhasKutti[14]*:*When obscene messages were put online, ladies filed a claim, which is said to be the first instance of cyberstalking and harassment. This case also gained significance since it was the first time that digital evidence was requested under Section 65B of the Indian Evidence Act of 1872.*Bois Locker Room*[15]***:*** is a crucial instance after COVID-19. It was an Instagram community that was active as of May 2020 and was founded by Delhi school children. It was designed to spread sexual images of women, most of whom were minors, along with lewd comments. The kids allegedly threatened to reveal nude photos of the victims who later came forward to report them. The incident was denounced by the Delhi Commission of Women, and the Delhi Police's cyber unit opened an investigation. The majority of the accused were found to be minors.

*Pornography as a Cybercrime:*A case was filed under Section 67 of the IT Act, 2000[16], in the Air Force Bal Bharti School case, which is another well-known instance of online pornography. The same school's students made more cruel jokes about one student who had a pockmarked face. In order to exact revenge on his classmates, he creates the website http://www.amazing-gents.8m.net. On this website, 'sexy' girls who were teachers at the school and other facts and materials about girls that were sexually explicit were uploaded on free online space. The girl's father, an Air Force officer, filed a complaint with the Delhi Police cybercrime unit in accordance with Section 67 of the IT Act, 2000. The accused was delivered to a children's residence in Timarpur, Delhi.

The following is a critical analysis of the issue of sexual harassment of women in the cyber space:

- Under the IT Act of 2000, the phrases "stalking," "harassment," and "women" are not defined. There are no reliable statistics on how often women are sexually harassed online since they are reluctant to report because doing so could expose them to victimisation.
- The 2008 amendment to Section 78 of the IT Act, 2000, deals with the "Power to investigate Offenses." However, because it solely pertains to, an officer with the rank of Inspector or higher can conduct the investigation. When it comes to the investigation of offences, there has been little discussion nor attention on women. Since the term is gender neutral, it isn't clear whether a male or female officer will be assigned to an investigation.
- Online is where the majority of sexual cybercrimes against women are committed. However, this component is not covered by the IT Act of 2000, and there is no measurable data to evaluate the crimes of sexual harassment against women perpetrated online. Also, the term

[14] C No. 4680 of 2004

[15]Nakshab Khan, "Bois Locker Room probe: Minor girl created fake profile to test boy's character, say Delhi Police", 2022

[16] The Information Technology Act, 2000 (Act 21 of 2000), s.67.

"cybercrime" is not defined in this Act. Along with a lack of training in the police and judicial systems, India lacks the technology necessary to gather information on sexual offences committed online.

- Voyeurism and privacy violations are addressed in Sections 354C of the IPC, 1860 and Section 66E of the IT Act, 2000, respectively. These rules, however, are insufficient to address the issue of "Revenge Porn."
- When compared to the consequences outlined in the Indian Penal Code, 1860, the IT Act, 2000's punishments and penalties are insufficient in light of the seriousness of the offence that cybercriminals are perpetrating against women.
- There are fewer incidences of sexual harassment of women in cyberspace that are accurately reported. Due to psychological and sociological issues, such as hesitancy and concern for their reputation, the majority of women do not show up to register cases.

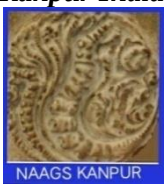
The following recommendations are provided in light of the study and analysis discussed above:

- Given that it has ratified international agreements against transnational organised crime and drug trafficking, India should ratify a convention on cybercrime, such as the Budapest Convention, in order to follow its rules and regulations and fight the crime globally.
- The Indian legal system should adopt the *"no contact order"* provision found in U.S. and U.K. laws, which prohibits stalkers from contacting their victims for an extended period of time.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was created as a result of the Vishakha guidelines and the ensuing directives. A new specialized law or statute against sexual harassment of women in cyberspace is required because this Act is mostly limited to "Workplace."
- Because the IT Act, 2000 largely addresses economic and commercial offences, it is urgent to update it with sections that focus on women, in keeping with the Criminal Law (Amendment) Act of 2013 and the 2018 modifications to the Indian Penal Code, 1860.
- Mr. Pawan Duggal, a cyber law specialist, advised that judges working in tribunals should be well-versed in cyber laws and regulations to primarily deal with sexual harassment of women in internet.
- The crime's jurisdiction is still up for debate. Since cybercrimes have crossed international borders, it is essential to develop a system that holds offenders accountable in the country where the crime was committed.
- In addition to the regular police force, a dedicated cyber police unit must be established and stationed in every area to combat these crimes.

Cyberspace sexual harassment of women is a growing criminal activity that needs to receive attention on a global scale. It involves knowledge and ability,

and cannot be committed by the average person. The time has come for society to shift its attitude toward women and stop treating them like a worthless commodity. The establishment of a forensic science university in the state was proposed by the honourable *Mr. Justice Yad Ram Meena*, a former chief justice of the Gujarat High Court,this university will assist both the investigating authorities and the judges in addressing the problem of cybercrimes against women, facilitating the swift resolution of cases. Additionally, it is crucial to create a sensible rule or act to meet the unforeseeable scenario of no laws addressing sexual harassment of women in the cyber world.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

PATENT LAW IN THE AGE OF ARTIFICIAL INTELLIGENCE

ABHIMANYU SHARMA
Student B.A. LL.B(H.), 5th Year
Law College Dehradun
Uttaranchal University, Dehradun India
DR. LAKSHMI PRIYA VINJAMURI
Associate Professor
Law College Dehradun
Uttaranchal University, Dehradun India

Abstract:
This article will explore the implications of artificial intelligence (AI) on patent law in the modern era. It will begin with an introduction to the topic, discussing the history of patent law and its current status. The article will then provide an overview of AI, explaining what it is and how it works, as well as outlining the different types of AI and their applications. The impact of AI on patent law will then be explored, with a discussion of the challenges and opportunities that AI presents. The article will consider the potential benefits and drawbacks of AI in patent law, and how it is changing the way patents are created and enforced. One of the key issues that will be explored in the article is the patentability of AI inventions. The current legal landscape will be explained, and different approaches taken by different jurisdictions will be outlined. The article will also consider the criteria for patentability of AI inventions, and how this may evolve over time. Ownership and licensing of AI patents will also be discussed in detail, with an exploration of the legal issues surrounding these areas. The article will consider the different types of licenses and their applications, as well as the challenges and opportunities presented by AI in patent licensing. Enforcement of AI patents will be another key issue explored in the article. Different types of enforcement will be outlined, and the challenges and opportunities presented by AI in patent enforcement will be considered. Finally, the article will consider the potential future directions for AI and patent law, including the legal and ethical issues

that may arise in the future. The potential implications of AI on patent law and the legal system as a whole will also be explored.

Overall, this article will provide a comprehensive overview of the impact of AI on patent law, and will highlight the challenges and opportunities presented by this rapidly evolving technology. The article will conclude by providing suggestions for future research and policies.

Keywords: Patent law, Artificial intelligence (AI), Patentability, Innovation, AI inventions

Introduction

The field of artificial intelligence (AI) has made significant advancements in recent years, and its impact is being felt across various industries, including intellectual property law. As AI technology becomes increasingly sophisticated, the question arises: how does patent law apply to AI-generated inventions? Patent law is intended to safeguard new and creative innovations by giving the creator a temporary control over the creation. An innovation must satisfy certain criteria, such as originality, non-obviousness, and utility, in order to be granted a patent. However, there are specific difficulties that must be handled when it comes to AI-generated innovations.

Patent law is a collection of legal rules that regulate the awarding and implementation of patents, which are limited-time exclusive rights given by the government to the creator of a novel and beneficial innovation. In return for revealing their innovations to the public, innovators are granted a legal control over their discoveries for a set length of time under patent law. A patent grants the creator the right to prohibit others from producing, using, selling, or shipping the copyrighted creation without permission. Patents are local in nature, which means that a patent issued in one nation does not confer the right on the creator to prevent others from producing, using, selling, or shipping the innovation in another.

The origins of patent law can be traced back to the 15th century when the Republic of Venice introduced a system of granting exclusive rights to inventors for a limited period of time. In the 17th century, England passed the Statute of Monopolies, which granted monopolies to inventors and created the modern concept of a patent. In the United States, the first patent law was enacted in 1790, and the US Patent and Trademark Office was established to oversee the granting and enforcement of patents. Since then, patent law has evolved and expanded to cover new technologies and fields, including software and biotechnology.

The emergence of AI technology has had a significant impact on patent law. AI-generated inventions pose unique challenges for patent law, particularly when it comes to determining who should be credited as the inventor and meeting the non-obviousness and disclosure requirements of patent law. Traditionally, a human inventor has been credited with inventing a new product or process, and the non-obviousness requirement of patent law has been evaluated based on whether a person skilled in the relevant field would have found the invention obvious. However, when it comes to AI-generated

inventions, there is often no direct human intervention in the invention process, which raises questions about who should be credited as the inventor and whether the invention meets the non-obviousness requirement of patent law. Additionally, the disclosure requirement of patent law, which requires inventors to provide a clear and complete description of their invention in the patent application, can be difficult to meet when it comes to AI-generated inventions. AI systems can be complex and opaque, making it difficult to fully understand how an AI-generated invention works and how it was developed.

There are numerous examples of AI-generated inventions that have been patented in recent years. For example, IBM has patented an AI system that can predict when and where a vehicle will crash, while Google has patented an AI system that can generate personalized news summaries for individual users. These inventions are created, in whole or in part, by an AI system without any direct human intervention, which raises questions about the role of the inventor in the invention process. Another example of an AI-generated invention is the Dabus machine, which was developed by a researcher named Stephen Thaler. Thaler claims that the Dabus machine is capable of generating new inventions without human intervention and has filed patent applications for several AI-generated inventions, including a container with fractal walls and a beverage container based on Morse code. However, the US Patent and Trademark Office has rejected these patent applications on the grounds that an AI system cannot be credited as the inventor under current patent law.

The Patents Act, 1970

The Patents Act of 1970 is the main piece of legislation that governs patent law in India. The Act defines the patentability factors, which include originality, innovative step, and commercial relevance. An innovation, according to the Act, is a novel product or method that includes a creative move and has commercial utility. The innovation must also not be apparent to a person knowledgeable in the pertinent area. Furthermore, the Patents Act of 1970 establishes certain limitations from patentability, such as innovations that are detrimental to public order or decency, medical treatment techniques, and computer programmes as such. The Act does, however, permit the patenting of computer-related innovations, including those relating to AI. (*Patents*, n.d.)

Provisions related to inventorship and ownership

Under the Patents Act, 1970, the inventor of an invention is entitled to apply for a patent. However, in cases where an invention is made by an employee in the course of their employment, the right to apply for a patent may belong to the employer. The Act also provides for joint ownership of patents in cases where an invention is made by two or more persons

In the case of AI-generated inventions, questions of inventorship and ownership can be more complex. In some cases, it may be difficult to identify who the actual inventor is. For example, in cases where an AI system is used to develop a new drug or medical treatment, it may be unclear whether the AI system or the human researchers should be credited as the inventor. As a

result, there is ongoing debate about how to determine inventorship and ownership in cases involving AI-generated inventions.

Challenges in applying the Act to AI-generated inventions

The Patents Act, 1970 was drafted long before the emergence of AI technology, and as such, it does not explicitly address issues related to AI-generated inventions. This has led to some challenges in applying the Act to such inventions.

One issue is that the Act requires that an invention must involve an inventive step. However, in some cases, AI systems may be capable of generating inventions without any input from a human inventor. This raises questions about whether an invention generated entirely by an AI system can be considered to involve an inventive step.

Another issue is that the Act requires that an invention must have industrial applicability. In the case of AI-generated inventions, it may be difficult to determine whether an invention has industrial applicability without first testing it in a real-world setting. This can be challenging in cases where the AI-generated invention relates to a new and untested technology.

Overall, the legal framework for patent law in India provides some guidance for addressing issues related to AI-generated inventions, but there are still many unresolved questions and challenges. As AI technology continues to advance, it is likely that these issues will become more pressing and require further attention from policymakers and legal experts.

The Indian Patent Office is responsible for the administration and enforcement of patent law in India. The Patent Office operates under the control of the Controller General of Patents, Designs, and Trade Marks, who is appointed by the Indian government. The Patent Office has its headquarters in Mumbai and has branch offices in Delhi, Chennai, and Kolkata. The Patent Office plays a crucial role in the patent system in India, as it is responsible for granting patents, registering patents granted in other countries, and conducting searches and examinations of patent applications. The Patent Office is also responsible for the maintenance of the Indian patent register, which contains information about all patents granted in India. (Ramachandran, 1989)

The Indian government has taken several steps to promote innovation in the field of AI, which could have implications for patent law. In 2016, the Ministry of Commerce and Industry released the National Intellectual Property Rights Policy, which recognizes the importance of protecting intellectual property in the context of emerging technologies such as AI. The policy emphasizes the need for a balanced and flexible approach to IP protection, which takes into account the unique challenges posed by these technologies.

In addition, the Indian government has launched several initiatives aimed at promoting innovation in AI. For example, the NITI Aayog, a policy think tank, has launched the National Program on AI to develop a roadmap for India's AI strategy. The government has also set up the Centre of Excellence in AI and Robotics in Bangalore to promote research and development in these fields. These initiatives could lead to increased patenting activity in the field

of AI and could have implications for the patentability criteria and examination procedures in India. ("Approach Document for India Part 1 - Principles For Responsible AI February 2021 Responsible AI #Aiforall," 2021)

Challenges of Patenting AI Inventions

As artificial intelligence (AI) becomes increasingly sophisticated, the patentability of AI-generated inventions has become a contentious issue. Patent law is designed to incentivize innovation by granting exclusive rights to inventors in exchange for public disclosure of their inventions. However, AI-generated inventions raise unique challenges for patent law, particularly with respect to the non-obviousness requirement, inventorship requirement, and disclosure requirement. This section will explore these challenges in more detail and consider the recent Thaler v. Commissioner of Patents case law. (Thaler v. Commissioner of Patents, [2021] FCA 879, 2022)

Non-obviousness requirement

The innovation must not be apparent to a person of average ability in the pertinent area, which is one of the main criteria for getting a patent. This criterion is meant to ensure that patents are only awarded for genuinely innovative concepts, rather than for minor enhancements on current technology. However, in the case of AI-generated innovations, the non-obviousness criterion can be difficult to implement.

As AI is capable of analysing massive quantities of data and finding trends that may not be instantly evident to humans, it can sometimes arrive at answers that would be deemed non-obvious by conventional standards. For example, an AI algorithm might be able to identify a new chemical compound that could be used to treat a particular disease, even though human researchers had not previously considered that compound. However, there is a risk that granting patents for such inventions could stifle innovation by preventing other researchers from building on the AI-generated discoveries.

Inventorship requirement

Another requirement for obtaining a patent is that the invention must be attributed to a natural person or persons who are named as the inventors. This requirement is intended to ensure that patents are only granted to actual inventors, rather than to organizations or machines. However, the inventorship requirement can be challenging to apply in the context of AI-generated inventions.

In some cases, it may be difficult or impossible to identify a specific human inventor who was responsible for the invention. For example, if an AI algorithm was used to generate a new drug candidate, it may be unclear whether the invention should be attributed to the human researchers who developed the algorithm, the programmers who wrote the code, or the AI system itself. There is a risk that failing to properly attribute inventorship could lead to disputes over ownership and compensation, as well as a loss of transparency and accountability in the innovation process.

Disclosure requirement

A third requirement for obtaining a patent is that the invention must be disclosed in sufficient detail to enable a person having ordinary skill in the relevant field to replicate the invention. This requirement is intended to ensure that the public can benefit from the invention by building on the disclosed knowledge. However, the disclosure requirement can be challenging to apply in the context of AI-generated inventions.

As AI algorithms are often complex and opaque, it can be difficult to provide a clear and complete description of how the AI-generated invention works. This can make it difficult for others to replicate the invention, and may also raise concerns about the potential for trade secret misappropriation. There is a risk that failing to provide sufficient disclosure could lead to patents being granted for inventions that are not actually novel or non-obvious, as well as a loss of trust in the patent system. (*The Challenges to Patentability Posed by Artificial Intelligence*, 2023)

Patentability of AI-generated inventions

Given the challenges posed by AI-generated inventions, some have called for a rethinking of the patentability requirements for such inventions. For example, some have suggested that the non-obviousness requirement should be relaxed in order to account for the unique capabilities of AI. Others have proposed that the inventorship requirement should be expanded to include organizations or machines, or that a new category of "AI inventor" should be created.

However, there are also concerns that relaxing the patentability requirements for AI-generated inventions could lead to a flood of low-quality patents that stifle innovation rather than promote it. Additionally, there are ethical and social implications related to the patenting of AI-generated inventions, such as issues of ownership and control over AI systems, the potential for these systems to exacerbate existing inequalities, and the impact on the future of work. As such, policymakers and patent offices must carefully consider the balance between promoting innovation and ensuring that the patent system serves the broader interests of society as a whole.

Case Studies

United States v. Arthrex, Inc. case law

The US Court of Appeals for the Federal Circuit ruled in United States v. Arthrex, Inc. that the Patent Trial and Appeal Board (PTAB) breached the Nominations Section of the US Constitution in the manner it selected administrative patent justices. The case concerned Arthrex, Inc.'s appeal to a medical device patent during an inter partes review (IPR) process before the PTAB. The PTAB ruled that the patent was void, and Arthrex filed an appeal.

The Court of Appeals ruled that the Secretary of Commerce's nomination of administrative patent judges, rather than the President or a court of law, breached the Appointments Clause. As a result, the Court removed the section of the Patent Act that allowed for the appointment of administrative patent judges, rendering them subordinate officials who could only be named by the

Director of the United States Patent and Trademark Office (USPTO). (*United States v. Arthrex, Inc., 520 U. S. 651*, 2021)

IBM v. BGC Partners Inc. case law

In IBM v. BGC Partners Inc., IBM sued BGC Partners Inc. for patent violation on two inventions connected to computerised trading platforms. BGC Partners Inc. claimed that the inventions were void under the Alice ruling of the United States Supreme Court, which ruled that abstract concepts are not patentable. The patents were declared void by the District Court for the Southern District of New York because they were directed to the abstract idea of matching orders in a computerised trading system, and the claims did not contribute enough to the abstract idea to make them enforceable. The Court determined that the claims were limited to regular computer operations and that using a generic computer did not convert the general concept into a protected innovation. (*International Business Machines Corp. v. BGC Partners, 10 Civ. 00128 (PAC) (FM).*, 2010)

As AI continues to rapidly develop and impact various industries, including the field of patent law, there are many possible changes that could be made to patent laws in order to keep up with the pace of technological advancements. In this, we will explore some possible future directions for patent law in relation to AI, as well as some policy suggestions for patenting AI inventions and the role of patent law in promoting innovation in AI.

One potential change in patent law due to AI is the potential expansion of what can be considered a "person skilled in the art." In patent law, the "person skilled in the art" is the hypothetical person who is knowledgeable in the relevant field and is used as a standard for determining the non-obviousness of an invention. With the rise of AI, the definition of what constitutes a person skilled in the art may need to be expanded to include AI systems, as they are becoming increasingly involved in the inventive process. Another potential change is the introduction of new patentability criteria specific to AI-generated inventions. For example, some experts have suggested that the concept of "technical effect" could be introduced as a requirement for patentability of AI-generated inventions. This would ensure that the invention has a practical application beyond just being an algorithm or computational model.

Policy Suggestions for patenting AI inventions

In order to encourage innovation in AI and ensure that patent law is able to effectively address the unique challenges posed by AI-generated inventions, there are several policy Suggestions that could be implemented. One suggestion is to establish a specialized patent examination process for AI-generated inventions. This would ensure that patent examiners are knowledgeable about AI and are able to effectively evaluate the non-obviousness and novelty of AI-generated inventions.

Another suggestion is to provide more clarity around the issue of inventorship for AI-generated inventions. As discussed earlier, the question of who can be considered the inventor of an AI-generated invention is still being debated in some jurisdictions. Providing clear guidelines and criteria for inventorship

would help to ensure that inventors are properly credited for their contributions and that patent rights are assigned to the appropriate parties.

The role of patent law in promoting innovation in AI

Finally, it is important to consider the role that patent law can play in promoting innovation in AI. Patents provide a legal mechanism for inventors to protect their intellectual property and recoup their investment in research and development. By providing patent protection for AI-generated inventions, patent law can help to incentivize innovation in AI and encourage investment in the development of new AI technologies.One potential concern is the risk of patent trolls – entities that acquire patents solely for the purpose of extracting licensing fees or settlements from companies that are using similar technology. This can create a chilling effect on innovation, as companies may be hesitant to invest in research and development if they fear being hit with a patent infringement lawsuit. To address this concern, some experts have suggested that patent laws should be reformed to make it more difficult for patent trolls to assert their patents.

Conclusion

In conclusion, the development of artificial intelligence (AI) has raised several legal and ethical questions in the context of patent law. The patentability of AI-generated inventions presents unique challenges due to the non-obviousness and inventorship requirements of patent law. Additionally, the lack of clarity on disclosure requirements and the patentability of AI-generated inventions continues to create ambiguity in the legal framework.

The legal framework for patent law in India, while similar to that of other jurisdictions, has its own set of challenges and opportunities in the context of AI-generated inventions. The Patents Act, 1970, lays down the criteria for patentability, including non-obviousness and inventorship requirements. However, applying these criteria to AI-generated inventions can be difficult due to the complex nature of the technology. Moving forward, possible changes in patent law may include the development of specific guidelines for AI-generated inventions and the introduction of new patent categories for these inventions. Additionally, policy Suggestions for patenting AI inventions may focus on promoting transparency and accountability in the development and use of AI technology.Overall, patent law has an important role to play in promoting innovation in AI. The legal framework must evolve to keep up with the rapid development of this technology and provide clarity and certainty to innovators and investors. As AI continues to transform various industries, it is crucial for patent law to keep pace and provide a framework that balances innovation and public interest.

References

1. Ferid Allani v. Union of India, WP(C) 7 of 2014, (Delhi High Court December 12, 2019).
2. International Business Machines Corp. v. BGC Partners, 10 Civ. 00128 (PAC) (FM)., (District Court for the Southern District of New York May 11, 2010

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

A BRIEF ANALYSIS OF THE MODERN PERSPECTIVE OF MENTAL CRUELTY IN DOMESTIC AFFAIRS AGAINST WOMEN IN INDIA

GUNJAN PATHAK
B.A.LL.B. (Hons.) Xth semester
Law College Dehradun
Uttaranchal University Dehradun .
UJJWAL KUMAR SINGH
Assistant Professor of Law
Law College Dehradun
Uttaranchal University Dehradun India

Abstract
Mental cruelty against women is a pervasive problem in India that has far-reaching consequences for women's physicaland emotional well-being. Over the years, the Indian judiciary by the means of activism recognized the seriousness of mental cruelty against women in domestic affairs and has taken a proactive role in defining and expanding the legal framework on this issue. This article provides an overview and deliberates on the changing scope of mental cruelty cases against women in India, analysing key judgments and legislation that have shaped the legal framework on this issue. The article also highlights the grey areas in current the combat system to curb cases of mental cruelty and lays down suggestions to precise the issue along with aligning India with the Sustainable Development Goal (SDG-5).

Keywords: Mental Cruelty, Sustainable Development Goal(SDG-5), DV Act, Section 498-A IPC.

Introduction:

Mental cruelty is defined as any act or conduct that causes severe emotional or psychological harm to a woman. It is a gender-based violence against women thatcan take many forms, including verbal abuse, humiliation, isolation, threats, and intimidation. It is a non-physical form of abuse that can have serious and lasting effects on a woman's mental and emotional well-being.Mental cruelty against women is often perpetuated by intimate partners, family members, and society at largebut this issue has still not received

enough attention in the Indian Context. Mental cruelty against women is a violation of their human rights. The issue of mental cruelty can be traced back to the deeply rooted customs and rules embedded in Indian society. Historically, Indian society was characterized by a system of stratification wherein men held a dominant position and women were relegated to subservient roles. According to the Codes of Manu and Chanakya, women were expected to be obedient to their husbands and to adhere to strict codes of conduct that were designed to preserve their chastity and honour. Any perceived deviation from these codes of conduct could result in severe social sanctions, including ostracism and violence.

Cruelty norms are dynamic, evolving from the circumstances. The definition of the term "cruelty" changes with the passage of time, location, and person. The definition of this phrase is not the same for those who live in different social and economic situations. As a result, the Legislature has not defined the term "cruelty" in its entirety. It entrusted this responsibility to the courts to determine the meaning of this term based on the facts and circumstances of the various cases.In its Report in 1956, the Royal Commission, also known as the First Law Commission on Marriage and Divorce, stated that it is not proper to have a detailed definition, but rather to allow the definition of cruelty to remain open to such adaptation that would be necessary through the medium of judicial decision to equate with changing social conditions.[1]

Furthermore, the Indian legal system traditionally provided little protection for women who were subjected to mental cruelty except a constitutional sanction provided under Articles 15 and 51A (e). There was no particular legal recourse for women who were exposed to emotional abuse or verbal harassment by their spouses or in-laws before the introduction of the Protection of Women from Domestic Violence Act in 2005. However, there is nospecific legal definitiongiven to mental cruelty.

Current Statistics on Mental Cruelty Cases in India:

According to a statistical analysis of National Crime Record Bureau (NCRB) figures from 2016, the majority of cases involving crimes against females were mental cruelty cases with the phrase "Cruelty by using a spouse or his family" accounting for 32.6% of all such instances.According to their statistics from 2019, there were 21,359 incidences of mental cruelty against women reported in India.[2].In addition, the National Family Health Survey (NFHS-4) study done in 2015–16 discovered that 27.3% of Indian women between the ages of 15 and 49 reported getting verbal or emotional abuse from their spouses. The report also revealed that 22% of women in India reported getting emotional abuse from their husbands, making this the most prevalent type of marital violence recorded by women in India.

[1] Diwan, Paras and Diwan Peeyushi, Law Relating to Dowry Death, Bride Burning, Rape and Related Offences, p. 1 41.

[2] National Crime Records Bureau (NCRB) - Crime in India 2019 report

Furthermore, a study conducted by the National Law School of India in 2017 found that 52% of women respondents experienced mental cruelty in their marital relationships. The study also found that the most common forms of mental cruelty reported by women included verbal abuse, humiliation,and insults.

A Constitutional Perspective on the Rights of Women:

Every legal framework for the protection and upliftment of women against the evil of mental cruelty in domestic affairs has a constitutional sanction.Constitutional provisions that provide gender justice include The Preamble, Fundamental Rights (Part III), Directive Principles of State Policy (Part IV), and Fundamental Duties (Part IVA).

- **Preamble:**Gender Justice is embodied in the Constitution right from the Preamble and reflects the basic structure of the Constitution, which cannot be amended in the exercise of the power under Article 368 of the Constitution.
- **Fundamental Rights:**Fundamental Rights are those that every person is entitled to under a nation's constitution. They are seen as crucial for preserving equality, liberty, and human dignity.

  Article 14 and Article 21 are the two vital vertices of the golden triangle which provides to every citizen equality among equals and the right to a dignified life. Article 15(1) empowers the Legislature to make special laws for the protection and upliftment of vulnerable sections including womenand children.
- **Directive Principles of State Policy:** The DPSPs reflect the Indian Constitution's commitment to promoting gender equality and empowering women. They recognise the significance of establishing a society in which women have the same opportunities as men and may live with dignity. However, it is important to note that DPSPs are non-justiciable, meaning that they cannot be enforced by a court of law. Nonetheless, they serve as guiding principles for the State to pursue policies and programs that promote gender equality and empower women.
- **Fundamental Duties:**They acknowledge the significance of establishing a society in which women would live with respect and dignity and have access to equal rights and opportunities. These demonstrate the commitment made by the Indian Constitution to advancing gender equality and women's empowerment.
- **Article 51(A)(e)** of the Indian Constitution pertains to the fundamental duties of every citizen of India. The provision seeks to promote gender equality and respect for women's dignity in society. It emphasizes the need to renounce and discourage practices that are harmful or derogatory to women.

Indian Legal Framework on Mental Cruelty Against Women

- Under Criminal Law

- **Indian Penal Code,1860:**

In 1983, the Indian Penal Code introduced Section 498-A which defines cruelty by a husband or his relatives as a criminal offense. Under this section, any act of cruelty by a husband or his relatives that causes a woman to commit suicide or causes grave injury or danger to her life, limb, or health, whether mental or physical, is punishable by imprisonment for up to three years and/or a fine. Section 306 of the Code states that abetment of suicide is also a criminal offense and includes instigating or compelling a person to commit suicide by any means.

- **The Evidence Act, 1872**

Section 13-A of the Indian Criminal Code concerns incidents of a married woman aiding suicide. If it is shown that a woman committed suicide within seven years of her marriage and that her spouse or his family treated her cruelly, the court may conclude that the husband or relative aided her suicide. The term "cruelty" is defined under Section 498-A of the Indian Criminal Code (45 of 1860).

Dimensions of Mental Cruelty Against Women asPer Judicial Pronouncements:

- **Under IPC:**

The concept of mental cruelty in terms of section 498A IPC has thus progressed through judicial pronouncements.

The Supreme Court held in *V. Bhagat v. D. Bhagat*[3] that mental cruelty has to be grave enough that the parties cannot be anticipated to live together. Additionally, the conduct of the person alleged of mental cruelty must have been of such a kind that it makes it difficult for another partner to live with them. The Supreme Court defined mental cruelty as mental pain, misery, or suffering induced by one spouse to such a degree that it dissolves the link between both spouses and makes it impossible for the affected spouse to carry on living with the other in *S. Hanumantha Rao v. S. Ramani*.[4]

In another case, *State of Karnataka v Balekai*[5], the court upheld cruelty as any treatment that leads the wife to have a reasonable fear that residing with her husband will be detrimental and destructive to her life.To find cruelty, the court evaluates the husband and wife's married connection, their cultural and psychological condition of life, their well-being, and their participation in everyday life.

Under DV Act:

The Supreme Court emphasised a crucial point in the case of*Rupali Devi v. State of U. P. &Ors*[6]stating that the 2005 Act's definition of domestic violence discusses harm or injury caused to the wife's life, limb, or health, whether physical or mental, and that this indicates a close relationship with

[3](1994) 1 SCC 337
[4] AIR 1999 SC 964
[5](2010) 7 SCC 129
[6] (2019) 2 SCC 722

Explanation (a) and (b) to Section 498A of the IPC, 1860, which defines cruelty. The landmark case of *Hiral P. Harsora v. Kusum NarottamdasHarsora*[7]was one of the first cases that recognized the concept of mental cruelty under the DV Act. The court held that mental cruelty is a serious form of domestic violence that can cause severe harm to women's mental health and well-being. The court further held that mental cruelty can take many forms, including verbal abuse, emotional manipulation, and isolation, and that it need not be accompanied by physical violence.

In 2018, the High Court of Kerala in the case of *S. Sreekumar v. Sreedevi*[8]emphasized the need for a case-by-case analysis of mental cruelty under the DV Act. The court held that mental cruelty must be viewed in the context of the entire situation and that it can be a result of a consistent course of conduct or a single act. The court further stated that mental cruelty can arise from intentional or reckless conduct that causes a high level of stress and anxiety. The case of *Juhi Praveen v. State of NCT of Delhi*[9], provided further clarity on the concept of mental cruelty under the DV Act. The court held that mental cruelty can be a standalone ground for seeking protection under the DV Act and that it need not be accompanied by physical violence. The court further stated that the impact of mental cruelty on the victim's mental health and well-being must be considered while assessing the severity of the offense.

Recent Judicial Trend:

The scope of mental cruelty has been widened in recent years the intention of the spouse to cause injury or harm to the other party is giving way to the impact of the respondent's conduct on the petitioner's health and state of mind.

In Ms. Gurdev Kaur v. Sarwan Singh[10], the court stated that the criteria for what constitutes cruelty must be used in the light of the evolved societal conditions that exist now, rather than the strict background of the teachings of Manu's or other Hindu lawgivers' ancient scriptures.

Various instances highlight the changing trend of the Indian judiciary towards mental cruelty cases against women are highlighted by the judiciary in following cases:

Unusual, neglectful, and deliberately harsh conduct:

The non-cooperative attitude, ill-treatment and adopt intentionally very harsh and rude behaviour comes under the purview of mental cruelty.

In *K. Srinivas Rao v. D.A. Deepa*[11], the Supreme Court held that mental cruelty may arise not only from acts of the commission but also from acts of omission or neglect that cause the aggrieved party to suffer mental agony and anguish.

False accusation of adultery or unchastely

[7] (2016) 10 SCC 165
[8](2018) 2 KLT 79
[9] (2018) 256 DLT 651
[10] AIR 1992 SC 1903
[11] (2013) 5 SCC 226

If any spouse leviesa false allegation of adultery or unchastely against the other spouse, then it amounts to mental cruelty. In *V. R. Bhate v. Neela V. Bhate*[12], the Supreme Court observed that the husband's false allegation of adultery against the wife was a grave assault on her character, honour, prestige, and health, and was considered in the light of an educated Indian wife and judged her according to Indian civilization and norms. As a result, such an act or action by the husband constitutes mental cruelty, and indeed the wife is authorized to seek proper relief from the court.

Distrust and Verbal Abuse

In *Hiral P. Harsora v. Kusum NarottamdasHarsora*[13], the Supreme Court held that sustained accusations, excessive criticism, and interference in the personal and professional life of the spouse may constitute mental cruelty.

Filing a false and baseless criminal case

In *Naveen Kohli v. Neelu Kohli*[14], the Supreme Court held that filing false criminal cases or making false allegations against the spouse amounts to mental cruelty. The court further stated that such acts lead to the breakdown of the marital relationship and create an atmosphere of tension and anxiety, making it impossible for the parties to live together. Therefore, such acts constitute mental cruelty and entitle the aggrieved party to seek relief under the DV Act.

State of Intoxication

In *Shailja &Anr. v. Khobbanna*[15], the Supreme Court observed that the question of whether drunkenness as an act of mental cruelty or notdepends upon the factor whethersuch an act of drunkenness is accompanied by insult, abuse, or violence and causes any kind of mental pain or torture to the wife, only on that point, it constitutes mental cruelty which must be having the capacity of disturbing the mental peace of the other party.

Infectious and venereal disease

In*V. Bhagat v. D. Bhagat*[16], If any party is suffering from any infectious or venereal disease and it is fully known to him that by establishing sexual relations with the other spouse, it will automatically communicate to him or her. But despite the knowledge, if he insists the other party have sexual intercourse with him then such an act leads to mental cruelty, and on such account, the party may approach the court for the dissolution of the marriage.

Forcing wife to adopt the profession of prostitution

In *S. Hanumantha Rao v. S. Ramani*[17]it was heldthat if the husband compels his wife to lead an immoral life, then it would be a case of mental as well as physical torture against the wife.So such practices if adopted by the husband to earn more and more money would make it impossible for the wife to lead

[12] (2003) 8 SCC 337.
[13](2016) 10 SCC 165
[14] (2006) 4 SCC 558
[15](2018) 13 SCC 303
[16]AIR 1994 SC 710.
[17](1999) 3 SCC 620

her life with him because to have a respectful and graceful life is the basic right of every individual in society and if anybody violates it, then the aggrieved party may knock the door of the court.

Persistent threat to commit suicide

In Praveen Kumar v. M. Madhuri[18], the Supreme Court ruled that threatening suicide to compel the other partner into doing what he does not want to do for any reason amounted to mental cruelty.

Forcing to terminate the pregnancy The conduct of the husband to compel his wife to terminate pregnancy without any cause on the one hand and the wife causing abortion without the consent of her husband would give mental pain, torture, and ill-treatment to each other and such action cannot be pardoned in any event. In *Suchita Srivastava &Anr. v. Chandigarh Administration*[19], the Supreme Court ruled that the right to reproductive autonomy is a fundamental right of every woman, and any interference with this right would constitute a violation of her human rights. The court also observed that the husband's coercion of his wife to undergo an abortion without her consent amounts to mental cruelty, which is a valid reason for seeking divorce under the Hindu Marriage Act.

Refusal to have sexual intercourse

In *Samar Ghosh v. Jaya Ghosh*[20], the Court held if one of the spouses continuously refused to establish sexual intercourse with the other spouse, it may or may not amount to mental cruelty. If such a refusal is due to the ill-health or any physical incapacity then it does not at all amount to mental cruelty. Yet, wilful rejection of a sexual connection by one partner when the other partner is displeased will amount to cruelty.

Undue familiarity If the husband has familiar relationship with another women other than his wife, amount to mental cruelty

In *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*[21],the Supreme Court held Improper association with a member of the opposite sex by a spouse short of adultery amount to cruelty. The court observed that the husband's relationship with other woman other than his wifewas found to be of such a nature as to cause mental pain, agony, and suffering to his wife, and therefore, it amounted to cruelty. The court also held that it is not necessary that the conduct of the errant spouse must be such as to lead to the conclusion that the other spouse cannot possibly live with him/her. It is sufficient if the conduct of the spouse is so grave and weighty that it makes it intolerable for the other spouse to live with him/her.

Threats to give divorce and not intentionally maintaining the spouse

The practice of instantaneous Triple Talaq, or Talaq-e-biddat, amounts to mental cruelty, as was established in the*Shayara Bano v Union of India*[22]. In

[18] (2010) 12 SCC 350
[19] (2009) 14 SCC 42.
[20](2007) 4 SCC 511
[21](2003) 6 SCC 334
[22] (2017) 9 SCC 1

this case, the Supreme Court's Constitutional Bench, by a 3:2 majority, pronounced the practice unlawful per Article 14 & Article 13(1) of the Indian Constitution.

Polygamy amounts to Mental Cruelty

The Supreme Court of India addressed this issue in the case of *Sarla Mudgal v. Union of India*[23], stating that the second marriage of a Hindu husband after accepting Islam would be void on that ground as well and would come under the provisions of Section 494, IPC. A problem with this law is that it is misused by men to perform multiple marriages, especially by converting to Islam.

Nikah Halala amounts to mental cruelty

In its verdict in 2019, the Supreme Court in *Shayara Bano V Union of India*[24]declared that nikah halala and polygamy were not essential practices of Islam and were therefore not protected under the right to religious freedom. The court also noted that nikah halala was a form of mental and emotional abuse and could not be allowed to continue.

Miscellaneous cases of cruelty

Marital rape:In *Independent Thought v. Union of India*[25], it was said that it would be useful to point out that S. 498-A, IPC covers the cases of victims of 'marital rape' which is perpetrated by the husband on the wife. This rape is rape irrespective of the fact by whom and under what circumstances it has been committed. However, it's important to note that if the court focuses too much on defending the legislative process and doesn't strike down poorly constructed enactments, it could hinder the national campaign to abolish the marital exemption. Lastly, It was observed by Justice Mohapatra in *Shyamsundar v. Shantamani* that it has been equally settled that physical violence alone is not the only feature to be proved by the wifeto successfully claim separate maintenance and residence.Mental abuse can be sufficient to get the wife a divorce. In terms of mental cruelty and desertion, perceptions are rapidly shifting, and we must be aware of current perceptions, especially among Hindus, of monogamous marriage.[26]

Grey Areas in Remedies Available to Women:

One of the main grey areas in the remedies available to women against mental cruelty in India is the lack of specific legal provisions that address mental cruelty. While the Domestic Violence Act, 2005 recognizes mental cruelty as a form of domestic violence, the Act does not provide a comprehensive definition of mental cruelty, leaving it open to interpretation. This has resulted in inconsistent application and enforcement of the legal provisions on mental cruelty. Another grey area is the lack of awareness among women about their legal rights and remedies. Many women are not aware of the legal provisions on mental cruelty and how to access the legal system. This results in a lack of

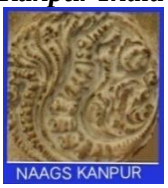
[23] (1995) 3 SCC 635
[24] (2017) 9 SCC 1
[25](2017) 10 SCC 800
[26]AIR 1964 Ori 1.

reporting of mental cruelty cases and a lack of effective remedies for women who do seek legal assistance. The burden of proof is also a grey area in remedies available to women against mental cruelty. Unlike physical violence, mental cruelty is not easily visible and can be difficult to prove. This puts women in a disadvantaged position when seeking legal remedies and can lead to delays in the delivery of justice. Finally, there is a lack of adequate support services for women who experience mental cruelty. Women who experience mental cruelty often require counselling and other support services to help them cope with the effects of the abuse. However, there is a lack of adequate resources and support services, such as counselling and legal aid services, which can assist women in seeking protection and relief.

Conclusion:

The Indian judiciary has played a critical role in recognizing and expanding the legal framework on mental cruelty against women. The above cases demonstrate the evolution of the concept of mental cruelty and its recognition as a standalone ground for divorce. The judiciary has emphasized that mental cruelty can take many forms and that it is often a result of a consistent pattern of behaviour. However, despite the legal framework and judicial activism, mental cruelty against women remains a prevalent problem in India. There is a need for continued judicial activism, social awareness, and policy reform to address the root causes of mental cruelty against women in India. The government and civil society organizations must work together to create a more equitable and just society for women. The recognition of mental cruelty against women as a valid ground for divorce is a positive step toward addressing this issue, but much more needs to be done to ensure that women are protected.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

A CRITICAL ANALYSIS OF CRIMINAL LAW (AMENDMENT) ACT, 2013 IN COMBATING ACID ATTACKS IN INDIA

MANSI BISHT
Xth Semester B.A.LL.B. (Hons)
Law College Dehradun
Uttaranchal University Dehradun India
DR. MANSI SHARMA
Assistant Professor of Law
Law College Dehradun
Uttaranchal University Dehradun India

ABSTRACT

The use of acid to commit a crime is the most serious issue and horrific crime in India today.Acid attack is when a person pours acid on someone with the intent to kill or spoil their appearance in order to retaliate. Rejection of a marriage proposal, disapproval of men's sexual desires, dowry demands, property disputes and other family concerns generally rank high in the list of factors responsible for these crimes. Acid attacks are motivated by enmity towards the victims. The 2013 Criminal Amendment Act brought significant changes to the legal framework for acid attacks, including stricter punishment for perpetrators, regulation of acid sales, and provision of medical and financial assistance to victims.

The article examines the impact of these changes on acid attack cases in India, including a decrease in the number of reported cases and an increase in the conviction rate. However, there are still several challenges that need to be addressed, such as the effective implementation of the laws and schemes related to acid attacks, creating awareness about acid attacks and providing a long-term rehabilitation and support for victims. The article also highlights the importance of a collective effort from all stakeholders, including the government, civil society organizations and individuals, in the fight against acid attacks. The government needs to continue its efforts to strengthen the legal framework, create awareness, and provide support to the victims. Civil

society organizations can play a crucial role in supporting victims and contributions from individuals can be made through the dissemination of information regarding acid attacks.
Overall, this article analysis the impact of the amendment in the past 10 years and further emphasizes the need for continued efforts to address the subject of acid attacks in India with an aim to create a safer and more inclusive society for everyone.
Keywords Acid Attack,Victim, Amendment, Punishment, Provision

Introduction

Acid attacks are a form of violence that involves the intentional use of acid or other corrosive substances on a person to cause harm or disfigurement. Acid attacks have been prevalent in India for many years and have been used as a form of revenge or punishment against women, especially in cases of rejected marriage proposals, dowry demands, and other such violence. When acid is used as a weapon, it can do severe damage to the victim's physical, psychological, and emotional well-being and often result in lifelong disability, disfigurementand social stigma. In light of the dramatic rise in acid attacks across the country, the Indian government passed the Criminal Law (Amendment) Act, of 2013, which introduced significant changes to the law relating to acid attacks. This act is a piece of Indian legislation that was passed by the Lok Sabha on 19th of March, 2013 and by the Rajya Sabha on 21st March, 2013.The bill was signed by the President on April 2, 2013 and it was broughtinto effect on 3rd February, 2013.The purpose of this amendment was to ensure that criminal cases, particularly those involving crimes against women, were heard quickly and fairly. This amendment has become a game-changing piece of legislation for the safety of women since it includes protection for women against acid attack or other sexual offences. The Indian Penal Code, Code of Criminal Procedureand Indian Evidence Act have all been significantly revised as a result of the amendment.

Section 100 adds another category of exceptions to the right of self-defence. Sections 326A and 326B, new updated provisions, make it an offence to commit or attempt to commit an acid attack. [1]The requirement for a female police officer to record a victim's statement was added to Sections 154 and 161 as part of the amendment. According to Section 357A, hospitals are now obligated to offer care to victims free of cost.[2]

The term "victim" refers to the individual who has suffered some form of harm as a result of the alleged criminal conduct.[3]

Victims of acid attacks are those who have suffered deformities as a direct result of being attacked with acid or another harmful chemical.Acid attacks destroy flesh and internal organs in a terrible way. Most people who are burned by acid never recover fully because they don't get medical assistance in

[1] The Indian Penal Code, 1860 (Act 45 of 1860)
[2] The Code of Criminal Procedure, 1973 (Act 2 of 1973)
[3] The Code of Criminal Procedure, 1973, Section 2(wa), (Act 2 of 1973)

time, and those who live in rural areas are particularly at risk. The problem is that there is hardly any hospital with the resources to treat acid attack victims. It calls for a lot of psychiatric counselling and substantial reconstructive surgery, both of which are in short supply. Victims of acid attacks often become a financial and emotional burden on their families.

If someone is a victim of a crime relating to acid assault the nearest public or private hospital, regardless of who runs it, must treat them immediately and at no cost, and must also notify the authorities.

CAUSES AND REASONS BEHIND ACID ATTACKS

1. Revenge and Retaliation: In many cases, acid attacks are carried out as a form of revenge or retaliation for some perceived wrongdoing or personal dispute. This may include instances where the attacker has been rejected in a relationship or marriage proposal, or where they have been denied a job or promotion.
2. Domestic Violence: Acid attacks can also be a form of domestic violence, where the attacker use acid to control, intimidate or punish their partner or family members. This type of violence is often fuelled by feelings of jealousy, possessiveness, or anger.
3. Gender-Based Violence: Women are disproportionately affected by acid attacks, with many attacks being carried out as a form of gender-based violence. This includes attacks on women who have rejected unwanted advances, or who have defied traditional gender roles or expectations.

Table 01: Gender Distribution of Acid Attack Victims (2020)[4]

GENDER	PERCENTAGE OF VICTIMS
MALE	17.30
FEMALE	82.70

4. Land Disputes and Property Conflicts: In some cases, acid attacks are carried out in the context of land disputes or property conflicts. This may include cases where the attacker seeks to drive a family or community off their land, or where they seek to settle a score with a rival.
5. Social and Political Conflicts: Acid attacks may also be used as a weapon in social and political conflicts, including inter-ethnic or inter-religious tensions. This type of violence is often accompanied by deep-seated grievances or long-standing historical animosities.

Table 2: Reasons behind Acid attack cases (2020)

Reason	Percentage of Reported Cases
Rejected Marriage Proposal	35.33%
Land or Property Dispute	10.96%
Domestic Dispute	9.57%
Revenge	8.18%
Business Dispute	4.23%

[4]National Crime Record Bureau, Report on Crime in India (2020)

Others	31.73%

IMPLICATIONS OF THE ATTACK ON THE VICTIM

1. Physical - Acid causes severe effects on the body parts of the victim which are affected for a lifetime. The damage is so brutal that it can turn the person blind or deaf. It can destroy the body parts completely leading to medical complexities for the entire life of the victim.
2. Psychological – The victims are not just affected physically but emotionally and psychologically too. During the attack they go through unbearable pain and after the attack they go through multiple factors like fear, depression, etc. They feel ashamed after the disfigurement, scared of being attacked again, afraid to face the world and the thought process goes on which breaks them emotionally.[5]
3. Economical – The attack is so violent that it makes the person disabled and disfigured. This makes them lose their job, studies, etc. Therefore, the victims tend to be a burden on their families. They are no more in a condition to work or earn for themselves and they become economically weak in society.
4. Social – The social life of a victim turns out to be a hard cult after the attack. People look at or rather stare at them as strange odd beings where they feel like aliens. It becomes so difficult for them to socialize that they have to cover themselves or their affected body parts before stepping out of their house. Hence, their life is no more casual but destroyed.

The post-2013 Criminal Amendment Act has brought about some significant changes in the legal system regarding acid attacks in India. The Act introduced new provisions in IPC related to acid attacks, such as increased punishment, compensation for victims, and stricter regulations on the sale of acid. Let's look closely at the impact of the amended act on acid attack cases in India:

1. Stricter Penalties for Perpetrators- Under section 326A the amendment provides for a minimum imprisonment of ten years and a maximum of life imprisonment for acid attack perpetrators along with the fine. Attempt to throw acid as defined under Section 326B, carries a penalty of 5 yearsimprisonment, with the maximum sentence reaching 7years in prison.Additionally, it made acid attacks a non-bailable offense. The amendment also expanded the definition of acid attacks to include other forms of corrosive substances, such as petrol, kerosene and other chemicals.Throwing acid or intending to do so is specifically mentioned as a reason for exercising one's right to private defenceunder Section 100.It means that someone who is attacked with acid can now use their right to self-defence.

Further in a leading case of 2016 Punjab and Haryana HC upheld the life imprisonment awarded to a man who had thrown acid on his wife, causing her

[5] Nargis Y. (2015). Acid attack in the Back Drop of India and Criminal Amendment Act, 2013. International *Journal* of Humanities and Social Science Invention 4(1). 6-8.

to suffer permanent disfigurement. The court held that the crime was heinous and brutal and that the accused had not shown any remorse for his actions.[6]

2. Regulation of Acid Sales- The amendment introduced regulations on the sale and possession of acid. It required individuals selling or possessing acid to register with the local government and maintain records of all transactions. Additionally, the law made it mandatory for sellers to verify the identity of the buyer before selling acid. The amendment also prohibited the sale of acid to minors and imposed strict penalties for non-compliance with the regulations.

The apex court of India had also issued guidelines to regulate the acid sale and ordered the government to provide compensation and medical facilities to acid attack victims. The court also directed the government to frame rules for the treatment and rehabilitation of acid attack survivors.[7]

3. Provision of Medical and Financial Assistance to Victims- The amendment made it mandatory for the government to provide free medical treatment to acid attack victims. It also introduced a compensation scheme for victims that provides financial assistance for medical treatment, rehabilitation, and other related expenses. The scheme provides for a minimum compensation of Rs. 3 lacks and a maximum of Rs. 7 lacks depending on the severity of the attack and the resultant disability.

The changes introduced by the 2013 amendment have had a significant impact on acid attack cases in India. The following are the key observations:

1. Increase in Reported Cases After the amendment- There was an increase in the number of reported acid attack cases in India. According to the NCRB data, from 2014 to 2020, there were 1665 reported cases of acid attacks in India. This was a significant increase from the 309 reported cases from 2010 to 2013. This increase can be attributed to the increased awareness and sensitivity toward acid attacks after the 2013 amendment.

Table 3: State-wise distribution of Acid Attack Cases (2020)[8]

Year	No. of Reported Cases	Conviction Rate (%)
2010	65	-
2011	83	27.7%
2012	83	0%
2013	349	320.5%
2014	309	-11.5%
2015	249	-19.4%
2016	283	13.7%
2017	244	-13.8%
2018	228	-6.6%
2019	228	0%
2020	124	-45.6%

[6] State of Punjab vs. Ram Singh, 2016 SCC Online P&H 678.

[7] Laxmi v. Union of India &Ors (2014) 4 SCC 427

[8]Supra Note 8 at page 5

2. Stricter Punishment for Perpetrators- The stricter punishment for acid attack perpetrators has acted as a deterrent and reduced the number of acid attack cases in India. According to the NCRB data, the conviction rate for acid attack cases has increased from 18.3% in 2013 to 29.6% in 2019. This indicates that the introduction of harsher punishments has had a positive impact on the prosecution of acid attack cases.

3. Regulation of Acid Sales -The regulation of acid sales has also had a positive impact on reducing acid attack cases. The introduction of mandatory registration and record-keeping requirements for acid sellers has made it easier for law enforcement agencies to track down the source of the acid used in an attack. The ban on the sale of acid to minors has also helped in reducing acid attack cases.

4. Provision of Medical and Financial Assistance to Victims - The provision of free medical treatment and financial assistance to acid attack victims has been a significant relief for victims and their families. The compensation scheme has helped victims in meeting their medical and rehabilitation expenses, which were often unaffordable earlier. Additionally, the mandatory provision of free medical treatment has helped in reducing the physical and emotional trauma suffered by victims.

5. Reservation - With the enactment of the RPWD Act of 2016[9] efforts have been made to increase the reservation quota for people with learning disabilities and victims of acid attacks.This act establishes a quota of 4 percent for people with disabilities in government sector.Those with significant locomotor disabilities, such as those with cerebral palsy, leprosy treatment, dwarfism, acid attack victims or muscular dystrophy, will be given priority for one percent of the vacancies.

Despite the positive impact of the 2013 Criminal Law (Amendment) Act, there are still many challenges and areas for improvement. Here are a few:

1. Low Conviction Rate - The conviction rate for acid attack cases is still low, with only 29.6% of cases resulting in convictions in 2019. This can be attributed to the slow pace of the judicial system and the lack of resources and training for law enforcement agencies to handle acid attack cases. There is a need for the government to focus on strengthening the judicial system and providing adequate resources to law enforcement agencies.

2. Underreporting of Cases - Acid attack cases are still underreported in India, with many victims not coming forward due to fear of social stigma and retaliation from the perpetrator. There is a need for the government to create awareness about acid attacks and encourage victims to report such incidents without fear.

3. Rehabilitation and Support for Victims - While the provision of free medical treatment and financial assistance is a step in the right direction, there is a need for the government to focus on long-term rehabilitation and support

[9] The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016)

for victims. Many acid attack victims suffer from physical and emotional trauma and require ongoing support and rehabilitation. The government needs to work towards creating a support system for victims and their families.

4. Education and Awareness - Education and awareness are crucial in preventing acid attacks. The government needs to focus on creating awareness about acid attacks and their devastating consequences. This can be done through public campaigns, school education programs, and other awareness programs. Additionally, the government needs to work towards changing societal attitudes towards women and addressing the root causes of gender-based violence.

Conclusion

Acid attacks are a heinous crime that can have a devastating physical and emotional effects on the victims. The 2013 Criminal Law (Amendment) Act has brought about significant changes in the legal framework for acid attacks in India. The stricter punishment for perpetrators, regulation of acid sales, and provision of medical and financial assistance to victims have had a positive impact on acid attack cases in India. Yet there is much more work to be done in ensuring the effective implementation of the laws and schemes related to acid attacks, creating awareness about acid attacks, and providing long-term rehabilitation and support for victims. The government, civil society organizations, and individuals need to work together toward creating a society that is safe and inclusive for everyone**.**

1. Strengthening the Judicial System- The government needs to focus on strengthening the judicial system to ensure speedy justice for acid attack victims. This can be done by increasing the number of courts and judges, providing training to judges and law enforcement agencies on handling acid attack cases, and introducing special courts for fast-track trials of acid attack cases.
2. Encouraging Reporting of Cases- The government needs to create awareness about acid attacks and encourage victims to report such incidents without fear. This can be done through public campaigns, school education programs, and other awareness programs. Additionally, the government needs to ensure that victims are provided with adequate protection and support during the legal proceedings.
3. Long-term Rehabilitation and Support for Victims- The government needs to focus on long-term rehabilitation and support for acid attack victims. This can be done by providing vocational training and employment opportunities, providing counselling and mental health support, and ensuring that victims have access to healthcare and rehabilitation services for as long as they need them.
4. Education and Awareness-The government need to focus on creating awareness about acid attacks and their devastating consequences.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

REVAMPING THE INDIAN PENAL CODE: CHALLENGES AND SUGGESTIONS

DR. ANJU BENIWAL
Assistant Professor of Sociology
Government Meera Girls College
Udaipur Rajasthan India

Abstract
The Indian Penal Code (IPC) has been in existence since its introduction in 1860, and while it has undergone numerous amendments, there is a consensus that the IPC requires a massive revamp. This paper identifies the key issues with the IPC, including outdated provisions, inadequate penalties, and a lack of consideration for victims' rights. Additionally, it is highlighted that the code is not comprehensive, and the term 'crime' is not well-defined in the code. The study is based on a thorough review of existing literature, including legal documents and research papers. Several challenges arise when it comes to revamping the Indian Penal Code, including resource constraints, a lack of political will, and resistance from interest groups. Additionally, several suggestions have been made, such as the introduction of innovative punishments, the creation of separate chapters for cybercrime and environmental offences, the inclusion of a victim-centric approach, and wider public participation in the reform process.
The paper concludes that while revamping the IPC poses significant challenges, it is a vital step towards modernising the criminal justice system and ensuring that the laws are in line with contemporary realities. Therefore, it is recommended that the Indian government take decisive action to bring about comprehensive reform of the IPC. Finally, it emphasises that the revamping should be carried out in a systematic manner, with a clear roadmap and timeline, to ensure that the process is transparent, participatory, and inclusive.
Keywords: *Indian Penal Code; Provisions; Revamping; Crime; Laws.*

Introduction

The Indian Penal Code (IPC) is a comprehensive criminal code that codifies the law related to crimes in India. It was enacted in 1860 during the British Raj and has since undergone several amendments. The IPC covers crimes ranging from minor offences such as theft and cheating to grave offences including murder and rape. The code is divided into 23 chapters and contains over 500 sections. It lays down the punishment for each offence and defines the elements of a crime. The IPC is a crucial framework for the criminal justice system in India and is applied by police, judges and lawyers. Its provisions aim to deter criminal behaviour, protect society and provide justice to victims of crime. The Indian Penal Code (IPC) is the official criminal code of India, and it was first introduced in colonial India in 1860.

The history of the IPC can be traced back to the early 19th century when the British East India Company began to introduce laws and regulations in India. In 1833, Lord Macaulay was appointed to draft a criminal code for India that would serve as a model for all colonies governed by the British Crown.

After several years of research and drafting, the IPC was finally enacted in 1860, following the Indian Rebellion of 1857, which led to the transfer of power from the East India Company to the British Crown.

The IPC was modeled on the British Criminal Code of 1857, and it covers a wide range of offenses, from minor offenses like petty theft to more serious crimes like murder and rape. It also includes provisions related to conspiracy, abetment, and criminal breach of trust. Over the years, the IPC has been amended several times to reflect changes in society and legal practices. In 1983, the Code of Criminal Procedure was also introduced to provide a framework for the investigation, prosecution, and trial of criminal offenses.

Today, the IPC is an integral part of the Indian legal system and is used as a reference point by judges, lawyers, and law enforcement agencies across the country. Indian Penal Code (IPC) is an important legislation in India. It is the main criminal code of India, which defines various offenses and their punishments. It covers a wide range of subjects, including offenses against the state, public order, decency, morality, property, and persons.

The importance of IPC can be understood from the following points:

1. ***Provides uniformity in criminal law***: IPC is applicable throughout India, and it helps to provide uniformity in criminal law. This means that a person committing an offense in one part of the country can be punished under the same law as someone committing a similar offense in another part of the country.
2. ***Protects society***: IPC provides protection to society by punishing those who commit crimes. It acts as a deterrent to potential offenders, and thereby helps in maintaining law and order in the society.
3. ***Helps in the administration of justice***: IPC lays down the procedure for the investigation and trial of criminal cases. It also provides guidelines for sentencing and punishment. This helps in the administration of justice, and ensures that the guilty are punished and the innocent are not.

4. ***Preserves human rights***: IPC is designed in such a way that it does not infringe on the fundamental rights of people. It ensures that the rights of the accused are protected during the investigation and trial.
5. ***Prevents abuse of power***: IPC acts as a check on the arbitrary exercise of power by the law enforcement agencies. It makes sure that no one is exempt from the reach of law, and that the powers of the state are not abused.

The objective of this Act is to provide a general penal code for India("Preamble of the IPC"). Though not the initial objective, the Act does not repeal the penal laws which were in force at the time of coming into force in India. This was done because the Code does not contain all the offences and it was possible that some offences might have still been left out of the Code, which were not intended to be exempted from penal consequences. Though this Code consolidates the whole of the law on the subject and is exhaustive on the matters in respect of which it declares the law, many more penal statutes governing various offences have been created in addition to the code.

Structure

The Indian Penal Code of 1860, sub-divided into 23 chapters, comprises 511 sections. The Code starts with an introduction, provides explanations and exceptions used in it, and covers a wide range of offences.

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

Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.(Indian Penal Code. EBC. pp. 1–796.

Nirbhaya Case: This was a brutal incident that took place in Delhi in 2012 where a young woman was gang-raped and violated with an iron rod. This case led to the amendment of the Section 376 of the Indian Penal Code (IPC) that increased the minimum punishment for rape from 7 years to 10 years and introduced life imprisonment and death penalty under certain circumstances.

1. ***Delhi High Court judgment on Section 377***: In 2018, the Delhi High Court struck down Section 377 of IPC which criminalized consensual homosexuality. This judgment was a landmark decision that changed the social status quo and recognised LGBTQ rights.
2. ***Acid Attacks***: Acid attacks were a common occurrence in India, and several cases were reported where perpetrators threw acid on women, causing them severe burn injuries and disfigurement. This led to the amendment of IPC's Section 326A and 326B that introduced harsher punishment for acid attacks and made it a non-bailable offense.
3. ***Bhanwari Devi case***: In 1992, Bhanwari Devi, a social worker, was gang-raped by upper-caste men because of her attempts to stop child marriage. This case led to the formulation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

4. ***Dowry Prohibition Act***: In 1961, the Dowry Prohibition Act was passed to prohibit the practice of dowry, which was a prevalent practice in India, and many cases were reported where women were killed or harassed for dowry. The act provided for the punishment of people who demanded, gave, or accepted dowry.

Amendments

The Code has been amended several times.(Indian Penal Code. (2023, March 16). In *Wikipedia*. https://en.wikipedia.org/wiki/Indian_Penal_Code)

S.N. .	Short title of amending legislation	No.	Year
1	The Repealing Act, 1870	14	1870
2	The Indian Penal Code Amendment Act, 1870	27	1870
3	The Indian Penal Code Amendment Act, 1872	19	1872
4	The Indian Oaths Act, 1873	10	1873
5	The Indian Penal Code Amendment Act, 1882	8	1882
6	The Code of Criminal Procedure, 1882	10	1882
7	The Indian Criminal Law Amendment Act, 1886	10	1886
8	The Indian Marine Act, 1887	14	1887
9	The Metal Tokens Act, 1889	1	1889
10	The Indian Merchandise Marks Act, 1889	4	1889
11	The Cantonments Act, 1889	13	1889
12	The Indian Railways Act, 1890	9	1890
13	The Indian Criminal Law Amendment Act, 1891	10	1891
14	The Amending Act, 1891	12	1891
15	The Indian Criminal Law Amendment Act, 1894	3	1894
16	The Indian Criminal Law Amendment Act, 1895	3	1895
17	The Indian Penal Code Amendment Act, 1896	6	1896
18	The Indian Penal Code Amendment Act, 1898	4	1898
19	The Currency-Notes Forgery Act, 1899	12	1899
20	The Indian Penal Code Amendment Act, 1910	3	1910
21	The Indian Criminal Law Amendment Act, 1913	8	1913
22	The Indian Elections Offences and Inquiries Act,	39	1920
23	The Indian Penal Code (Amendment) Act, 1921	16	1921
24	The Indian Penal Code (Amendment) Act, 1923	20	1923
25	The Indian Penal Code (Amendment) Act, 1924	5	1924
26	The Indian Criminal Law Amendment Act, 1924	18	1924
27	The Workmen's Breach of Contract (Repealing) Act	3	1925
29	The Obscene Publications Act, 1925	8	1925
29	The Indian Penal Code (Amendment) Act, 1925	29	1925
30	The Repealing and Amending Act, 1927	10	1927
31	The Criminal Law Amendment Act, 1927	25	1927
32	The Repealing and Amending Act, 1930	8	1930
33	The Indian Air Force Act, 1932	14	1932
34	The Amending Act, 1934	35	1934
35	The Government Adaptation of Indian Laws) Order, 193		1937
36	The Criminal Law Amendment Act, 1939	22	1939

37	The Offences on Ships and Aircraft Act, 1940	4	1940
38	The Indian Merchandise Marks Act, 1941	2	1941
39	The Indian Penal Code (Amendment) Act, 1942	8	1942
40	The Indian Penal Code (Amendment) Act, 1943	6	1943
41	Adaptation of Central Acts and Ordinances) Order,		1948
42	The Criminal Law (Removal of Racial Discriminations)	17	1949
43	The Code of Criminal Procedure (Amendment) Act	42	1949
44	The Adaptation of Laws Order, 1950 —		1950
45	The Repealing and Amending Act, 1950	35	1950
46	The Part B States (Laws) Act, 1951	3	1951
47	The Criminal Law Amendment Act, 1952	46	1952
48	The Repealing and Amending Act, 1952	48	1952
49	The Repealing and Amending Act, 1953	42	1953
50	The Code of Criminal Procedure (Amendment) Act,	26	1955
51	The Adaptation of Laws (No.2) Order, 1956 —		1956
52	The Repealing and Amending Act, 1957	36	1957
53	The Criminal Law Amendment Act, 1958	2	1958
54	The Trade and Merchandise Marks Act, 1958	43	1958
55	The Indian Penal Code (Amendment) Act, 1959	52	1959
56	The Indian Penal Code (Amendment) Act, 1961	41	1961
57	The Anti-Corruption Laws (Amendment) Act,	40	1964
58	The Criminal and Election Laws Amendment Act,	35	1969
59	The Indian Penal Code (Amendment) Act, 1969	36	1969
60	The Criminal Law (Amendment) Act, 1972	31	1972
61	Employees' Provident Funds and Family Pension Fund	40	1973
62	The Employees' State Insurance (Amendment) Act,	38	1975
63	The Election Laws (Amendment) Act, 1975	40	1975
64	The Criminal Law (Amendment) Act, 1983	43	1983
65	The Criminal Law (Second Amendment) Act, 1983	46	1983
66	The Dowry Prohibition (Amendment) Act, 1986	43	1986
67	The Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988	33	1988
68	The Prevention of Corruption Act, 1988	49	1988
69	The Criminal Law (Amendment) Act, 1993	42	1993
70	The Indian Penal Code (Amendment) Act, 1995	24	1995
71	The Information Technology Act, 2000	21	2000
72	The Election Laws (Amendment) Act, 2003	24	2003
73	The Code of Criminal Procedure (Amendment) Act,	25	2005
74	The Criminal Law (Amendment) Act, 2005	2	2006
75	The Information Technology (Amendment) Act,	10	2009
76	The Criminal Law (Amendment) Act, 2013	13	2013
77	The Criminal Law (Amendment) Act, 2018	22	2018
78	The Jammu and Kashmir Reorganization Act, 2019	34	2019

Challenges

1. ***Outdated laws***: The Indian Penal Code was enacted in 1860, and while it has undergone some amendments, many of the existing laws are considered outdated and irrelevant in today's context. The Code lacks provisions for new forms of crimes, such as cybercrime, hate crimes, and new forms of sexual offenses.
2. ***Poor implementation***: The Indian legal system is plagued by delays and backlog of cases, leading to poor implementation of the Indian Penal Code. There are also inadequate infrastructures, insufficient resources, and lack of training for police and judicial officers.
3. ***Discriminatory laws***: The IPC has been criticized for perpetuating discriminatory laws that disproportionately affect certain communities, including women, Dalits, and religious minorities.
4. ***Vague laws***: Some provisions of the IPC are vague and open to interpretation, which could lead to misuse and abuse of the law. This is especially true for laws related to sedition, defamation, and blasphemy.
5. ***Lack of focus on victim compensation***: The IPC focuses primarily on punishment and deterrents against crime, with little emphasis on compensating the victim. The existing laws do not provide adequate redressal mechanisms for the victims, leading to under-reporting of crimes.
6. ***Inadequate protection for whistle-blowers***: The IPC does not provide adequate protection for whistle-blowers who report corruption or illegal activities. This makes it challenging for individuals to come forward, leading to a lack of accountability and transparency.
7. ***Complexities in Codifying Laws***: The Indian Penal Code is a complex and comprehensive legal framework that has evolved over many years. Revamping it can be challenging because it requires understanding the complex nuances of the Indian legal system and ensuring that the changes made are compatible with other laws and regulations.
8. ***Balancing Rights and Responsibilities:*** The Indian Penal Code needs to balance individual rights and societal responsibilities. The code must ensure that every citizen is protected and not exploited in any way, while also ensuring that the law doesn't become too restrictive and limit the freedom of citizens.
9. ***Resistance to Change***: The Indian Penal Code has been in place for over a century, and many people are resistant to change. Revamping it can be a challenging task because it involves convincing people that change is necessary and that the new laws will be beneficial.
10. ***Addressing Emerging Issues***: The Indian Penal Code needs to address emerging issues such as cybercrime, data protection, and environmental crimes. This requires a thorough understanding of the latest technological advancements and scientific findings.
11. ***Ensuring Consistency***: The Indian Penal Code must be consistent with other laws and regulations in the country. Revamping the code must

take into account how it interacts with other legislation and ensure that the changes made are in line with the broader legal system.

12. ***Legislative Support***: Revamping the Indian Penal Code requires the support of the legislature. Lawmakers must be convinced of the need for change and be willing to pass legislation that reflects the changes made to the code.

Suggestions

1. ***Updating the language***: The language used in the Indian Penal Code (IPC) is archaic and outdated, which can make it difficult for people to understand. Revamping the language used in the IPC can help make it more accessible and understandable for the layman.
2. ***Simplify complex laws***: The IPC is complex and extensive, making it challenging for people to understand the laws that apply to them. Simplifying complex laws and breaking them down into simpler terms can help make it easier for individuals to understand the legal system.
3. ***Increase penalties for serious offenses***: The current penalties for serious offenses are often considered too lenient, failing to serve as an effective deterrent for potential criminals. Revamping the IPC to increase the punishments for serious crimes could help to deter potential criminals.
4. ***Enforce gender equality***: The Indian Penal Code is not gender-neutral, leading to women often suffering injustices. Implementing gender equality laws could help with reducing gender-based violence and other forms of discrimination.
5. ***Updating laws***: Many of the IPC's laws have not been updated for a long time, leading to gaps in practical implementation. Updating laws to reflect modern society can help bring about more fair verdicts and equitable enforcement.
6. ***Strengthening of cybercrime laws:*** Cybercrime is on the rise in India, and the laws for cybercrime are still evolving. With a robust IT sector, revamping laws to reflect the rapidly changing technological advancements can ensure citizens are protected from these vulnerabilities.
7. ***Speed up the legal process***: Many cases take several years to be resolved, leading to many problems for the accused and victims. Reforming the Indian judiciary could help speed up the legal process, leading to quicker resolution to crimes.

These are some suggestions that could help to revamp the Indian Penal Code to reflect the changing times and ensure that residents are better protected under law.

Conclusion

The Indian Penal Code (1860) is the official criminal code of India. It is a comprehensive criminal code that covers all essential aspects of criminal law. Indian Penal Code (IPC) defines various activities that are considered to a be a crime. The IPC was introduced in India during the colonial rule as an attempt

to bring a common criminal code in India and remove the defects of Mohammad law that prevailed in India at that time. This code had its roots primarily in English Law but it was also based on some elements of the Napoleonic Code and Louisiana Civil Code of 1825. With the changes in society, perspectives of people, and the nature of crimes, the laws need to evolve as well. Although the IPC enacted in 1860 was ahead of its time and has been in India for one and a half-century, it has not kept pace with the progressive times. The Act brought in by the British to meet their needs and objectives has somewhere failed to serve the people in modern times.

The criminal (Amendment) Act of 2013, Criminal Amendment Act, 2018 and the insertion of Section A and 509 was made to counter the racially motivated crimes. However, this did not receive support from all the states to that extent. These were the major amendments in criminal justice system. Though IPC is a well-written code that has been amended many times over the years to bring a change in the criminal system. However, we can say that the criminal system cannot be reformed just by revamping the IPC. The implementation of the code should also be efficient to ensure its success. In conclusion, Indian Penal Code is a cornerstone of the Indian legal system. It serves as an essential tool for maintaining law and order, protecting society, and ensuring justice. It is a vital component of India's legal framework, and its importance cannot be overstated. The IPC is an important law code that has played a significant role in shaping Indian society. However, it has faced criticism for its outdated provisions and harsh punishments, and there is a need for reforms to make it more effective and humane. To overcome some of these issues can be done through legislative reforms, amendment, and continuous review of the IPC.

References

1. "India penal code" India code - a repository of state and central acts. Ministry of law and justice..
2. Indian Penal Code. EBC. pp. 1–796.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

REPORTING OF CYBER CRIME AGAINST WOMEN IN NEW CONSTITUTIONAL AND LEGAL REGIME

DR. AJAY KUMAR SINGH
Associate Professor
Department of Law
K. S. Saket P. G. College
Ayodhya India
SHAILSUTA
Research Scholar
Faculty of Law
Dr. Ram Manohar Lohia, Avadh University
Ayodhya India

Abstract

India is developing very fast in terms of many innovations and technological advancements. Presently, India is targeting to become a Digital India in its full term. More than half of the Indian population are using Computer, internet and other devices which are most commonly used are social media sites such as Facebook, chat rooms, Instagram, skype, WhatsApp *etc*. As every coin has two sides so does the digitalization of the India.One side is strengthening the system of India in all terms such as education, economy, governance etc. while the other side it introduced a new form of crime i.e. cyber-crimes.

[1]The main victim of this cyber crime is women, in particular. They are more susceptible to the criminal activities due to various factors such as unawareness, lack of privacy regime etc. According to 'India Inequality Report 2022: Digital Divide' released by the NGO on Sunday, Women constitute only one third of internet users in India. Cyber-crime is a global phenomenon.

Intrduction

According to the official statistics provided by the National Crime Records Bureau, Government of India estimates that a total of 52,974 cases

[1] Sobha Sexna, *Crime against women* (Deep and Deep Publication, Delhi, 2014)53.

were registered under Cyber Crimes which shows an uplift of 5.9% in registration over 2020 (50,035 cases in 2020) and if compared with 2019 data, the number of cybercrime incidents in 2021 has risen up by 18.4 percent. Further, if we talk about the share of the crime rate under total conducted crimes, it increased from 3.7 in 2020 to 3.9 in 2021 i.e. 0.2 percentage.

The majority of cybercrime incidents reported in 2021 (32,230 out of 52,974) had fraud as their primary motivation, followed by sexual exploitation (8.6%; 4,555 cases) and extortion (5.4%).However, the biggest percentage of cybercrime instances overall, with cases rising 282% from 2,691 in 2019 to 10,303 in 2021 is Telangna while the other four states with the most cases were Uttar Pradesh (8,829), Karnataka (8,136), Maharashtra (5,562), and Assam (4,846). With the advancement in technology, cyber offences and the victimization and objectification of women are growing at its pace and simultaneously, it poses a great threat to the security and mental health of the individual. Though, India is one of the few nations, which has introduced some piece of legislations to combat cyber-crimes, but, it is not as effective as it must be especially in dealing with women as a target in this crime. Cybercrimes against women are still observed on a light note in India. If we see the reason behind this, we will figure out that the respect towards women in our modern society is depleting. It is not as like as inthe traditional Indian society, in which women were placedin the high regards. Even the Vedas glorified our women as the mother, the creator, and one who gives life and worshipped her as a 'Devi' or Goddess. Many variants of cybercrimes such as morphing, e-mail spoofing do-not have a moral backing in society, as a result, they are not taken as a serious one.[2]

The term "cyber crime" is nowhere defined dueto its varied nature. If anyone wantto understand the concept of cyber crime, it is imperative to see the concept of crime, which is, attach with the computer and internet. The concept of cyber crime is not absolutely different from the concept of conventional one. Both include the conduct whether act or omission which causes violation of rules of law and backed by the state. In other sense, we can say that the cyber crime is a species of which genus is the conventional crime.Further, any criminal activity that operates a computer either as an instrumentality, target or a modus operandi for perpetuating further crime come within the ambit of cyber crime.[3]

Cybercrime might be defined as a mix of crime and technology. If we see in a simpler terms, it states that 'any offence or crime that involves the use of a computer is a cyber-crime.' Cybercrime pertains to crimes committed over the internet in which the perpetrator, concealed by the curtain of a computer screen, is not required to make real contact with another person and may not always reveal their name. Moreover, this crime may be committed

[2]*Supra* note 1

[3] Nishant Singh, *Crime Against Women*, (Ancient Publication House, Delhi, 2014)52

against persons, property as well as government. Cyber spaces have become havens for cyber criminals in which women are the most vulnerable class.[4]

SOME MAJOR CYBER CRIMES AGAINST WOMEN

This is a fact that women are the most vulnerable class who are mostly affected and simultaneously face various health issues such as depression, hypertension, anxiety, heart disease, diabetic and thyroid ailments due to e-harassment.

Cybercrimes are classified in many forms which are as under: [5]

- Cyberstalking : Cyberstalking is a way in which perpetrator stalk someone via internet for online harassment and online abuse. A cyberstalker does not indulge in direct physical threat to a victim instead of that he follows the victim's online activity to collect information, make threats in different forms of verbal intimidation.
- Harassment through e-mails : Harassment through e-mails is an old concept. It is very akin to harassing through letters. It includes blackmailing, threatening, bullying, and even cheating via email. It's called E-Harassment which is easier to do via fake ids and create problems in the life of a victim.
- Defamation : Cyber defamation is of two types : libel and slander. It is the easiest way to disseminate and publish defamatory statement about the person on a website or circulating it among the social and friends circle of targets or organisationjust to ruin a women's reputation by causing her grievous mental agony and pain.
- E- Mail spoofing : It is an e-mail that emerges from one source but has been sent from another source. It can cause monetary damage.
- Phishing : Phishing is the attempt to gather sensitive and personal information such as username and password and intent to gain personal information. It violates privacy of an individual.
- Morphing : Morphing is altering or changing the original picture by an unauthorised user or fake identity. It was identified that female's pictures are downloaded by fake users and again re-posted /uploaded on different websites by creating fake profiles and misuse it.
- Trolling : Trolls spreads a cold war on the Internet, criminal's starts quarrelling or disturbing victim by posting inflammatory or insignificant messages on an online community with the intention to provoke victims into an emotional and psychological disterss response. They are the professional abusers who, by creating and using fake identity on social media, constitute a cold war atmosphere in the cyber space.
- Cyber Pornography : Cyber Pornography is an another threat to the female netizens. This would consist of pornographic websites; pornographic magazines produced using computers and the internet.

[4] *ibid*

[5] *Ibid* at 1.

The main rationale behind the increasing cyber crime rate against women can be classified into: sociological and legal.[6]

Sociological Reasons:

As it is clearly stated that the statute deals with cyber crime is not expressly mentioning those crimes under the related particular provisions whereas on the other hand various enactments such as IPC, Constitution *etc*. give special protection to women , but the same protection seems not to be provided in general under the specific legislation related to the cyber crimes. It is also true that due to various other reasons such as hesitation and shyness of the victim and her fear of defamation of family's name remained unreported. Most of the time such victims feels that she herself is responsible for the crime done to her. However, even today the Indian police is approaching cybercrimes in a very lethargic manner.

Some of the famous social media platforms provide very wide alternatives in their respective privacy policies to secure and protect women from such kind of perpetrators. At the same time, one should also keep in mind that, most of the popular websites declare their privacy policies that they will not take any responsibility or liability for any form of harassment caused to the users by other users. Therefore, before registering on every other social media platform, women must scrutiny the privacy policies or safety measures pertained to such offences. Negligence and non-vigilance in most of the cases is also a primary genesis in regards to the cyber obscenity crimes.

Unfortunately, even in this present time, the Indian police not tend to take cybercrimes seriously. In such scenario, the woman who falls victim to cyber victimization should first contact a women assistance cell or NGO (such as All India Women's Conference, Navjyoti,Centre for cyber victims counselling, Sakshi) which will support and guide them through the whole process, also this will make ensure that police does take any case in a serious manner.

Legal Reasons

Lack of legal security is one the main legal reason for the rising number of cyber-crimes against women in India. The need of the hour is to make severe laws and the proper implementation of such legislations should also be ensured. The Government and the legislature should be made accountable to take effective and efficient steps in furtherance of protecting women from such cyber-crimes so thatpeople don't lose faith in the law enforcement authorities.

Lack of legal awareness is also another factor which need to be overlooked. Women have to go through the privacy rules and regulations listed on the social networking websites in a very thorough manner. If they do so, they can themselves help in regulating cyber obscenity by becoming aware of their rights and ensuring to abide by the safety measures provided and prescribed over the places.

[6]*Supra* note 1.

Repercussions upon women[7]

Although, it is a true fact that any form of crime has a great negative toll on the victim and the society as a whole. The first suffering of a woman who has seen herself as a victim is in a deep mental shock. It becomes very difficult for her to believe or have faith that it is the same old self she knows for so many years; she started raising point even on her existence especially in the cases of cyber defamation or cyber pornography. It distorts her confidence level. Some getspetrified so much thatshe cannot confide it with his family or friends. Some start hating their basic interests in life like eating, socializing or even working with the daily schedules. The most dangerous and catastrophic effect is the urge of revenge. The feeling of retaliation sometimes turn herself into a cyber-criminal to take revenge of her insults and then slowly and gradually she has become used to it and develops the passion of destroying other's peace at the cost of her happiness. If we tell this sufferings in a very short it makes her helpless, hopeless and harming every possible way like emotionallyand mentally. Consequently, these kinds of crimes ultimately hamper her growth by generating a permanent scar in her life.

THE LEGAL FRAMEWORK:

The internet, basically, has two unique traits. Firstly, it goes beyond the physical / geographical barriers, and hence, the abuser may be acting from any part of the world. Secondly, the internet entails anonymity to the users.

If we see in Indian context, there are prima facie two major laws in India that address cyber- crimes against women to a large extent-

1. The Indian Penal Code, general criminal *lex loci*, which defines a large number of offences, and stipulated punishment for the same.

Due to the 2012 Delhi Gang Rape case (Nirbhaya Case) there has been a huge outcry over bringing out new reforms and penal provisions so as to protect and guard women against the criminal. The 2013 Criminal Law Amendment Ordinance consists of severalamendments to the Indian Penal Code, such as to provisions sec. 354, 354 A, 354 B, 354 C & 354 D. Consequently, with the introduction of these sections now the various issues of MMS scandals, pornography, morphing, defamation can be dealt in a proper and efficient manner.

CONSTITUTIONAL LIABILITY

Whereas The Constitution of India also guarantees right to live, right to education, right to health, food and right to work and the most important right *i.e*. right to privacy .

Hacking into someone's private property or stealing someone's intellectual work is a breach of his right to privacy. "***The right to privacy is inextricably bound up with all exercises of human liberty – both as it is specifically enumerated across Part III, and as it is guaranteed in the residue under Article 21. It is distributed across the various articles in Part***

[7]Ahmed Farooq, *Cyber Laws in India*(Laws on internet, Pioneer Books)

III and, mutatis mutandis, takes the form of whichever of their enjoyment its violation curtails."[8]

The Indian constitution does not particularly provide the "right to privacy" as one of the fundamental rights guaranteed to the Indian citizens but it is protected under IPC. "Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being."

It is clear from the above discussion that cybercrime involves the breach of right to privacy and if there is breach of privacy, it means it's a gross violation of Art.21 of the Constitution of India, meaning, prescribed remedy can be invoked against the accused.

2. The Information Technology Act deals with the specific offences. Under the Information and Technology Act, 2000, there are various provisions regarding stalkers and cybercriminals :

Section 66A: "Sending offensive messages through communication service, causing annoyance etc., through an electronic communication or sending an email to mislead or deceive the recipient about the origin of such messages (commonly known as IP or email spoofing) are all covered here. Punishment for these acts is imprisonment up to three years or fine."[9]

Section 66B: "Dishonestly receiving stolen computer resource or communication device with punishment up to three years or one lakh rupees as fine or both."[10]

Section 66C: "Electronic signature or other identity theft like using others' password or electronic signature etc."[11]

Section 66D: "Cheating by person on using computer resource or a communication device shall be punished with imprisonment of either description for a term which extends to three years and shall also be liable to fine which may extend to one lakh rupee."[12]

[8] Justice K.S. Puttaswamy (Retd) Vs Union of India [2017]10 SCC 1
[9] Information Technology (Amendment) Act, 2008, No 10, (2009) S. 66A
[10] Information Technology (Amendment) Act, 2008, No 10, (2009) S.66B
[11] Information Technology (Amendment) Act, 2008, No 10, (2009) S.66C
[12] Information Technology (Amendment) Act, 2008, No 10, (2009) S. 66D

Section 66E: "Privacy violation – Publishing or transmitting private area of any person without his or her consent etc. Punishment is three years imprisonment or two lakh rupees fine or both."[13]

Section 66F: "Cyber terrorism – Intent to threaten the unity, integrity, security or sovereignty of the nation and denying access to any person authorized to access the computer resource or attempting to penetrate or access a computer resource without authorization."[14]

Section 67 deals with publishing or transmitting obscene material in electronic form. The earlier section in IT Act was later widened as per ITAct, 2008 in which child pornography and retention of records by intermediaries were all included.[15]

Section 72: Punishment for breaching privacy and confidentiality diaries were all included.

Most of the cybercrimes other than e-commerce related crime are being dealt with these sections. Cyber defamation, cyber defamation, email spoofing, cybersex, hacking and transgressing into one's privacy is very common in these days but IT Act is not expressly stipulating them under specific Sections or provisions as well.[16]

If we analyse the present laws, Cyber stalking is not covered unde the existing cyber laws in India. It comes under the ambit of Section 72 of the IT Act that perpetrator can be booked remotely for breach of confidentiality and privacy. Further, the accused may also be comes under Section 441 of the IPC for criminal trespass and Section 509 of the IPC as well.

- Suhas Katti v. State of Tamil Nadu[17], decided by a Chennai Court in 2004, was the case related to cyber pornography in India. In this casethe woman, a divorcee, complained to the police about a man who was sending her obscene, defamatory and annoying messages in a Yahoo message group on account of refusing a marriage proposal.The accused opened a fake e-mail account in the name of that woman and forwarded mails received in that account. The victim also got phone calls by people who believed that she was soliciting for sex work. Consequenlty, these kind of messages resulted in mental harassment The police complaint was lodged in February 2004 and within seven months from the filing of the First Information Report, the Chennai Cyber Crime Cell attained a conviction. Katti, the convict, was penalised under S. 469 IPC (forgery for the purpose of harming reputation),[18]1year simple imprisonment and

[13] Information Technology (Amendment) Act, 2008, No 10, (2009) S.66E
[14] Information Technology (Amendment) Act, 2008, No 10, (2009) S.66F
[15] Information Technology (Amendment) Act, 2008, No 10, (2009) S.67
[16] Information Technology (Amendment) Act, 2008, No 10, (2009) S.72
[17]C No. 4680 of 2004
[18]S.469. Forgery for purpose of harming reputation.—Whoever commits forgery, 1[intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Rs. 500 for offence under S. 509 IPC (words, gestures or acts intended to insult the modesty of a woman) and under S. 67 of IT Act 2000 (punishment for publishing or transmitting obscene material in electronic form).

- SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra ,[19] was a case of cyber defamation in India : In this case, the report regardingcyber defamation was lodged when a company's employee (defendant) started sending derogatory, defamatory and obscene e-mails about its Managing Director. The plaintiff was able to figure out the identify of the defendant with the help of a private computer expert and as a result, he moved the Delhi High Court.
- The most popular case related to cyber spoofing is Gujrat Ambuja's Executive Case, in this case the perpetrator pretended to be a girl for cheating and blackmailing the Abu Dhabi based NRI.

Consequently, the court granted an ad-interim injunction and restrained the employee from sending, publishing and transmitting e-mails, which are defamatory or derogatory to the plaintiffs. Thus, the Courts have also played an activeand important role to provide legal security over the internet. It reposes the faith in the people that Judiciary is for the society and it will always be the support system for the upliftment of the society.

ROLE OF GOVERNMENT

i. National Commission for Women stated in its report on "Ways and Means to Safeguard Women from Cyber Crimes in India", which primarily, talk about the recommendation for stringent law, Policies to discourage hacking activities, dedicated helpline numbers, opening of more cyber cells, and imparting of proper legal, establishing forensic labs and technical training law enforcement agencies like police& judiciary *etc*. to tackle cybercrime.

ii. Similarly, there are adequate and effective provisions dealing with cyber-crimes in the Information Technology Act, 2000 as well as the Indian Penal Code, 1860. Government has, in fact, taken a plethora of legal, technical and administrative steps towardsprevention and curbing cybercrimes. These steps are like: 1. setting up of Cyber Police Stations and Cyber Crime Cells in each State for reporting and investigation of Cyber Crime cases. 2. Establishing Cyber Forensics Training Labs in north-eastern States and cities such as Mumbai, Pune, Kolkata and Bangalore by the Ministry of Electronics & Information Technology(MeitY) to train State police officials and judiciary in cybercrime detection and collection, preservation and seizing of electronic evidence and dealing with cybercrime.

iii. Various effective steps have been taken by Ministry of Home Affairs, Meity and State Government to modernize the setup and well equipped

[19] (Suit no.1279/2001, District Court of Delhi)

the police personnel with knowledge and upgraded skills for prevention and control of cybercrime.

iv. An advisory with respect to functioning of Matrimonial website on 6thJune, 2016 under Information Technology Act, 2000 has been issued by the Ministry of Electronics & Information Technology. Various rules are also laid down thereunder directing the matrimonial websites to adopt safeguards and measures to ensure that people using these websites are not defrauded by the means of fake profiles or misuse/wrong information posted on the website.

v. Computer Security Policy and various Guidelines to all the Ministries/Departments has been issued and circulated by the Government on taking steps and preventive measures to prevent, detect and mitigate cyber-attacks.

vi. A portal namely www.cybercrime.gov.in has been developed by Ministry of Home Affairs to facilitate victims/ complaints to report cybercrime complaints online.

People need to be careful over which parts of their daily lives are being recorded by cameras & should act modest in such situations. People need to be acknowledged about their respective rights. Many studies and reports show that a large population of netizens in India have no knowledge of their respective rights in such particular matters. The most important obstacles related to the issue of cyber-crimes against women are related to the procedural aspects of litigation such as the conflict of jurisdiction, loss and lack of evidence, lack of cyber army and cyber savvy judiciary.

Judiciary plays an imperative role in shaping the respective enactment to tackle the issues. Today with the growing tentacles of cyberspace, the territorial boundaries seem to have no importance or restrictions thus, the concept regarding territorial jurisdiction as enumerated in S.16 of C.P.C. and S.2. of the I.P.C. providing least value to the relevance of the issues relation to the cyber-crime and thus, will have to give way and scope to optional method of dispute resolution If we observed IPC, only section 292 talks about that if it is proved that you have published or transmitted or caused to be published in the electronic form then only it can be an offence. Moreover, the Information Technology Act, 2000 addresses certain common cyber-crimes such as cyber stalking, morphing and email spoofing as offences. Unfortunately there are various terms like cyber defamation, not defined under IT Act and as a result, it is treated under the same provision which deals with cyber pornography or publication of obscene material on internet. The IT Act primarily does not provide specific term for blocking of cyber pornography for public access and one has to include cyber pornography into the definition of public order to put check on cyber pornography, where courts in India have already interpreted public order as 'maintenance of law'. The cyber pornography comes under the ambit of S. 66A, E, 67,67A and 67B. On the top of it, all pornography

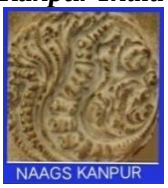
offences are of bailable nature under sec. 77B of the Act.[20] The only exception is sec.67A and 67B. Thisis the main reason why the offenders have the courage to do these kinds of offences and have no fear.IT Act is merely a toothless law. These sections should be made non- bailable to deter the offenders and then only it will curb this type of crimes.

CONCLUSION:

The main problem of cybercrime exists in the modus operandi and the persistence of the cybercriminals. The judiciary along with the police department and the investigative agencies should be well equipped with the modern web-based applications in order to be a step ahead from such perpetrators. It is the utmost duty of the legal system and regulatory agencies to keep pace with the technological developments and guarantee that newer technologies do not become tools of exploitation and harassment. Governments can take effective legislativemeasures and steps to ensure respective human rights; especially women's rights. Legislations should not only protect and provide safety to internet users but, it should also educate and inform all groups on how to exercise their communication rights as well Moreover, individuals should be more attentive while on online as well as offline with regards to the precautionary measures in the cyber space and the remediesare available if their right is violated. However, several changes are still pay heed such as cyber savvy judges. It can be categorically stated that proper implementation of legislations along with public awareness and education of women involving their rights and legal remedies can play an imperative role in eradicating or curbing cybercrimes from our society. Enacting of laws cannot be the only recourse available to prevent such crimes. The digital technology has grown faster than the legislations governing the technology day by day. Hence, the existing laws fall short to deal the situation. The threat of cyber-crime extends not only to India, but is disseminated across the planet. Hence, there is a requirement of coordinated and integrated effort on part of the world community. In addition to, there must be grievance redressal mechanisms and institutionsvitalized and popularized, so that the lodging of complaints made easy andin this way, minimizing the delay in investigation and prosecution as well.

[20]77B. Offences with three years imprisonment to be bailable.--Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence punishable with imprisonment of three years and above shall be cognizable and the offence punishable with imprisonment of three years shall be bailable.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

RIGHTS OF VICTIMUNDER CRIMINAL JURISPRUDENCE IN INDIA

NAWAL KISHOR MISHRA
Assistant Professor
Faculty of Law
Banaras Hindu University, Varanasi, India

Abstract - There are various kinds of crimes and criminals. The crime mostly affects the individual victim and their families but the main focus has always been given to the criminals and crime rather than victims generally , the victim is treated as forgotten man. This paper is mainly concerned with the rights of victims in criminal jurisprudence. The major components of the victim's rights may be- fair treatment, assistance, compensation, privacy etc. In the beginning of this paper the rights of victims in general are discussed. Secondly the paper pointed out certain rights of victim under various legislations in India.

Keywords- compensation, criminal law, protection, restitution, trial, right and victim.

Introduction

In order to administer criminal justice the whole world follow a single valued principle i.e the right of accused must be protected at all costs. [1] This is why the whole criminal jurisprudence has been developed around it deals with rights of the accused. When a crime is committed, the accused is captured, tried, and convicted or acquitted, or the offender being released on probation in some situations. Even if the offender is found guilty, we hear more about reform slogans in court in such circumstances. The criminal justice system as a whole is more concerned with safeguarding rights of the accused than with administering punishment. Throughout the procedure, the situation of the crime victim, who is the worst victim, is ignored. So-called human and civil rights advocates have historically focused on the rights of the

[1]A.H.Mondal, "*Crime Victims and Their Treatment*", Central India Law Quarterly, Vol. XIV, (2001).

guilty while completely ignoring the rights of victims under the name of criminal reform.[2]

The term"victim" has been drived from Latin term *Victima* which means an unfortunate person who suffers from some adverse circumstances. Section 2(wa) of The Code of Criminal Procedure define the term victim. It provides that victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir.

I. RIGHTS OF VICTIMS

Advocates for victim's rights are pushing for a shift from retributive to restorative justice in the criminal justice system. They argue that involving victims in the process will increase their visibility and promote restoration. Currently, justice is primarily seen as access to courts of law, but victims are often hesitant to participate unless their safety is ensured. To address this, the criminal justice system must prioritize the needs of victims while still upholding the right of accused to a fair trial within the bounds of the law. Achieving this balance will be a significant challenge. The victim's rights can be categorised broadly into the following categories:-

1. The Right to Receive Dignified and Respectful Treatment

The right to dignity and respect mandates that victims of crime are treated with sensitivity by all agents of the justice system throughout the judicial process. This crucial right should be enshrined in all laws that define victims' rights. However, the Indian Criminal Justice System, which is regulated by the Code of Criminal Procedure, does not explicitly guarantee this right to victims. One immediate solution to address this is to provide special treatment to victims of sexual assault or rape, such as having their cases heard by a court presided over by a woman[3]. Nonetheless, the right to dignity and respect is protected as a fundamental right under Article 21 of the Constitution. In its broadest interpretation, Article 21 seeks to uphold the life and personal liberty of individuals, except as prescribed by the law. Therefore, this article, in its comprehensive application, encompasses not only the protection of the right of accuseds but also the rights of the victim.

2. Right to be Informed

The criminal justice system is obligated to provide victims with general information, and in most states, victims and their families have the right to be informed about significant pending criminal cases and their outcomes. Moreover, victims are notified when hearings are cancelled or rescheduled. Victim notification is considered the fundamental right that underpins all other victims' rights, as victims must be aware of their rights to exercise them effectively. Without this awareness, they would be powerless to

[2] Elias, R. "*Victims Still: The Political Manipulation of Crime Victims.*" SAGE Publications (1993).

[3]Section 26 of *the Code of Criminal Procedure, 1973.*

assert their rights[4]. Victims are typically informed in person by a court official or service provider, or through communication modes such as telephone, email, or letter. Furthermore, technology has facilitated automated notifications through phone calls or computer systems, and case status information can be published on court websites for victims to access.

3. Right to be Physically Present at Court Proceeding

The victim's right to attend, also known as the right to be present, refers to the victim's entitlement to physically attend criminal justice proceedings. While some countries have enshrined this right in their laws, the level of detail varies. Some statutes explicitly state that victims have an absolute right to attend all proceedings related to the defendant, while others provide judges with more discretion.

The right to attend is crucial for victims as it enables them to participate in the criminal justice process and witness the delivery of justice firsthand. This right has several benefits, including empowering victims to take an active role in seeking justice and holding perpetrators accountable, reminding justice system actors of the human toll of crime, keeping victims informed of the status of their case, and providing victims with the knowledge they need to ask informed questions of prosecutors

4. Right to be Heard

The right to be heard, also known as the right to participation, refers to the victim's entitlement to express their views, concerns, and interests throughout the criminal justice process. Although the scope and nature of this right differ among countries, it is widely recognised as an essential element of victims' rights. In practice, it means that victims should have access to appropriate channels and opportunities to be heard by relevant authorities, such as judges, prosecutors, and parole boards

5. Right to be Protected from Intimidation and Harm within Reasonable Limits

The right to protection from intimidation and harm within reasonable boundaries implies that victims should be shielded from any form of harassment, intimidation, or retaliation as a result of their involvement in the criminal justice system. This right should be balanced with other important principles, such as the right of accused to a fair trial and the need to maintain public safety. Therefore, reasonable measures should be taken to protect victims, such as providing them with information on safety measures, restraining orders, or temporary relocation assistance

6. Right to Restitution

Restitution, which is the earliest form of victim's rights and dates back thousands of years, is a civil remedy utilized in criminal cases to restore the victim to their pre-offense state as much as possible and prevent the offender

[4]A. Seymour and D. Beatty, in press, Judicial Education Project Curriculum, Washington, DC: Justice Solutions et al., and Office for Victims of Crime, U.S. Department of Justice.

from benefiting unfairly. Restitution statutes were some of the first victim protection laws enacted almost half a century ago. Victims may demand restitution for theft of goods or property damage, as well as for present and future expenses for homicide victims and their dependents. Violations of vehicle and traffic regulations, including fraud, theft of services, and forgeries, also warrant restitution. Although India has not explicitly recognized the victim's right to restitution through specific legislation, the Code of Criminal Procedure's victim compensation provisions have acknowledged it.

7. Right to Apply for Compensation

Compensation schemes for victims of violent crime exist to provide financial support for crime-related expenses that are not covered by other sources, such as medical bills, mental health counseling, lost wages, and funeral costs. For victims of violent crime, financial strain can be as severe as physical injuries and emotional distress, particularly when they struggle to pay medical bills or lose income due to disability or death. Delays in the trial process, especially for elderly or young victims and those with life-threatening illnesses, can exacerbate their suffering. Therefore, the right to seek compensation is a critical aspect of a victim's rights.

In India, the Code of Criminal Procedure includes provisions for compensating crime victims[5]. When a accused is found guilty, the victim is entitled to compensation, and a fine is imposed as part of the sentence[6]. However, in some cases, the court may order restitution even if a fine is not included in the sentence[7] . This indicates that a victim's right to compensation is dependent on the accused's conviction.

8. Right to a Speedy Trial

A victim has the right to a prompt resolution of their case without undue delay. This means that if the defense seeks to postpone the trial for frivolous reasons, the court must consider the negative impact the delay could have on the victim's well-being. Furthermore, the defense must compensate the victim for any fees incurred each time they cause a delay.

In India, the Code of Criminal Procedure does not establish a time limit for the investigating agency to complete the investigation[8] but if the investigation is not completed within the specified time frame, the accused becomes eligible for bail. However, there is also no deadline for completing the trial in court. One of the most significant issues in the Indian criminal justice system is the prolonged delay in resolving cases, which has often discouraged victims from pursuing their cases further.

9. Rights to privacy

The victim's right to privacy guarantees two fundamental protections: the safeguarding of the victim's contact details and the prevention of

[5] Section 357 of *the Code of Criminal Procedure, 1973.*
[6] Section 357(1) of *the Code of Criminal Procedure, 1973.*
[7] Section 357(3) of *the Code of Criminal Procedure, 1973.*
[8] Section S.173 of of *the Code of Criminal Procedure, 1973.*

disclosure of the victim's name. These protections are crucial in shielding victims from further abuse, harassment, and intimidation by the perpetrator. Essentially, privacy rights with regard to a victim's contact information aim to ensure the victim's safety. Likewise, the aim of the victim not disclosing their name is to shield them from shame, loss of dignity, and stigma associated with publicizing personal information about the crime, particularly in sexual offenses

III. RIGHTS OF VICTIMUNDER INDIAN CRIMINAL JURISPRUDENCE

The criminal justice system in India is based on the adversarial system of the Anglo-Saxon tradition. According to this system, the prosecution is responsible for proving the case against the defendant beyond a reasonable doubt. In India, the approach to punishment has shifted towards crime prevention and the rehabilitation of criminals, which has been reinforced in various rulings of the Supreme Court. Victims are not granted any rights under the criminal justice system, and are treated as mere witnesses while the state assumes the responsibility of prosecuting and punishing offendersThe Indian criminal justice system is primarily regulated by four major statutes.

(1) The Constitution of India;
(2) The Indian Penal Code, 1860;
(3) The Code of Criminal Procedure, 1973 and
(4) The Indian Evidence Act, 1872.

1. Rights of Victims under the Constitution of India

The Indian Constitution is considered the highest law of the land and is commonly referred to as the "mother of all laws." It guarantees equal protection to all citizens and prohibits the state from depriving anyone of their life or personal liberty except procedure established by law[9]. The principle of social justice, which is enshrined in the Indian Constitution, is also reflected in the criminal justice system. The Supreme Court has recognized the "Rule of Law" as a fundamental element of the Indian Constitution, which has been integrated into the criminal justice system.

Within the Indian Constitution, there exist certain provisions aimed at safeguarding victims' rights, ensuring their protection, and recognizing the principle of victim compensation. While Articles 14 and 21 establish fundamental rights of great importance, it is also important to consider the directive principles of state policies outlined in Articles 39A and 41 in conjunction with these provisions. Article 14 of the Indian Constitution includes a negative provision that prohibits the state from denying equality before the law to any individual. However, the second section of the same Article is positive in nature, indicating that the state is responsible for ensuring equal protection under the law to all citizens.

Similarly, Article 21 of the Indian Constitution guarantees the right to a dignified life, legal assistance, and a fair trial as a fundamental and

[9]Arts.14 and 21 of Indian Constitution.

inalienable right to life and personal liberty. This Article serves as a safeguard against arbitrary deprivation of life and liberty and obligates the state to provide compensation to victims of violent crimes.

The Indian Constitution's Fundamental Rights and Directive Principles have established a strong basis for a new social order that prioritizes social and economic justice in the country's national life. Article 41, which has a broad application to victimology, mandates that the state provide effective measures for "securing public assistance in cases of disablement and other cases of undeserved want[10]." It is likely that victims and other affected individuals will seek refuge under Article 41[11]. By interpreting this passage with sympathy and creativity, we can trace the constitutional origins of victimology[12]. Additionally, Article 21's protection against unwarranted deprivation of life and liberty contains provisions that require the state to compensate victims of criminal violence[13].

The Constitution's Part III and IV, which embody human values, also exert a substantial influence on the criminal justice system. The phrases "We the people of India," "justice-social, economic, and political," "equal protection of the laws," respect for individual dignity, basic freedoms, fair procedures, and free legal aid, along with other provisions contained in the Constitution, have transformed the criminal law system into a socially protective one. However, despite being implicit in our Constitution, these rights and principles receive inadequate attention from the institutions of the criminal justice system, such as the Police, Prosecutors, and Courts.

2. Rights of Victims under the Indian Penal Code,1860

The Indian court system has undergone rigorous testing and evolved into a robust and fair system of incarceration and punishment. The judiciary is responsible for enforcing the country's laws. However, it cannot make judgments based on its own perceptions or regulations. Thus, a unified document is necessary to guide all decision-making processes and penalizing standards. This document is known as The Indian Penal Code, 1860 (IPC) and is applicable to all persons who commit crimes within Indian borders, including ships and aircraft operating within the Indian Ocean or Indian airspace.

The IPC has a long history, dating back to the British administration in India, and was derived from British legislation in 1860. The code has 23 chapters and 511 sections, covering a broad range of offenses, and defines an offense as any act or omission punishable by law. The IPC's punishments are the only ones available in India; all other punishments are abolished. Although

---

[10]MurugesanSrinivasan and Jane Eyre Mathew, Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System, TEMIDA, Jun 2007, at pp 51-62.

[11]*Ibid.*

[12]*Ibid.*

[13]Basu, D.D, *Constitutional Law of India* (Nagpur: Wadhwa& Co.,2003).

the IPC has been in force for over 150 years, it has only been amended a few times in the post-British era, with the addition of three chapters dealing with criminal conspiracy, election-related offenses, and offenses against married women. Recent amendments, particularly those addressing sexual offenses such as rape, were introduced under the Criminal Law (Amendment) Act, 2013.

After the horrific gang-rape and murder of a 23-year-old paramedical student on a moving bus in the national capital on December 16, 2012, the need for a robust law addressing sexual offenses against women became apparent. The victim died in the hospital 13 days after the incident, and the crime's heinousness stunned the nation. In response to public pressure for more safety measures for women and stricter legislation punishing perpetrators, the national government appointed the Justice J S Verma Commission to develop severe rules to combat crimes against women. The Criminal Law Amendment Act, 2013 became effective on April 3, 2013, and is a crucial step in ensuring justice and safety for women in India.

Section 166A[14] of the Indian Penal Code (IPC) deals with the offence of not recording information about an offence against a woman. This section was added to the IPC in 2013 under the Criminal Law (Amendment) Act 2013.This section is important in ensuring that public servants, including police officers, take prompt and appropriate action when they receive information about crimes against women. It holds them accountable for any negligence or deliberate inaction in recording such information, which can lead to delayed justice and further victimization of women.

The Act also altered certain sections of The Code of Criminal Procedure,1973, The Indian Evidence Act, 1872, and The Protection of Children from Sexual Offences Act, 2012.The Criminal Law Amendment Act, 2013 provided a significant boost to victim protection by creating numerous new offences to protect women against acid attacks[15], sexual harassment[16], voyeurism[17], and stalking[18], as well as expanding the definition of rape[19] in the IPC

The Indian Penal Code (IPC) was amended in 2018 to introduce stricter punishment for sexual offences against children, including the death penalty for the rape of girls below the age of 12. The Criminal Law (Amendment) Act, 2018 also introduced changes to the Protection of Children from Sexual

[14] if a public servant fails to record any information given to them about the commission of an offence under sections 326A, 326B, 354, 354B, 370, 370A, 376, 376A, 376B, 376C, 376D, 376E, or 509 of the IPC, which are all related to crimes against women, they can be punished with imprisonment for a term which may extend to two years along with a fine.

[15]Section 326A and 326B of *Indian Penal Code, 1860*

[16]Section 354A of *Indian Penal Code, 1860*

[17]Section 354C of *Indian Penal Code, 1860*

[18]Section 354D of *Indian Penal Code, 1860*

[19]Section 375 of *Indian Penal Code, 1860*

Offences (POCSO) Act, 2012, including the provision of a minimum punishment of 20 years in prison for the rape of children below the age of 12. The amendment also introduced the death penalty for repeat offenders and for gang rape of children below the age of 16. The Act was passed by the Indian Parliament in August 2018 and deemed to enforce in April 2018.

The amendment was introduced following the increase in reported cases of sexual offences against children in India. The government had been facing mounting pressure to take stricter action against sexual offenders, particularly in the wake of the 2012 Delhi gang rape case. The amendment was seen as a significant step towards ensuring justice for victims of sexual violence and protecting children from sexual abuse. However, some critics have raised concerns about the effectiveness of harsher punishments in reducing sexual offences and have called for broader societal changes to address the root causes of violence against women and children.

3. Rights of Victims under the Code Of Criminal Procedure

Criminal law's primary purpose is to safeguard society against criminals and lawbreakers. To do this, the law issues threats of punishment to prospective lawbreakers and makes steps to ensure that real lawbreakers face the required penalties for their crimes. Thus, criminal law in a broader sense encompasses both substantive and procedural criminal law. The substantive criminal law specifies offences and imposes appropriate punishments, but the procedural criminal law is responsible for enforcing the substantive law. Without procedural criminal law, substantive criminal law would be nearly meaningless.[20]Because, in the absence of an enforcement mechanism, the fear of punishment imposed by substantive criminal law would remain hollow in practise. Empty threats have no deterrent impact, and without deterrent effect, the criminal law has little meaning or legitimacy.

Criminal procedure is divided into three distinct sections: pre-trial procedure, intermediate procedure, and trial procedure. Numerous machines are utilised in each of these procedures to ensure that victims receive justice. The Code clearly delineates the duties and responsibilities of numerous agencies, including the police, prosecution, court, and prison authorities, during the criminal procedure. However, the most critical individual for whom the entire mechanism functions, i.e. the victim, is utterly disregarded. He is not allowed to participate in the proceedings, oppose bail, or appeal the verdict. At the moment, victims are the worst victims of crime and have little say in court proceedings.[21]

Section 357A of the code[22] provides for victim compensation scheme requiring all states to develop a victim compensation programme in

[20]Dr.K.N.ChandrashekharanPillai, R.V.Kelkar'sCriminal Procedure, fifth ed., Eastern Book Company, Lucknow (2008), p.1.

[21] See the Statement of Objects and Reasons, *The Code of Criminal Procedure (Amendment) Act, 2008*

[22]*Code of Criminal Procedure,1973*

conjunction with the central government. The district legal service authority or state legal service authority must determine the amount of compensation upon a court's recommendation. Additionally, there is an option for relief following an investigation by the state or district legal service authority in circumstances when no trial is held due to the offender's inability to be located or identified. S.357 B gives additional compensation to victims who fall under the provisions of sections 326 A and 376 D of the IPC. Section 357 C directs all hospitals, whether government-owned or administered by municipal governments, to offer free medical aid to victims of IPC sections 326 A, 376 A, 376 B, 376 C, and 376 D

a. Investigation and Victim's Role

Once a case is registered, the police will initiate an investigation. The term "investigation" refers to the collection of evidence by a police officer or any other individual (other than a magistrate) authorised by a magistrate.[23] During the investigation, the police officer will have all authority, including the authority to arrest the accused if the offence is cognizable.[24]In general, the investigation include going to the scene to determine the facts and circumstances, arresting the suspect offender, gathering evidence, examining the persons, and lastly forming an opinion based on the materials gathered and presenting it to the magistrate for trial. On the magistrate's instructions, the charge sheet is filed.[25]Two critical steps are critical discovery and arrest of the suspect offender, as well as search and seizure of evidence necessary for trial. The investigating officer may require the victim to be present as a witness and record his statement during the investigation. By order, the officer may compel any individual, including the victim, to appear before him or another person.[26] However, "no male person under the age of fifteen years or a woman over the age of sixty-five years, or a mentally or physically challenged person, shall be asked to attend at a location other than his or her residence."[27] This clause seeks to safeguard males under the age of fifteen and females from the possible inconveniences caused by police abuse of authority. The victim is therefore critical during the investigation, since he provides information either personally or as a witness, assisting the police in advancing the case.

Additionally, under section 164A, if the victim is a rape victim, the victim should be examined medically by a registered medical practitioner employed by a government- or local-government-run hospital, or, in the absence of such a practitioner, by any other registered medical practitioner with the consent of the woman or a person competent to give such consent on

[23]Section 2 (h) of *The Code of Criminal Procedure,1973*
[24]Section 155(2) & (3) of *The Code of Criminal Procedure, 1973*
[25]Section 173 of *The Code of Criminal Procedure, 1973*
[26]S.160(1) of *The Code of Criminal Procedure, 1973*
[27] Proviso to S.160 (1).of *The Code of Criminal Procedure, 1973* Substituted by*The Criminal Law (Amendment) Act, 2013.*

her behalf.[28] This measure is included to safeguard the victim's dignity and privacy

The Trial and the Victim's Role

In India, the criminal justice system is founded on an adversarial system. The victim shall be defended by the state-appointed Public Prosecutor[29]. Section 24(8) has been amended to include a proviso allowing the victim to retain an advocate of his choice to assist the public prosecutor.[30]The defendant shall be represented by a defence lawyer nominated by the defendant or by the court as part of the free legal aid programme. Between these two, the judge shall serve as an umpire. The prosecution bears the burden of establishing guilt, and the prosecution must establish the accused's guilt beyond a reasonable doubt. The law ensures that the accused has an appropriate and fair opportunity to defend himself.

The trial shall be open, ensuring a healthy, objective, and fair proceeding.[31] The open trial allows everyone to attend and observe the proceedings. However, the Code requires that certain trials, such as those involving rape, be conducted in camera to protect the rape victim's dignity.[32]Along with the right to a fair trial, another core concept that regulates criminal justice is the accused's presumption of innocence. The onus of establishing guilt beyond a reasonable doubt is always on the accused. As a result, the accused receives extensive protection, including protection under the Indian Constitution in the form of fundamental rights, while the victim is overlooked throughout the process.

4. Rights of Victims under the Indian Evidence Act, 1872

As a procedural statute, the Act contains minimal measures that safeguard victims during the course of the trial. The victim is not required to participate in the investigative process in order to avoid problems, except for the purpose of identifying any persons or property recovered by the investigating officer.[33]

India's criminal justice system is adversarial in nature. It is predicated on the core premise of presumed innocence unless proven guilty. This is why the prosecution normally bears the burden of establishing charges against an accused person. The Act establishes that some offences carry a presumption against an accused's innocence, placing a heavy burden of proof on the accused to establish his innocence. For example, in situations involving dowry deaths,[34] aiding a married woman's suicide,[35] and rape[36], the presumption will

[28] Inserted by *Code of Criminal Procedure (Amendment) Act,2005.*
[29]S.24 of *The Code of Criminal Procedure, 1973*
[30]*Code of Criminal Procedure (Amendment) Act, 2008.*
[31]S.327 of *The Code of Criminal Procedure, 1973*
[32]Section 327(2) of *The Code of Criminal Procedure, 1973*
[33]Section 9 of *Indian Evidence Act, 1872*
[34] Section 113B of *Indian Evidence Act, 1872*
[35] Section 113A of *Indian Evidence Act, 1872*
[36] Section 114A of *Indian Evidence Act, 1872*

be against the accused's innocence. The Criminal Law (Amendment Act), 2013, which amends the Indian Penal Code, the Indian Evidence Act, and The Code of Criminal Procedure, provides that after section 53, section 53Aprovides that evidence of the defendant's character or previous sexual experience is irrelevant in certain circumstances. This new section was added to conform the Act to I.P.C. modifications dealing to sexual offences, including rape.

Under Sections 151[37]and 152[38]of the 1872 Indian Evidence Act, victims are protected from indecent, scandalous, or insulting questioning, as well as queries meant to anger or offend them. Otherwise, there is no provision protecting victims against threats, intimidation, or other temptation to conceal the truth. Frequently, when an accused person is released on bail, one of the terms and conditions set by the Courts is that the accused not tamper with the evidence or approach the witnesses. Again, this is not a provision for witness protection; it is only to ensure that the trial does not become fruitless. Additionally, judges conduct in-camera trials to guarantee that witnesses can testify without fear of reprisal or shame. In recent years, the Supreme Court has approved video conferencing for the purpose of recording evidence. All of these are insufficient in the absence of a specific legislative provision ensuring victims' protection before to, during, and after the trial.

Previously, pursuant to Section 155(4) of the Act, the defence attorney might invalidate the victim's evidence by alleging that she possessed a "immoral character." This assault on her in the name of a legally permitted cross examination, interrogating her about prior sexual actions, her personal life, and other private topics, discouraged many rape victims from filing complaints. Section 155 (4) was repealed and section 146 was changed by the Indian Evidence (Amendment) Act of 2002. According to the new regulation, cross examination of the prosecutrix over her general moral character is not permitted. This cleared the way for an end to unnecessary attacks on the past sexual acts of rape's victim.

IV. COMPENSATION FOR VICTIMS

Only until victims receive adequate compensation for their injuries will the criminal justice system be successful. Just compensation for a person who has suffered, including his dependents, is required by law.[39] In all circumstances, the accused is liable for any injury caused to the victim. However, if the accused is impoverished or unable to pay the reparations, the state shall bear the cost. Compensation is justified in numerous ways, including the fact that it benefits the victims, acknowledges their pain, and, most importantly, works as a deterrence to the offender. Additionally, it has a reformative influence on the offender, as recompense has an "innate moral

[37] Section 151 of *Indian Evidence Act, 1872*
[38] Section 152 of *Indian Evidence Act, 1872*
[39]Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996) at 57.

value." In India, following primary laws provide for the award of compensation to victims of crime. This includes :

(i) Compensation under Constitution of India

(ii)Compensation under Criminal Procedure Code, 1973[40]

i. Development of Victim Compensation under The Constitution of India

Through Articles 32 and 226, the Indian judiciary took a fresh step in the domain of victim compensation and developed an effective constitutional remedy for infringement of fundamental rights. In *Rudul Shah v. State of Bihar*[41], Chandrachud C.J. used the unprecedented authority conferred on the Supreme Court by Article 32 for the first time to awarded compensation to the petitioner for illegal incarceration in violation of his fundamental right to life and personal liberty under Article 21. Again, in *State of Punjab v. Ajaib Singh*[42], the Supreme Court went a step even further and awarded the accused Rs. 5 lakhs in compensation even after acquitting him. The Supreme Court of India articulated novel ideas of victimology and victim justice in the landmark judgment of *BoddhisattwaGautam v. SubhraChakraborty*[43]. To begin, it concluded that awarding compensation as an interim measure is required to avoid undue delay in administering justice to a victim of crime. Second, it decided that the court possessed power to provide such compensation to the victim even if the accused is not convicted, according to the criminal procedures' delayed development. The court developed these principles in the future, presumably as a kind of judicial activism, and they were subsequently integrated into the Cr.P.C. through revisions in 2008 that were notified in 2009.

In *D.K. Basuv. State of West Bengal*[44], the court concluded that compensation is the only viable remedy for 'applying balm to the wounds' of the deceased victim's family members, who may have been the family's breadwinner. Contrary to this trend, in *A.K. Singhv. Uttarakahnd Jan Morcha*[45], the Supreme Court reversed the High Court's judgement ordering the convicts to pay Rs 10 lakhs in restitution for the crime they committed. On the other hand, in the recent case of *Chairman, Railway Board v. Chandrima Das*[46], the Supreme Court awarded a rape victim, a Bangladeshi woman who had been repeatedly raped by railway staff, Rs 10 lakh in compensation. The Courtmaintained the Calcutta High Court's ruling that she was entitled to the fundamental right to life in India even as a foreign national, and hence there was a constitutional need to compensate her. According to judicial precedents,

[40] Act No.2 of 1974
[41](1983) 4 SCC 141.
[42](1995) 2 SCC 486.
[43](1996) 1 SCC 490.
[44](1997) 1 SCC 416.
[45](1999) 4 SCC 476.
[46](2000) 2 SCC 465.

compensation has been invoked more frequently than section 357(3) of the Cr.P.C. The courts were more lenient in awarding large sums of compensation for violations of basic rights than for criminal offences. With the advent of section 357A, the criminal courts are anticipated to take a similar approach when invoking the compensation jurisdiction.

ii. **Compensationunder The Criminal Procedure Code,1973**

In accordance with the Law Commission of India's[47] recommendations, a detailed provision for victim compensation has been incorporated into section 357 of the Criminal Procedure Code, 1973, hereinafter referred to as the Cr.P.C. According to s. 357 clauses (1) and (3), the court may grant compensation to crime victims in the interest of justice at the time of verdict, if the court determines that it is suitable in a particular case. Additionally, Section 357 authorises the trial court and appellate courts (with revision jurisdiction) to compensate crime victims only after the offender has been tried. Section 357A of the code[48] provides for victim compensation scheme requiring all states to develop a victim compensation programme in conjunction with the central government.The district legal service authority or state legal service authority must determine the amount of compensation upon a court's recommendation. Additionally, there is an option for relief following an investigation by the state or district legal service authority in circumstances when no trial is held due to the offender's inability to be located or identified. S.357 B gives additional compensation to victims who fall under the provisions of sections 326 A and 376 D of the IPC. Section 357 C directs all hospitals, whether government-owned or administered by municipal governments, to offer free medical aid to victims of IPC sections 326 A, 376 A, 376 B, 376 C, and 376 D Apart from this clause, the victim may also seek compensation through the higher courts pursuant to section 482 of the Cr.P.C. Compensation may be awarded by higher courts using their inherent authority. However, the Supreme Court rejected claiming such authority in light of the current statutory requirement under section 357. In*PalaniappaGounder v. State of Tamil Nadu and others*[49], the court stated, "If a statute has an express provision covering a particular subject matter, there is no basis for claiming or using the court's inherent powers since the court is required to apply the legislation's provisions."

Four decades ago, in his inimitable style, Iyer Krishna J. stated for the Court in *Maru Ram & Ors. v. Union of India and Ors*[50].that while the criminal's social responsibility to restore the loss or heal the injury is a component of the punitive exercise, the length of the prison term is not reparation for the crippled or bereaved, but is futility compounded with cruelty. He stated that victimology must find a solution, not by barbarism, but

[47] Law Commission of India, 41st Report on Indian Penal Code,1860 (1969).
[48]*Code of Criminal Procedure,1973*
[49]AIR 1977 SC 1323.
[50](1981) 1 SCC 107.

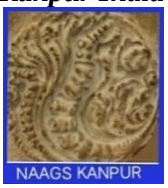
through compelled recoupment of the damage by the wrongdoer, not by increasing the offender's anguish, but by diminishing the dejected's loss. The number of cases in which section 357 has been invoked to pay compensation is comparable to the amount of salt in flour. It was never taken seriously by the courts.

CONCLUSION

the implementation of laws has a direct impact on society's quality of life, and it is important to ensure that the cost of implementing rights does not outweigh their benefits. The criminal justice system serves as a tool for individuals to seek redress for harm done to them and to enhance their quality of life. However, despite the expansion of victim's rights, their role in the system remains symbolic, and their rights are often neglected. It is crucial to prioritize the needs of victims and ensure that they receive the justice they deserve to create a fair and just society. The United Nations Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power acknowledges the importance of providing victims with certain rights and compensation for their losses. In modern criminal justice systems, the focus has shifted to the right of accused, and compensation and restitution have been replaced by civil remedies. It is important to prioritize the needs of victims and ensure that they receive the justice and support they deserve to address the painful reality that the victim does not receive the attention they deserve in the criminal justice system.

In order to prioritize the needs of victims in the criminal justice system, there are several proposed reforms that should be implemented. Firstly, the definition of crime should be expanded to include transgressions against individuals, with individual justice becoming the new goal of the system. Throughout the process, victims should be treated with respect and their privacy protected, with regular updates provided on the progress of the case. To ensure that victims are fully informed of their rights, a brochure detailing criminal procedure and victim rights should be provided at no cost. Additionally, victims should be granted legal aid and protection against harassment or intimidation by the accused. The victim should also be given the opportunity to be heard before granting bail to the accused or during plea bargaining negotiations. They must also heard while withdrawing prosecution case. The Code of Criminal Procedure should also be amended to include a provision for submitting a Victim Impact Statement (VPS), which would be considered by the judge when determining the sentence's severity, taking into account the victim's suffering and loss. These proposed reforms would help to ensure that the needs of victims are prioritized, and that they receive the justice and support they deserve.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

NEED OF ELECTORAL REFORM IN PARLIAMENTARY DEMOCRACY

DR. MRITYUNJAY KUMAR RAI
Assistant Professor of Law
M.B.S. PG College
Gangapur (Raja Talab) Varanasi.India

Abstract
The democratic process is centred around elections. People in a democracy engage in public affairs and express their opinions through elections. In a democracy, elections are once more the means by which power is peacefully and orderly transferred and the legitimacy of the executive branch established. So, elections not only preserve democracy but also give it life. Thus, holding free and fair elections is a must for democracy. India is one of the world's most populous and largest democracies. Apart from that, India still experiences challenges with illiteracy, poverty, etc., much like the majority of developing nations do, compared to most of the developed democracies of the globe. Its broad and diversified electorate reflects the variety of caste, religion, geography, language, etc. that make up its social mosaic. It is a monumental job to hold regular elections in the nation while promoting widespread popular involvement.Yet in a large democracy like India, these two crucial procedures have had a lot of problems. Communalism and politics, money and power, booth capturing, violence, and criminalization of politics may be a few of these difficulties. As a result, electoral changes have become more and more necessary.

Introduction
General Elections at a glance Among all the countries liberated from the colonial yoke, India alone has earned the singular distinction of not only being the world‟s longest functioning effective democracy but also of setting an example by conducting as many as seventeen free and fair general elections to the National Legislature, Lok Sabha and more than 350 elections to the State Legislatures. Successive elections have both enhanced and deepened the people‟s commitment to democracy. The election to the Lok Sabha being direct, the territory of India is divided into territorial constituencies for the

election. At present, the allocation of seats in the Lok Sabha is based on 1971 Census and will continue to be so till 2026. The term of the Lok Sabha, unless dissolved sooner is five years from the date appointed for its first meeting. The total number of seats in the Lok Sabha is 545 at present. The 28 States elect 530 members of Parliament (LS) while the remaining 13 are added from the Union territories and two are nominated by the President as per provisions of Article 331 of the Constitution from the Anglo-Indian Community which was abolished in 2019. Provision also exists for reserved seats for Scheduled Castes and Scheduled Tribes. Since 1989, the size of the Lok Sabha increased from 544 to 545. The extra seat was the result of Goa becoming a State (on May 30, 1987).

NEED OF ELECTORAL REFORMS

Elections are connected to representation in parliamentary democracies on a regular basis. The only way to carry out representation, government formation, control of the government, and change in the political parties in power is through elections. Elections are thus fundamental components of parliamentary democracy. Elections alone, however, are not a requirement for achieving public ambitions. A vibrant democracy needs free and fair elections. Free and fair elections go hand in hand with democracy. Election reforms have cleared the path for free and fair elections in this regard. Election reforms include the use of best practises to provide better, more accountable parliamentary democracy, the eradication of structural faults, honest politics, maintaining the confidence of the public, accurate representation, and other things. If we want to ensure that a healthy democracy remains in the nation, at least in a viable form if not in its ideal one, election changes are required, and they are required immediately. Articles 324 through 329 of the Indian Constitution discuss elections and electoral reforms.

ADR reports that 29% of the elected MPs of the 17th Lok Sabha have criminal records for rape, murder, attempted murder, and crimes against women. Since 2009, there have been 11% more MPs involved in significant criminal proceedings. 162 winners of the 2009 Lok Sabha elections had criminal charges filed against them. 185 victors of the Lok Sabha elections in 2014 have filed criminal charges against themselves. Political parties now serve as a haven for criminals. Legislative members who are criminals now participate in the rule-making process. This is serious issue before electoral reforms. There is no legislative act to prevent criminal politicians from rule making process. Booth capturing, violence, pre-election intimidation, victimisation is mainly the product of muscle power.

MAJOR COMMITTEES ON ELECTORAL REFORMS

Many a committees were formed to suggest for electoral reform, some of which are-

- Tarkunde Committee (1974)
- Jaya Prakash Narayan Committee (1974)
- Goswami Committee on Electoral Reforms (1990)
- Vohra Committee Report (1993)

- Indrajit Gupta Committee on State Funding of Elections (1998)
- Law Commission Report on Reform of the Electoral Laws (1999)
- National Commission to Review the Working of the Constitution (2001)
- Election Commission of India - Proposed Electoral Reforms(2004)
- Jeevan Reddy Committee (2004)
- The Second Administrative Reforms Commission (2008)

The aforementioned committee have raised concern on lot of issues in our democracy. Some of these issues includeCommunalism and Politics, Money Power, Booth Capturing, Violence, and Criminalization of Politics.With a view to restoring the faith of the public in the democracy of India and its processes, many electoral reforms have been made from time to time.

WHY ELECTORAL REFORMS ARE NECESSARY

India is in dire need of electoral changes in order to address the various challenges that have arisen in the past, as well as the issues that have emerged in recent years. Let's review a few of these challenges, and then will consider some potential solutions:

Here some of the issues are discussed:

l. **Criminalization of Politics**: There is not a single political party without a candidate having a criminal record, and the majority of parties' candidates have been accused to have been found in criminal cases. The most notable development is the growing criminalization of politics. Even news channels broadcast on their channels about the candidate's background throughout election season, as well as criminal charges against the candidates who is handed a ticket for a particular party. Because of their financial power, it is certain that someone who spends lakhs on elections can make it large in the political arena. Political groups are offered in return. Tickets were offered to candidates with criminal backgrounds not only by state or local parties, but also by significant national parties. To address this difficult issue, the Election Commission of India must issue new guidelines that prohibit the participation of criminals in elections while simultaneously imposing some mandatory rules on political parties that require them to show election expenditure.

2. **Paid News as an Election Offense**: Paid news is the sale of editorial space by media organisations to political parties. This is simply an advertisement disguised as news in order to garner votes. This practise has been going on for years, but it came to light during the 2009 Lok Sabha elections when the Press Council of India probed the media coverage of candidates. Former Maharashtra Chief Minister Ashowk Cavan has been charged with being implicated in a paid news scandal. There are no such guidelines set by the Election Commission of India that make paid news an electoral offence, if it is not less than two years in prison, so that such individuals are barred from contesting elections, but such issue has yet to be resolved

3. **Misuse of Government Machinery**: Usually, the government, whichever party is in power, uses official machinery during elections to try to win the candidate of whichever party belongs to it. Many methods are used in this way to win the government, such as advertising it will again become the party or public exchequer showcasing their achievements, disbursements out of the discretionary money at the disposal of the ministers, use of government vehicles for canvassing, and so on. In this sense, anytime a government abuses government machinery during an election, that government reaps the greatest profit and the election results favourably. This results in the misappropriation of public monies, which a particular party utilises for its own benefit rather than for the benefit of the public [1].

4. **Role of Media**: We can see how the media is currently promoting a particular political party. It is a hazardous situation for Indian democracy when the fourth pillar of democracy becomes prejudiced. Some political parties are using media personnel to sway and steer voter attention toward particular political parties. The ECI should also impose restrictions on these media outlets and individuals by issuing rules.

5. **Present Anti Defection Law**: The present anti-defection law has the provision for the disqualification of member from a political party on the ground of going against the whip. This provision is against the very concept election. Those persons willingly would not be able to represent the will of the people.

6. **Simultaneous Elections**: time to time of issues of simultaneous election of Assembly and Lok Sabha elections, mandatory voting and linking of Aadhaar with electoral rolls are other demands that are raised frequently with claims that these will relive functioning of the Indian democracy

RECOMMENDATIONS OF LAW COMMISSION

The Supreme Court of India, in the matter of *Public Interest Foundation & Others*v. *Union of India & Anr*,[2] directed the Law Commission of India to make suggestions on two specific issues, viz., (i) "curbing criminalization of politics and needed law reforms"; and (ii) "impact andconsequences of candidates filing false affidavits and needed law reforms to check such practice".

In response to this ruling, the Commission focused on these two issues and, on February 24, 2014, the Government of India received its 244th Report, titled "Electoral Disqualification," which was the result of several deliberations and a Nationwide Consultation conducted on February 1. The Union Law and

[1]L.M. Singhvi. *Elections and Electoral Reforms in India* 165 (New. Delhi: Sterling Publishing House, 1971)

[2]Writ Petition (Civil) No. 536 of 2011

Justice Ministry received the Law Commission of India's Report No. 255 on "Electoral Reforms." Following careful consideration, discussion, and deliberation with all relevant parties, including registered national and state political parties, as well as extensive and in-depth analysis of numerous issues by the commission, Justice Shri A. P. Shah, Chairman of the Law Commission of India, presented the 201-page report.

Following is the summary of the report on various issues discussed in the report:

1. Election Finance

The Law Commission has proposed wide ranging reforms on the issue of expenses incurred by candidate such as limits; disclosure obligations of individual candidates and political parties; and penalties imposable on political parties; as well as examining the issue of state funding of elections. The electoral bond scheme introduced in 2018 is a method of political funding. It aimed at ensuring enhanced accountability to defeat the growing menace of black money and to promote transparency in funding and donations received by the political parties. Only a political party registered of the Representation of the People Act, 1951, and which has secured more than one per cent of the votes polled in the last election to the Lok Sabha would be eligible to receive the bonds. The Commission does not consider a system of complete state funding of elections or matching grants to be feasible, given the current conditions of the country.

2. Anti Defection Law

Except for theissue of his disqualification according to the criteria laid out in the tenth schedule of the Indian Constitution, all questions of post-election disqualification of a sitting member of Parliament or a State Legislature are decided by the President or, as the case may be, the Governor of the State in question, taking into consideration the recommendation of the Election Commission., the person who serves as Speaker or Chairman of the House in question is the only person who can address and decide the second question[3]. Some of the choices made by the Honorable Speakers have resulted in disputes and further legal proceedings.The ECI is now a three-person authority under the Constitution, and the EC requested that any problems about the disqualification of members due to defection be addressed by the President and Governors.

The Commission believes the aforementioned recommendation should be considered, and that the legal issues pertaining to disqualifications under the Tenth Schedule should be left to the President and the Governors of the affected States, just as is the case with all other post-election disqualifications of seated MPs, MLAs, and MLCs, which are controlled by Articles 103 and 192 of the Constitution. In the same way as the President or the Governor may take action based on the opinion supplied by the Election Commission in any

[3]According to Articles 103 and 192 of the Constitution.

other cases of disqualifications under the aforesaid Articles 103 and 192, the President or the Governor may take action in the instance of disqualifications under the Tenth Schedule. After giving the parties involved every opportunity, the three-person Commission makes a recommendation to the President and Governors on post-election disqualification issues.If decision on anti-defection issues were made by the President or the Governor based on the Commission's, those decisions would be more respected and acceptable to the general public.

3. Strengthening the office of the Election Commission of India

The ECI should be strengthened by first, giving equal constitutional protection to all members of the Commission in matters of removability; second, making the appointment process of the Election Commissioners and the CEC consultative; and third, creating a permanent, independent Secretariat for the ECI.

4. Paid News and Political Advertisements

Changes were made to the RP Act of 1951 to make it clear that publishing "paid news" and helping to publish it with the intention of advancing a candidate's election prospects or adversely affecting those prospects constitutes an electoral offence and is punishable by a minimum of two years in prison. All types of media should be required to follow disclosure laws in order to stop the practise of cloaked political advertising.

5. Opinion Polls

In accordance with Section 126 of the Representation of the People Act of 1951, it is unlawful to "show to the public any election subject by means of film, television or other similar apparatus" throughout the forty-eight-hour period beginning with the hour set for the poll's close. Contravention of the aforementioned restriction is a criminal offence punishable by up to two years in jail, a fine, or both.

6. Restriction on Government Sponsored Advertisements

To preserve the integrity of elections, prevent the use of public funds for partisan interests such as, among other things, highlighting the accomplishments of the government, and ensure that the ruling party or candidate does not receive an undue advantage over another in the spirit of free and fair elections, the Commission advises regulating and restricting government-sponsored advertisements six months prior to the date of expiry of the House/Assembly.

7. Restriction on the Number of Seats from which a Candidate May Contest

The RPA's provision 33(7), which allows candidates to run in up to two seats for parliamentary, assembly, biennial council, or by-elections, is something the Law Commission advises changing. Section 33(7) should be changed to allow candidates to run from just one constituency due to the time and effort required, election weariness, and voter harassment.

8. Preparation and Use of Common Electoral Rolls

The Law Commission endorses the ECI‟s suggestions regarding the introduction of common electoral rolls for Parliamentary, Assembly and local body elections.

Conclusion

It is a well-known reality that there are certain issues with the country's election system that need to be fixed over time. Yet it should be done gradually and continuously, after much discussion and deliberation. The significance of the concerns related to electoral changes has been recognised by successive governments at the centre. Election reform recommendations from the Electoral Commission and different committees have occasionally been taken into consideration and also put into practise.It has also been emphasised that the country's political parties must reach an agreement before implementing any adjustments to the voting process. The government acknowledged that electoral reforms are a continuous process, and it is the responsibility of all parties involved, including the government, the Election Commission of India, the Law Commission, etc., to implement such recommendations for electoral reforms as occasionally come to general agreement.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

SOCIAL CHANGE IN LIFE OF KASHMIR AFTER ARTICLE 370

NIRMALIKA SINGH
Research Scholar
Departmet of Sociology
ISDC
Allahabad Central University
Prayagraj India

Abstract
The Kashmir issue was born in the aftermath of the partition of the subcontinent. Kashmir since then has remained the bone of contention between India and Pakistan. Kashmiri society as baffled by many new unique and complex problems on social, political, economic, demographic and cultural basis. But on August 5, 2019 life in India administration Kashmir changed forever after New Delhi abrogated Article 370 of the Indian constitution, which had allowed the region limited autonomy. The parliament passed legislation dividing the state of Jammu and Kashmir into the union territory of Ladakh and the Union territory of Jammu and Kashmir. India said its decision would improve the economic and social development of Kashmir and embarked on a major political makeover of the muslim-majority region.
The special provisions about J & K is permitted to create its constitution under Article 370. Except for defence, foreign affairs, financial matters and communication, all other legislation must be approved by the state legislature before it may be implemented. Furthermore, except in the case of presidential order, no alternation under Article 370 allowed for the creation of exceptional under Ar. 35A , rights such as the right to public imployment, the acquisition of real estate and govt. scholarships. Under Article 35A , the J & K legislature was given the authority to define the status ‘ permanent inhabitants ‘ and offer them particular rights and benefits without fear of being challenged on grounds of infringing on the rights of persons from other states. This Research paper dwells on the societal impact of the abrogation of article 370 and the constantly evolving social demography and legislative changes that have

mystified future pathways for J and K. The descendants of partition refugees who relocated from Sialkot, many of whom have SC, will now be able to find work, purchase and own land, and vote in the new union territory. Another changes in children born to women who marry nationals from outside Jammu and Kashmir can now inherit property. Political reservation, as stipulated under the Indian constitutions, has been denied to scheduled tribes in Jammu and Kashmir specially the Gujjar and bakarwal tribes.

Key Words- The Constitution of India, The Valley of Kashmir (Jammu-Kashmir, and Ladakh), Article 370, Temporary Provisions, Union Territories, Ground Reality Scenarios, Human Rights, Legal Analytical Study, Problem Solving Skills, Country Peace, Stability, advanced development, international stable and progressive relations. Social change.

The state of Jammu and Kashmir is given a special autonomous status inside the Indian union by way of what is referred to as a "temporary provision" in Article 370 of the Indian Constitution. In accordance with article 370(1)(b), the Union Parliament may only pass laws for the state "in consultation with the Government of the State" with regard to the defence, foreign policy, and communications-related issues included in the Instrument of Accession. Jammu and Kashmir can only be affected by other issues on the legislative subject lists with the "concurrence of the Government of the State" via a presidential decree.Article 370(1)(d) stipulates that other constitutional provisions may be applied to the state from time to time, "subject to such modifications or exceptions" made by the president of India, also through a presidential order, as long as they do not fall within the matters referred to above and except with the concurrence of the state government.As a result of this status, the state of Jammu and Kashmir enacted its own Constitution, which was formally adopted by a Constituent Assembly on November 17, 1956, and entered into force on January 26, 1957.Article 370(3), however, which grants the president of India the authority to change or repeal Article 370 itself through a public notification (declaring that this Article "shall cease to be operative or shall be operative only with such exceptions and modifications"), is crucial for the purposes of recent developments. This is true as long as "the recommendation of the Constituent Assembly of the State" is given before the president issues such a notification.

significance of article 35A-

Jawaharlal Nehru, the country's prime minister at the time, and Sheikh Abdullah, the prime minister of Jammu and Kashmir, reached a deal in July 1952 that called for the state to be subject to India's citizenship law and gave it the authority to control the rights and privileges of its own long-term residents. The Constitution (Application to Jammu and Kashmir) Order, 1954 (issued in accordance with article 370(1) of the Constitution) codified this agreement by adding article 35A to the Indian Constitution, giving the state of Jammu and Kashmir the authority to define its permanent residents and the "special rights and privileges" that come with such residency, such as the ability to limit immigration to the state and acquire real property. 35A. Saving of laws

pertaining to rights of permanent residents. Despite the provisions of this Constitution, no law currently in effect in the State of Jammu and Kashmir, and no law that is enacted in the future by the State's Legislature, may: (a) define the classes of people who are, or shall be, permanent residents of the State of Jammu and Kashmir; or (b) grant such permanent residents any special rights and privileges, or impose restrictions on others with regard to: (i) employment with the State Government. (ii) acquisition of immovable property in the State; (iii) settlement in the State; or (iv) right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part.Part III of the 1956 Constitution of Jammu and Kashmir outlines the rights and benefits of permanent inhabitants. The article's proponents claim that its goal is to protect the identity and population composition of the state with a majority of Muslims. The state would be "fully integrated," according to the national ruling party, the Bhartiya Janata Party (BJP), which pledged to revoke the article as part of its election campaign. Demographic change was seen as a way to resolve the conflict in the state. The party also thinks that the provision prevents the state's economy from developing.

Steps have been taken to revoke Jammu and Kashmir's special Status-

In accordance with article 370(1) of the Indian Constitution, the president of India signed the Constitution (Application to Jammu and Kashmir) Order, 2019, C.O. 272 on August 5, 2019. This, according to constitutional attorney Gautam Bhatia, "constitutes the ground for everything that follows." According to the decision, "[a]ll the provisions of the Constitution, as modified from time to time, shall apply in reference to the State of Jammu and Kashmir," with the "concurrence of the Government of State of Jammu and Kashmir.Additionally, since the government was unable to directly rely on article 370(3) to repeal other provisions of the Constitution, it attempted to amend article 367, the Constitution's interpretation clause, by using its authority under article 370(1). As a result, references to the "Government of the State [Jammu and Kashmir]" in article 370 will now be understood to refer to the governor of Jammu and Kashmir, and the phrase "Constituent Assembly of the State" in article 370(3) will Moreover, the ruling declares that it will "supersede the Constitution (Application to Jammu and Kashmir) Order, 1954," so nullifying article 35A as well.

On the same day, India's upper house of Parliament passed a Statutory Resolution recommending that the president of India abrogate most of article 370 pursuant to article 370(3). The next day, on August 6, the president implemented the resolution and revoked Jammu and Kashmir's special status through Presidential Order C.O. 273, which stated that, as of August 6, 2019, "all clauses of the said article 370 shall cease to be operative," and that "[a]ll provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir."The Jammu and Kashmir Reorganisation Act, 2019, was also

approved by the Indian Parliament during that time. It was approved by the president on August 9 after passing both the upper and lower houses on August 5 and 6. According to a blog article from Lawfare. The intention of this legislation was to divide Jammu and Kashmir from being one state, whether autonomous or not, into two union territories, which are always directly under the supervision of the federal government (3–4). In contrast to Ladakh, a mountainous region bordering China that has also had border clashes, one union territory—which would include the Kashmir Valley—would have a legislature.The government claims that the revocation was carried out for the "economic development and growth" of the state.

Article 370 Abrogation: Justification and Immediate Effect-

With the approval of the Kashmiris and the elected state government, Article 370 has been modified numerous times throughout the years to promote integration, improved administration, and sound government. Despite these dilutions, Article 370 nonetheless had a significant symbolic and psychological impact on Kashmiris. It also showed off India's asymmetric federalism, which gave differing privileges to different federal subdivisions, frequently in appreciation of their unique ethnic identities.All pro-India Kashmiri politicians were detained prior to New Delhi's unilateral move to repeal Article 370 and divide the state of J&K into two union regions.Thousands of security men were dispatched, and the Valley was completely cut off from communications. This "implemented constitutional revolution," in New Delhi's words, was carried out to open the way for improved management, excellent governance, and regional economic growth.Additionally, the administration claimed that J&K's corruption and militancy were directly related to Article 370.According to official statistics, Kashmir had 1,999 incidences of stone-throwing in 2019, up from 1,458 in 2018 and 1,412 in 2017.400 militants are reportedly active in the Valley,according to recent estimates of the Multi-Agency Centre (MAC) led by the Intelligence Bureau. This raises the possibility of increased insurgency activities even in the border districts of Rajouri-Poonch and Kishtwar. Alarmed, the government supported its 5 August decision by imposing an unprecedented high-security grid and a communications blackout on the whole region.

New Delhi appears less certain about its course of action six months later. Even though its actions have damaged India's reputation as a liberal democracy, the government has not yet taken any proactive steps to restore the public's trust and normalise the situation, either through the office of the Lieutenant Governor in the recently carved Union Territory or at the Centre. The NDA government had rejected this outcome, arguing that Kashmir was an internal matter for India, but the repeal of Article 370 has also resulted in the internationalisation of the Kashmir dispute. The United Nations Security Council (UNSC) has convened twice behind closed doors to discuss the situation in Kashmir during the past five months. Two house resolutions on Kashmir that denounce New Delhi's action have been passed by the US

Congress. Representative Pramila Jayapal, an Indian-American, introduced House Resolution No. 745 last year. It now has 36 cosponsors, 34 of whom are Democrats and two are Republicans.New Delhi was compelled to invite international diplomats and politicians to the Kashmir Valley on "fact-finding" visits as a result of the increasing attention being paid to the situation in Kashmir (from the UNSC and the US, in particular). The first one occurred in October 2019, when the administration welcomed legislators from the European Union to the Valley. the UK's Brexit Party, Germany's National Front, Poland's Prawo I Sprawiedliwo, and France's Rassemblement were among the far-right political parties represented.The second delegation of foreign diplomats, which included the ambassadors and high commissioners of 15 countries to India, visited Jammu & Kashmir on official business as worldwide criticism grew. Diplomats from the United States, South Korea, Vietnam, Bangladesh, Fiji, the Maldives, Norway, the Philippines, Morocco, Argentina, Peru, Niger, Nigeria, Guyana, and Togo were among them. European Union ambassadors missed the meeting and insisted on scheduling a different time to speak with the incarcerated political figures.

Today, Kashmiri life is lurching slowly and steadily in the direction of normalcy. The Valley, on the other hand, is surrounded by a tense quiet that may flare up at the slightest provocation from the other side of the border.

Some major findings are this-

Governance and Corruption- When the Jammu and Kashmir Reorganisation Bill was introduced in the Raja Sabha on August 5, 2019, the Union Home Minister stated that the special status granted to J&K under Article 370 was the primary contributor to corruption, terrorism, and the alienation of the state. It is true that J&K has experienced widespread and pervasive corruption, which at times has even presented dangers to national security. The "fake guns licences case," which implicated nearly six States in India, is proof of this perilous trend. According to the individuals this author spoke with, New Delhi's actions, rather than Article 370, are to blame for the corruption, nepotism, and poor administration that have resulted in the alienation of Kashmiris.A series of governments at the Center have safeguarded vested interests by adopting a strategy of unconditional appeasement of regional political leaders, trapping the Valley in a never-ending cycle of poor leadership and corruption.When asked about corruption and bad governance after 5 August 2019, the interviewees with ORF, particularly the farmers, had very negative opinions. They argued that since Article 370 was repealed, local government corruption has increased and that the promise that Kashmir will now have an administration and government free of corruption is merely empty rhetoric.

The National Agricultural Cooperative Marketing Federation of India Ltd.'s local marketplaces were particularly unfavourable to the farmers, who highlighted their suffering (NAFED). There were two key causes: the early November 2019 unseasonal snowstorm that ruined their crop and the extremists' threats to kill them. Any native Kashmiri who continued to live

their normal lives and conduct business after Article 370 was repealed was seen by the terrorists as having accepted New Delhi's unilateral decision. Prior to the repeal of Article 370, this wasn't the case.

The administration of the Union Territory declared this unexpected snowstorm a natural calamity, but the Centre took absolutely no action. The farmers felt duped by New Delhi's silence regarding their suffering, which only served to confirm their belief that they had been reduced to the status of "second-class citizens". Now, they demand that New Delhi send a team to observe the situation, evaluate the damage, and declare the appropriate compensation, just as would have been done, according to them, in any other region of India.

Following the declaration of the natural disaster, Raghav Langer, the District Commissioner of Pulwama, claimed in an interview with this author that the UT administration formed teams under the responsibility of the Tahsildars to undertake on-farm inspection and determine the damages. Farmers claim the exercise was carried out haphazardly and that numerous impacted communities received no assessment at all. While conducting research for this report, the author observed one such Tehsil team that, rather than travelling to the farms for an on-site evaluation, operated out of a prominent villager's home and summoned the farmers for the verification of their bank account numbers and other documents for payment. The majority of farmers are unsure of whether they will get paid at all.

Numerous farmers recalled that only wealthy and powerful family received compensation for damaged orchards in 2018. Many farmers compared the current civil administration, which lacks professionalism and ethics, to the colonial masters.Interestingly, compensation for all UT administration personnel increased after August 5; nonetheless, according to all respondents, they all still behave irresponsibly at work and have a haughty attitude. The Pulwama Municipal Committee workers and the medical staff at the district hospital were described as "most notorious" by the trade union head of the Pulwama district, who was also interviewed. The Pulwama Municipal Committee, one of the most dishonest administrative agencies in the former state, has previously permitted widespread canal building and other wrongdoings. People believe that the state's division into UTs will have little impact on the fight against corruption.

- **Effect on condition of women-** before 2019, if a Kashmiri women married outsider man, that she could no longer buy property there . Now it ended up jeopardising Women’s right as it barred their freedom to choose a life partner. Women’s safety in improving consistently with the decline in terror attacks. Combining it with the fact that new employment opportunities are emerging due to various government schemes.
- **Growth and Development**-The Jammu and Kashmir administration has so far signed more than 13,600 crores for investments, 6000 across

of government land has been acquired for setting up industries in the state.

- The Security situation in Jammu and Kashmir has deteriorated dramatically.
- People and investors from outside Jammu and Kashmir can now purchase land.
- Domicile certificates have been granted to over 4 lakh persons in Jammu and Kashmir.
- Non- local spouses of Jammu and Kashmir women are awarded domicile status.
- Jammu and Kashmir separate flag has been retired.
- No security clearance for stone pelters passports.
- Job reservation for locals in Jammu and Kashmir
- Rehabilitation of Kashmiri pandit's
- After years of neglect, Ladakh gets its due recognition

Effectsof Article 370 on Human Rights-

Under the cover of Article 370 many human rights are being trashed and tampered. Human rights are for the welfare of the society and should be awarded to every citizen of India irrespective of their caste, colour, race, gender or creed. Under the ambit of Article 370 state govt. of the valley failed to protect the basic rights of the residents of Jammu and Kashmir. discrimination with backward people, women who cannot marry outside the state to protect their property rights, right to education of children etc. are not protected under the constitution of Jammu and Kashmir. The consequences of the Art. 370 in the purview of Human Rights are as follows-

1.Gender Biases-Gender prejudices are loudly criticised under Article 370 with regard to Jammu and Kashmir. In Article 35A, it is discussed the rights of women who lose their property rights when they wed outside of the country. Jammu and Kashmir's women have been subjected to discriminatory behaviour that is wholly unacceptable and calls for justice. The state of Jammu and Kashmir is blatantly backward. Women and children are not given basic human rights. The residents of the valley strictly adhere to the right to an education from the age of eight to fourteen, but it is not required. Child marriage is still widespread, and Jammu and Kashmir citizens are exempt from laws that prohibit such crimes.

2.Backward Classes- The possibility of increased discrimination has been raised by the existence of Article 370. Discrimination against members of less affluent classes is possible and is against human rights.

3.Political Rights- The Kashmir valley, which is the smallest of all the other areas, has the most seats in the electoral constituencies, which is unfair and encourages inequality among the other states. In order to maintain a democratic system of governance, every state should be given an equal chance to choose its representatives from among its constituents.

4.Civil Rights- To take advantage of the special rights in Jammu and Kashmir, the Certificate of Permanent Residency is crucial. By denying equal

rights to those who have lived in Kashmir for a long time merely because they do not possess a certificate of Permanent Residence, adult suffrage is violated. This is blatantly against Article 370's definition of human rights.

5.Minority Rights-Since Jammu and Kashmir is outside the purview of either the State Minority Commission or the National Minority Commission, they are in a minority position.

6.EmploymentRights- Article 16's right to equal opportunity is guaranteed to every Indian citizen, but it does not apply to Jammu and Kashmir. Only people who possess a PRC are permitted to work in the state under the terms of the presidential order. The Federal government lacks the authority to become involved in Jammu and Kashmir's employment or recruitment policies and is also powerless to stop the prejudice that is occurring there.

7.Freedomof Movement- Under the umbrella of Article 370, the people of Jammu and Kashmir cannot be guaranteed the right to freedom of movement. Both Article 19 and the people of Jammu and Kashmir's human rights are being violated by this.

Some of the challenges are as follow-

1. Terrorism has escalated and is expected to rise future in the coming days.
2. Changes in status quo.
3. The challenge of protecting ethnic minorities interestes.
4. Polarisation challengers.
5. Other Difficulties. (Internet connection, data and communication. Sequarity problems, poverty, unemployment, educational conditions IT based business etc.)

Conclusion-

Jammu and Kashmir unique status was to be terminated, but only with the approval of its people. In theory, the momentous decision opens up new chances for economic development in the union territories of Jammu and Kashmir and Ladakh. As a result, the more is sure to have a profound impact on J and K demography, culture and politics. The govt must seek to reduce the security footprint in order for democratic institutions to function smoothly. Abrogation of Article 370 would not solve the problem of Kashmiri alienation. Aside from a Security oriented approach to containing adolescent radicalisation and lowering terror attacks and infiltration efforts the government must reinforce the region’s democratic system.

Therefore, we can say that albeit belated, Jammu and Kashmir will embark on a new journey of evolution without its special status and the question of Kashmiri identity will witness paramount changes in the near future. Some major Conclusion are below-

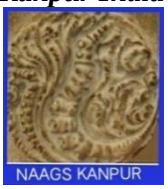
1. The nation experienced this decision's announcement as flash news because it happened so quickly. The residents of Kashmir were stunned. Without a doubt, it is to promote peace and order in Jammu and Kashmir, but the administration ought to have made such a significant decision more gradually.

2. They ought to have informed the locals about their choices and the negative effects of Article 370, which impedes their State's expansion and development. It is important to win the public's trust first.
3. The government restricted the media's freedom of speech and expression in violation of Article 19, which prohibits such restrictions. This has made it more difficult for the media to give the full picture.
4. Locals have a number of issues that need to be addressed, such as the lack of high-speed internet access, which is making it difficult for them to obtain the prerequisites for healthcare and online education from their respective educational institutions.
5. When the locals see the love and support they would receive from outside their state, the media's involvement would have to illuminate the issue in a positive direction.
6. The Panchayati Raj is Jammu and Kashmir's new festival, but this will only help the democracy there at a lower level.
7. Jammu and Kashmir should be merged into one state rather than given the status of a Union territory.
8. Only diplomats are using this matter to their own advantage. They are a part of a group that should solely be concerned with the growth and betterment of the country, not with getting back at someone or making money.
9. The Human Rights Commission has noted that numerous people killed, orphaned, widowed, orphaned and half-widowed, and numerous dead people have no record of their existence simply because they were militants. Families in need may be given compensation or Work.
10. For their protection and safety, women in both territories should receive appropriate self-defense instruction. The freedom and empowerment of women should extend to all spheres.

References-

1. PM Narendra Modi speech Updates: "Article 370 was a hurdle for development of Jammu & Kashmir", Business today, 8 August 2019.
2. Sumantra Bose, Kashmir, Roots of Conflict Paths to Peace (London; Harvard University Press, 2003)
3. Niti Kiran, J&K among top 5states with high monthly average unemployment rate, India Today, 6 August,2019.
4. Sunil Bhat, Political storm over J&K HC job advertisement, India Today, 31 December,2019.
5. Rakesh Mohan chaturvedi, "Article 370 cause of Corruption and Terrorism", The Economic Times, 6 August, 2019.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

FREEDOM OF PRESS AND ELECTRONIC MEDIA IN INDIA

ASHISH KUMAR SINGH
Guest Lecturer – Law
Maharaj Balwant Singh P.G. College
Gangapur, Varanasi

Introduction-

Freedom generally means absence of a kind of interference. The press is most served platform to spread any information at mass scale. It is regarded as the oxygen of democracy. The expression 'Freedom of the press' means, 'Freedom from interference from authority which would have the effect of interference with content and circulation of news paper.' Article 19 of the universal declaration of human rights, 1948 enshrines the right of freedom of speech and expression. Unfettered press has proved to the most viable option as a source of information. But, around the world in some democracies, as they claim themselves to be, free press is not so doing well. The subsistence of free and independent press is the foundation stone for any successful democracy. It is recognized as the fourth pillar of democracy. International convents of civil and political right also talks about freedom press under article 19. It has been greatly observed that press not only serves as a medium of exchange of information but it also act as a platform through which the general public shape their opinions over various issues such as national politics, economic agenda, International forums and many more.

The prime purpose of the free press guarantee regarded as creating a fourth institutions outside the government as a additional check on three official branches: executive; legislative and judiciary.

Press freedom or media freedom means freedom of various kinds of media and communications sources to operate in political and civil society. Restriction on press is generally through censorship on the media publications.

From past observation, It observed that press freedom is breached through two ways. First is censorship or mandatory licensing by [1] the government in advance publication and the second is punishment for printed material, especially that is considered by the government to be seditions. Press obliged to perform their discretion while publishing any news as they are heavily burdened with responsibility. Press has the power shape any democracy down to its spine.

A free press very important and essential for effective functioning of a democracy. A free press has also been described as the oxygen of democracy; one cannot survive without the other our actual experience since independence, and especially in last decade or so, also suggest that a free and vigilant press is vital to restrain corruption and injustice at least to the extent that public opinion can be roused as a result of press investigations and comments. The press serves as a powerful antidote to any abuse of power by government officials and as a means for keeping the elected of officials responsible to the people whom they were elected to serve. The democratic credentials of a state are judged today by extend of the freedom press enjoys in that state. At this present juncture of time, as we approached the sixth decade of our freedom, it essential to keep in mind, the pertinence of freedom of press, which is regarded as the fourth pillar of democracy a further dimensions to the freedom of expression is added by the exists of mass society in which communication among citizen can take place only through the use of media like press and broadcasting and not directly which prevails both technical and in the Indian context, financial , the importance of the press is even more crucial.

Press organization or vibrant and restive institutions which proved platforms for public discourse on popular issues and enjoy wide readership. The principle features of press organization include critical independence, democratic constructiveness and commercial viability. The state's fear of the power of press organization and there immense contributions to the defense of fundamental human rights of ten serves as justification for censorship. Although freedom of the press is guaranteed in first amendment, to what extent that right is protected has been battled in court and debated in public opinion for more than 200 years. Historically, "Press freedom" is known as such because it was printers and news papers that fought for this right which now a day's refers to media in general. It right that goes beyond and individual freedom of expression, much as it is also built upon that right. It many places it is privately owned news paper that continue this quest or help preserve victories against powerful forces who are sensitive to certain information becoming public the question to be addressed in this study there for is the extent to which battle ground of press freedom today has new frontier that incorporate cyberspace. This also entails taking stock of main forces in the

[1] Indian Express News Paper V. Union of India AIR 1978 SC 597

realm of new media (beside newspapers' presence there), and indeed whether old and new media are even on same side in respect of this new arena.

The face of Indian has been fast changing with the growth of the internet, the phenomenal rise of satellite and cable network, the continuing growth of regional press, despite various challenges and the blurring of lines between news and entertainment. But there is a sort of 'crises in present media due to processes of commercialization, mercerization and commoditization. This has led some to present a pessimistic view of the media to emphasize the ascendancy of 'infotainment' over 'serious' reportage and analysis of politics an opposite view asserts not that there is too title serious politics in the media, But too much.

Freedom of Press and Electronic Media: The constitutional perspective –

The first ever law which was passed in support of the press freedom was in Swedish assembly. On December 2, 1766, The Swedish parliament passed legislation that is now recognized as the world's first law supporting the freedom the press and freedom of information. But it was England where first ever struggle for press freedom occurred. In England, severe restriction where imposed on the publications

The American supreme court gave the broader aspect of contemporary press in the following words: The guarantees of freedom of speech and press where not designed to prevent the censorship of the press merely, but any action of the government by means of which its might prevent such free and general discussion of public matters as seems absolutely essential.

"It is now firmly established in U.S., the democracy cannot thrive on 'standardization of ideas by the legislature, court or dominants political or community groups. On the other hand, Its rests on a competitions of ideas on public issues and event provocation and controversial views which strike and prejudices and pre-conceptions.'

Freedom press in India can be traced back to the British era. The ever set of regulation for the press can in 1799 which was formed by governor general Wellesley towards the commotion of few Englishmen in the wake of British rule in India. This regulation required the newspapers to mention the name of the publishers, printers and editors and they also have to submit prior the printing the secretary general of India for prior scruting and censorship. But when lord hasting took over as governor general, some libration was observed as he favored the freedom of press.

Freedom of Press in India after Independence-

Indian got independence on 15th august, 1947.On January 15th 1950. India adopted its constitution and it changed the picture of rights of the Indian citizens. Freedom is enjoyed Indian citizens under article 19 of the Indian Constitutions. Article 19 (1) state that protection of certain rights regarding freedom of speech etc.

1- **All citizens shall have the right**
   (a) To freedom of speech and expression
   (b) To assemble peaceably and without arms;

(c) To form associations or unions;
(d) To more freely throughout the territory of India;
(e) To reside and settle in any part of the territory of India; &
(f) To practice any profession, or to carry on any occupation, trade or business.

Article 19 (1)(a) of the constitutions, 1950 state that "All citizens shall have right to freedom of speech and expression". 'Justice Patanjali Sastri has opined that ' freedom of speech and of the press lay at foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of process of popular government, It possible.' But this freedom is not absolute.

Role of Media In Strengthening Democracy In India:

- Media and Democracy- In India however media has developed and emerged as a very powerful and influential tool in all matters. Importance and power of media can never be denied in democracies; media politics, media content etc. and media persons has a direct or indirect influence on the audience. Mass media and democracy are always related to each other.

Media is a mirror of the society and how democratic a society is, can be represented through media. Opinion leaders influence the public opinion regarding poetical leaders and political system of any country. Media and democracy have strong association. Countries which are strong democracies always have resilient and free media. In the role of 'Watch dog' The media can promote government transparency, accountabilities and public scouting of decision makers in power, and by highlight policy failures, maladministration by public officials, corruption in judiciary, and scandals in the cooperate sector, Media acts as a minor.

[2]The Media acts as a strong agency to formulate and organized public opinion. The relevance and importance has been adequately dealt in this research. The role of the media as public forum is vital, media functions as an agenda setter, providing information about urgent social problems the free press can strengthen the public sphere, by mediating between citizens and the states'.

- **Role of Media in Public policy-**

The foundation of the democratic institutions dates back to the French revolution in 1789. There were three centre of power namely the monarchy, The church and feudal lords during those day. So fourth estate 'media' was added by the French revolution first. It was because of major role played by the media in the democratic intuitions. So even during the inception era of democracy the media had of very important role to play. Therefore we can't imagine democracy is present day

[2] Terminiello V. Chicago (1949) 337 US 1 (S)
Report of the Press commission, part- II (1954) at PP. 4-9
Constitution of India, Article 19(1)(a), Right to freedom
Art 19(2) constitution of India, 1950

without media. It a two aspects or faces of one coin. Media structures the policy of a country by making public opinion. The policy output is actually authoritative action i.e. The decisions of the government on the various problems of the people. In a way media exercise the decisive influence over the public policy.

- **Sway of Media-**

The democracy is like a vehicle without wheels. The media as undoubtedly evolved and become more active over the years. It is the media only who reminds politicians about there unfulfilled promises at the time of elections. Through excessive coverage during elections helps people, especially illiterates, In electing the right person to the power. This reminder compels politicians to be up to their promises in order to remain in power. Media plays central role in shaping healthy democracy. It is the back bone of democracy. The impact of media is really remarkable. The media reveals the drawbacks in the democratic system, which eventually helps government in eliminating the loopholes and making system more responsible, responsive and receptive. Thanks to technology that has brought a kind of revolution in journalism.

Conclusion-

Freedom of speech is the bulwark of democratic government. This essential for the proper functioning of the democratic process. It is regarded as the 1st condition of liberty. It opens up channels of free discussion of issues, It place a crucial role in the formation of public on social, political and economic matters. The motive of our constitution framer to keep freedom of speech and expression in our constitution was to make India a developed country article 19 (1) (A) gives an opportunity to citizens to develop their personality before the society. This is impossible without the freedom of speech and expression because the citizens are mirror of a nation if they well educated, well qualified and have a good moral character, no doubt the said nation will go in right direction. Article 19(1)(A) because through this we are gating good opportunity to citizens to come forward and present ourselves before the society. The concept of freedom of expression does not take the form of a positive or enforceable right. It is a negative liberty to communication with others or an immunity from interference by others. The word 'expressions' used in article 19(1)(A) in addition to 'speech' is comprehensive enough to cover the press. In fact, the lack of specific mention of the press in the constitution created no difficulty when the Supreme Court called to upon to protect the freedom of the press in several cases, which came before it. Media play a vital role in democracy. It called the fourth pillar of the democracy. But in last few years the media had a more negative influence rather than a positive effect (accept for a few exceptions). The media has to be properly regulated by the courts. The law commission also has come of with the report on 'trial by media' free speech v/s fair trail under criminal procedure (amendments to the contempt of court act, 1971).

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

ROLE OF MEDIA IN STRENGTHENING DEMOCRACY IN INDIA

DR. RAJU MAJHI
Assistant Professor
Law School
Banaras Hindu University, Varanasi

Abstract

In the words of Abraham Lincoln, "Democracy is the government of the people, by the people, for the people." So, it is very clear that the main pillar of democracy is the 'people'. It is the people who are ruler in a democratic form of government. A system of government in which all the people of a country choose and elect their representatives that is called democracy. For a democratic country, access to information is essential, freedom to read or write is an important element to expose and reveal the truth, to ensure self-development and self-fulfilment of citizens and to help ensure participation of citizens in a democracy. In other words, democracy in general terms is understood to be a form of government which is subject to popular sovereignty. Media came into existence in 1780 with the introduction of 'The Bengal Gazette' and since it has matured leaps and bounds. It has been playing a very significant role in shaping human minds and opinion. Democracy is a popular political notion in today's world, fair and free elections are the prerequisite of the law, protection and freedom of human rights and supremacy of the Constitution are important elements in true democratic system. Since 17th century, press is being recognised as Fourth Estate of democracy and a forum for public discussion and debate. Today, media is respected as watchdog, as a guardian of the public interest. Media organizations are generally assumed to play an important role in democracies, but how effective are they in performing this function is a matter of study. The power of media can be used to reinforce democracy. It can be used as an instrument to bridge between governors and the governed. This paper aims to analysis two separate aspects of media performance: the extent to which they

perform a 'watchdog' role by providing information, and the degree to which they act as a representative forum for the views of citizens. Through this research paper an attempt has been made to highlight the role of media in strengthening democracy in India. The present paper highlights the impact of media as a platform of nation building through political, social, economic and cultural democracy.

Keywords: Democracy, democratic, government, sovereignty, watchdog etc.

Introduction

To understand the democracy setup of any country it is very significant to know the meaning of democracy. The democracy means that 'A system of government in which all the people of a country choose and elect their representatives' called democracy. In the word of Abraham Lincoln, *"Democracy the is government of the people, by the people, for the people".* So, the main pillar of democracy is the 'people'. It is the people who are the ruler in a democratic form of governance. And power sharing is one of the important aspects of democracy. Everyone can participate in the governance. As in, everyone has the right to elect or be elected as representative in a democratic form of governance. Unless the people have the sufficient knowledge of the political incidents and the events participation of the people cannot be very effective. So, communication becomes very essential in a democratic form of government. Therefore, this role is played by the media. Basically, there are three institutions namely, executive, judiciary and the legislative in Indian democracy. So, because of the immense importance of media in democracy media can be considered as fourth institutes of the democracy in India.Against this background an attempt has made under this article to analyse the various aspects of role of media in the strengthening of democracy in India.

After discussing the meaning of democracy, it is very pertinent to give due attention in the general understanding of media and development of media in our country.The following paragraph discusses the meaning and definition of Media.

1. **Meaning and definition of Media**

Media means communication- whether written, broadcast, or spoken. Generally, the word 'communication' is defined as an exchange of information and message. However, Mass Media denote a section of the media especially designed to reach a large audience. Liberated media is an essential part of a functioning democracy. The media has an extraordinary ability to act as a catalyst in society efforts to strengthen democratic polity. Mass media in its different forms has influenced human life in many ways. Being the leader over a considerable period of time Print media is still regarded as the authentic medium of mass communication. Apart from providing news and views Radio and Television, has also developed a flair for entertainment. And now the latest form of media named the new media with internet has indeed made it possible to disseminate information and ideas in real time across the globe. By arising divergent views and engaging in cross-

questioning on significant national and social issues the media reflects and informs public opinion and practically shares the task of the parliament.

Role defines a function or part performed especially in a particular operation or process whereas Media means by which something is communicated or expressed. To strengthen means to empower something and democracy outlines a system of government by the whole population or all the eligible members of a State, typically through elected representatives. After defining the meaning of media, it very relevant to have a look on the importance of media in the society.

2. Importance and Role of Media

As we all are aware that media is considered as an important element of a free and independent society, as it is the more of provision of all the necessary news and information to the general citizens of the country. Media is an inherent and integral part of any country to give a different shape of democracy and it plays a significant role in strengthening the democracy of its country. Basically, media refers to the communication outlets or tools that are used to store and deliver the information or data. The above statement explains the basic role of the media, and further the components are communication industry, the news media, print media publishing, photography, cinematics, broadcasting, advertising etc. Thus, media is a vast field and has the responsibility of communicating each and every necessary information to the lowest most level of the hierarchical structure.

It is very pertinent to mentioned here that in India, the media is considered as the fourth pillar of democracy, as it supplies all the political news to the citizens and help the voters to make a fair and reasonable decision. Also, they identify the problems in the society and serve as a medium for deliberation. Media also work as a representative of the group to raise voice for their well-being and keep a check upon the different activities in the country to analysis the quality of the services being provided to the citizens. Therefore, it can be said that the media plays an important role in the free and fair play of the government and other authorities and ensure the equal application of the principles of a democratic nation in the country like India.

The media is regarded as an important part of the Indian democracy because, it is an ideal illustration to strengthen the concept of right of freedom to speech and express. The media helps the citizen to be an active participant in the political, economic aw well as social happenings of the nation, through the dissemination of the necessary information to them on timely bases. As stated in the above paragraph, the media acts as a representative of the citizens and stand for their needs and demands in front of the government. In the similar manner, the media informs the government about the current requirements of the citizens and help them to design their public welfare policies accordingly. Media has a huge contribution in bringing up the reforms in the nation, through raising voice against the unjustifiable and illegal actions of certain individuals, whether the political leaders or a normal citizen. The media helps in exposing the corrupt individuals in public and private agencies and allow

the deserving hard-working individuals to come forward and avail the opportunities. The media is the voice of the marginalized people of the nation, they empower the poor and vulnerable people by providing them with a platform through which they can approach to the specific authority.

Today, the word media is used by the general public in all the spectrums of life. It is not a surprise because no industry has grown, extended and succeeded as media in the present times. Under the grab of speech and expression, media is now omnipresent, it has invaded upon all the facets of life an individual. This fact is not only applicable to the Indian soils, but is global. Not only this, the media has become so powerful that it can make or break the government by influencing the people. The public also heavily depends on the media to secure information. in this scenario the question of the accountability of powerful media arises. Here, we need to understand that we "Public" are the active participant, we are requiring to shape the role of media because this commanding instrument can use as a boon or as bane too. Media has a fundamental right of freedom of speech and expression which can be used as per its whim or wish. The modern age is generally considered to be the age of representative democracy, and the mass media are an informal but an essential component of that representative democratic polity. Equally important is the fact that a democratic polity is an institutional guarantee of a free, fair and fearless media.Now it is very important to have a look on the development of Media in India.

3. Development of Media in India

Media came into existence in 1780 with the introduction of 'The Bengal Gazette' and since then it has matured leaps and bounds. It has been playing a very significant role in shaping human minds and opinion. Democracy is a popular political notion in today's world, fair and free elections are the prerequisite of democracy and rule of the law, protection and freedom of human rights and supremacy of the Constitution are important elements in true democratic system. For a democratic country, access to information is essential, freedom to read or write is an important element to expose land reveal the truth, to ensure self-development and self-fulfilment of citizens and to help ensure participation of citizens in a democracy. In other words, Democracy in general terms is understood to a form of government which is subject to popular sovereignty. It ensures that citizens make responsible, informed, choices rather than acting out of ignorance or misinformation. And information serves a "checking function" by ensuring that elected representatives uphold their oaths of office and carry out the wishes of those who elected them. A democratic system can run to its paramount potential when there is extensive participation on the part of mass which is not possible without people getting informed about various issues. This is where media steps in. A list of the core characteristics of democracy includes people's sovereignty, rule of law, social and political equality, elected government by means of universal adult franchise, free and open competition for political positions and institutions, periodic elections for legitimising government,

fundamental rights and civil liberties, multi-party system, independent judiciary and free media. Now, before moving further, it is very pertinent to have a little look on the constitutional status of press and media in India. A little attempt has been made to discuss the constitutional status regarding the press and media in the following paragraph.

4. Constitutional Status of Press and Media in India

After the independence of India when the Constitution was being drafter, the question aroused before the constitutional makers of India that whether or not to have a separate provision for press like in Constitution of America, or to include the freedom of press in right to speech and expression as in Constitution of England. In this context, Dr. B. R. Ambedkar the Chairman of Drafting Committee powerfully argued that, *"The press is simply another way of describing a citizen or an individual. The media has no superior privileges which are not to be given or which are not to be exercised by the voter in his separate capacity. The executive of press or the editor are all citizens and therefore, when they select to write in a newspaper, they are just exercising their right of freedom of speech and expression and in my decision then no special mention is necessary of the freedom of press at all."* [1]Hence, in Indian Constitution the right to press was inserted in freedom of speech and express i.e., Article 19 (1)(a). Free press is the need of democracy and is more important for the huge democratic country like. In India in the absence of any extract Article in the Constitution for free press, it was the judiciary who promoted and safeguarded the independence of press.

Hence, In India Constitution the right to press was inserted in freedom of speech and expression, i.e., Article 19(1)(a). Free press is the need of democracy and is more important for the huge democratic country like India. In India in the absence of any exact Article in the Constitution for free press, it was the judiciary who promoted and safeguarded the independence of press. After discussion of the constitutional provisions in relation to the press and media, it very necessary to see judicial approach in protecting the independence of press and media. Independence of press and media plays a pivotal role in the strengthening the democracy.

5. Role of Indian Judiciary in Protecting the Independence of Press and Media

The court in *Romesh Thapar* v. *State of Madras*[2] case has alleged that right to circulation is as important as right to publication. In *Sakal News Papers* v. *Union of India*[3] indirect effort by Government to restrict the freedoms, by passing the Newspaper (Price and Pages) Act, 1956, which empowered the government to regulate the space for advertisement, was struck down by judiciary as it, would have direct impact of circulation.

[1] Constituent Assembly Debates, Vol. VII, p.780 (2nd December, 1948).
[2] AIR 1950 SC 214
[3] AIR 1962 SC 305

In the famous case *Express Newspapers (Bombay) (P) Ltd*. v. *Union of India*[4] court observed that the importance of press. It was held that "*In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in the developing world, where television become provider of all the information."*

Freedom of Press includes the freedom to propagate ideas, opinions, views of all the masses of a nation. This has been reiterated by the Supreme Court through its various judicial pronouncements. In *Brij Bhushan* v. *State of Delhi*[5], the Apex Court declared that freedom of speech and expression includes freedom of propagation of ideas and this freedom is ensured by the freedom of circulation.

In *S. Ameenul Hasan Rizvi* v. *Press Council of India*[6], the Court held that the freedom of press will be jeopardised if it is forced and compelled to print a particular news, comment, letter, advertising, etc. In case of newspaper is compelled to print what it does not wish to print, it would violate Article 19(1)(a) of the Constitution of India. The Government can only impose the restrictions mentioned under Article 19(2). If the State imposes any restrictions other those mentioned under Article 19(2), the fundamental freedom of speech and expression will be in danger.

In *Shreya Singhal* v. *Union of India*[7], two girls Shaheen Dhada and Rinu Srinivasan, were arrested by the Mumbai Police in 2012 for expressing their displeasure at a bandh called in the wake of Shiv Sena Chief Bal Thackery's death. The women posted their comments on the Facebook. The arrested women were released later on and it was decided to close the criminal cases against them. But the arrests attracted widespread pubic protest. The police authorities have misused its power by invoking Section 66A. Petitioners contended that it violates the freedom of speech and express. Section 66A of the Information Technology Act, 2000 provides provisions for the arrest of those who post allegedly offensive content on the internet. The court declared that Section 66A of the Act is unconstitutional in nature by upholding that the fundamental freedom of speech and expression cannot be violated in any case. The judgment has increased the scope of the right available to us to express ourselves freely, and limits the power of the State in restraining the fundamental freedom of speech and expression. The Supreme Court has not only given afresh lease of life to free speech in India, but has also performed its role as a Constitutional Court for Indians.

In India the judiciary protected the rights of press as well as constrained it in the interest of justice. The court in *Bihar* v. *Shailabala Devi*[8] case speeches

[4] (1985) SSC 641
[5] AIR 1950 SC 129
[6] 2001 (91) DLT 492.
[7] (2013) 12 SCC 73.
[8] AIR 1952 SC 329

and express on the part of an individual inflame or boost to of ferocious crimes such as murder, etc., will undermine the security of the State. The court in the case of *Dr. D. C. Saxena* v. *the Chief Justice of India* alleged if preservation of democracy is the foundation for free speech, society equally is authorized to regulate freedom of speech or expression through democratic action. The cause is evident, e.g., that society accepts free speech and expression through democratic action. The cause of evident, e.g., that society accepts free speech and expression and also puts restrictions on the right of the majority.[9] After role of judiciary in protecting the independency of press and media, it is needful to establish the relation between media and democracy. The following paragraph made an attempt to discuss the relationship between media and democracy.

6. Media and Democracy

In India however, media has developed and emerged as a very powerful and influential tool in all matters. Importance and power of media can never be denied in democracies; media policies, media content etc., and media persons have a direct or indirect influence on the audience. Mass media and democracy are always related to each other. Media is a mirror of the society and how democratic society is, can be represented through media. Opinion leaders influence the public opinion regarding political leaders and political system of any country. Hence, media has an influential role in strengthening democracy. Media and democracy have strong association. Countries which are strong democracies always have resilient and free media. In the role of 'watchdog' the media can promote government transparency, accountability, and public scrutiny of decision-makers in power, and by highlighting policy failures, maladministration by public officials, corruption in the judiciary, and scandals in the corporate sector, media acts as a mirror.

The media acts a strong agency to formulate and organised public opinion. The relevance and importance have been adequately dealt in this research. The role of media as public forum is vital, media functions as an agenda-setter, providing information about urgent social problems the free press can strengthen the public sphere, by mediating between citizens and the State, facilitating debate about the major issues of the day, and informing the public about their leaders. A good democracy is thus first and foremost a broadly legitimated regime that completely satisfies its citizens (quality in terms of result). Hence, to strengthen democracy, India requires to safeguard its citizen first. Media is a tool for social change also. Through promoting programs like the betibachao, betipadhao, building and maintenance of clean toilets, swach Bharat, saving of water and saving of fuel etc, that the media is quite successful in promoting the social values and protecting the environment to some extent. The media is also responsible to grant aid, assistance and help to the needy people in the situations like any other catastrophe. The media provides the help lines in the cases of adverse contingency. If the channels of

[9] 1(996) 5 SCC 216.

communication reflect the social and cultural pluralism within each society, in a fair and impartial balance, then multiple interests and voices are heard in public deliberation. This role is particularly important during election campaigns, as fair access to the airwaves by opposition parties, candidates and groups is critical for competitive, free and fair multiparty elections.

Media freedom shapes the social, legal, political, economic and the cultural factor. People know very less about the political issues and activity in countries where the government interfere with the media. Corruption has a very adverse impact on the development of the country. Media extracts the fact and information's from the institutes and makes it available to the people. And this role of media makes the life of corrupt government officials tough. The media even at times releases the secret files which may include the actual instance of corruption. So, in countries where the government does not interfere with media, people participation in the functioning of the governance is more and the people can easily punish the corrupt politicians. So, free media repeatedly report the action of the government to the people and it put everything in front of the people to decide whether if it is right or not. When people are not conversant of the political activity, they become ignorant of the political affairs of the country.

It plays a very significant role in providing information to the public. So, if the media is not free, the information does not reach the people and the people lost interest participating in the government functions. Also, when the information about the political leader and the political parties does not reach the people, they become unaware about the detail the political party or candidate of the election. So, either they vote in darkness or the chose not to vote. So, lack of information has a very adverse impart on the voter's turnout. So, free media play a very significant role in enhancing the voter's turnout. As voter's turnout is a very essential aspect of democracy it definitely contributes to the strengthening of the democracy. So, it is the media who help the people to collect informationfrom these institutes easier and cheaper. So, a medium pay a vital roe in digging out the facts from these transparent institutes and makes these facts available to the people. Therefore, media contribute a lot to these three processes namely transparency, publicity and accountability which strengthen the democracy.

It also plays an important role in making the public policy. The foundation of the democratic institutions dates back to the French revolution in 1789. There were three centres of power namely the monarchy, the church and the feudal lords during those days. So, the fourth estate 'media' was added by the French revolution first. It was because of the major role played by the media in the democratic institutions. So, even during the inception era of democracy the media had a very important role to play. Therefore, we cannot imagine democracy in present day without media. It is two aspects or faces of one coin. Media structures the policy of a country by making public opinion. The policy output is actually authoritative action, i.e., the decisions of the government on various problems of the people. Media directly cannot shape

the policy but definitely it can criticize the policy and force the government to change the policy in case if it is not in the interest of the people. Media mediates between the State and the society and hence criticise by the media has very adverse impact on the popularity of ruling party. In a way media exercises the decisive influence over the public policy. Media is the regulating flow of communication between the policymakers, policy and others in any political system. This role of media influences the policy making and hence makes a country and its political system more democratic. It helps to bring social change in the India society by various means like to attack on gender discrimination, patriarchal set up of society, division of work amongst men and women.

7. Conclusion

From the above discussion it can be conclude by putting emphasis on the contribution of media in every aspect to the people of the country. Besides that, the importance and role of media in a democratic system is debatable. India has the largest democracy in the world and it is widely accepted that media has a powerful presence in the country. In the current scenario the India media has been subject to a lot of criticism for disregarding its obligation to social responsibility. Perilous commercial practices in media have affected the fabric of Indian democracy. In the race of sustainability and commercial interest transnational media organizations have spread their wings in the Indian market with their own global interests at the cost of truth and accuracy which was initially thought to be an agent of escorting in social change through developmental programs aimed to uplift the weaker section of the society and showcase the truth only. But, extreme coverage or propaganda of sensitive news has led to communal riots at times. Constant repetition of the news, especially sensational news, breeds apathy and insensitivity. Though media has at times successfully played the role of a watchdog of the government activities and has also aided in participatory communication, a lot still needs to be done. Media should take utmost care in arising or publishing such sensational news. It is a mirror of society and a powerful tool in implementing laws. Although, the Indian Constitution does not have an exclusive act defining the liberty of the press but it is evidently included in the freedom of speech and expression under the Article 19 (1)(a).

Media organisations, whether in print, audio visual, radio or web have to be more accountable to the general public. It should be monitored that professional integrity and ethical standards are not sacrificed for sensational practices. The freedom of press in the country is a blessing for the people. However, this blessing can go terribly wrong when manipulations set in. No one is perfect in this world. Still, there is a lot of scope for improvement by which media can raise up to the expectations of the public for which it is meant. We cannot think of a democracy without active and neutral media. Media employs the tools of discussion, opinion polls, debates, and write ups to stimulate authorities for taking appropriate action. Media offers an indicative and investigative platform for discussing the different causes of and solutions

to, to the problem of improper implementation of law. The Indian democracy has survived and is functioning relatively well, and the media no doubt have great contribution in it. However, the India media have its own serious criticism, elitists; urban oriented; politically biased; under the grip of big industrial and business houses; using hate politics and sensationalizing the news for economic interest; using communal and caste politics especially by the vernacular media.

When there is information, there is enlightenment. When there is debate, there are solutions. When there is no distribution of power, no rule of law, no accountability, there will be exploitation, corruption, suppression and annoyance. Media does more than mere reporting news. It also monitors administration and keeps a check on corruption and bad administration. The fight against corruption has been largely fuelled by the media. With the passage of time, it has become a more matured and a more responsible entity. Big media conglomerates are a serious threat. Citizen-friendly democracy is a goal that the media should strive for in a country like in India. The present media insurgency has led to people in making an informed decisions and beginning of a new era in a democracy. This can be end with the statement that without strong and impartial role of media a strong democracy cannot be imagine. It can be concluded that media plays a significant role in the strengthening the democracy. But it is well reminded that media must not be regulated by sovereign power nor by the corporate body, if it will work under it media will loose its credibility in the society and at the same time it will fail the strengthening the democracy of any country.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

ROLE OF CONSTITUTIONAL COURTS IN STRENGTHENING AND PROTECTING THE PARLIAMENTARY DEMOCRACY IN INDIA

DR. PRADEEP KUMAR
Assistant Professor
Department of Law
SLS, BBAU Lucknow India
NITESH KUMAR CHATURVEDI
Research Scholar
Department of Law
SLS, BBAU Lucknow India

Introduction

Preamble of the Constitution of India begins with the term 'We the People of India', underlining the spirit of democracy in India, because people of India are source of power that lies in the political sovereign. Therefore, constitutional democracy in the form of representation of people is existed in India. The members of the union or state legislatures are mandated to represent vicariously the aspirations and concerns of the people, whom they are representing in Lower-House of Parliament or State Legislature. Preamble of the Constitution of India also declares that the people of India have resolved to constitute India into a sovereign, secular, socialist democratic republic with the four-fold objective, namely, to secure to all its citizens, justice social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote among them all fraternity, assuring the dignity of the individual. Our constitution ensures a Socialist, Secular State and Equality, Fraternity among its citizens. Secularism, a basic feature of the Constitution must inform all actions of the State, and therefore, cannot be spurned but must be observed in letter and spirit.

[1] Democracy can be achieved only when the governing dispensation

sincerely endeavors to observe the fundamental rights in letter and spirit. Democracy also, needless to say, would become fragile and may collapse, if only lip service is paid to the rule of law.[2]

Word 'Democracy' is inextricably intertwined with power to the people. In constitutional democracy ballot is more potent than the most powerful gun. Democracy facilitates a peaceful revolution at the hands of the common man if elections are held in a free and fair manner. Elections can be conflated with a nonviolent coup capable of unseating the most seemingly powerful governing parties, if they do not perform to fulfill the aspirations of the governed…Democracy is meaningful only if the sublime goals enshrined in the preamble to the Constitution of India receive the undivided attention of the rulers, namely, social, political and economic justice. The concepts of liberty, equality and fraternity must not be strange bedfellows to the ruling class.[3]

1. **Provision of the Constitution to established a democratic setup in India**

Provisions in Part V[4] and VI[5] of the Constitution of India established for us a parliamentary form of government, which was based on the British model. In a parliamentary democracy, there is no formal separation of power between the Parliament and the political executive (Council of Ministers). The political executive is a part and parcel of the Parliament and is drawn from it. The party or the group of parties which has a majority in the Lower House of the Parliament or which enjoys the confidence of the Lower-House is invited by the President of India to form the union government. In a parliamentary democracy, the political executive is not directly elected as such by the people of the country. Even the President of India, the nominal Head of the State is not elected by the people directly but by the Members of the Parliament and the State Legislatures. In a parliamentary form of government or a Presidential form, indeed in every democracy, the process of election should be free, fair and equitable. Various provision of the Constitution and the Representation of the People Act, 1950 and Representation of the People Act, 1951 to seek to provide for a free and fair election but problems have been arising in this regard on account of division in our polity on the basis of religion, caste, language, region and race. Apex Court of India has already declared that free and fair elections are the very foundation of democratic institutions.[6]

2. **Provision of the Constitution to established Election Commission of India**

Part 15 of the Constitution of India provide the provision related to the elections. It contains with six articles i.e. from Articles 324 to 329. Article 324

---

[1] *S.R. Bommai* v. *Union of India,* AIR 1994 SC 1918.
[2] *Anoop Baranwal* v. *Union of India,* Live Law 2023 SC 155, Para 92.
[3] *Anoop Baranwal* v. *Union of India,* LiveLaw 2023 SC 155, Para 92.
[4] Constitution of India, 1950 art. 52-151- Part V- The Union.
[5] Constitution of India, 1950 art. 152-237 Part VI- The States
[6] *P.R. Belagali* v. *B.D. Jatti,* AIR 1971 SC 1348.

declares that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution of India, shall be vested in the Election Commission. Article 325 declares that there shall be one general electoral roll for every parliamentary/assembly constituency for election to either House of Parliament or House of the Legislature of a State and that no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them. Article 326 of the Constitution of India confers a right upon every citizen of this country to be included in the electoral roll if he has completed eighteen years of age on the specified date and is not otherwise disqualified under any of the provisions of the Constitution of India or any law made by Union Legislature or the State Legislatures. Article 327 empowers Union Legislature to make provision with respect to election to legislature. Article 328 confers a similar power to the Legislature of a State to make provision with respect to election to such legislature. Article 329 creates a bar to interference by courts in electoral matters.

a. Right to Vote is a Constitutional Right in India

In the context of Article 329(b) of the Constitution of India a Bench of six learned Judges of the Apex Court in *N.P. Ponnuswami* v. *Returning Officer, Namakkal*[7], held that the right to vote was a creature of a statute. In this case Court was not concerned with the question as to whether Article 326 provided for a Constitutional right to vote.

In *Rama Kant Pandey* v. *Union of India*[8], a Bench of three learned judges was dealing with a petition challenging the validity of the Representation of the People (Amendment Ordinance) Act, 1992. It was in the context of the said challenge; the Court noted that the right to vote or to stand as a candidate for election was neither a fundamental nor civil right.

Recently, Chief Justice of India Dr. DY Chandrachud had also expressed his view on right to vote was a statutory right. While hearing a PIL, in which petitioner is challenging the constitutionality of Section 33(7) of the Representation of Peoples Act 1951. The Chief Justice of India orally remarked that- "*of course, there are some judgments that say that the right to vote is only a statutory right and not a constitutional right. But no, it is a constitutional right because it's a part of Article 19(1) (a) of the Constitution, in which the right of expression covered the right of people to elect, and for people to vote*."

In *Anoop Baranwal Case*[9], the Constitution Bench comprising Justices K.M. Joseph, Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy and C.T Ravikumar was held that right to vote is a Constitutional right. In this case

[7] AIR 1952 SC 64.
[8] AIR 1993 SC 1766.
[9] LiveLaw 2023 SC 155.

Justice Rastogi also observed that right to vote is not merely a constitutional right, but a component of Part III of the Constitution. Further he stated that right to vote is not limited only to Article 326, but flows through Article 15, 17, 19 and 21 of the Constitution.

b. Role of Election Commission in free and fair elections in India

India is the largest democracy in the world since 1947. Free and fair elections have been held at regular intervals, as per the provision of the constitution and electoral laws[10]. *In Anoop Baranwal* v. *Union of India*[11], all the four writ petitions was filed[12], in which petitioners are requested to Apex Court to issue a writ of mandamus or an appropriate writ, order or direction, commanding the respondent: to make law for ensuring a fair, just and transparent process of selection by constituting a neutral and independent collegium/selection committee to recommend the name for the appointment of the member to the Election Commission under Article 324(2) of the Constitution of India. Petition was clubbed by Apex Court and further a Bench of two learned Judges was constituted by Apex Court to hear the matter of appointment of CEC and ECs. The issue has not been debated and answered by the double bench of Apex Court earlier. Article 145 (3)[13] of the Constitution of India would require the Court to refer the matter to a Constitution Bench for an authoritative pronouncement.

Constitution Bench of Apex Court comprises with Justice K.M. Josheph, Justice Ajay Rastogi, Justice Annuradha Bose, Justice Hrishikesh Roy and Justice CT Ravikumar. Judgment contains with 378 pages in which leading judgment written by Justice K.M. Joseph and concurring opinion given by Justice Ajay Rastogi is full of impactful discussions on Indian realities on the role of election and election commissioners. During the hearing, the Bench had questioned to the Central Government for clearing the appointment of Arun Goel as one of the Election Commissioners at a 'lightning speed' when the hearing was underway in Apex Court. The Bench asked the Attorney General of India to produce the files related to the appointment of Arun Goel as CEC. Bench noted that several political parties came into power; however, none of them framed a law or systematic process for appointment of Election Commissioners or Central Election Commissioner. Apex Court said that this is a 'lacuna' in law and that making of law under Article 324 of the Constitution is an unavoidable necessity.

[10] Mamta Rao, *Constitutional Law* 715 (Eastern Book Company, Lucknow, 1st edn.).
[11] LiveLaw 2023 SC 155.
[12] All four Public Interest Litigation was filed by separately for relief, in which a writ petition (civil) no. 104 of 2015, filed by Anoop Baranwal, second writ petition (civil) no. 1043 of 2017 was filed by Shri Ashwani Kumar Upadhyay, another writ petition (civil) no. 569 of 2021, filed by the Association for Democratic Reforms and the latest and the last writ petition (civil) no. 998 of 2022 was filed by Dr. Jaya Thakur.

[13] Constitution of India, 1950 art. 145. Rules of Court, etc.

Bench of the Court said that-"*the cardinal importance of Election Commission in democratic setup must be independent, honest, competent and fair. Election Commission must be tested on the anvil of the rule of law as also the grand mandate of equality. Rule of law is the very bedrock of a democratic form of governance. It averts a democratic Government brought to power by the strength of the ballot betraying their trust and lapsing into a Government of caprice, nepotism and finally despotism. It is the promise of avoidance of these vices which persuades men to embrace the democratic form of Government. An Election Commission which does not ensure free and fair poll as per the rules of the game, guarantees the breakdown of the foundation of the rule of law*."[14]

Court has also emphasized that it is the duty of the Election Commission to act in a fair and legal manner and abide by the Constitutional framework and the directions of the Courts, considering that the fate of democracy was contemplated to rest in the hands of the Election Commission. Bench of the Court also said that-"*there is a crucially vital link between the independence of the Election Commission and the pursuit of power, its consolidation and perpetuation. As long as the party that is voted into power is concerned, there is, not unnaturally a near insatiable quest to continue in the saddle. A pliable Election Commission, an unfair and biased overseer of the foundational exercise of adult franchise, which lies at the heart of democracy, who obliges the powers that be, perhaps offers the surest gateway to acquisition and retention of power…The demand for putting in place safeguards to end the pernicious effects of the exclusive power being vested with the Executive to make appointment to the Election Commission, has been the demand of political parties across the board*."[15]

Constitution Bench also opined that-*"Democracy can be achieved only when the governing dispensation sincerely endeavors to observe the fundamental rights in letter and spirit. Democracy will also become fragile and collapse if only lip service is paid to the rule of law…..Democracy can succeed only if all stakeholders work on it to maintain the purity of the election process, so as to reflect the will of people of India. However, it expressed regret at the 'unrelenting abuse' of the electoral process over a period of time. It also commented on the impartiality of the media in the present times. 'A large section of the media has abdicated its role and become partisan'. In the backdrop of criminalization of politics, the surge in the influence of money power and the role of the section of media that has turned unashamedly partisan it it essential to fill up the vacuum the exists in the process of appointment of members of the Election Commission.*"[16]

Finally Bench of Apex Court has unanimously ruled that Central Election Commissioner and Election Commissioners would be appointed by a high

[14] *Anoop Baranwal* v. *Union of India*, LiveLaw 2023 SC 155, Para 165.
[15] *Anoop Baranwal* v. *Union of India*, LiveLaw 2023 SC 155, Para 221.
[16] *Anoop Baranwal* v. *Union of India*, LiveLaw 2023 SC 155, Para 164.

power committee consisting with Prime-Minister of India, Leader of Opposition in Lower House of the Parliament (leader of largest opposition party) and Chief Justice of India. These types of appointments ensure that the poll panel is really insulated from political pressure and election to be held in free and fair manner.

3. **Role of Constitutional Courts in strengthening the Democratic Values in India**

Higher Judiciary in India enjoys a very significant position since it has been made as the guardian and custodian of the Constitution. It not only is a watchdog against violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, Indians and aliens alike, against discrimination, abuse of State power and arbitrariness. Constitutional Courts has been established under the Constitution of India and these are the instrumentalities for fulfilling ideals enshrined therein. An independent and impartial Constitutional Courts are the essential element of a federal Constitution for maintaining the supremacy of the Constitution of India. Constitutional Courts are *sine quo non* for protecting the fundamental rights as well legal rights of citizen of India. Constitution of India provides a single integrated judicial system. This means that unlike some other federal countries of the world, India does not have separate State Courts. The structure of the judiciary in India is pyramidal with the Apex Court[17] at the top, High Courts[18] below them and district and subordinate courts[19] at the lowest level.

Constitution of India is supreme law of the land and the Constitutional Courts has been designated by the Constitution to keep parliament and executive within the limits of the provision of the Constitution. If it oversteps it, the Constitutional Courts can strike down the law. And there is no appeal from the judgment of the Apex Court. Its judgment becomes the law of the land under Article 129[20] and 141[21] of the Constitution—unless Parliament acting under its amending power changes the law as declared by the Apex Court.

Constitutional Courts does not merely interpret the laws passed by the legislature, but it also decides their constitutionality. Article 13 of the Constitution empowers Constitutional Courts to check the constitutionality of any law, which infringe the fundamental rights of the citizens. The most important power of the Constitutional Courts is the power of judicial review. Judicial Review means the power of the Supreme Court or High Courts to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional. The term judicial review is nowhere mentioned

[17] Constitution of India 1950, art. 124.
[18] Constitution of India 1950, art. 214.
[19] Constitution of India 1950, Part- VI, Chapter- VI, art. 233.
[20] Constitution of India 1950, art.129- Supreme Court to be a court of record.
[21] Constitution of India 1950, art.141- Law declared by Supreme Court to be binding on all courts.

in the Constitution of India. However, the fact that India has a written constitution and the Supreme Court can strike down a law that goes against fundamental rights, implicitly gives the power of judicial review to the Supreme Court and judicial review is also the basic structure of Indian Constitution.[22]

***Union of India* v. *Association for Democratic Reforms and Another*[23]**

Criminalization of politics has been one of the fiery issues since it has an immediate bearing on the choice of candidates in an election and goes to the root of expectation of good governance through elected representatives. Treating the right to vote as akin to freedom of speech and expression under Article 19(1)(a) of the Constitution of India and enforcing the 'right to get information' as 'a natural right' flowing from the concept of democracy, in the case of Association for Democratic Reforms, the judiciary brought about a major electoral reform by holding that a proper disclosure of the antecedents by candidates in election in a democratic society might influence intelligently the decisions made by the voters while casting their votes. Observing that casting of a vote by a misinformed and non-informed voter, or a voter having a one sided information only, is bound to affect the democracy seriously, the court gave various directions making it obligatory on the part of candidates at the election to furnish information about their personal profile, background, qualifications and antecedents.

***People Union for Civil Liberties* v. *Union of India*[24]**

The People's Union for Civil Liberties, which is an NGO, filed a PIL to add NOTA in Ballot. Finally on September 27, 2013, the right to register a 'none of the above' vote in elections was applied by the Apex Court of India, which then ordered to the Election Commission of India that all electronic voting machines should be provided with a NOTA button so as to give voters the option to choose 'none of the above'. In this landmark judgment Apex Court recognized negative voting as a constitutional right of a voter and directed the Government/Election Commission to provide the 'NOTA' button option in all the EVMs.

4. Relevance of 10th Schedule of the Constitution of India

The experience of this country with the Tenth Schedule of the Constitution since its introduction has not been happy. It has led to innumerable abuses and undesirable practices. While the idea of disqualification on the basis of defection was a right one, the provision relating to 'split' has been abused beyond recall. The underlying idea was that a person elected on the ticket of a political party should remain with it during the life of the House or leave the House. It was also suggested by the Law Commission that the decision on the question of disqualification under the said Schedule should be entrusted to the President (in the case of Lower House

[22] *L. Chandra Kumar* v. *Union of India,* AIR 1997 SC 1125.
[23] (2002) 5 SCC 294.
[24] (2013) 10 SCC 1.

of the Parliament) and to the Governor (in the case of State Legislature) who shall render their decision in accordance with the opinion of the Election Commission of India which shall be consulted in that behalf. Paragraph 7 of the tenth Schedule bar the jurisdiction of the Constitutional Courts in respect of matters connected with the disqualification of a member of a House under the said Schedule. It means that the judgment of speaker of the House is final. This paragraph has, however, been declared unconstitutional by the Apex Court in *Kihota Hollohan* v. *Zachilhu and others*[25].

Nebam Rabia and Bamang Felix v. *Deputy Speaker*[26]

In the year of 2011, election of State Assembly was held in Arunachal Pradesh, in which congress party won with a full majority of 49 seats out of 60 assembly seats. After that in 2015, 21 Congress MLAs and two independent MLAs rebelled against the newly elected Chief-Minister of State. On November 19, 2015, 13 members of the legislative assembly addressed a letter to the Governor of the State to express their dissatisfaction with the Speaker and the current Government, 21 Congress MLAs also declined to attend party meetings, alleging the incompetence of Chief-Minister Nabam Tuki. They claimed that the Chief Minister had drastically mismanaged cash and wasted money for managing the MLAs. After that without consulting the Chief-Minister or the Council of Ministers, the Governor of Arunachal Pradesh postponed the State Assembly meeting from December 16, 2015 to January 14, 2016. Governor has also impeached the speaker of the House and nominated a congress rebel as deputy speaker of the House then who annulled the disqualification order of 14 rebel congress MLAs. Removal of Speaker of House was challenged in the Gauhati High Court on grounds of 'an extraneous and inappropriate exercise of constitutional authority'.

On January 5, 2016, the High Court postponed the disqualification of Congress MLAs and dismissed the Speaker's petition, stating that neither the Governor's discretion under Article 163 of the Constitution nor the legislative procedure under Article 212 may be contested in court, and that both are legally legitimate. The acts of the Governor and the Assembly were not arbitrary. In this situation an appeal was filed in the Apex Court, and the case was assigned to a five judge Constitutional Bench for further scrutiny. On July 13, 2016, a five-judge Bench of the Apex Court comprising with Justice J.S. Khehar, Justice Dipak Misra, Justice M.B. Lokur, Justice P.C. Ghose and Justice N.V. Ramanna unanimously held that the powers of Governor to summon, dissolve and prorogue a session is within the scope of judicial review. Justice Khehar wrote the majority opinion on behalf of Justice P.C. Ghose and N.V. Ramanna while Justice Dipak Misra and Justice Madan Bhimrao Lokur wrote separate concurring opinions. In a landmark verdict which contains 331 pages, the Constitution Bench of Apex Court quashed the order of Governor of the Arunachal Pradesh.

[25] AIR 1993 SC 412.

[26] (2017) 13 SCC 332.

Apex Court identified two broad issues, first, was the decision of Governor of State to prorogue the Assembly session constitutional? Second, could the Speaker of House disqualify MLAs while a motion for his removal was pending before the House?

Apex Court confirmed that the Governor of the State does not enjoy broad discretionary powers and is always subject to constitutional standards. Article 174 confers the Governor with the power to summon, prorogue or dissolve the legislature of the State. The Court considered whether the Governor must exercise this power at his discretion or in consultation with the Council of Ministers. Apex Court concluded that the discretion of Governor did not extend to the powers conferred under Article 174 of the Constitution of India. Hence, he could not summon the House because it is a legislative agenda or address the legislative assembly without consultation of council of ministers is possible.Apex Court has also considered whether the Speaker may disqualify rebel MLAs while a motion to remove him was pending in the House. Article 179(c) of the Constitution provides that a Speaker of the House may be removed from office by a resolution of the Assembly passed 'by a majority of all the then members'. Significantly in Constituent Assembly discussion reveal that the phrase 'all the then members' was preferred to 'members present and voting' as it was precise. Hence, the Apex Court concluded that decision of Deputy Speaker to disqualify rebel MLAs was an attempt to overcome voting by 'all the then members' and evade disqualification. On January 6, 2016, while the matter was being argued before the Apex Court, the Union government dismissed the ruling State government and imposed President's rule. First time in its history, the Apex Court effectively nullified the President's rule and restored the previous State Government with Nabam Tuki as Chief Minister of the State. However, Chief Minister N. Tuki was soon voted out of power in a floor test and the Court's decision was reversed through political means.

5. Conclusion:

Democracy is an ever-evolving concept, and India as constitutional democracy being the largest and among the youngest democracies in all over the world. India has still a long path to walk on and promote, protect and strengthen democratic values. A conscious and visionary leadership is need of the time to steer the country and fulfill the vision of the founding fathers of the Constitution including the Apex Court. Now we need more active institutions and citizenry to protect and preserve the democracy in holding the governing people's actions accountable to the Constitution of India. Ensuring the independent and transparent working system of constitutional bodies is inescapable. For the efficient working of institutions, all conflicts should be weeded out in line with constitutional principles, leaving aside all political and personal prejudices. Hence, the recent ruling of the Apex Court on appointments of the Chief Election Commissioner and Election Commissioners is fly forward in ensuring and strengthening the democratic principles in Indian polity.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

PEOPLE PARTICIPATION IN PARLIAMENTARY DEMOCRACY AND DECENTRALIZED GOVERNANCE

SHIV SHANKAR SAROJ
Assistant Professor of Law
Maharaj Balwant Singh PG College
Gangapur, Varanasi

Abstract:

People participation plays an important role in parliamentary democracy. In other words, people's participation plays in major role in this method. People's participation is the basic of parliamentary democracy. This method has been followed in India since independence. In the seven decades since independence, it has been run successfully with some minor or major disturbance.

In this method people elect their representatives in elections to run the government successfully at the National, State and local levels. The easiest and most direct way of political participation of the people is voting in election. As we all knows that the Indian Constitution is a federal Constitution and the most important featureof any federal Constitution is division of powersbetween Central and State.In this system, there are twogovernments exist at same time i.e. Central Government and State Government. Both the Governmentsare elected by the people through their representatives.

A new level of Government was created by 73rd and 74thconstitutions amendments, which ensured public participation through Panchayat and municipalities. The Framers of the Constitution had a dream that people participation is necessary in governance (democracy) which comes true at root level through this Constitutional Amendment. But every system has some loopholes similarly this people participation have been corrupted by the misuse of political power muscle power, Caste, Religion and industrialists.

Key words: Democracy, Public Participation, Decentralization of the Government, Free and Fair Election.

Introduction:

Democracy is made of two Greek words i.e. "Demos" and "Kratos" Demos means-people and Kratos means power. Thus the real meaning of democracy is power of the people. Sixteenth President of the United States America *Abraham Lincoln*said that *"Democracy is the government of the people, by the people and for the people."*

It appears that people's participation has a very crucial role play in democracy. The oldest democracy developed in Athens in the 6th century. In the 18th century, with the help of Greek Philosophers it emerged in the front of the people. Indian parliamentary democracy is adopted from west mister (England). First time it has accepted in Government Indian Act, 1935. There are three basic characteristics in parliamentary democracy.

I. Representation of the people.
II. Responsible Government and
III. The council of ministers shall be responsible to the legislature.

In this paper the researcher only emphasis on people participation (representation of on the people) in preview of parliamentary democracy.

People Participation:

People participation means contribution of people in process of governance which includes formation authorities for governance. People participation has been considered as fundamentalbasisof democracy.

Usually people participation means people directly express their political opinion through their vote in elections. But it is not in real sense of people participation in democracy. In fact, Participation includes all those activity of citizens by which they seek influence, support or criticize the government and government policies.

Different Dimensions of Public Participation:

1. Public Opinion:

In every democratic system public opinion is one of the most effective ways to participation. Generally voice of the people and public opinion are considered the same but the reality is quite different. Voice of the people means opinion of the majority. The public opinion is neither unanimous opinion of people nor it is the opinion of the majority.Public opinion means the same opinion or support of the people any public concern.

2. Freedom of Press:

Generally Freedom of Press refers to the expression of opinion through news papers. News paper is a simple and easy medium to conveythe expression of idea to the public.According to Press Commission of India,"Democracy flourishes not only under the conscious care of the Legislature but also under the care and guidance of public opinion. Its biggest feature is that public opinion is clarifiedthrough it only."Freedom of the Press means the right to publish idea without government permission provided that the ordinary law of the country is not violated.

3. Right to Vote and Representation:

Usually there are two types of democracy i.e. direct democracy and indirect democracy. In direct democracy the public at large directly participate

in the government as to policy making and day to day operations. In indirect democracy which is also known as representative democracy, the elected representative of the people directly participate the government. Parliamentary Democracy is a form of government in which citizen has the right to participate by electing a political leader of their choice. In this system, the people use their vote to electing their favorite representatives from their Constituent Assembly to Lok Sabha and the State Legislature Assembly.

In Part XV of the Indian Constitution, provisions have been made regarding Election from Article 324 to 329.According to Article 326, every person who is a citizen of India and attained 18 years of age can cast their vote in the general election to be held in Country. Voting age was 21 years before 61st constitutional amendment act, 1998. According to the arrangement given in Article 324 of the Indian Constitution, the responsibility of all elections to be held for the Parliament and the Legislature of each State in the Country has been given to the Election Commission. Free and fairelection is the one more important aspect of the democratic system, so the full responsibility of conducting free and fair election has been given to Election Commission.

Right to Vote:

Right to vote is very important in Parliamentary Democracy because people's participation insure through this. According to the Article 21 of UDHR "Everyone has a right to take part in the Government of his Country, directly or through freely chosen representatives.Article 25 of International Covenant on Civil and Political Rights, 1966 also refers that "Everyone shall have the right to vote and freedom of expression."

It is always been a matter of controversy that whether right to vote in India is a Fundamental Right or a Constitutional Right or a Statutory Right? The Supreme Court of India determinedin 2003 [1] that right to vote isnot a fundamental right but a constitutional right.

But in *Kuldeep Naiyer Case,*[2] it was held that Right to Vote is a Statutory Right and not a Fundament Right.The basis of both decisions is Article 326 of Indian Constitution and the Section 171-A of the Indian Penal Code, 1860. Article 326 of Indian Constitution provides that every citizen who has completed the age of 18 yearsis entailed to be registered as a voter in the electoral role of his area. If we saw the provisions of Sections 171-A, clause (b), the voter has right to cast their vote or not. Therefore it is interpreted as a statutory right. But in a recent decision the Hon'ble Supreme Court has made it clear that right to vote a Constitutional Right.[3]

The voter insures his political participation through his voting, which is powerful medium of public participation in parliamentary democracy. Contesting in general election is also an important aspect of public participation. Candidate's electoral right defined as a Statutory Right in the

[1]PUCL vs Union of India, AIR 2003 SC 2363.
[2](2006) 7 SCC 1.
[3]Anoop Baranwal vs Union of India, March (2023) wp (c) no. 104/2015

Indian Penal Code, 1860. According to provisions of Indian Penal Code,"ElectoralRight means the right of person to stand, or not to stand as a candidate orwithdraw his name as a candidate or to cost their vote or not to cost their vote in any election.

By the virtue of above discussion it is clear that public opinion, freedom of press, right to vote or the essential part of people participation.

73rdand 74th Constitutional Amendments were made in the India Constitutions to further strengthen public participation. By virtue of these to Constitutional Amendment Part IX (Panchayat) Article 243 to 243 (O) and Part IX-A (Municipalities) Article 243(P) to 243(Zb) were embedded. Although Directive Principles of State Policy imposed the duty of state that the state shall take step to organize Gram Panchayat and endow then with such powers and authority as may be necessary to enable them to functions as units of self government. But the nature of this provision is not justifiable so for no onecan enforce this provision in Court of Law.

During the debates in the Constituent Assembly many membersexpress their dissatisfaction; anger and sorrow because of the provisions related to Panchayat were not kept in the original Constitutions.Mahatma Gandhi was in support of the PanchayatRaj system. Gandhi ji mentioned that,*"The blood of the village is the cement with which the edifice of the cities is built. I want this blood that is today inflating the arteries of the cities to run once again runs in the blood vessels of the villages."*But the Chairman of Drafting Committee Dr. B.R. Ambedkar's view on this topic was very different from other Members of the Constituent Assembly. Dr. Amedkar argued that local elite and upper castes where so well entrenched in society that local self government only means to a continuing exploitation of the down to earth masses of Indian society.

During ConstitutionalAssembly debates dated4th November 1948, Dr B.R. Ambedkar said, *"What is the village but a sink of localism, a dam of ignorance, narrow mindedness and communalism?"*Dr. B.R. Ambedkar had a different opinion regarding the Panchayat System based on his actual experience because he has suffered the brunt of the caste system in Indian rural society. His whole life was spent in the struggle against the caste system.

The concept of Gram Panchayat is the result of efforts made by Mahatma Gandhi which he saw in his dream of Gram Swaraj which is continued after independence.

Some basic features of Panchayati Raj are followings:

- **i.** A three tier system of Panchayat raj.i.e. Gram Panchyat, Panchayat Samity and Zila Parishad.
- **ii.** There are mandatory elections conducted every five year.
- **iii.** It provides reservation of seat for Scheduled Caste and Scheduled Tribes.
- **iv.** It ensures the woman participation in local government and 33% seats is to be reservedforwomen only.

v. It is clear from the above discussion that extensive arrangement have been made for people participation and decentralized of power in the Indian Democratic System.

Despite these, there are many difficulties and obstacles in this system. Misuse of political power, muscle power, religion or caste etc has become a means to creating hurdles in public participation. Political parties that remain in power may influence public participation by misusing of their power. They influence people by using Government Agencies, Machineries and resources in a wrong way in their elections.Now a day it is generally seen that advertisements, newspapers, television and media are easily misused by political parties during the elections.

Many efforts have been made by the Legislature, Judiciary and Election Commission to overcome all these difficulties. The Legislature has made many efforts to ensure public participation. Even before the Independence, organized provisions were made in this regard under the Indian Penal Code, 1860 (Chapter IX-A: Offences relating to Elections). If any person gives any gratification to any person or accepts any gratification as a reward to exercise of any electoral right, commits the offence of bribery.[4] Further it is provided that whoever voluntarily interferes or attempt to interfere with any electoral right commits the offence of undue influence in election.[5] Whoever commits any such offences shall be liable to imprisonment of either description for a term which may extend to one year or with fine or with both.

The Representation of People Act, 1951:

The provisions regarding corrupt practices have been made under The Representation of People Act, 1951 under which Bribery, undue influence etc. have been declared corrupt practices.

Role of Judiciary:

The Indian Judiciary has taken many commendable steps in this direction. In its landmark judgment the Supreme Court held that the voter's right to information is Fundamental Right under Article 19 of the Indian Constitution. It is a fundamental right of a voter to get information about his Candidates. Candidates should highlight their criminal records, details of their assets, liabilities and educational qualification while filing nomination form.[6]

In Indian democratic system, the free and fair election is a basic structure of the Constitution. It was held in Indira Nehru Gandhi vs Rajnarain in 1975.[7] The Supreme Court first declares the Constitutional Amendment, by which the decision of the High Court was abolished by adding a new Article 329-A to the Constitution and the election of Smt. Gandhi was said to be correct. Justice Khanna said, "Democracy is the basic structure of the Indian

[4]Section 171-B of Indian Penal Code, 1860
[5]Section 171-C of Indian Penal Code, 1860
[6]PUCL vs Union of India, 2003 SC.
[7]AIR 1975 SC 2299.

Constitution and free and fair elections is essential for the success of democracy."

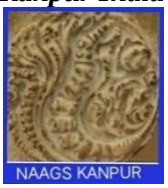
A very famous judgment was delivered by Hon'ble Supreme Court regarding corrupt practices in elections. Section 123(3) of the Representation of the People Act, 1951 provides that demanding of vote in the name of caste, religion, language and community is considered a corrupt practice. In this case, Abhiram Singh challenged the communal statements which had given by C.D. Commachen during his election.[8] The Supreme Court gave its view on the content, scope of corrupt practices under Section123 (3) of the Representation of the People Act, 1951. The Court held that if the word 'his religion, caste, race, community or language' appearing in Section 123 (3) of the Representation of the People Act, 1951 also covers the religion, caste, race, community or language of both the candidates and voters also.

The Court, by a majority of 4:3 determined that if any person i.e. voter or a candidate influence an election by using caste or religion based identity; it would amount to 'corrupt practices.'

Conclusion: Public participation is an essential aspect in Parliamentary Democracy. The best effort has been made to ensure this, through Constitutional and Statutory provisions. Election Commission and Judiciary have taken commendable step to implement these provisions. The public has also increase in the past few years. In spite all these legal instruments and measures, it is not ensure in its pure form because of criminalization of politics, use of money and muscles powers and lack of awareness in people of their rights. More efforts are still needed to ensure public participation in its full fledge. All organs of the Government will have to take proper step for the public participation. Peoples should also be aware about their voting rights and use it freely without any external effects or pressure.

[8]Abhiram Singh vs C.D.Commachen(dead) by LRs and others, 2017, available at indiakanoon.org

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

CONSTITUTIONAL CHALLENGES IN CONTEMPORARY INDIA: SOME REFLECTIONS

DR. ANIS AHMAD
Assistant Professor of Law, SLS
Babasaheb Bhimrao Ambedkar University
Lucknow India
DR. MUJIBUR REHMAN
Assistant Professor of Law, SLS
Babasaheb Bhimrao Ambedkar University
Lucknow India

Abstract
The Constitution is the supreme law of the land by which the nation is governed and confers the various powers to establish the democratic institutions accordingly**.** The very object of the constitutional democracy is to transform the society and fulfill the constitutional ideas and vision. The Constitution also provides the power to limit the government organs for fulfilling the aspiration of the good governance as per the norms of constitutionalism. But, still there are certain constitutional challenge which needs to be ponder and review the working of the constitution for achieving the constitutional vision and spirit for the advancement of constitutional democracy, constitutional governance and having strong independent judiciary for realizing the socio-economic rights as well as the sustainable human development in the future. The present paper is a humble attempt to review the 75 years of journey of constitutional law in independent India.

Key Words: Constitutional Law, Good Governance, Rule of Law, Independence of Judiciary

Introduction

India is a democratic country governed by written Constitution and rule of law. A Constitution enjoys a special status because of its position as reservoir of power and being a source of law making body becomes the fundamental law of the land. The Constitution also provides the power to limit the government organs for fulfilling the aspiration of the good governance as per the norms of constitutionalism.

[1] The primary objective of having a constitutional democracy is to transform the society progressively and inclusively. Constitutional law being a basic law of a nation which prescribes fundamental principles to regulate the relations of government and its citizens and which also chart out plan and method according to which the public affairs of the nation are to be administered.[2] In addition to this, the Preamble of the Constitution establishes India as a Socialist, Secular, Democratic and Republic for the governance of the country.[3] The Constitution also provides fundamental rights and freedoms, which could also be enjoyed within the limit of the Constitution. Apart from that the Part- IV of the Constitution, under garb of Directive Principles of State Policy as fundamental charter of governance of the country imposes an obligations on the state to take positive steps for socio- economic well-being of the peoples and to ensure justice for all. Further, in order to ensure the fundamental rights of the citizens the Constitution also conferred the remedial judicial powers to the Supreme Court and High Courts under the Articles 32 and 226.[4] Although the Constitution is supreme but not infallible by virtue of the various provisions like Executive, Legislature and Judiciary and emergency powers along with the amending powers of Parliament under Article 368 of the Constitution. Despite the above facts that our Constitution is very excellent given by founding fathers for the governance of the nation still confronted various challenges for its smooth working after completing 75 years of independence.[5] The present paper is a humble attempt to review the potentiality of constitutional vision and spirit for the advancement of constitutional democracy, constitutional governance and having strong independent judiciary for realizing the socio-economic rights as well as the sustainable human development in the future.

I. Constitutional Challenges

After completing 75 years of its independence, India celebrated it as a Amrit Mahotsav in 2022 with the huge enthusiasm of fanfare, flag flying, feasts and festivals at home and abroad and now we entered into the era of Amrit Kaal pronounce by the present government but still it indeed a great moment for all of us to review and ponder on the immediate constitutional challenges faced by the nation. However, there is an urgent need to be performed in order to actualize the dreams of the framers of the Constitution and as well as the essence of independence based on principles of equality, equity, freedom, inclusion and creating equal opportunities for all the peoples of this country.

---

[1] P.Ishwar Bhat, *Constitutionalism and Constitutional Pluralism* 8 (Lexis Nexis Gurgaon Ist edn., 2013)

[2] Zafar Mahfooz Nomani, *Natural Resources Law and Policy* 18 (Uppal Publishing House, New Delhi, 2004).

[3] Subhash C. Kashyap *Our Constitution An Introduction to India's Constitution and Constitutional Law* 54(National Book Trust, India, 2010)

[4] P.M. Bskdhi, *The Constitution of India* 74 (Universal Law Publishing Co.2006).

[5] Sam Pitroda, "Pledges from Red For, Pledges by every Indian" *The Hindu, August 31, 2022.*

The significance values of democratic republic are to empower the individual capabilities which he or she possesses. In such a scenario India must introspect and judged by the extent to which it has galvanized and advanced human development index assess by the international agencies.[6]

The independence address of the Prime Minister from the Red Fort in August 2022 outlined the five important pledges were taken to make India a developed nation by 2047 removing all traces of colonization, taken pride in our roots and heritage, unity and integrity of nation and to infuse constitutional duties orientation among the all citizens of India. But these pledges needs much more clarity and broader understanding and conversation with all stakeholders of the nation building to sociolise and institutionalized for its implementations for achieving the preambular strong commitment of the Constitution.[7] Keeping this background in mind, Until and unless we deals the few important challenges such as problem of good governance, rule of law, independence of judiciary, judicial review and judicial governance.

(A) Challenges of Good Governance

Today the term governance has come to occupy a central place in the development discourse. Governance is the key mechanism for translation of human rights in to reality. It is the prime concern of a society since its origin, for the proper functioning of a society and for the achievement of the higher human development goals, access to justice, maintaining law and order and equality in society, protection of life and liberty, opportunity, peace and prosperity and human moral development. Governance can be used in several context such as national governance, international governance, local governance, corporate governance and so and so forth.[8] Simply we can say the governance means the decision making process and implementation of the decision taken thereon. Further, the term governance includes not only governing activities but also promote socio-economic development and maintenance centre-state relationship, stability and maintained law and order without coercion.

As far as Good governance is concerned the United Nations Development Programme defines Good Governance as "what makes institutions and rules more effective and efficient, in order to achieve equity, transparency, participation, responsiveness, accountability and the rule of law

Good governance also denotes about how governments and other social organizations interact, how they relate to citizens, and how decisions are taken in a complex world. Thus governance is a process whereby societies or organizations make their important decisions, determine whom they involve in the process and how they render account. Good governance is the largest input

[6] Pulapre Balakrishnan, "India, democracy and the promised republic" *The Hindu*, August 8, 2022.

[7] Supra note 5.

[8] S. B. Sinha, "Constitutional Challenges in 21st Century"21 (1) *National Law School India Review* 119 (2009).

in the fight in the poverty and to have a intimate inter relationship with human development.

The Concept of good governance in India is very old from the Rigveda times. After the independence of the country in 1947 the governance strategy which India adopted the vision of Nehru, Sardar Patel, Gandhi ji and other national movement leaders. The founding fathers of the Constitution were very much conscious about the democratic ethos of the Indian constitution for governance of the country.[9] Despite all these things the question of inflation, corruption, poverty, unemployment, discrimination, cyber crimes and cyber security, illiteracy, malnutrition, health issues, child trafficking, human trafficking, farmer's suicide, climate change etc are remains unsolved. It is due to failure in good functioning or in other words malfunctioning or non functioning of the government.

Upholding the Rule of Law

The precept of rule of law duly recognized by the framers of the Indian constitution as an part and parcel of substantive and liberal democracy. The principles of Rule of Law means the absolute supremacy of law in absence of arbitrariness of power of the government evolved by the professor Dicey in England is still a cardinal principles for governance. The principle highlights that the law is above all and is to be given supremacy. It also emphasizes the principles that every individual or corporation or all the branches of the government are supposed to act according to the law, with the underline message '*howsoever high and mighty one may be law is above him'*.[10] The rule of law embodies in Article 14 of the constitution as a basic feature recognized by Supreme Court of Indian in the case of *Indira Nehru Gandhi v. Raj Narain.* The Constitution of India guarantees to all, the equality before the law or equal protection of law within the territory of India. It means that all the citizens were equally eligible to all public offices, honours, as positions strictly according their capabilities, virtues and talents. There can be no discrimination between one person and another person on the grounds of religion, caste, creed, race, sex or place of birth in matter of public places and public employments. All the citizens are equally entitled to enjoy the political rights to vote and participate in the process of the governance without any distinction in political affairs. In economic aspect equality means that for the same ability for the same labour the same salary would also be the same. No man can exploit the other class. These constitutional guarantees had taken the inspiration from the Universal Declaration of Human Rights under Article 7.[11]

---

[9] Subhash C. Kashyap, "Towards Good Governance: Need For Political Reforms", in T.N.Chaturvedi et.al (eds), *Towards Good Governance* 66 Indian Institute of Public Administration, 1999).

[10] A.K.Sikri, "Rule of Law: Protecting The Constitution and Democracy" 25 *Nyaya Deep The Official Journal of NALSA* 3(2014).

[11] J.n. Pandey, *Constitutional law of India* 102 (Allahabad law Agency, Allahabad, 55th edn 2018).

The Rule of Law also requires that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order. But, in fact the Rule of Law has conceptually transformed over a period of time. The modern form idea of rule of law was formulated in the Delhi Declaration in 1959 which prescribes not only to maintain the law and order but to ensure adequate social and economic conditions of life for the society. Despite the recognition of the rule of law as a basic feature in different cases by the Indian judiciary, now it is high time to adhere these principles to strengthen the democratic institutions which are reeling under threat.[12] Democracy can be achieved only when the governing dispensation sincerely endeavors to observes the fundamental rights in letter and spirit. Democracy also needless to say, would become fragile and may collapse if only lip service is paid to the rule of law.[13]

Protecting the concept of independence of Judiciary

The Constitution is supreme and all the authorities function under the supreme law of the land. The judiciary being a third organ of the government entrusted the power of interpretation of laws and to uphold the constitutional values and to enforce the constitutional limitation that is the essence of rule of law. An independent of judiciary is very much needed for civilized society and constitutional democracy.[14] In order to uphold the supremacy of rule of law and realization of basic human rights and ensure the socio-economic welfare of the peoples the independent judiciary played very pivotal role in a democratic system. Normally the independence of judiciary is derived its force from the constitution itself. However, in certain circumstances it may also be assured through legislations, conventions and other norms. For smooth discharging of its constitutional obligations the judiciary must be free from all types of interference and must not be influenced by socio-economic and political changes and events.[15] The independence of judiciary does not mean just to creation of an autonomous institution free from the control and influence of the executive and the legislature. For maintain the autonomy of judicial organ it must adhered the principles of separation of powers. The Constitution specially directs that the state to separate the judiciary form executive under Article 50. The very purpose of independence of judiciary that judges must be able to decide the disputes before them according to the law, uninfluenced by any other factors.[16]

The post emergency period is generally known as the rise of judicial governance and judicial activism in Indian constitutional history to evolved

---

[12] Supra note at 13. 4.

[13] Anoop Barnwal v. Union of India, LiveLaw 2023 SC,155.

[14] M.P.Singh, "Securing the Independence of Judiciary- The Indian Experiences 10 (2) *Ind International Comperative Law Review* 245 (2000).

[15] M.P. Jain, "The Supreme Court and Fundamental Rights" in S.k.Verma, Kusum *et.al* (eds), *Fifty Years of the Supreme Court of India Its Grasp and Reaac*h 3 (Oxford University Press 2000).

[16] Supra note 16 at 252.

various jurisprudence and with doctrinal creativity as well as procedural innovations for establishing the good governance and enforcing the fundamental rights. It was due to the growing incapability and non function of the government organs. With the passes of time there is no aspect of governance which remains outside the purview of judicial review.[17]

Another important aspect of judicial independence is the appointment and transfers of judges of different high courts and Supreme Court is also a kind of much debated controversial issues in recent times. The controversy related to appointment of judges came up before the Supreme Court in the case of *S.P. Gupta versus Union of India*[18], in this case the court Supreme Court observed that independence of the judiciary is basic structure of the Constitution and it can be amenable. *In Supreme Court on Record Association vs Union of India*[19] in which the decision apex court of the majority was unsatisfactory and was overwhelmingly criticized by the legal fraternity. In this judgment primacy of the executive on matters of appointment and transfer of judges was given to the judiciary, which led the creation of the collegial body later known as collegium system with predominance of the judiciary. After that all the transfer and appointment of judges to the Constitutional courts done only on the recommendation of the collegium and President of India should be bound on the recommendation of collegium means that consultation of Chief Justice of India becomes the concurrence Chief Justice of India.

Conclusion

In conclusion we can say that the founding fathers of our Constitution given a very excellent constitution for the governance of the country and assigned the prominent role to every organ of the government for fulfilling the constitutional vision. The celebration of Republic Day and Independence Day cannot be complete as long as our national political thinking remains limited by narrow partisan perspective driven by injustices and compulsive pursuit of power for their vested interest. The existing constitutional challenges needs to be address by aspire with the constitutional vision charted out by the framers of the Constitution must be taken into consideration in fulfilling the India's glory in contemporary India.

[17] S.P.Sathe, *Judicial Activism in India* 63 (Oxford University Press 2nd edn 2003)
[18] AIR 1982 SC 149.
[19] (1993) 4 SCC 441.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

PARLIAMENTARY DEMOCRACY: ROLE OF OPPOSITION

PRATIBHA MALIK
Assistant professor
IIMT University Meerut India
SARIKA UJJWAL
Assistant Professor
Meerut India

Abstract
The proliferation of authoritarian regimes throughout the globe puts democracy in danger, and experts from all over the world have not given the function of opposition in a democracy the attention it deserves. To comprehend the state of research on the topic internationally, Both the administration and the opposition have a significant role in how well a democracy functions. The opposition must be given institutional structure and accepted as legitimate in order for democracy to function effectively. As a defining characteristic of democratic political systems, the relationship between the administration and opposition has been shaped significantly by the establishment of the political party as an institution. Using Britain as an example, this chapter explores how the party system helped the administration and opposition in that country build a mutually beneficial relationship. It looks at the opposition's function in India's parliament as well as the interactions between the government and opposition both inside and outside of it. Together with divisions and factional politics, it also takes into account India's "partyless democracy".
KEYWORDS: democracy ; parliament , opposition ;ministers

INTRODUCTION

A fundamental citizenship right, the enjoyment of democracy must be exercised in the interests of the polity and in an atmosphere of freedom, equality, transparency, and accountability. Its foundation is the idea that everyone has a right to take part in the management of public affairs. All citizens—men and women who represent all the political and social forces of the country—can engage in democracy since it is a participatory process.

Politically speaking, this indicates that the opposition, or those political parties, groups, and individuals who do not constitute the governing majority, must be permitted to engage actively in the democratic process.
The Inter-Parliamentary Union ought to think about issuing a thorough statement outlining the obligations of the opposition. The UDHR Conditions for Free and Fair Elections (Cross Union, 1994), and the Universal Declaration on Democracy should serve as the cornerstone for our endeavour (UN, UN, 1997). The latter agreement included the following provisions, among others:
1. Defending and advancing each person's dignity and fundamental rights, achieving social fairness, advancing local economic and social growth, fostering social cohesion, enhancing national peace, and fostering conditions favourable to international peace are among democracy's key goals. Democracies are the only kind of government that have the ability to self-correct, making them the best at fulfilling these goals. Article 3 states that in order to achieve democracy, men and women must labour in equal and complementary ways, complementing one another through their diversity, in the management of society's affairs.
2.The success of democracy requires a real collaboration between men and women in the management of society's affairs, in which they work in equality and profit from one another's difference." "A state of democracy ensures that the processes by which power is acceded to, wielded, and alternates allow for free political competition and are the product of open, free, and non-discriminatory participation by the people, exercised in the rule of law, in both letter and spirit," states Article 4 of the Constitution. (Second Article).accordance with
3. " Since democracy is predicated on the notion that everyone has a right to take part in the administration of public affairs, it is crucial that representative institutions exist at all levels, especially a Parliament composed of representatives from all facets of society and endowed with the authority and resources to enact laws and monitor governmental action on behalf of the general public." (Art. 11)
4. Appropriate standards and rules must be created to promote ethical principles and openness in all sectors of public life "in on page 15.
At all levels, the management of people's engagement in democratic processes and public life must be fair, unbiased, and devoid of bias. any kind of intimidation or discrimination by state or non-state actors." Article (16) "If democracy is to be sustained, it must be consistently promoted and preserved via education and other forums for culture and knowledge. As a result, education in its broadest sense—especially civic education and the formation of responsible citizenship—must be given top priority in a democratic society. Article (19).

II. Composition of parliamentary work :

Every attempt must be made to represent the political makeup of the assembly while establishing the Parliament's governing body (Board). If vice-presidents

are necessary, a fair number of them must be reserved for opposition MPs who would preside over meetings of the assembly alternately with majority MPs.
Political (parliamentary) organisations are free to create as long as they have the required minimum number of members, which is set down in the legislation. Each parliamentary group, whether in the majority or the opposition, will get funding to hire its own personnel and will be granted access to meeting spaces in the house. According to its membership, the opposition is entitled to representation on every committee and subcommittee of the legislature. According to its membership, There will be a set number of standing committee chairmanships that are open to the opposition. By default, the opposition will serve as the committee's chairman on budgetary matters. Every select committee with the power to look into covert conduct must involve the opposition, regardless of the nature of the investigation.

III. What does "opposition" actually mean?

Freedom of choice up to and including choosing the nation's leaders is the cornerstone of a democracy. This shows that the legislature, which passes laws for the country, must also provide a platform for the expression of many points of view. These comments should come from a variety of people, not simply those who sit on the government benches (some of whom could have suggestions for alternative operating procedures to those the Ministers in the Cabinet have in mind), but also those who disagree with the guiding principles of those processes**.** In other words, legitimately elected representatives of the people must be allowed to propose and discuss alternative policy ideas, even if they are not a part of the government or have an official post. This type of legislative political partnership is referred to as the "opposition," which is also usually used to refer to all the parties outside of the ruling coalition. The number of the parties represented in parliament determines which member of the opposition becomes its leader. Democracies have traditionally tolerated such criticism as long as it is expressed constructively and does not involve breaking the law or being unpatriotic.

IV. Rights /Adhikar of Opposition in Parliament :

Members of the opposition want complete respect for fundamental rights, just like lawmakers who are a part of the majority administration. For instance, they must all be allowed to exercise their right to life and, as a result, be protected in their political activities from any actions that might compromise their individual veracity or cause damage to their property. If the situation calls for it, the State must accord them the same level of personal security as the representatives of the majority.

In a similar line, it is crucial that lawmakers, especially those in the opposition, respect free speech and the press in order to fulfil their legislative duties. Although these (as well as other) fundamental rights are already guaranteed by national legislation, members of parliament, particularly those who are associated with the opposition, need access to additional privileges in order to cooperate with the majority government, observe its actions, and

criticise them as required. They are enumerated below, and they should be adequately governed by statutory or constitutional standards.

V. Role of opposition in parliamentary process which includes democracy

The threat of civil conflict, the possibility of a foreign invasion or war, the possibility of military actions overseas, etc. should all be serious national issues that the executive should engage the parliament on. This will make it possible for the opposition to participate in the discussion and offer suggestions for the decision-making process. In order to propose amendments to the Constitution, the opposition must be able to highlight relevant issues. Any dysfunction in the courts or the Presidency may be criticised by the opposition. It has the right to look into potential human rights abuses and request action. According to its membership, the opposition shall be eligible for a certain number of chairmanships on standing committees. By default, the opposition will serve as the committee's chairman on budgetary matters. The opposition must be represented on any select committee with the power to oversee any type of clandestine action.

VI. Duties of the Opposition:

A member of parliament performs a number of duties in the legislative branch, such as authoring legislation, representing constituents, evaluating the performance of the administration, and supporting or opposing proposals that are presented before the House. Members of the opposition must accept that, although having fewer opportunities to offer legislation, their roles as representatives will remain unchanged and they will be subject to more scrutiny and surveillance than government backbenchers. But, the opposition owes it to both themself and their supporters to act as a substitute executive branch or even an administration in waiting.

This is acknowledged in more advanced democracies, and the leader of the largest opposition party is frequently given access to confidential information on the justification that, as the Party Leader in waiting, he or she has to be ready to assume government at any time. The opposition has a responsibility to monitor the development of its policies and to make both the public and legislature aware of them. The main challenge facing the opposition is the necessity to just be taken seriously in this role. In order to do this, it must create policies that are relevant to people's everyday lives and be as dependable, respectable, and unified as a political party. The government has responsibilities in respect to the opposition. First and foremost, adequate finance must be provided to enable a "loyal opposition" to operate. There must be ample access to sources of information, especially those accessible to ministries and their staff. There must also be access to impartial assistance from parliamentary staff members, such as legislative counsel or foremen when they are available. The use of PR and the media must have financial backing. It's important to recognise the special role held by the front-bench opposition spokespersons and the leader of the opposition. The opposition leader does not receive a salary, despite the fact that this role has been recognised for generations.

VII. The counter opposition in parliament :

With regard to the variations among its members and viewpoints, parliament, which also represents and channels this diversity in the political system, embodies society's diversity. It serves as the intermediary between the opposing ideals of individuality and collectivism, diversity and uniformity, in order to foster social cohesiveness and solidarity. Its duties include reviewing the Executive's activities and enacting laws, in part through the distribution of funds. To protect variety, pluralism, and the freedom to be different in a culture that values tolerance, parliament must facilitate the involvement of all individuals in both homogenous and heterogeneous communities. Thus, it is crucial that participants in legislative processes come from opposing political parties and organisations. Human rights must be universally recognised and upheld in order to achieve this, as well as the specific rights and obligations of each individual. An essential and significant part of parliamentary democracy is the opposition.

The opposition's primary duty is to present a respectable challenge to the majority's decision. Moreover, it seeks to prevent abuses by both the government and the people, ensuring the preservation of the public interest. It also aims to promote openness, honesty, and efficacy in the administration of public affairs. This is done through keeping an eye on and criticising the actions of the government. Without a doubt, the opposition helps ensure that democracy runs smoothly by protecting and upholding fundamental liberties and rights.

VIII. What Democracy Means through Opposition

The largest non-government party or coalition that represents the electorate and is not a member of the treasury benches is known as the opposition. It plays a significant role in challenging the actions and decisions of the government and in raising issues of public importance in a functioning political democracy.

Opposition's role in democracy and its functions

1- Constructive criticism of governmental policies, programmes, laws, and legislation that encourage the government to act in the interests of the general public and social welfare.

2. The opposition's primary role is to confront the incumbent government and hold them accountable to the general people.

3- Opposition brings ideas from the civil society to the legislature and the in power government.

4- The opposition must back the government's excellent and in the public interest decisions, rather than criticising each and every one of them.

5. Positive opposition reveals the government's weaknesses.

6- The opposition serves as the watchdog of the public interest and serves as a reminder to the incumbent government of its obligations to the voters who gave them power.

7- The two sides of the same coin are the opposition and the ruling party.

8- The opposition acts as a check on government, as seen by its representatives in a number of legislative committees.
9- Opposition members who serve on parliamentary committees get an additional chance to review proposed legislation as part of the committee procedure.
10. The opposition might use the media to approach voters

Opposition's dysfunction in legislative proceedings

1. Divisive opposition

The degree of splintered opposition has an impact on how well the legislative elections perform electorally.

2. The Government alone has the authority to define the topic for discussion, but occasionally the opposition tries to divert attention.

3. Interjection by a member during another member's speech or a debate on a listed subject.

4. Disruption

A prolonged interruption in parliamentary proceedings includes an unwanted word, action, or gesture that slows down the conduct of business in the house and offends the dignity of the chamber, such as waving signs, screaming slogans, going into the house well, and adjournment motions.

5. Walk-outs: They are an acceptable method of protest to voice opposition to the current administration..

Opposition and Parliamentaries : Cooperation

The opposition frequently has a difficult decision when deciding whether to support the administration on a piece of legislation or try to seek consensus on a policy issue. This may be a statesmanlike stance and in the country's best interests, but if the public and civil society perceive this in an unfavourable light, the opposition may suffer. If a consensus is reached too fast, the opposition, which represents important minority interests, may feel aggrieved or overlooked. Even if the national interest calls for something else, this might result in the opposition offering a different perspective.

The opposition must be ready to discuss its position with pressure groups and civil society participants.

IX. Check by opposition:

One of the opposition's primary roles is to examine the executive branch's operations, which involves monitoring how the legislation is being applied from a performance and accountability perspective and, in particular, how the executive is using the funds allocated to it for its task. Here is maybe where the opposition can both make a valuable contribution to the effective governance of the nation and also make its own arguments and illustrate how its policies would have produced better outcomes. Members who want to examine the executive's work can do so via a variety of tools. The questions asked in parliament for the Prime Minister and Cabinet Ministers' responses are the most prominent of these. The majority of Commonwealth legislatures' Standing Rules and customs let the opposition to request time to discuss or raise a specific matter. The opposition has the most extensive chances in

parliamentary committees that are active in oversight. Other MPs, however, will view as a disincentive the fact that the majority of meetings take place within the chamber or that their work is less interesting to the media and a significant percentage of society than discussions in open parliament.
The opposing occasionally feels as though they should hold a majority on a few committees, particularly those that deal with oversight. This is absurd since committees aren't meant to create a majority where one doesn't already exist.

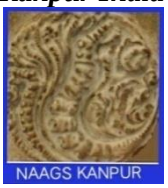
Conclusion

In a democratic system, the opposition party plays a vital role in the functioning of the government. The opposition party also referred to as the minority party, is an essential component of any democratic society as it acts as a check and balance on the ruling party or government. The opposition party provides an alternate viewpoint, scrutinizes and challenges the ruling party's policies, and holds them accountable for their actions. The role of the opposition party is crucial for maintaining a healthy and functioning democracy, as it ensures that the government is constantly being challenged and that alternative viewpoints and policies are being presented to the public. This article will discuss in detail the role, functions, strengths, and weaknesses of the opposition party in a democracy, highlighting the importance of its presence in a democratic system**.**In conclusion, the opposition party plays a crucial role in a democratic system by holding the government accountable for its actions and policies. The opposition party acts as a counterbalance to the government, providing alternative viewpoints and policies and ensuring that the government is working in the best interests of the people. The importance of the opposition party cannot be overstated as it plays a vital role in maintaining a healthy and functioning democracy. Overall, the presence of an opposition party is vital for the functioning of a healthy democracy as it ensures that the government is always held accountable for its actions and that the public is provided with alternative viewpoints and policies.

REFERENCES::

1. Birch, A. (1964). Representative and Responsible Government. University of Toronto Press. ComSec and CPA (1998).
2. The Role of the Opposition. London, ComSec. CPA/WBI (2006). Recommended Benchmarks for Democratic Legislatures. London, CPA.
3. Kaul, M.N. and Shakdher, S.L. (2000). Practice and Procedure of Parliament, 5th edition (ed. Malhotra, G.C.). New Delhi,
4. Rogers, R. and Walters, R. (2004). How Parliament Works, 5th edition. Pearson Longman UK.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

THE NEXUS OF CASTEISM, COMMUNALISMS, AND RELIGIOUS FUNDAMENTALISM IN INDIAN DEMOCRACY: CHALLENGES AND PROSPECTS

DR. RAHUL TIWARI
Assistant Professor
Atal Bihari Vajpayee School of Legal Studies
C.S.J.M. UniversityKanpur India
DR.SHASHI KANT TRIPATHI
Director
Atal Bihari Vajpayee School of Legal Studies
C.S.J.M. UniversityKanpur India

Abstract:

This research paper examines the intersection of casteism, communalism, and religious fundamentalism in Indian democracy. Despite being one of the largest democracies in the world, India has been grappling with these challenges since its independence in 1947. The paper argues that these three phenomena are interrelated and reinforce each other, leading to systemic discrimination, violence, and exclusion of marginalized communities. Through a literature review, the paper explores the historical roots, political, social, and economic implications, and contemporary manifestations of casteism, communalism, and religious fundamentalism in India. The paper also examines the responses of Indian democracy to these challenges, including legal frameworks, affirmative action policies, civil society movements, and political mobilization. Finally, the paper discusses the prospects of Indian democracy in addressing these challenges and advancing social justice and equality for all citizens.

Key Words: Indian democracy, casteism, communalism, religious fundamentalism, marginalization, discrimination, social justice, equality.

Introduction:

India, the world's largest democracy, has struggled to fully realize its democratic potential due to the persistence of deeply ingrained social hierarchies and divisive identity politics. In this research paper titled "The Nexus of Casteism, Communalisms, and Religious Fundamentalism in Indian

Democracy: Challenges and Prospects", we delve into the interplay between casteism, communalism, and religious fundamentalism, and their impact on India's democracy. We examine how these social, political, and cultural phenomena have been intertwined throughout India's history, and how they continue to shape contemporary politics, public policy, and social relations.

Through a comprehensive analysis of existing literature and empirical evidence, we explore the challenges and prospects of building a more inclusive, equitable, and democratic society in India. The paper highlights the urgent need for transformative social and political reforms that can address the root causes of casteism, communalism, and religious fundamentalism, and foster a more harmonious and participatory democracy for all Indians.

Review of literature:

In the year 2022, Dr. Anamika Das in her article "Secularism and Communalism in India: Role of the state and the citizens" stated that there are various factors and challenges to the development of secularism and national Integration in India. Because India is full of diversity of languages, cultures, religions, etc., and tying, them all together into a common identity is very difficult. Considering all the diversities and difficulties, the framers of the Indian Constitution tried to incorporate various provisions such as Secularism, Justice, Equality, Fraternity, National Integration, Fundamental Rights and Duties, Directive Principles of State Policy, and many other provisions under different Articles for maintaining Secularism and National Integration in India. Though there are many provisions in our constitution yet communal violence, communal riots, extreme feeling of regionalism, movements for autonomy and self-determination, terrorism, language politics, caste politics, religious fanaticism, students' unrest, etc. are always found to be a threat to the existence and development of secularism and maintaining National Integration.

The problem addressed in the research paper is of significant importance due to several reasons:

The issue of casteism, communalism, and religious fundamentalism is prevalent in Indian society and has been a significant challenge to Indian democracy. The paper aims to analyse the nexus between these three factors and their impact on Indian democracy.

The research paper can provide insights into the social and political dynamics of Indian society, highlighting the challenges faced by marginalized communities such as Dalits, Muslims, and other minorities.

The paper can help policymakers and scholars understand the root causes of social inequality and political polarization in India and develop strategies to address these challenges.

The research can contribute to the ongoing academic debate on democracy, social justice, and human rights, providing a case study of the challenges that emerging democracies face in building an inclusive and equitable society.

Research methodology is a way of approaching the research problem. The truth which involved in a research problem can be found only through

some systematic steps. The type of steps to be applied depends on the object and the nature of the research problem. Research methodology is a process that is used to collect new information or data regarding the problem of research. This process of research methodology is systematic. Methodology, in reality, covers the blueprint of research and played a significant role in any research. Research methodology provides such values or ethics that are necessary for the research outcome. Any research required a deep study of the research problem. This paper has used doctrinal or non-empirical research methodology to achieve the objectives of this paper. Doctrinal or non-empirical research methodology is a research methodology that has been based on legal propositions. This research methodology has been used to analyse the present legal provisions or case laws by using legal reasoning power to find out the solution to the research problem. It includes an analysis of existing statutory provisions, reports, articles, books, journals, and cases.

Casteism, communalism, and religious fundamentalism:

Casteism, communalism, and religious fundamentalism have deep roots in the history of India and have evolved over time.

Casteism:

Casteism is the practice of dividing society into different castes or social groups based on birth. The caste system is believed to have originated in ancient India, with the four major castes being the Brahmins (priests and scholars), Kshatriyas (warriors and rulers), Vaishyas (merchants and traders), and Shudras (laborers). Below these four castes were the Dalits or Untouchables who were considered outside the caste system and subjected to extreme discrimination and oppression.

Over time, the caste system became more rigid and hierarchical, and the discrimination and oppression of Dalits intensified. Despite legal efforts to abolish the caste system, it remains deeply ingrained in Indian society, particularly in rural areas.

Casteism has been a pervasive social issue in India for centuries, with the caste system dividing society into various hierarchical layers based on birth and occupation. The Indian Constitution, which was adopted in 1950 after India gained independence from British rule, abolished caste-based discrimination and sought to establish a democratic and egalitarian society.

However, despite the constitutional provisions, caste-based discrimination and prejudice continue to persist in various forms, including social exclusion, economic inequality, and violence against lower-caste individuals. This has resulted in an unequal distribution of power and resources, with dominant caste groups holding greater political and economic influence.

Casteism is against the principles of Indian democracy. Indian democracy is based on the principles of equality, liberty, fraternity, and justice, which are enshrined in the Constitution of India. Casteism, on the other hand, is a social system that divides people into different castes based on their birth and assigns them different social, economic, and political statuses.

Therefore, to uphold the principles of democracy, it is essential to eradicate casteism from Indian society and create a society that is based on the values of equality, liberty, fraternity, and justice for all.To address the issue of casteism, India needs to undertake comprehensive social and economic reforms that address the root causes of caste-based discrimination. This includes promoting education and awareness, strengthening legal and institutional mechanisms, and ensuring greater representation of marginalized communities in politics and public life.

Communalism:

Communalism is the belief that one's own religious or ethnic group is superior to others, and it often results in violence and conflict between different communities. In India, communalism has been a major issue since the partition of India and Pakistan in 1947, which led to the displacement of millions of Hindus and Muslims and the deaths of hundreds of thousands of people.Communalism has been a significant challenge for Indian democracy since independence.

In India, communalism has often been manifested in religious conflicts between Hindus and Muslims, leading to violence and bloodshed. This has resulted in the loss of lives and property, affecting the social fabric of the country. Communalism also affects the political discourse of the country, leading to the politicization of religion and religious sentiments.

Indian democracy has been successful in accommodating the diversity of its people and has tried to ensure equal representation and opportunities for all communities. However, communalism challenges the fundamental principles of democracy, including equality and secularism. It threatens social harmony and creates divisions within society.

Communalism has been fuelled by political parties and leaders who use religious and ethnic identities to gain power and influence. It has also been exacerbated by economic inequality and competition for resources.Communalism, which refers to the promotion of the interests of a particular religious or ethnic group over those of society as a whole, is generally considered to be opposed to the principles of democracy.

In India, where communalism has often been associated with religious tensions between different communities, it has been a divisive force that has threatened the country's democratic fabric. This is because democracy relies on the idea of equal citizenship, which means that all citizens, regardless of their religious or ethnic background, should have the same rights and opportunities. Communalism, on the other hand, promotes the idea that certain groups are superior or have more rights than others, which is incompatible with democratic principles.

To overcome communalism, Indian democracy needs to ensure the rule of law and hold accountable those who promote and indulge in communal violence. It also needs to promote inclusive and secular values in society and discourage religious extremism. Political leaders and religious leaders need to

promote communal harmony and unity, instead of exploiting religious sentiments for their own gain.

Religious Fundamentalism:

Religious fundamentalism is the belief in the literal interpretation of religious texts and the strict adherence to religious laws and practices. In India, religious fundamentalism has been on the rise since 1980.

Religious fundamentalism can pose a significant challenge to Indian democracy, as it often seeks to impose a particular religious ideology or belief system on society, which can lead to discrimination and intolerance towards those who do not share the same beliefs.

India is a secular democracy, which means that the government does not promote or favour any particular religion. However, some religious fundamentalist groups seek to influence the political process and promote their agenda by using violent means, such as riots and attacks on minorities.

This can create a polarized and divisive environment in the country, where people are divided along religious lines. In extreme cases, it can also lead to the suppression of individual freedoms and human rights.

In India, religious fundamentalism has been associated with political movements that seek to promote the interests of a particular religion or community over others. Such movements may seek to limit the rights and freedoms of minorities, and this can undermine the principles of democracy.

It is important for the Indian government to remain vigilant and ensure that all citizens are treated equally, regardless of their religion. The government should also work towards promoting a culture of tolerance and respect for diversity and discourage any form of extremism or religious intolerance.

At the same time, it is important for civil society to play an active role in promoting religious harmony and understanding, and to counter any attempts to promote religious fundamentalism. This can be achieved through education and awareness-raising campaigns, as well as through interfaith dialogue and collaboration.

Conclusion:

In conclusion, casteism, communalism, and religious fundamentalism are complex issues deeply rooted in the history and society of India. While progress has been made in addressing these issues, there is still a long way to go in terms of achieving social and religious harmony in the country.

The nexus of casteism, communalism and religious fundamentalism in Indian democracy poses significant challenges to the country's prospects for a harmonious and inclusive society. These social issues are deeply rooted in Indian society and have a long history of causing divisions and conflicts.

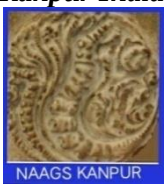
These social issues have implications for India's democratic institutions, which are designed to ensure equality and representation for all citizens. However, the influence of casteism, communalism, and religious fundamentalism can undermine these democratic values and lead to the marginalization of certain groups.

Addressing these challenges requires a comprehensive approach that involves education, social reform, and legal action to combat discrimination and promote inclusivity. It also requires a commitment from political leaders and civil society to work towards building a more just and equitable society for all.

References:

1. Class, Caste, Gender. India, SAGE Publications, 2004.
2. Indian Social Problems. India, S CHAND & Company Limited, 2017.
3. Yadav, Yogendra. Making Sense of Indian Democracy: Theory in Practice. India, Permanent Black, 2020.
4. Bose, Sumantra. Transforming India: Challenges to the World's Largest Democracy. United States, Harvard University Press, 2013.
5. Kumar, Ashwani. Hope in a Challenged Democracy: An Indian Narrative. India, Wisdom Tree, 2017.
6. Sharma, Ruchir. Democracy on the Road: A 25 Year Journey Through India. India, Penguin Random House India Private Limited, 2019.
7. Indian Democracy: Contradictions and Reconciliations. India, SAGE Publications, 2020.
8. Reddy, G. Ramachandhra. The Challenges of Governance in Indian Democracy. India, A.P.H. Publishing Corporation, 2007.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

IMPACT OF CONSTITUTIONAL AMENDMENTS ON INDIAN SOCIETY

DR. SHIV SHANKAR SINGH
Associate Professor
University Department of Law
Patna University, Patna India

Abstract
This paper examines the impact of Constitution amendments on Indian society. The 42nd Amendment, 73rd Amendment, and 86th Amendment are discussed in detail. The paper explores the impact of these amendments on individual rights, democracy, participatory democracy, access to education, social and economic empowerment, the judiciary, federalism, women's rights, civil society, political and economic landscape, and contemporary issues. The paper concludes that constitutional amendments are crucial to address the changing needs of Indian society but must be in line with the principles of democracy, secularism, and social justice.

Key Words – Constitution, Amendment, Empowerment,contemporary issues and Secularism.

Introduction

The Constitution of India is the supreme law of the land and has been amended several times since its adoption in 1950. These amendments have had a significant impact on Indian society, shaping its political, social, and economic landscape in various ways. One of the most significant amendments to the Constitution was the 42nd Amendment Act of 1976, which was introduced during the period of Emergency. This amendment expanded the powers of the central government, curtailed the powers of the judiciary, and made several changes to the fundamental rights of citizens. However, the amendment was later repealed, and some of its provisions were removed.

Another significant amendment was the 73rd and 74th Amendment Acts of 1992, which introduced the concept of Panchayati Raj and Municipalities, respectively. These amendments aimed to decentralize power and promote local self-governance, empowering rural and urban communities to participate in decision-making processes and take charge of their development.The Right

to Education was declared a fundamental right by the 93rd Amendment Act of 2005, obliging the state to provide free and required education to all children aged six to fourteen. This amendment has had a significant impact on the education system in India, improving access to education and reducing the dropout rates.

The National Judicial Appointments Commission (NJAC), created by the 99th Amendment Act of 2014, was created with the goal of improving the selection of judges for higher courts. The Supreme Court, however, ruled that the NJAC was invalid because it had infringed the judiciary's independence. The Goods and Services Tax (GST) was established by the 101st Amendment Act of 2016 with the goal of streamlining the tax code and establishing a nationwide single market for goods and services. This amendment has had a significant impact on the economy, promoting ease of doing business and increasing tax revenues for the government.

The idea of reservation for economically disadvantaged sections (EWS) in education and public jobs was established by the 103rd Amendment Act of 2019.This amendment aims to provide opportunities to those who were previously excluded from the benefits of reservation based on caste and community.

These amendments have had a significant impact on Indian society, shaping its political, social, and economic landscape in various ways.

Important of Amendment in Indian Constitution

Amendments to a constitution are important for several reasons:

1. Flexibility: A constitution that can be amended allows for changes to be made to adapt to changing circumstances or societal needs. It ensures that the constitution remains relevant and responsive to the needs of society.
2. Protection of Rights: Amendments can protect and expand individual rights, such as freedom of speech, religion, and the right to vote. The addition of the Bill of Rights to the United States Constitution is an example of this.
3. Democracy: The ability to amend a constitution allows for a democratic process in which citizens can have a say in the governing rules of their society. Amendments can be proposed and ratified by elected representatives, ensuring that the people have a voice in the process.
4. Checks and Balances: Checks and balances may be included in amendments to guarantee that no branch of the government has excessive authority. To avoid one person having too much power for too long, the 22nd Amendment to the U.S. Constitution restricts the number of terms a president may hold office.
5. Social Progress: Amendments can also be used to advance social progress by addressing issues such as civil rights, environmental protection, and equality. The 19th Amendment to the U.S.

Constitution, which granted women the right to vote, is an example of an amendment that increased social development.

Political Impact: The 42nd Amendment Act of 1976 had a significant impact on the political landscape of India, as it expanded the powers of the central government and curtailed the powers of the judiciary. However, this amendment was later repealed, and some of its provisions were removed. The repeal of the 42nd Amendment Act restored the balance of power between the three branches of government, ensuring that no one branch could dominate the others.

The 73rd and 74th Amendment Acts of 1992 introduced the concept of Panchayati Raj and Municipalities, respectively, empowering rural and urban communities to participate in decision-making processes and take charge of their development. These amendments have had a significant impact on the political landscape of India, promoting decentralization and local self-governance. The 2014 99th Amendment Act sought to modernise the selection procedure for judges for higher courts. The National Judicial Appointments Commission (NJAC), however, was abolished by the Supreme Court on the grounds that it had infringed the judiciary's independence. This ruling highlighted the significance of the judiciary's independence in preserving the political system's balance of power.

Social Impact : The Right to Education was become a fundamental right by the 93rd Amendment Act of 2005, which mandates that all children between the ages of six and fourteen must receive free and compulsory education from the government. The education system in India has been significantly impacted by this amendment, which has increased access to school and decreased dropout rates.

The social empowerment of marginalized communities, particularly those living in poverty, as it has helped to bridge the gap between privileged and underprivileged children. The amendment has provided opportunities for children from disadvantaged backgrounds to receive quality education, which is a crucial step towards breaking the cycle of poverty and achieving social mobility. Economically Weaker Sections (EWS) Reservation was established by the 103rd Amendment Act of 2019 in both public employment and education.This amendment seeks to provide caste and community-based reservation advantages to individuals previously excluded. This amendment has changed India's socioeconomic environment by giving marginalized groups social and economic mobility..

Economic Impact: The 101st Amendment Act of 2016 introduced the Goods and Services Tax (GST), which aimed to simplify the tax system and create a common market for goods and services across the country. This amendment has had a significant impact on the economy, promoting ease of doing business and increasing tax revenues for the government. The GST has also helped to reduce tax evasion and boost compliance, contributing to a more transparent and efficient tax system.

The impact of constitutional amendments on Indian society is as follows :

India has seen several constitutional amendments since its independence in 1947. Some of the most important amendments and their impact on Indian society are as follows:

- **42nd Amendment (1976):** This amendment was introduced during emergency and gave more powers to the central government. It also introduced fundamental duties for citizens, which include maintaining the unity and integrity of India, promoting harmony and the spirit of common brotherhood, and preserving the country's rich heritage. The amendment increased centralization of power and was criticized for curbing individual liberty.
- **73rd and 74th Amendments (1992):** These amendments provided for decentralization of power at the local level by introducing Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs). The amendments are aimed at strengthening grassroots democracy and promoting participative governance. The amendments have had a positive impact on Indian society by empowering local communities and increasing their participation in the decision-making process.
- **85th Amendment (2001):** This amendment extended the benefits of reservation to socially and educationally backward classes in private educational institutions. The amendment was intended to provide greater access to education for disadvantaged communities and has had a positive impact on Indian society by promoting social inclusion and diversity.
- **97th Amendment (2011):** This amendment strengthened the functioning of Panchayati Raj Institutions by making them more independent and financially autonomous. The amendment also reserved one-third of the seats in PRIs for women, which has had a positive impact on gender equality and women empowerment.
- **101st Amendment (2016):** This amendment introduced the Goods and Services Tax (GST), which replaced multiple indirect taxes with a single tax system. The amendment aims to simplify the tax system and increase revenue collection. The impact of GST is still being debated, but it has been criticized for its complexity and impact on small businesses.

Conclusion:

In conclusion, the Constitution amendments in India have had a significant impact on the political, social, and economic landscape of the country. These amendments have played a crucial role in shaping India's development trajectory and have contributed to the country's progress in various ways. The amendments have promoted decentralization, local self-governance, and social empowerment, while also facilitating economic growth and development. While there have been challenges and setbacks along the way, the overall impact of the Constitution amendments has been positive and transformative, laying the foundation for a more inclusive, equitable, and prosperous India.

References :

1. "The Constitution (Seventy-Third Amendment) Act, 1992." Ministry of Law and Justice, Government of India
2. "The Constitution (Seventy-Fourth Amendment) Act, 1992." Ministry of Law and Justice, Government of India
3. "The Constitution (Ninety-Fifth Amendment) Act, 2009." Ministry of Law and Justice, Government of India
4. "The Constitution (One Hundred and First Amendment) Act, 2016." Ministry of Law and Justice, Government of India

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

AN ANALYSIS OF THE PROVISIONS OF SEIZURE AND ARREST UNDER NDPS ACT, 1985

ADITYA SINGH
Xth year B.A.LL.B. (Hons)
Law College Dehradun
Uttaranchal University Dehradun India
ABHIRANJAN DIXIT
Assistant Professor of Law
Law College Dehradun
Uttaranchal University Dehradun India

Abstract
Even in the most extreme circumstances where adequate evidence establishing the culpability of an accused are present, the courts have chosen to acquit them, more often on technical grounds arising due to the incorrect application of the provisions of the Narcotic Drugs and Psychotropic Substances/NDPS Act, 1985, particularly those relating to seizure of prohibited substances and arrest of the person holding them. Therefore, it is essential that the relevant provisions of the Act are applied without prejudice and in consonance with the established rule of criminal law. The strict terms of imprisonment and/or fines imposed on those found guilty of committing, aiding, abetting, or instigating such offences reflect one of the primary goals of the Act, objective is to establish strict guidelines for the management of operations involving narcotic drugs and psychoactive substances, and other Controlled Substances.
This paper aims at studying the Standard Operating Procedure for NDPS cases and the recent trend adopted by the judicial courts on it, with the purpose to reconcile it with the Right to Privacy and other safeguards available to an individual subjected to a search, seizure and arrest under the Act. Further, this paper aims to highlight the lacunas existing in the provisions of the NDPS Act, which unjustifiably curtail the civil liberties of an individual and leads to their wrongful confinement and malicious prosecution.
Keywords*:* Psychotropic Substances, Operating Procedure, Right to Privacy, civil liberties, wrongful confinement, malicious prosecution

Introduction

The Narcotic Drugs and Psychotropic Substance/NDPS Act of 1985 is a specific piece of legislation, the search and seizure guidelines specified in the Act must be adequately observed. In public area and any building, conveyance, or enclosed space, various rules are applied for search and seizure. Sections 42 and 43 of the Act [1] have entirely separate areas of application. Sections 41 to 58 of the Act, which prescribe procedures, are hotly contested as to whether they should be considered nearly required or merely a guideline. In any system of law, the power of search and seizure belongs to the State and must be used in the public good. However, this authority cannot be used only on what might be described as an executive fiat. The goal of the power of search and seizure is to find evidence that an investigative agency might not otherwise have access. In light of this, these powers are becoming increasingly prominent in the current world as they are increasingly granted to administrative bodies under various statutes. Among the many additional factors driving an expansion of administrative power of search and seizure are the prevention of tax evasion and the mounting of numerous administrative inquiries for varied goals.[2]

It is a power that needs to be restrained and regulated by law, necessitating competent and constitutionally sound legislation. It is generally accepted that a search by itself does not restrict the right to possess and enjoy the property when it comes to the right to property and the law of search and seizure. A seizure and removal constitute unquestionably a restriction on custody of the confiscated objects.[3] The right to have the area searched and the objects taken is thus only momentarily interfered with by a search and seizure.

However, it is important to make sure that the search and seizure were justified and based on reliable information and facts. Government actions must not be arbitrary, and harassment should never be required.[4]

Power of Seizure and Arrest in Public Place

Section 42 specifies that a public place include any kind of public transit, hotel, store, or other location that is intended for or accessible to the general public. A hotel does not cease to be a hotel simply because guests are allowed to remain there. While section 42 authorises officers of authorised agencies to undertake a search, seizure, and arrest in any building, vehicle, or enclosed area, this section addresses the ability to seize and arrest in public locations. If the officer has "reason to think" that a crime involving narcotics or

---

[1] The Narcotic Drugs and Psychotropic Substance, Act, 1985, No.61 ,Acts of Parliament, 1985

[2] M.P Jain, "Power of search and seizure" No. 4, XI Journal of the Indian Law Institute, 535-543 (1969).

[3] "Search and seizure",, Vol. 65, No. 4 The Journal of Criminal Law and Criminology pp. 448-459 (Dec., 1974),

[4] Thomas. Y davis, "Centennial Symposium: A Century of Criminal Justice" Vol. 100, No. 3, The Journal of Criminal Law and Criminology, 933-1042 (2010).

psychotropic substances has been committed, they may exercise their jurisdiction under both of these provisions.[5] This provision grants such police considerable authority, including the ability to hold a person found to be in lawful possession of a controlled substance or narcotic while in the company of another person. The terms "building," "vehicle," and "enclosed area" as they are used in section 42 have been chosen particularly to safeguard the residents of the structures listed above.

In its wisdom, the legislature decided that it was appropriate to draw a boundary between a building, a vehicle, and an enclosed space on the one side, and a public space or a place of transit on the other.

The word "authorised" has been purposefully left out of Section 43. This authority has been granted to the officials of the departments listed in Section 42, who are unable to keep quiet if someone is discovered in public with narcotics, it was concluded after carefully reading the entire document the legislature did not intend for any officer of the agencies listed in Sections 41 or 42 of the operate to receive authorization from the Central or State Government to act in certain ways. There is little doubt that a Peon or Sepoy will be present, in addition to a Constable. A private citizen may make an arrest if the crime was committed in his presence and is a cognizable offence under Section 43 of the Criminal Procedure Code. "Any officer of any of the departments specified under Section 42 may seize any narcotic drug/psychotropic substance listed in this act in any public place or in transit," said was held by Hon'ble Rajasthan High Court ruled in Raju Basant v. State of Rajasthan[6]. Additionally, it was found that Section 42 meets the requirements of Section 43. Within a building, car, or other enclosed space, authorities are authorised to conduct searches, seize contraband, and make arrests under Section 42 of the Act.

Section 43 of the aforementioned act prohibits the recording of any information provided by a person regarding a Section IV punishable offence. In Dr. Partap Singh v. Director of Enforcement[7], the Supreme Court considered how to interpret the phrase "reason to believe," and it was noted, reason to believe does not equate to an officer's level of personal happiness. The belief must be genuine; it cannot be an empty pretence. Whether there was cause for such suspicion and whether the officer in charge behaved honourably will depend on the specifics of the case and will affect how the evidence is viewed. Keep in mind that the words "reason to suspect and reason to believe" were employed by the Legislature in Section 49 of the aforementioned Act. The facts and circumstances of this case do not support the judgement that the officer conducting the search had probable cause to believe that the appellant had committed a Chapter IV offence, notwithstanding the fact that the two sections (Sec. 42 and Sec. 49) utilise

[5]Andrew Wells, "International Legal and Policy framework for Drug control"

[6] 1994 (2) WLC 250.

[7] (1985) 3 S.C.C.72.

different terminology. Therefore, the use of these varied phrases in this context is pertinent and conveys the legislative intent.

It is essential to establish a legitimate and reasonable suspicion before conducting any search, seizure, or arrest. Customs agents and other tax authorities are not allowed to search or seize something just out of suspicion or a lack of belief. The relevant officer must form a judgement based on facts that can be supported. Simply limiting revenue officials' discretionary power is beneficial.[8]

According to the provision attached explanation, a "public place" for the purposes of this section includes any public transportation, hotel, retail outlet, or other venue meant for or accessible to the general public. In interpretation clauses, the word "includes" is typically used to expand the meaning of the words or phrases that exist in the "statute's" body. In this application, these words and phrases must be understood to contain both the things that the interpretation clause specifies they must include as well as what they actually mean given their nature and context. In the case of Commissioner of Income Tax v. Taj Mahal Hotel[9], this was decided. The phrases "public location" and "in transit" will both apply to a moving train.

The Delhi High Court issued its first principle in the case of Saurabh Sharma and others v. Sub Sub-Divisional Magistrate[10] on September 17, 2020, stating that because the country is in an alarming state and the covid spread is contagious, a private vehicle would be regarded as public and even a person travelling alone in a private vehicle would be required to wear a mask. On 16 April 2021, the Supreme Court issued its next ruling in the matter of Boota Singh v. State of Haryana[11], ruling that a private vehicle would not be regarded as a public venue for purposes of Section 43 of the Narcotic Drugs and Psychotropic Substances Act.

When interpreting how sections 42 and 43 of the Act should be applied, the location of the search and seizure is important. The situation in this regard has also been clarified by many judicial judgements. In its wisdom, the legislature decided it was appropriate to create a boundary separating a building, a vehicle, and an enclosed space from a public area or a place of transportation. If a search is conducted by a junior most officer while the family is housed in a structure or a vehicle, harassment cannot be completely ruled out. Therefore, the legislature concluded that, for the purposes of Section 42 of the Act, any such officer who has been granted permission by the federal or state government to conduct a search of a building, conveyance, or enclosed space may conduct such a search. In contrast to the terms "building," "vehicle," and

[8]Daniel B. Yeager, The Journal of Criminal Law and Criminology Vol. 84, No. 2, 249-309 (1993),

[9] A.I.R. 1972 S.C. 168.

[10] W.P.(C) 6595/2020.

[11] 2000 (2) CLR 193.

"enclosed or open area," which were used to distinguish between the two, the legislature might have picked any location.

The officer may also stop the animal or vehicle using any legitimate means. The only prerequisite is that there must be a plausible theory among the police that a drug or psychoactive substance is being carried. It is not required to put these facts in writing when a search and seizure are conducted in a public setting or on a moving subject.

The Supreme Court ruled in State of Punjab v. Baldev Singh[12] that the provisions of subsection (2) of Section 42 would only apply in cases involving information about the availability of contraband in a building, conveyance, or enclosed place, and would not apply in cases involving information about the possession of contraband by a person who is known to have access to it i.e. a person who is known to have access to it. Beckodan Abdul Rahiman v. State of Kerala[13] does not establish a precedent that an empowered officer must comply with Section 42's criteria when investigating a violation of the Act, even if the information presented to him pertains to the conduct of a crime in a public setting. This is due to the fact that none of these cases addressed the matter and reached a conclusion.

In accordance with Section 43 of the NDPS Act and Section 100(4) of the Criminal Procedure Code, the search should be done in the presence of two independent witnesses from the area if possible. If the appointed officer fails to do so, the prosecution must demonstrate that the connection of such witnesses was not practicable under the particular case's facts and circumstances. Given the Act's stringent minimum sentence requirements, it is evident that such a programme is necessary. Consequently, the law requires the presence of at least two trustworthy, independent witnesses during searches and seizures. According to the ruling in Prithipal Singh v. State[14], the authorized official must take the approach that is reasonable, just, and fair as stipulated by the Act, and failing to do so must be considered suspiciously. There were no independent witnesses present when the search was conducted in a market. The accused conviction and sentence were overturned because the defense was deemed to be unpersuasive. A private person may be detained if the crime is committed in his presence, according to Section 43 of the Criminal Procedure Code. This authority has been granted to the employees of the departments listed in S. 42 in the case of Mohd. Jaimdabdin v. State of Manipur[15], and they are not allowed to keep quiet in public. The legislators did not intend for the Central or State Government to authorize any officer of the Departments named in sections 41 or 42 of the Act to make an arrest or seize narcotics in a public area simply because narcotics are discovered in anyone's possession. According to the ruling in the case of Babu Rao v. State of

[12] A.I.R 1994 (3) S.C.C. 299.

[13] 1997 CLR 619.

[14] 2009 CLR 528.

[15] 1991, Cr.L.J. 696.

Karnataka[16], if the crime is committed in his presence, even a private person may be detained under Section 43 of the Criminal Procedure Code (CrPC).

Indispensability of the mandate under Section 50 while undertaking a search or seizure. A person from whom a drug or psychoactive substance was seized must be transported under Section 50 to the closest Gazetted Officer of any of the departments listed in Section 42, or to the nearest Magistrate if the subject requests it. According to the current situation, when acting in accordance with Sections 41(2) or 42 of the Act, the empowered officer or the authorized officer must adhere to Section 50 provisions before searching the person, and that person must be made aware that, if necessary, he will be brought before a Gazetted Officer or a Magistrate in accordance with those provisions. The officer is required by law to take the person to a Gazetted Officer or Magistrate upon request, and the person being searched must be informed beforehand. Failure to do so would be a violation of section 50, which is required and could damage the procedure and the prosecution's case. However, if the person making the request requests that the seizure be brought before a Gazetted Officer or Magistrate in accordance with the provisions of Section 50 of the NDPS Act, then the empowered officer or authorized officer is only required to abide by those provisions in the case of a seizure made in accordance with Section 43 of the Act. Therefore, Section 50 compliance is not required when the search and seizure are carried out in line with Section 43 of the Act. The Bombay High Court ruled in the matter of Daniel v. R. Ramesh[17] that when the accused is searched and taken into custody in a public bus, section 50 compliance is not necessary and section 43 search procedures are employed instead.

Section 53 deals with the Disposal of Person Arrested and Articles Seized which is an aftereffect to Article 22 of the Indian Constitution, which protects individuals from being detained and arrested. It requires the officer who makes an arrest under Sections 41, 42, 43, or 44 to explain the reason(s) behind the arrest. The rules must be followed, and if they are not, the arrest or imprisonment would be unlawful. In other words, there are two sorts of arrests: those made with warrants issued by the magistrate and those made without such warrants. When someone is detained pursuant to a warrant, the warrant itself serves as the basis for the detention. If the warrant is read to the detainee, this satisfies the legal need that the detainee be informed of the reasons behind his detention. If he is taken into custody without a warrant, he must be informed of the reason for the detention. If someone is detained after they commit an offence, they must be told why they were arrested. He must be informed of the exact act for which he will be punished if he is held after committing an offence.

[16] 1992 (4) Kar.L.J. 563.
[17] 1995 (2) BomCR 682.

The Supreme Court's ruling in State of Punjab v. Balbir Singh[18], which put an end to the debate over whether Section 52 is required or contradictory, established the following observation, "After the arrest and seizure made in accordance with the Act, Sections 52 and 57 go into effect. The Cr.P.C. also contains several provisions that are quite comparable. If there is a violation of any of these clauses, the Court must look into the implications of that. When determining whether the Act's requirements to be followed after the arrest or search are to be followed in this situation are mandatory or directory, it will be necessary to keep in mind that, generally speaking, the provisions of a legislation producing public obligations are directory. These two parts contain specific procedural criteria, and the officers are required to adhere to them strictly. However, failure to strictly abide by any of these orders does not, by itself, render the actions taken by these officers null and void; at best, it can compromise the admissibility of evidence relating to an arrest or search, and in rare circumstances, it can render such an arrest or search invalid. However, if there is sufficient additional evidence, a breach by itself does not render the trial or the conviction illegitimate. Therefore, it must be shown that this lack of compliance has resulted in prejudice and an injustice.

These considerations must be taken into account as the courts assess the merits of the case and the evidence. However, the authorized officers cannot fully disregard these clauses. The prosecution's case will surely suffer if the cops fully violate the rules or if there is no adequate justification for their non-compliance. However, a straightforward noncompliance or failing to strictly comply alone will not invalidate the prosecution.

Statements and the seizure's recording Panchnama, which are typically the first two activities conducted, could not have required more than 12 hours. If this is the case, nothing would prevent the investigation agency from presenting the suspect to the magistrate within the stipulated timeframe of 24 hours. This is needed not just by Sections 57 and 167 of the Code of Criminal Procedure, but also by Articles 21 and 22 of the Constitution of India. It is disappointing that Customs personnel and members of the Narcotics Cell are preoccupied with these fundamental yet legal requirements, such as the prohibition on holding an accused for more than 24 hours without bringing them before a judge. It is currently unknown what would have occurred to this application if the initial argument had not been upheld. If there is a complete violation of the mandate contested in Articles 21 or 22 of the constitution, many cases under the NDPS Act that would ordinarily conclude with the bail application being denied due to the restrictions of Section 37 of the NDPS Act would have to conclude with the granting of bail. In Snibo Ilbow Casamma v. State of Maharashtra[19], the defendant was held, brought before the magistrate after two days, and granted bail; nevertheless, the Honorable Court did not

[18] JT 1994(2) SC 108

[19] 11 (1994) CCR 925.

evaluate whether the defendant should have been taken before the magistrate within 24 hours.

Conclusion

After going through the entire set of statutory provisions regarding seizure and arrest under NDPS Act, and the judicial interpretation of the same, it can be concluded that there remains a grey area which gives sufficient leverage to the investigative agencies to act to the prejudice of the accused and in contravention of the established fundamental rules of criminal law. Even the courts in various cases have not made a justiciable interpretation of the law and in the process, have acted to the detriment of the accused and to the law in general. It is essential therefore, that the Act be amended to incorporate certain safeguards against such wrongful seizure and confinement and that the responsibility of judicial institutions to maintain due care and caution is increased to prevent the increasing instances of judicial contravention of the laws.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

निजता का अधिकार : लोकतन्त्रात्मक विधिक परिदृष्य

डॉ0 दीपक कुमार श्रीवास्तव
एल–एल0एम0 नेट, एल–एल0डी0
सहायक प्राध्यापक, स्नातकोत्तर, विधि विभाग
महाराज बलवन्त सिंह, पी0जी0 कॉलेज
गंगापुर (राजातालाब) वाराणसी उ0प्र0(भारत)

निजता का अधिकार लोकतन्त्र की आधारशीला हैं। निजता का अधिकार एक सुदृढ़ लोकतन्त्र के लिए अत्यन्त आवश्यक है। निजता के अधिकार द्वारा ही व्यक्ति स्वयं को समाज मे सुरक्षित महसूस करता है। भारत जैसे लोकतान्त्रिक देश मे निजता के अधिकार का अभाव बड़े पैमाने पर लोगो की निजता के हनन का कारण बन सकता है। देश मे रहने वाली जनता के सर्वांगीण विकास के लिए स्वस्थ लोकतन्त्र का होना अत्यन्त आवश्यक है। अतः निजता का अधिकार स्वस्थ एवं सुदृढ़ लोकतन्त्र के लिए अत्यन्त महत्वपूर्ण है।परिवर्तन प्रकृति का शाश्वत नियम है। हमारा समाज सदैव से ही परिवर्तनशील रहा है। परिस्थितियाँ सदैव एक समान नहीं रहती है, यह हर घड़ी, हर पल बदलती रहती है। इसलिए समाज के साथ चलने के लिए हमें स्वयं में परिवर्तन लाना आवश्यक है। आज हम 21वीं सदी में रह रहे हैं, जिसे तकनीकी और प्रौद्योगिकी का युग कहते हैं। हमारे वैज्ञानिकों द्वारा की गयी प्रगति परिवर्तनशील प्रकृति के कारण ही संभव हो पाया है। हमारे वैज्ञानिक चाँद तक पहुँच गये हैं। आज हमारे वैज्ञानिकों द्वारा किये जा रह अनुसंधान हमें निरन्तर प्रगति की ओर अग्रसर कर रहे हैं। भारत वैज्ञानिक प्रगति के कारण ही युद्ध सैन्य बल में भी आत्मनिर्भर बनने की ओर अग्रसर हो रहा है।[1]इसी प्रकार के पवित्तन व्यक्ति के निजी जीवन में भी देखने को मिलते हैं, अतः हम ये नहीं कह सकते कि जैसे हम आज है, वैसे कुछ वर्ष के पश्चात् भी रहेंगे। यही बात परिस्थितियों पर भी लागू होती है। महिलाओं की जो स्थिति कुछ दशक पहले थी उसमें काफी परिवर्तन आ चुका है। पहले जहां महिलाओं को घर से बाहर निकलने व

[1] शिवदत्त शर्मा, **मानवाधिकार,** विधिसाहित्य प्रयाग (विधायी विभाग) विधि और न्यायालय, न्याय मंत्रालय भारत सरकार, 2006 दिल्ली

नौकरी करने की अनुमति नहीं होती थी, वही आज महिलाए देश के हर क्षेत्र में व्याप्त है। आज महिलाये एक शिक्षिका, न्यायाधीश, अधिवक्ता, डॉक्टर एवं सामाजिक कार्यकर्ता इत्यादि की भूमिका अति सफलतापूर्वक निभा रही है। वे घर एवं बाहर, जीवन के दोनों ही पहलुओं की बखूबी संभाल सही है। आज महिला की पहुँच चाँद तक हो गयी है। आज महिलाये राष्ट्रीय एवं अन्तर्राष्ट्रीय स्तर के विभिन्न प्रकार के प्रतियोगिताओं में हिस्सा ले रही है। यह सब हमारे समाज में हुए परिवर्तन के फलस्वरूप ही संभव हुआ है।[2]

निजता का संकल्पना एवं अर्थ

निजता का अर्थ है, "किसी व्यक्ति के निजी जीवन के कृत्यो या निर्णयो मे किसी अन्य व्यक्ति के ध्यान अथवा हस्तक्षेप से मुक्त रहने की स्थिति।" "किसी व्यक्ति के निजी जीवन, परिवार, वंश चलाने, आय एवं निजी सम्पत्ति इत्यादि मे किसी अनवांछित बाहरी हस्तक्षेप से मुक्त होने का अधिकार।"[3] निजता के अधिकार द्वारा व्यक्ति स्वयं को बाहरी हस्तक्षेप से सुरक्षित महसूस करता है। किसी व्यक्ति के निजी जीवन से सम्बन्धित जानकारी जब तक वह स्वयं दूसरो के समक्ष उपस्थित न करना चाहे, तब तक कोई भी उन सूचनाओ को जानने के लिए उस पर दबाव नही बना सकता। कोई व्यक्ति किस हद तक स्वयं को दुनिया के समक्ष उपस्थित करना चाहता है। सामान्यतः निजता का अर्थ व्यक्तिगत स्वतन्त्रता से लिया जाता है। निजता का अधिकार, हमारे चारो तरफ एक आवरण की भॉति होता है जिसके अन्तर्गत हमारा घर, परिवार, सम्पत्ति इत्यादि आते है, इसे हम कब किसके समक्ष उपस्थित करना चाहते है यह केवल हम पर निर्भर करता है। निजता हमारे व्यक्तिगत जीवन मे एकान्तता, परिवार व वंश चलाने की स्वतन्त्रता, खाने पीने एवं घूमने फिरने की स्वतन्त्रता इत्याादि मे किसा भी बाहरी हस्तक्षेप से मुक्त होना है। व्यक्ति को निजता के अधिकार के अन्तर्गत उसकी व्यक्तिगत स्वतन्त्रता, डेटा, पहचान, भाषण, शिक्षा ग्रहण करने इत्यादि के एकान्तता की रक्षा करने का अधिकार प्राप्त है।[4]

निजता के अधिकार की लोक कल्याणकारी अवधारणा

निजता असामान्य रुप से अत्यन्त व्यापक शब्द है, जिसमे दोनो भौतिक एवं संवैधानिक अधिकार शामिल है। निजता के अधिकार की अवधारणा को आसानी से नही समझा जा सकता। निजता प्राकृतिक अधिकरो के सिद्धान्त से निकलती है एवं प्राकृतिक अधिकारो के सिद्धान्त का उपयोग करती है। निजता का अधिकार एक कानूनी ढॉचे को सन्दर्भित करता है, जो व्यक्तियो को उनकी निजी जानकारी, उनके एवं उनके परिवार की सूचनाओ की गोपनीयता का संरक्षण करने का कानूनी अधिकार प्रदान करता है। इसलिए निजता को किसी व्यक्ति के अकेले रहने एवं स्वयं को किन्ही विशेष व्यक्तियो के समक्ष उपस्थित करने की क्षमता के रुप मे परिभाषित किया जा सकता है। निजता का अधिकार हमे यह तय करने की आजादी देता है कि हम अपने विचारो एवं भावनाओ को किन चुनिन्दा व्यक्तियो के साथ साझा करे अथवा न करे। निजता हमे, हमारी शारीरिक एवं मानसिक सुरक्षा का अधिकार प्रदान करता है।[5]

---

[2] ***भारत*** 2010, 1119

[3] न्यायमूर्ति के0 एस0 पुत्तास्वामी (सेवानिवृत) और अन्य बनाम भारत संघ और अन्य जे0एल0टी0(2017) एस0सी0जे0 21 (2017)10 एस0सी01

[4] **वही**

[5] स्वार्टज, ***"एडमिनिस्ट्रेटिव लॉ"*** 30(1984)

निजता का अधिकार हमारे स्वास्थ्य, हमारी निजी जीवन और हमारे निजी आय, व्यय एवं सम्पत्ति को अन्य व्यक्तियो के हस्तक्षेप से मुक्त रखने का अधिकार प्रदान करता है। निजता के अधिकार, के द्वारा कोई व्यक्ति किसी के जीवन मे बिना उसकी अनुमति के हस्तक्षेप नही कर सकता। निजता का अधिकार, हमे यह समझने मे यह सक्षम बनाता है कि, हम कौन है? और अपने आस पास के लोगो के साथ कैसे बातचीत करना चाहते है। निजता का अधिकार हमे उन सीमाओ को बनाने मे सक्षम बनाता है, जिससे हम यह निर्धारित कर सके कि हम अपने शरीर, स्वास्थ्य, सम्पत्ति से जुड़ी जानकारी किसके साथ साझा करे।[6]

यद्यपि भारत मे निजता पर अधिक चिन्तन नही हुआ है किन्तु निजता की झलक हमारे व्यवहारों एवं संस्कारो मे अवश्य मिलती है। निजता की जड़ हमारे प्राचीन समाज में भी देखने को मिलती है। निजता की अवधारणा हिन्दुओ के प्राचीन पाठ **हितोपदेष** मे दिखती है जो यह बताता है कि पूजा, लिंग, सेक्स और पारिवारिक मामलों को प्रकटीकरण से बचाया जाना चाहिए। अतः निजता की यह अवधारणा भारतीय संस्कृति से पूर्ण अपिरिचित नही है बल्कि इसकी झलक हमारे पूर्वजो एवं हमारे व्यवहारो और संस्कारो मे देखने को मिलती है। हमारा भारतीय समाज संयुक्त परिवार की अवधारणा से गठित समाज है। संयुक्त परिवार मे सभी लोग एक साथ रहते है एवं एक दूसरे के अधिकारो सम्मान करते हुए अपना कर्तव्य पालन करते है। संयुक्त परिवार मे किये जाने वाले लगभग सभी क्रियाकलाप खुले मे एवं सबकी जानकारी मे होते है, तथापि निजता की अवधारणा हमे हमारे उन संस्कारो एवं व्यवहारो मे देखने को मिलती है जिसे हमने पीढ़ियो से अपने मे संजोकर रखा है। हमारे समाज मे छोटो द्वारा बड़ो का सम्मान एवं बच्चो को बड़ो द्वारा दिया गया स्नेह तथा घर की बहुओ एवं महिलाओ को दी गयी निजता, हमारे सामने एक अति सुन्दर प्रतिमान प्रस्तुत करती हैं।[7]

भारतीय समाज मे व्यावहारिक प्रतिमान के अनेको ऐसे उदाहरण है जो निजता के अधिकार को मौन स्वीकृति प्रदान करते है । यही कारण है कि निजता का अधिकार, प्राचीन भारतीय समाज के लिए कभी भी अत्यधिक चिंता का विषय नही रहा है, किन्तु कालान्तर मे समाज के विकास के साथ ही निजता से जुड़ी समस्याये भी उत्पन्न होने लगी। आज व्यक्ति के सर्वांगीण विकास के लिए निजता का अधिकार बहुत मायने रखता है। आज घर के बाहर ही नही बल्कि घर मे भी लोग निजता चाहते है। अतः बदलते परिवेश के साथ ही निजता की अवधारणा भी परिवर्तित हो रही है। आज प्रत्येक व्यक्ति अपने निजी जीवन मे निजता चाहता है तथा अपनी निजी जानकारी को कुछ चुनिन्दा व्यक्तियो के साथ ही साझा करना चाहता है, यही कारण है कि दिन पें दिन निजता का अधिकार का महत्व बढ़ता जा रहा है।[8]

निजता का अर्थ : संविधानिक संरक्षा

निजता के अधिकार सम्बन्धी कोई भी उपबन्ध भारतीय संविधान मे नही हैं। हॉलाकि विगत 75 वर्षो से भारत मे भी इन अधिकारों के प्रति संघर्ष बढ़ा है। जिन्हे हम न्यायालय में आने वाले वादों में देख सकते हैं।[9] विगत कुछ वर्षो मे न्यायालय के समक्ष

---

[6] ***पूवोक्त*** 3

[7] डॉ0 दीपक कुमार श्रीवास्तव, ''***महिला सशक्तिकरण***'', नाथराम पब्लिकेशन, 2017 वाराणसी उ0प्र0।

[8] ***वही***

[9] एम0 पी0 शर्मा बनाम सतीशचन्द्र, जिला मजिस्ट्रेट, दिल्ली, 1954 ***एस0सी0आर0***, 1077, खरक सिंह बनाम उ0 प्र0 राज्य 1954 ***एस0सी0आर0***332

विभिन्न वाद आये है जिनमे निजता के अधिकार का मुद्दा उठाया गया है एवं उनका प्रवर्तन कराने की बात की गयी है। **आई नीड माई ओन स्पेस** और **प्लीज लीव मी अलोन** वर्तमान समय मे अत्यन्त प्रचलित वाक्यांश है।[10]

भारत एक लोकतान्त्रिक देश है जिसमे विविध धर्मो एवं संस्कृतियो के लोग रहते है। विविध धर्मो एवं संस्कृतियो के लोगों की पसंद एवं नापसंद भी अलग–अलग होती है, अतः उन सभी के लिए निजता का अर्थ भी अलग–अलग होगा। कुछ लोगो के लिए ये शरीर की गोपनीयता, तो वही किसी के लिए सूचना की गोपनीयता और वही कुछ अन्य वर्गो के लिए इसका अलग–अलग दृष्टिकोण हो सकता है। प्रत्येक धर्म, जाति एवं संस्कृति के लोगो के लिए उनकी निजता का अलग मायने होता हैं।

निम्नलिखित विभिन्न पहलुओ के साथ अध्ययन करना समीचीन होगा :–

निजता और व्यक्ति[11]
निजता और परिवार[12]
निजता और स्वास्थ्य[13]
निजता और विवाह[14]
निजता का अधिकार और डेटा संरक्षण[15]
निजता का अधिकार ओर मीडिया[16]
निजता का अधिकार और यौन उत्पीड़न के षिकार एवं गम्भीर बीमारी के मरीजो की निजता[17]

आज भारत में व्यापक स्तर पर डिजिटल भारत एवं कैशलेश इकोनॉमी का प्रचार हो रहा है। भारतीय जनता भी बढ़ चढ़ के डिजिटल इण्डिया के विकास में सहयोग दे रही है। **गूगलपे, फोनपे** जैसे विभिन्न एप्लीकेशन्स बड़े स्तर पर कार्यरत होकर देश को कैशलेश इकोनॉमी की ओर अग्रसर कर रहे हैं। ऐसे में यह प्रश्न उठता है कि क्या डिजिटल प्राइवेसी देने के लिए हमारा विधिक ढांचा इस स्तर का है? या अगर हम भारत की बात करें तो यहां डिजिटल प्राइवेसी के लिए हमारा विधिक ढांचा अत्यन्त प्रारम्भिक स्तर का है। हम आज भी विदेशी चिप एवं विदेशी सर्वरों पर निर्भर है, जबकि हमारा पड़ोसी देश चीन, साइबर सुरक्षा और आतंकवाद के खतरों को कम करने के लिए विविध तकनीकीयों को विकसित करने में लगा हुआ है।भारत में रहने वाले लोग जो गोपनीयता सम्बन्धी पहलुओं पर बड़ी–बड़ी डींगे मारते हैं, जहाँ थोड़ी सी लालच में आकर अपनी व्यक्तिगत जानकारी अन्जान लोगों के साथ साझा कर देते हैं, इन निजी सूचनाओं का उपयोग अनैतिक व अवैध कार्य के लिए किया जाता है।

---

[10] ***पूर्वोक्त*** 3

[11] एस0पी0 गुप्ता बनाम भारत संघ (1981) ***एस0एस0सी0*** 87

[12] मेनका गांधी बनाम भारत संघ ***एस0सी0आर0***1978

[13] खरक सिंह बनाम उत्तर प्रदेश राज्य ***एस0सी0आर0***1963 एस0सी0 1295

[14] मिस्टर 'एक्स' बनाम जेड ***एस0सी0आर0***1999 एस0सी0 495

[15] ***पूर्वोक्त*** 3, पीपुल्स यूनियन फॉर सिविल फिवटीण बनाम यूनियन ऑफ इण्डिया ***एस0सी0आर0***1997 एस0सी0 568

[16] राजगोपाल बनाम तमिलनाडू राज्य (1994)6 ***एस0सी0सी0*** 632

[17] मिस्टर 'एक्स' बनाम जेड हास्पिटल ***एस0सी0आर0***2003 एस0सी0 164, सुरजीत सिंह, थिंड बनाम जीत कौर ***एस0सी0आर0***2003 पंजाब एवं हरियाणा, प्रगति वर्गीज बनाम सिरील जॉर्ज वर्गीज ***ए0आई0 आर0***1997 एस0सी 349, विशाखा बनाम राजस्थान राज्य (1997) 4 उप नि0 प0 628, ***ए0आई0 आर0***1997 एस0सी0 302

30 अगस्त 2019 को भारत सरकार के गृह मन्त्रालय द्वारा राष्ट्रीय साइबर अपराध रिपार्टिंग पोर्टल का शुभारम्भ किया गया है, जिसका मुख्य उद्देश्य साइबर अपराध से जुड़ी घटनाओं के आनलाइन रिपार्टिंग के लिए जनता को एक केन्द्रीय तन्त्र प्रदान करना था। इस केन्द्रीय तन्त्र की स्थापना से लेकर 28 फरवरी 2021 तक कुल 317439 साइबर अपराध की घटनाये एवं 5771 एफ0आई0आर0 दर्ज की गयी है।आज के युग में गरिमापूर्ण जीवन जीने के लिए निजता के अधिकार के साथ ही इन्टरनेट तक पहुँच भी आवश्यक है। इस डिजिटल युग ने इस समस्या को और भी विशद कर दिया है। यदि हमारी निजता ही संरक्षित नहीं होगी, तो हमें लगातार साइबर हमलों का शिकार बनाया जायेगा। अनेक प्रकार के साइबर अपराधी एवं कम्पनीया अपनी वस्तुओं के लुभावने प्रचार देकर हमें परेशान करती रहेंगी।

साइबर विशेषज्ञों का यह मानना है कि यदि देश में साइबर सुरक्षा सम्बन्धी मामलों पर समय रहते ध्यान नहीं दिया तो वह डिजिटल इण्डिया एवं कैशलेश इकोनॉमी जैसे बड़े अभियानों पर ''रैंसमवेयर वोनाक्राई'' की तरह ही साइबर हमले का खतरे में बना रहेगा। अतः देश में साइबर सुरक्षा पर बहुत अधिक ध्यान देने की आवश्यकता है।भारत एक लोकतान्त्रिक देश है जहाँ जनता द्वारा सरकार चुनी जाती है और सरकार भी जनता के प्रति पूर्ण रूप से उत्तरदायी होती है। किसी भी स्वतंत्र लोकतान्त्रिक राष्ट्र के निर्माण में मूल अधिकार और नीति निदेशक तत्व अत्यन्त महत्वपूर्ण भूमिका निभाते हैं। नीति निदेशक तत्व में वे उद्देश्य एवं लक्ष्य निहित होते है, जिनका पालन करना राज्य का कर्तव्य होता है। कल्याणकारी राज्य के निर्माण की संकल्पना नीति निदेशक तत्व के अभाव में नहीं हो सकती है। एक समय था जब सरकार का कार्य केवल शान्ति स्थापित करना एवं भौतिक सुविधाये प्रदान करना था। किन्तु अब समय के साथ इस अवधारणा में भी परिवर्तन आया है, अब नीति निदेशक तत्व का मुख्य उद्देश्य जनता को आर्थिक, सामाजिक एवं राजनीतिक लाभ पहुँचाकर कल्याणकारी राज्य की स्थापना करना है।

नीति निदेशक तत्व में दिये गये निदेशक सिद्धान्तों के क्रियान्वन्यन में ही सरकार विभिन्न कल्याणकारी योजनायें बनाती है तथा जनता तक इसकी पहुँच सुनिश्चित करती है। इस कल्याणकारी योजनाओं का मुख्य उद्देश्य, देश को जनता को आधिकाधिक लाभ पहुँचाना है।इन कल्याणकारी योजनाओं से देश के आधिकाधिक जनसंख्या को जोड़ने के लिए ही सरकार द्वारा आधार परियोजना आरम्भ की गयी थी जिसका विरोध बहुत बड़े स्तर पर हुआ था। किन्तु वर्तमान समय में आधार परियोजना अत्यन्त व्यापक स्तर पर चल रही है। आज प्रत्येक व्यक्ति के पहचान के लिए आधार कार्ड को अनिवार्य कर दिया गया है।

वर्तमान समय में जनधन योजना, प्रधानमंत्री उज्जवला योजना, प्रधानमंत्री आवास विकास योजना, किसान सम्मान निधि इत्यादि ऐसी कल्याणकारी योजनाये है जो सरकार द्वारा जनहित में संचालित की जा रही है। इस वैश्विक महामारी के दौरान देश की लाखों गरीब जनता को मुक्त राशन वितरण, जनधन खातों के माध्यम से सरकार द्वारा दी गयी आर्थिक सहायता, उज्जवला योजना के माध्यम से लाखों घरों में मुफ्त रसोई गैस वितरण इत्यादि ऐसी कल्याणकारी योजनायें हैं जो वर्तमान में सरकार द्वारा चलाई जा रही है।

भारत एक लोकतान्त्रिक देश है जहॉ विविध धर्मों, जाति एवं संस्कृति के लोग रहते है। जहॉ सभी व्यक्तियो को समान रुप से अधिकार प्राप्त है, चाहे वे स्त्री, पुरुष, बालक, वृद्ध या कोई भी हो। भारत मे रहने वाले सभी लोगो को **विधि के समक्ष**

समानता एवं **विधियो के समान संरक्षण** का अधिकार मिला है, अर्थात् भारत मे रहने वाला प्रत्येक व्यक्ति एक ही विधि के अधीन है चाहे वह उच्च वर्ग का हो अथवा निम्न वर्ग का। भारत के संविधान मे विभिन्न प्रकार के अधिकारो को शामिल किया गया है, इन्ही में से एक है "निजता का अधिकार"। यद्यपि निजता के अधिकार से सम्बन्धित कोई स्पष्ट उपबन्ध हमारे संविधान में नहीं दिया गया है किन्तु निजता के अधिकार को भारतीय संविधान में अन्तर्निहित तत्व के रुप मे सम्मिलित किया गया है, जिसमे सभी व्यक्तियो को अपनी निजी जानकारी को अवैधानिक हस्तक्षेप से मुक्त रखने का अधिकार प्राप्त है।[18]

यहॉ यह उल्लेखनीय है कि यद्यपि भारत में निजता का अधिकार अत्यन्त बहस का विषय रहा है किन्तु भारतीय संविधान में निजता से सम्बन्धी कोई स्पष्ट उपबन्ध नही है। यहाँ यह बता दे कि संविधान के अनुच्छेद 21 के अन्तर्गत जीवन के अधिकार को उच्चतम न्यायालय ने आधारभूत अधिकार के रुप मे प्रस्तुत किया है एवं इस आधार पर सर्वोच्च न्यायालय ने विभिन्न व्याख्याने दी है। वर्तमान समय मे जीवन के अधिकार का क्षितिज इतने व्यापक स्तर पर फैला हुआ है कि उच्चतम न्यायालय द्वारा विभिन्न प्रकार के अधिकारो को इसके अन्तिर्निहित तत्व के रुप में शामिल किया गया है, जैसे निजता का अधिकार, निद्रा का अधिकार[19], जीविकोपार्जन का अधिकार[20], इत्यादि।

संविधान यह भी स्पष्ट करता है कि राज्य अथवा प्रशासन किसी व्यक्ति के निजी जीवन मे मनमाना हस्तक्षेप न करे। यह कारण है कि राज्य के नीति निदेशक तत्वों को संविधान मे समाहित किया गया है। संविधान में राज्यों पर कुछ सकारात्मक कर्तव्य अधिरोपित किये गये है जिनका पालन करना राज्य का कर्तव्य है। संविधान की प्रस्तावना मे परिकल्पित वाक्य लोकहितकारी राज्य एवं समाजवादी समाज की संकल्पना को पूरा करने के लिए राज्य इन निदेशक तत्वों को मानने के लिए बाध्य है। इन निदेशक तत्वों को संविधान में अन्तिर्निहित करने का मुख्य उद्देश्य राज्यों द्वारा कल्याणकारी योजनाओं की आड़ में होने वाले शोषण से जनता को बचाना है। नीति निदेशक तत्व भारतीय संविधान की अनोखी विशेषताये हैं।[21]

निजता का अधिकार संविधान द्वारा **अनुच्छेद**21 के अधीन एक संरक्षित अधिकार है। निजता का अधिकार, मानव गरिमा के साथ जीने के लिए अत्यन्त आवश्यक है जो संविधान के अनुच्छेद 21 के अधीन प्रदत्त प्राण एवं दैहिक स्वतन्त्रता के अधिकार मे समाहित है।निर्णय देते हुए उच्चतम न्यायालय के 9 न्यायाधीशों की खण्डपीठ ने पूर्व मे दिये दोनो निर्णय को ऊलट दिया जिसमे यह कहा गया था कि निजता का अधिकार संविधान द्वारा संरक्षित नही है, और यह अभिनिर्धारित किया कि:"निजता के अधिकार संविधान द्वारा गारण्टीकृत भाग 3 मे स्वतन्त्रताओ के एक भाग के रुप मे अनुच्छेद 21 के अधीन प्रदत्त प्राण एवं दैहिक स्वतन्त्रता के अधिकार के अन्तर्निहित हिस्से के रुप मे संरक्षित है।हांलाकि अपने इस फैसले मे सर्वोच्च न्यायालय ने यह भी कहा कि निजता का अधिकार कुछतर्कपूर्ण रोक के साथ ही मूल अधिकार है, साथ ही यह भी कहा कि

---

[18] ***अनुच्छेद*** 21, भाग 3, भारत का संविधान।

[19] ओलेगातेलीस बनाम बॉम्बे मुनिसिपल कॉरपोरेशन ***ए0आई0 आर0*** 1986 एस0सी0 180, दिल्ली डेवल्पमेण्ट हार्टीकल्चर इम्पालाइज यूनियन बनाम दिल्ली प्रशासन (1992)4 ***एस0सी0सी0*** 99

[20] शीला बरसे बनाम भारत संघ (1987) एस0सी0सी0 596, केदार पहाड़िया बनाम बिहार राज्य ***ए0आई0 आर0*** 1981 एस0सी0 934

[21] **अनुच्छेद** 35–51, भारत का संविधान।

हर मूल अधिकार परसामाजिक हित मे आवश्यकता पड़ने पर वैध निर्बन्धन लगाये जा सकते है। इस मामले मे निर्णय 9 न्यायाधीशो की संवैधानिक पीठ द्वारा सुनाया गया, जिसमे **चीफ जस्टिस जे0 एस0 खेहर, जस्टिस आर0 के अग्रवाल, जस्टिस एस अब्दुल नजीर** के साथ निर्णय देते हुए **जस्टिस डी0 वाई0 चन्द्रचूड़** ने यह कहा कि निजता व्यक्ति के व्यक्तित्व के विकास के लिए सहगामी अधिकार है ओर जीवन के महत्वपूर्ण पहलुओ को नियन्त्रित करने की क्षमता को विकसित करता है।संविधान पीठ के अन्य पॉच न्यायाधीशों **जस्टिस जे0 चेलमेश्वर, जस्टिस एस0 ए0 बोबड़े, जस्टिस आर0 एफ0 नरीमन, जस्टिस ए0 एम0 सप्रे** और **जस्टिस संजय किशनकौल** ने निजता के अधिकार के प्रति अलग अलग निर्णय दिये, किन्तु सभी ने एक मत मे यहस्वीकार किया कि निजता का अधिकार एक मौलिक अधिकार है। अतः सम्पूर्ण संवैधानिक पीठद्वारा आपसी व्यक्त करते हुए यह निर्णय दिया कि अन्य मौलिक अधिकारो की तरह निजता का अधिकार भी पूर्ण नहीं है।

निजता को मौलिक अधिकार घोषित करते हुए उच्चतम न्यायालय की संवैधानिक पीठ नेसरकार को करारा जवाब देते हुए कहा कि:"न्यायालय ने ऐसा कोई संवैधानिक कार्य नही कर रहा है, जो सांसद को करना चाहिए अथवा जो उसके अधिकारातीत है।"सरकार का यह कहना था कि निजता को मूल अधिकार का दर्जा प्रदान कर न्यायालय संसद का काम कर रहे है, जबकि संवैधानिक पीठ ने यह तर्क दिया कि नागरिको की निजता, जिसमे उनके स्वास्थ्य, धन और निजी जीवन की जानकारीया शामिल है, के संरक्षण का अधिकार है। आज लोग नही चाहते कि कोई भी उनके निजी जीवन मे हस्तक्षेप करे, किन्तुजहॉ लाभ दिखाई देता है वहा लोग आसानी से जानकारीया दे देते है। अतः सरकार को किसी भी प्रकार की योजना के क्रियान्वयन मे नागरिको के निजता के संरक्षण का अवश्य ध्यान रखना चाहिए।

केन्द्र सरकार ने आधार परियोजना की शुरुआत देश की अधिकांश जनता को कल्याणकारीयोजनाओ से जोड़ने के लिए की है। जनता की, राज्य की कल्याणकारी योजनाओ के हित मे निजता के अधिकार को छोड़ देने मे भलाई है। भारत मे अधिकतर आबादी गॉवो मे निवास करती है, तथा गरीब सामाजिक राजनैतिक अधिकार नही बल्कि आर्थिक तरक्की चाहते है जिससे वे अपने परिवार का पालन पोषण कर सके। हमारा इतिहास गवाह है कि किस प्रकार मानवाधिकारो का उल्लंघन लम्बे समय से होता चला आ रहा है। अतः संविधान मे दिये गये मूल अधिकार व्यक्ति को यह अधिकार देते है कि वे अपने जीवन मे हस्तक्षेप की सीमा तय कर सके। वह यह तय कर सके कि कौन, कब और कितना उसके निजी जीवन मे हस्तक्षेप कर सकता है। निजता व्यक्ति को उसका जीवन, अपने तरीकेसे जीने की स्वतन्त्रता प्रदान करता है।

तत्कालीन निर्णय द्वारा उच्चतम न्यायालय ने निजता के अधिकार को मूल अधिकार का दर्जा प्रदान कर दिया किन्तु न्यायालय ने यह भी कहा कि यह अधिकार सम्पूर्ण नही है तथा सामाजिक हित मे यदि आवश्यक हो तो, उक्त अधिकार पर निर्बन्धन लगाया जा सकता है। उदाहरण के लिए, समाज मे हो रहे अपराधो को रोकने के लिए निगरानी महत्वपूर्ण है, वहा व्यक्ति यह नही कह सकता कि यह उसका निजता का अधिकार है। इसी प्रकार जहॉ यह सन्देह हो कि किसी व्यक्ति के घर मे कोई अति उपयोगी वस्तु छिपायी गयी है तथा घर की तलाशी का आदेश जारी कर दिया जाय, वहॉ वह व्यक्ति निजता के अधिकार का सहारा लेकर उक्त खोज से बच नही सकता, एवं जहॉ ऐसी स्थिति उत्पन्न हो कि एक व्यक्ति की निजता की रक्षा के लिए अन्य

व्यक्तियो के अधिकारो का उल्लंघन होता हो तो वहॉ निजता के अधिकार का तर्क देना उचित नही होगा।

उच्चतम न्यायालय ने जहॉ इस निर्णय द्वारा सरकार को करारा झटका दिया वही उसने अपनी उस गलती की भरपाई भी कर ली जो उसने आपातकाल के दौरान मूल अधिकारो को निलम्बित करके की थी। उच्चतम न्यायालय का यह फैसला देश मे आतंकवाद के बहाने नागरिको के अधिकारो मे बढ़ता हस्तक्षेप और बढ़ते साइबर अपराध के विरुद्ध देश के नागरिको को सुरक्षा कवच प्रदान करता है। हॉलाकि इस मामले मे आधार कार्ड को विभिन्न गतिविधियो से जोड़ने को अनिवार्य किये जाने पर कोई निर्णय नही दिया गया है, किन्तु निजता को मूल अधिकार का दर्जा प्रदान कर उस दिशा मे पहला कदम है।[22]

अतः वर्तमान तत्कालीन निर्णय के विश्लेषण से हम ये कह सकते है कि पॉच और छःदशक के संघर्ष के बाद अब स्थिति बदल चुकी है। अब यदि किसी व्यक्ति के गोपनीयता केअधिकार का उल्लंघन होता है, तो वह न्यायालय का दरवाजा खटखटा सकता है।

अनुषंसायें

सरकार के इस तत्कालीन निर्णय द्वारा जहाँ एक ओर नागरिकों को निजता के रूप में एक नया मौलिक अधिकार मिला है तो वही उसने अनेकों प्रश्नों को भी जन्म दिया है। चूँकि संविधि निर्माण का कार्य विधायिका का होता है अतः यह कार्य विधायिका पर ही छोड़ देना चाहिए। वर्तमान डिजिटल युग में निजता के अधिकार पर अनेकों संकट मंडरा रहे हैं। आज राज्य की कल्याणकारी परियोजनाओं का लाभ सीधे जनता तक पहुँच रहा है। अतः जहाँ एक ओर यह परियोजना हमे लाभ पहुँचाती है, वही कहीं न कहीं हमारी निजता खतरे में पड़ती जा रही है। जहां एक ओर कुछ लाभ है तो वहीं कुछ हानि है।भारत में रह रहे गरीब तबके के लोगों के लिए किसी भी अन्य लाभ से अधिक आर्थिक लाभ मायने रखता है। अतः जहां सरकार द्वारा चलाई यह परियोजना उचित एवं वैद्य उद्देश्य रखती है एवं इसका उद्देश्य जनता का कल्याण करना है। तो हमे भी अपने निजी जीवन में कुछ सीमा तक निजता की अवधारणा को दरकिनार करते हुए सरकार द्वारा उठाये जाने वाले कल्याणकारी कदमों का आदर एवं सम्मान करना चाहिए।

- सरकार को सदैव राज्य और नागरिकों के मध्य सन्तुलन बनाये रखना चाहिए।
- बड़े पैमाने पर हो रहे डेटा चोरी, डेटा के संग्रहण एवं प्रसंस्करण इत्यादि को रोकने के लिए सरकार को सख्त कदम उठाने चाहिए।
- इस डिजिटल युग में सरकार द्वारा मजबूत व्यक्तिगत डेटा संरक्षण प्रणाली का निर्माण करना चाहिए।
- सरकार द्वारा गोपनीयता का अर्थ सभी के लिए एक समान लगाना चाहिए।
- जहाँ निजी हित और सार्वजनिक हित में संघर्ष उत्पन्न हो जाये, वहाँ सरकार को अति सतर्कता बरतते हुए कोई निर्णय लेना चाहिए।
- गोपनीयता का अधिकार मात्र राज्य के विरूद्ध सीमित न होकर ऐसे सभी व्यक्तियों एवं निजी संस्थानों के विरूद्ध भी प्राप्त होने चाहिए जो नागरिकों का डेटा एकत्र करते हैं।

[22] वही

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

प्राचीन भारतीय शास्त्र परम्परा में सामाजिक विधि–व्यवस्था

डा0 अभिषेक अग्निहोत्री
असिस्टेन्ट प्रोफेसर, संस्कृत विभाग
महाराज बलवन्त सिंह पी0जी0 कॉलेज
गंगापुर–वाराणसी

सार संक्षेपः– सृष्टि की सम्पूर्ण प्रक्रिया एक व्यवस्था के अन्तर्गत समायोजित है। नक्षत्रों का भ्रमण, वनस्पतियों का ऋतुकाल चक्र के अनुसार उत्पन्न होना और नष्ट होना, नदियों का प्रवाह परमाणुओं में इलेक्ट्रान का चक्रण आदि ऐसी अनेक प्रक्रियाएँ है, जो एक सुनिश्चित व्यवस्था के अन्तर्गत विधिपूर्वक निरन्तर संचालित हो रही है। वेदों में इस नित्य व्यवस्था को 'ऋ' कहा गया तो पुराणों में इसे विधाता का विधान बताया गया । यदि हम जीवित प्राणियों की बात करें तो उनका भी जीवन चक्र एक प्राकृतिक विधान के अनुसार संचालित होता है। निद्रा आहार, मैथुन, भय आदि ऐसी अनेक प्रक्रियाएँ हैं जिनके भिन्न–भिन्न प्राकृतिक विधान है। लेकिन मनुष्य अपने बौद्धिक विकास के कारण इन प्राकृतिक नियमों से इतर हटकर भी अपनी अपनी व्यवस्था या कर्म सम्पादित करता है। इसकी दो दिशाएँ हैं– विकृति एवं संस्कृति। जब मनुष्य प्राकृतिक अवस्था में ऊपर उठकर सह –अस्तित्व एवं सामंजस्य की भावना से एक समाज की रचना करता है तब उसके लिए कुछ विधि एवं निषेध का भी निर्माण करता है। प्रत्येक व्यक्ति के द्वारा इन विधि–निषेधों के पालन पर ही समाज व्यवस्था की सुदृढ़ता, सामंजस्य, सुख–शक्ति एवं समृद्धि का विकास होता है। दूसरी अवस्था विकृति की होती है। जब व्यक्ति प्रकृति के नियमों के नियमों के इतर हटकर समाज के स्थान पर केवल स्वयं का चिंतन करता है और न प्रकृति के नियमों का पालन करता है, न समाज के नियमों का पालन करना है, तब यह विकृति अवस्था है।

हमारे ऋषि–मुनियों ने, समाज के सामंजस्य, शान्ति, समृद्धि एवं लौकिक व पारलौकिक अभ्युदय के लिए समाज व्यवस्था का निर्माण किया था। जिसका पालन करते हुए प्रत्येक व्यक्ति लौकिक अभ्युदय से लेकर पारलौकिक निः श्रेयस सिद्धि तक की प्राप्ति कर सकता था। हमारे शास्त्रों में ऐसा वर्णन है कि प्राचीन काल में सभी लोग अपनी स्वेच्छा से इस व्यवस्था का पालन करते थे। न तो उस समय राज्य था, न

राजा, न दण्डनीय अपराधी, न दण्ड, धर्म के द्वारा ही सम्पूर्ण प्रजा एक दूसरे की रक्षा करती थी।

नवै राज्यं न राजासीत् न दण्डो न च दाण्डिकः।
धर्मेणैव प्रजासर्वाः रक्षन्ति स्म परस्परम्।। —महाभारत, शान्ति पर्व —95.14

बाद में लोगों ने इस व्यवस्था का अतिक्रमण करना प्रारम्भ किया, जिससे राज्य—व्यवस्था का उदय हुआ, और राज्य के द्वारा कुछ विधि—निषेध के नियम बनाए गए तब एक आरोपित विधि व्यवस्था का निर्माण हुआ। ऋषियों ने समाज के लिए जिस व्यवस्था धर्म का निर्माण किया था वह बहुतांश में स्वैच्छिक विधि—व्यवस्था थी। उसमे राज्य के द्वारा आरोपित दण्ड का भय नहीं था, वह मनुष्य के आन्तरिक चेतना के द्वारा सहज एवं स्वाभाविक रूप में प्रकट होती थी। राज्य द्वारा आरोपित विधि व्यवस्था मनुष्य के नैसर्गिक स्वतन्त्रता की चेतना को कहीं न कहीं खण्डित करती है और व्यक्ति इन विधियों का खण्डन करके स्वयं को शक्तिशाली एवं स्वतन्त्र होने की अनुभूति करता है। लेकिन जब विधि व्यक्ति के आन्तरिक चेतना के साथ सहज हो जाती तब उसके स्वाभाव के अंग के रूप में पालनीय हो जाती है। हमारे ऋषियों एवं मनीषियों ने एक ऐसे व्यवस्था धर्म का निर्माण किया था जिसमें राज्य के द्वारा आरोपित विधि की न्यूनतम भूमिका होती थी। यह व्यवस्था धर्म व्यक्ति, परिवार, समाज एवं सृष्टि के बीच सामंजस्य स्थापित करते हुए व्यक्ति के विकास मार्ग के प्रशस्त करती थी। इसके अन्तर्गत जन्म से लेकर मृत्यु तक के सम्पूर्ण दिशा —निर्देश को मनुष्य के अन्दर के सह—जात बनाने के लिए मनुष्य के जन्म से लेकर मृत्यु तक के षोडश संस्का, वर्ण व्यवस्था, पंचमहायज्ञ, पुरूषार्थचतुष्टय, आश्रम व्यवस्था इनके साथ जुड़े काम्य, निषिद्ध, नित्य, नैमित्तिक, प्रायश्चित तथा उपासना कर्म आदि का उन्होंने विधान किया था। भारतीय जनमानस में जो शक्ति निरन्तर भारतवासियों को अनुप्रमाणित करती चली आ रही है, संस्कृत वाड्म्य में प्रतिबिम्ब उसी जीवन शक्ति को 'भारतीय संस्कृति' की संज्ञा दी जाती है। 'संस्कृतिः संस्कृतधीना' कहकर संस्कृति एवं सस्ंस्कृत के इसी तादत्म्य को प्रतिपादित किया गया है। संस्कृतिकरण वह प्रक्रिया है, जिसमें ज्ञान, विश्वास, नैतिक जीवन मूल्य और नियम कायदे —कानून विषयक बातों का समन्वय होता है जिन्हें व्यक्ति समाज का सदस्य होने से अपने समाज में स्वाभाविक रूप से प्राप्त भी करता है।

जब मनुष्य प्रकृति का दोहन करके भौतिक क्षेत्र का विकास करता है, तो सभ्यता उसका प्रतिफलन होती है, जबकि संस्कृति मुख्यतः उसका मानवीय चेतना की आन्तरिक उपलब्धियों तथा अभ्युत्थान की निरूपिका होती है। संस्कृति ही सभ्यता की जननी है। संस्कृति में मानव को शान्ति, सन्तुष्टि एवं आनन्द की अनुभूति होती है। इसे प्राप्त करने के लिए मनुष्य हृदय से प्ररित होता है। सभ्यता संस्कृति को प्राप्त करने का साधन है तथा संस्कृति परम साध्य है। व्यक्ति के जीवन में श्रेष्ठ मूल्यों का समावेश ही भारतीय संस्कृति की मूलभूत आवश्यकता। 'सा प्रथमा संस्कृति विश्वारा' करकर प्राच्य मनीषियों ने वैदिक संस्कृति की प्राचीनता को प्रतिपादित किया है। यद्यपि अनेकशः हमारी भारतीय संस्कृति की जीव उतनी गहरी है कि वह इस संस्कृति रूपी भवन को ढहा नहीं सके। हमारी भारतीय संस्कृति का प्राणतत्व संस्कृत वाड्म्य रहा है, जो अनादिकाल से प्रवाहमान मन्दाकिनी के सदृश अविरलरूप से गतिशील हैं।

संस्कृति हमारे जीवन का एक ऐसा विशिष्ट अंग है, जो हमारी भौतिक तथा आध्यात्मिक दोनों शैली का प्रेरणा प्रदान करती है। भौतिक संस्कृति एवं आध्यात्मिक संस्कृति एक दूसरे के पूरक होते हैं। भारतीय मनीषियों ने समाज के इन्हीं पक्षों का गहनता के साथ

चिन्तन–मनन किया था और एक ऐसी सांस्कृतिक जीवन पद्धति की नींव स्थापित की, जिससे समाज निरन्तर सुख शान्ति के साथ अपने जीवन यापन की अवधि में आनन्दित रहता है। वस्तुतः शारीरिक और मानसिक शक्तियों से उत्पन्न अवस्था विकास ही संस्कृति है।

भारतीय संस्कृति की विशेषता है कि वह प्रतिकूल परिस्थितियों में भी अपने का अनुकूल बना लेती है। ऐतिहासिक काल में यवन, शक, कुषाण, हूण आदि अनेक जातियों ने भारत पर आक्रमण किया, किन्तु भारतीय संस्कृति के प्रभाव में आकर वे स्वयं भारतीय संस्कृति के प्रचारक एवं उन्नायक बन गए। शक महाक्षत्रप रूद्रदामन धर्म एवं संस्कृति का पोषक था। कुषाण शासक कनिष्क ने बौद्ध धर्म को न सिर्फ अंगीकृत किया, अपितु उसके प्रचार प्रसार में अपने समस्त साधनों को योजित कर दिया। हिन्द–यवन मिलिन्द ने बौद्ध संघ में अर्हत पद को प्राप्त किया। इतना ही नहीं तुर्क भी भारतीय संस्कृति से प्रभावित हुए तथा उसके जीवन मूल्यों को आत्मसात किया। यह सब हमारी भारतीय संस्कृति की ग्रहणशीलता के फल है।

हमारी भारतीय संस्कृति अपने समन्यवादी दृष्टिकोण के लिए विश्व विश्रुत है। यद्यपि हमारी भारतीय संस्कृति में वर्णाश्रम व्यवस्था प्रतिपादन किया गया है तथापि हमारी भारतीय संस्कृति भक्ति एवं उपासना के क्षेत्र में सभी वर्णो को समान अधिकार देने की पक्षधर रही है। यही कारण है कि अनेक विदेशियों ने भारत में आकर वैष्णव धर्म को अंगीकार कर लिया तथा हमारी भारतीय संस्कृति के नैतिक मूल्यों को आत्मसात् कर लिया। श्रीमद्गवतमहापुराण के अनुसार–किरात, हूण, पुलिन्द, पुलकस, आभीर, कङ्क , यवन, खश और अन्य जातियाँ जिन्होंने पाप का आश्रय लिया था, वे भगवान विष्णु को शरणागत होकर शुद्ध हो गयी–

किरातहूणान्ध्रपुलिकन्दपुल्कशा आभीरकङ्काः यवनाः खसादयः।
येऽन्ये च पापा यदपात्रयाश्रयाः शुध्यन्ति तस्मै प्रभविष्ठवे नमः।। श्रीमद्भगवत –2.4.18

इससे यह ज्ञात होता है कि हमारी संस्कृति सभी को आश्रय देती है तथा प्राणिमात्र का अभ्युदय ही भारतीय संस्कृति का ध्येय है।

विश्वबन्धुत्व एवं विश्वशान्ति की पुनीत भावना से युक्त हमारे प्राचीन भारतीय मनिषियों ने मानवमात्र में मैत्री तथा सौहार्द के लिए ईश्वर से प्रार्थना की –'मित्रस्याहं चक्षुषा सर्वाणि भूताणि समीक्षे। मित्राय चक्षुषा समीक्षामहे।। –यजुर्वेद 36.18

हमारी भारतीय संस्कृति में न तो भोगवाद को स्वीकार किया जाता है और न ही वैराग्यबाद के प्राधान्य को ही स्वीकार किया जाता है। ये दोनों ही क्रमशः सकार्यकर्मवाद अकर्ममार्ग होने से एकांगी एवं त्यात्य है। वस्तुत भारतीय संस्कृति निष्काम कर्मयोग का सन्देश देती हुई मध्यम वर्ग का अनुसरण करती है जो भोगवाद के कर्म और वैराग्यवाद के निष्काम कर्म के योग प्रतिफल है।

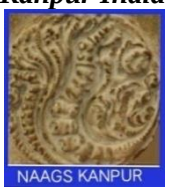
आध्यात्मिकता एवं धार्मिकता भारतीय संस्कृति के प्राणतत्व है। प्राचीन भारतीय संस्कृति का मनीषियों ने ऐहिक एवं पारलौकिक अभ्युदय का चिन्तन करते हुए पुरूषार्थचतुष्टय एं आश्रम व्यवस्था का प्रतिपादन कर मनुष्य को आध्यात्मिक साधना की ओर प्रवृत्त किया। मानव जीवन का परम लक्ष्य मोक्ष की प्राप्ति है। भारतीय मनीषियों ने मोक्ष प्राप्ति हेतु पुरूषार्थ चतुष्टय की स्थापना की है। भारतीय पद्धति में अर्थ एवं काम की अवहेलना न करते हुए उसे धर्म में इस प्रकार मर्यादित किया गया है कि वह मोक्ष प्राप्ति में साधक की भूमिका निभाता है। धर्म के द्वारा ही शेष तीनों पुरूषार्थों का सम्यक् भोग सम्भव तथा साध्य है। धर्म मनुष्य के जीवन की सभी अवस्थाओं में उसकी क्रियाओं को प्रेरित

तथा प्रभावित करता है। जो व्यक्ति धर्म का पालन करता है, उसी को मोक्ष की प्राप्ति होती है। इस प्रकार भारतीय संस्कृति का जीवनधायक तत्व धर्म है।

भारतीय संस्कृति में सार्वभौमिकता की भावना साहित्य एवं दर्शन में स्थान–स्थान पर मुखरित होती है–

'सर्वे भवन्तु सुखिनः सर्वे सन्तु निरामयाः।
सर्वे भद्राणि पश्यन्तु मा कश्चिद दुःख भाग भवेत्।। तैत्तिरीय उपनिषद

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

संविधान की आत्मा मौलिक अधिकार

डॉ दयाशंकर सिंह यादव
एसोसिएट प्रोफेसर समाजशात्र
सकलडीहा पी. जी. कालेज,
सकलडीहा, चन्दौली

सारांश
मौलिक अधिकार भारत के प्रत्येक नागरिक को प्राप्त होता है। जिसने भारत की सदस्यता ली है वह इसका हकदार होता है और भारत सरकार इसे सामान्य परिस्थिति में सीमित नहीं कर सकती।संविधान सभी नागरिकों के लिए व्यक्तिगत और सामूहिक रूप से कुछ बुनियादी स्वतंत्रता देता है। जिन देशों के संविधान में मौलिक अधिकार का वर्णन नहीं होता है अथवा मौलिक अधिकार को संविधान में जगह नहीं मिलती है तो वह देश जल्द ही तानाशाही देश हो जाता है। राज्य शक्ति को यदि संवैधानिक रूप से नियंत्रण में रखना है और राज्य की जनता को उनके मौलिक अधिकार देना है तो संविधान में मौलिक अधिकार महत्वपूर्ण होता है। यह व्यक्ति की मूलभूत स्वतंत्रता को निर्धारित करता है। संविधान के भाग III को 'भारत का मैग्नाकार्टा' की संज्ञा दी गई है।

मुख्य शब्द– मौलिक अधिकार, संविधान, नागरिकों, समानता।

मौलिक अधिकार का अर्थ होता है वे अधिकार जो व्यक्ति के जीवन के मौलिक रूप से आवश्यक है। ये अधिकार किसी भी देश के संविधान के द्वारा वहां के नागरिकों को प्रदान किये जाते हैं, जो नागरिकों के जीवन–यापन व सुरक्षा के दृष्टि से सबसे महत्वपूर्ण है। मौलिक अधिकार की रक्षा देश की सर्वोच्च न्यायालय करता है। भारतीय संविधान के अंतर्गत मौलिक अधिकार एक महत्वपूर्ण भाग है। मौलिक अधिकार उन अधिकारों को कहा जाता है जो व्यक्ति के जीवन के लिये मौलिक होने के कारण संविधान द्वारा नागरिकों को प्रदान किये जाते हैं और जिनमें राज्य द्वार हस्तक्षेप नही किया जा सकता। ये ऐसे अधिकार हैं जो व्यक्ति के व्यक्तित्व के पूर्ण विकास के लिये आवश्यक हैं और जिनके बिना मनुष्य अपना पूर्ण विकास नही कर सकता। ये अधिकार कई करणों से मौलिक हैंः–

1.इन अधिकारों को मौलिक इसलिये कहा जाता है क्योंकि इन्हे देश के संविधान में स्थान दिया गया है तथा संविधान में संशोधन की प्रक्रिया के अतिरिक्त उनमें किसी प्रकार का संशोधन नही किया जा सकता।

2.ये अधिकार व्यक्ति के प्रत्येक पक्ष के विकास हेतु मूल रूप में आवश्यक हैं, इनके अभाव में व्यक्ति के व्यक्तित्व का विकास अवरुद्ध हो जायेगा।

3.इन अधिकारों का उल्लंघन नही किया जा सकता।

4.मौलिक अधिकार न्याय योग्य हैं तथा समाज के प्रत्येक व्यक्ति को समान रूप से प्राप्त होते है।

मौलिक अधिकार का महत्व – मौलिक अधिकार देश के नागरिकों के जीवन यापन हेतु बेहद अनिवार्य होते हैं। यह व्यक्ति को मुख्य रूप से सुरक्षा प्रदान करते हैं। मौलिक अधिकार देश के नागरिकों के मानसिक एवं नैतिक विकास के लिए भी बेहद आवश्यक माने जाते हैं।

मौलिक अधिकारों का उद्देश्य – भारत का संविधान मौलिक अधिकारों को संरक्षित करने के लिए बनाया गया है। भारतीय संविधान द्वारा प्रदत्त मौलिक अधिकारों का मुख्य उद्देश्य एक नागरिक के व्यक्तित्व का सर्वांगीण विकास है। छह मौलिक अधिकार हैं जो भारत के संविधान के भाग प्प् (अनुच्छेद 12 से 35) में निहित हैं। मूल अधिकार सभी नागरिकों पर सार्वभौमिक रूप से लागू होते हैं, चाहे वे किसी भी जाति, जन्मस्थान, धर्म, जाति या लिंग के हों। इन अधिकारों का उद्देश्य सभी भारतीयों को समान अधिकार देना है, जिससे वे स्वतंत्रता, जीवन, स्वास्थ्य, शिक्षा, स्थायित्व, समानता और धर्मनिरपेक्षता जैसे मूल्यों का आनंद ले सकें।

मौलिक अधिकार का निर्माण– भारतीय संविधान दुनिया का सबसे बड़ा लिखित संविधान है। भारतीय संविधान में सभी उपबन्धों को विस्तृत और व्यापक रूप में अधिकारों को इंगित किया गया है। यह संघात्मक संविधान का सबसे बड़ा रूप है ।सभी आधुनिक संविधानों में मूल अधिकारों का उल्लेख है। इसलिए संविधान के अध्याय 3 को भारत का अधिकार दृ पत्र कहा जाता है। 'मैग्नाकार्टा' अधिकारों का वह प्रपत्र है, जिसे इंग्लैंड के किंग जॉन द्वारा 1215 में सामंतों के दबाव में जारी किया गया था। यह नागरिकों को पहला लिखित प्रपत्र था। इस दस्तावेज को मूल अधिकारों का जन्मदाता कहा जाता है। इसके पश्चात् समय–समय पर सम्राट् ने अनेक अधिकारों को स्वीकृति प्रदान की।फ्रांस में सन् 1789 में जनता के मूल अधिकारों की एक दस्ताबेज के रूप में घोषणा की गयी, जिसे मानव एवं नागरिकों के अधिकार घोषणा–पत्र के नाम से जाना जाता है। इसमें उन अधिकारों को प्राकृतिक अप्रतिदेय और मनुष्य के पवित्र अधिकारों के रूप में उल्लिखित किया गया हैय यह दस्तावेज एक लम्बे और कठिन परिश्रम का परिणाम था।जब भारत का संविधान निर्माण हो रहा था तो ऐतिहासिक पृष्ठभूमि तैयार थी जिसमें इंग्लैंड और फ्रांस के मूल अधिकारों के बारे में भारतीय विद्वानों ने अध्ययन किया और उसके फलस्वरुप भारतीय संविधान में मूल अधिकारों को शामिल किया।

मौलिक अधिकारों का वर्गीकरण– भारतीय संविधान में नागरिकों के मौलिक अधिकारों का वर्णन संविधान के तीसरे भाग में अनुच्छेद 12 से 35 तक किया गया है। इन अधिकारों में अनुच्छेद 12, 13, 33, 34 तथा 35 क संबंध अधिकारों के सामान्य रूप से है। 44 वें संशोधन के पास होने के पूर्व संविधान में दिये गये मौलिक अधिकारों को सात श्रेणियों में बांटा जाता था परंतु इस संशोधन के अनुसार संपति के अधिकार को सामान्य कानूनी अधिकार बना दिया गया। भारतीय नागरिकों को छ्ह मौलिक अधिकार प्राप्त है :–

1.समानता का अधिकार : अनुच्छेद 14 से 18 तक।
2.स्वतंत्रता का अधिकार : अनुच्छेद 19 से 22 तक।
3.शोषण के विरुध अधिकार : अनुच्छेद 23 से 24 तक।
4.धार्मिक स्वतंत्रता क अधिकार : अनुच्छेद 25 से 28 तक।
5.सांस्कृतिक तथा शिक्षा सम्बंधित अधिकार : अनुच्छेद 29 से 30 तक।
6.संवैधानिक उपचारों का अधिकार : अनुच्छेद 32

भारत के संविधान में मौलिक अधिकारों को तीन वर्गों में वर्गीकृत किया गया है।

1.**जीवन, स्वतंत्रता और उचित जीवनाधार के अधिकार –**

(क) जीवन का अधिकार– जीवन का अधिकार मौलिक मानवीय अधिकारों में से एक है जो सभी मनुष्यों को उनके जीवन के लिए संरक्षण प्रदान करता है। यह अधिकार मानव जीवन की महत्त्वपूर्णता को स्थापित करता है और उनके जीवन की सुरक्षा और संरक्षण के लिए संवैधानिक संरक्षण प्रदान करता है। जीवन का अधिकार मानव जीवन की सुरक्षा, आरोग्य, जीवन के स्तर, भोजन और बेहतर जीवन शर्तों के लिए संगठित रहने के लिए है। इस अधिकार का विस्तार समाज के उन समूहों तक भी होता है जो दुर्बल होते हैं, जैसे कि बच्चे, महिलाएं, वृद्ध लोग और अल्पसंख्यक समुदाय।जीवन का अधिकार सभी मानवों के लिए संवैधानिक व्यवस्था में संरक्षित होता है और अन्य मानवीय अधिकारों की तरह इसे संवैधानिक उपाधि द्वारा संरक्षित किया जाता है। यह अधिकार संयुक्त राष्ट्र मानवाधिकार परिणाम से भी जुड़ा हुआ है।जीवन का अधिकार सभी मानवों के लिए बेहद महत्वपूर्ण होता है। (ख) दंडमुक्त होने का अधिकार–दंडमुक्त होने का अधिकार मौलिक मानवीय अधिकारों में से एक है जो सभी मनुष्यों को उनके दंडमुक्त होने के लिए संरक्षण प्रदान करता है। यह अधिकार मानव अधिकारों के संग्रह में एक महत्वपूर्ण अधिकार होता है जो बिना किसी दंड या सजा के मनुष्य के स्वतंत्रता को सुनिश्चित करता है।इस अधिकार के तहत, कोई भी व्यक्ति बिना किसी न्यायिक या वैधानिक कारण के, गैरकानूनी तरीके से विचाराधीन नहीं किया जा सकता है। यह अधिकार संवैधानिक रूप से संरक्षित होता है और किसी भी सरकार द्वारा इसे प्रतिबंधित नहीं किया जा सकता है।दंडमुक्त होने का

अधिकार एक मुक्त, न्यायाधीशों द्वारा आवश्यकता के अनुसार दंड तथा सजा की विचारणा करने के बाद दिया जाता है। यह अधिकार अत्यंत महत्वपूर्ण होता है क्योंकि इसके बिना व्यक्ति का जीवन और स्वतंत्रता कभी भी खतरे में हो सकते हैं और समाज के विकास तथा मनुष्य के मूल्यों के बिना हो सकता है। (ग)गुलामी और पराधीनता से मुक्त होने का अधिकार– गुलामी और पराधीनता से मुक्त होने का अधिकार मानव अधिकारों में से एक है, जो हर व्यक्ति को उसकी स्वतंत्रता और आजादी के लिए अधिकार प्रदान करता है। इस अधिकार के अंतर्गत हर व्यक्ति को अपने देश में या किसी अन्य देश में किसी भी प्रकार की गुलामी, बाँध, या दासत्व से मुक्त होने का अधिकार होता है।यह अधिकार संवैधानिक रूप से संरक्षित होता है और किसी भी सरकार द्वारा इसे प्रतिबंधित नहीं किया जा सकता है। इस अधिकार के तहत, कोई भी व्यक्ति अपने जीवन और आजादी के लिए जिस तरह का भी स्वतंत्र चयन कर सकता है, वह उसे चुन सकता है और अपने जीवन को स्वतंत्र तरीके से जी सकता है। गुलामी और पराधीनता से मुक्त होने का अधिकार अत्यंत महत्वपूर्ण है, क्योंकि यह हमारी आजादी और स्वतंत्रता के लिए जड़ी हुई समस्याओं से निपटने में मदद करता है। (घ) स्वतंत्रता का अधिकार,(ङ) समानता का अधिकार–(च) उचित जीवनाधार का अधिकार– उचित जीवनाधार का अधिकार मानव अधिकारों का एक महत्वपूर्ण अधिकार है, जो हर व्यक्ति को उन्नत और स्वस्थ जीवन जीने के लिए अधिकार प्रदान करता है। इस अधिकार के अंतर्गत, हर व्यक्ति को स्वस्थ भोजन, पानी, स्वच्छता, निवास, स्वस्थ्य सेवाएं, वस्त्र, शिक्षा और प्रकाश के लिए अधिकार होता है।उचित जीवनाधार का अधिकार संवैधानिक रूप से संरक्षित होता है और किसी भी सरकार द्वारा इसे प्रतिबंधित नहीं किया जा सकता है। इस अधिकार के तहत, कोई भी व्यक्ति उन्नत जीवन जीने के लिए संभव रहे बिना किसी भी रूप में उसकी आवश्यकताओं से वंचित नहीं हो सकता है।उचित जीवनाधार का अधिकार हमारी मानवीय दिग्गजता का मूल बनता है। इस अधिकार के बिना, हम अपनी मौलिक आवश्यकताओं से वंचित हो सकते हैं और उन्नत जीवन जीने से वंचित हो सकते हैं। उचित जीवनाधार का अधिकार हमें एक आरामदायक, स्वस्थ और खुशहाल जीवन जीने का अधिकार

2.संरक्षण के अधिकार –

(क) बालकों के अधिकार– बालकों के अधिकार उन्हें सुरक्षित रखने, संरक्षित करने, समझाने और सम्मानित करने का अधिकार है। बालक वो होते हैं जो अभी बच्चे होते हैं, जिन्हें हम बच्चों के रूप में भी जानते हैं। यह अधिकार बच्चों को उनके संपूर्ण विकास के लिए सुरक्षा, स्वतंत्रता, शिक्षा, संभावनाएं, स्वास्थ्य देखभाल और खुशहाल जीवन जीने के लिए प्रदान करता है।बालकों के अधिकार के रूप में उन्हें निम्नलिखित अधिकार प्रदान किए जाते हैंःबालकों को समान अधिकारः सभी बालकों को समान अधिकार होते हैं और वे अपने अधिकारों के लिए लड़ सकते हैं।बालकों की सुरक्षाः बालकों को हर स्तर पर सुरक्षित रखना हमारी जिम्मेदारी होती है। उन्हें फिजिकल, मानसिक, सामाजिक और आर्थिक रूप से सुरक्षित रखना चाहिए। बालकों का शिक्षा अधिकारः सभी बालकों को शिक्षा का अधिकार होता है, जिससे उन्हें अपने भविष्य के लिए तैयारी करने में मदद मिलती है। **(ख) महिलाओं के अधिकार**– महिलाओं के अधिकार मुख्य रूप से वह समस्याएं हैं जो महिलाओं के सामने अधिकतर देशों में पाई जाती हैं। वे समानता, सुरक्षा, स्वतंत्रता, संज्ञान और स्वतंत्र फैसले का अधिकार जैसे अधिकारों की मांग करती हैं।इन अधिकारों में से कुछ मुख्य हैंः समानताः महिलाओं के अधिकार का पहला एवं मुख्य अधिकार समानता का है। वे सभी पुरुषों के समान होते हैं और समान अधिकारों के धनी होते हैं। सुरक्षाः महिलाओं को सुरक्षित रखने का अधिकार होता है। उन्हें हिंसा और अत्याचार से बचाना चाहिए। स्वतंत्रताः महिलाओं का अधिकार होता है कि वे अपने जीवन के फैसलों को स्वतंत्रता से ले सकें। संज्ञान अधिकारः महिलाओं को अपने अधिकारों के बारे में जागरूक होने का अधिकार होता है। उन्हें इन अधिकारों के बारे में जानकारी और संज्ञान होना चाहिए। स्वतंत्र फैसले का अधिकारः महिलाओं को अपने जीवन के सभी फैसलों के लिए स्वतंत्र फैसले करने का अधिकार (ग) **दलितों और अल्पसंख्यकों के अधिकार**– दलितों और अल्पसंख्यकों के अधिकार समानता, संरक्षण, समाजी आर्थिक स्थिति, शिक्षा और उनके धार्मिक और सांस्कृतिक अधिकारों के लिए लड़ाई करने जैसे अधिकारों की मांग करते हैं।इन अधिकारों में से कुछ मुख्य हैंः समानताः दलितों और अल्पसंख्यकों के अधिकारों में समानता का होना बहुत महत्वपूर्ण है। उन्हें सभी मूल अधिकारों के लिए समानता का अधिकार होता है। संरक्षणः दलितों और अल्पसंख्यकों को संरक्षण के अधिकार होते हैं। उन्हें हिंसा, शोषण और अत्याचार से बचाना चाहिए। समाजी आर्थिक स्थितिः दलितों और अल्पसंख्यकों का अधिकार होता है कि वे समाज के सभी अंगों के साथ समान रूप से जीवन जी सकें। उन्हें उचित मजदूरी, वित्तीय सहायता और अन्य समाजी लाभों का अधिकार होता है। शिक्षाः दलितों और

अल्पसंख्यकों को शिक्षा का अधिकार होता है। उन्हें समान रूप से शिक्षा के लिए सुविधाएं और अवसर प्रदान किए **(घ) वृद्धों के अधिकार**– वृद्धों को भी अपने अधिकारों का लाभ मिलना चाहिए। कुछ महत्वपूर्ण वृद्धावस्था संबंधी अधिकार निम्नलिखित हैं:

जीवन का अधिकार – वृद्धों को सम्मान के साथ जीवन जीने का अधिकार होता है। उन्हें खाने–पीने की सुविधा और वैद्यकीय सेवाओं का अधिकार होता है। **स्वतंत्रता का अधिकार** – वृद्धों को अपने जीवन के विभिन्न पहलुओं के लिए स्वतंत्रता का अधिकार होता है। उन्हें स्वतंत्र रूप से अपने दोस्तों और परिवार से मिलने और उनसे बातचीत करने का अधिकार होता है। **समाजिक सुरक्षा** – वृद्धों को समाजिक सुरक्षा के अधिकार होते हैं जैसे कि आवास, वित्तीय सहायता, तथा बुरी तरह से कुप्रबंधन से बचाने का अधिकार। **सम्मान का अधिकार** – वृद्धों को सम्मान का अधिकार होता है। उन्हें समाज के अन्य सदस्यों की तरह सम्मान दिया जाना चाहिए और उनकी सेवा करने का भी अधिकार होता है। **न्याय का अधिकार** – वृद्धों को न्याय का अधिक (ङ) **गरीबों के अधिकार**–गरीबों के भी अधिकार होते हैं। कुछ मुख्य गरीबों के अधिकार निम्नलिखित हैं: **खान–पान के अधिकार**: हर व्यक्ति को उचित खाने का अधिकार होता है। गरीबों के लिए उचित खाना, पानी और स्वच्छता के साथ भोजन उपलब्ध होना चाहिए। **आवास के अधिकार**: गरीबों के लिए उचित आवास की व्यवस्था की जानी चाहिए। उन्हें स्वस्थ रहने के लिए अपने परिवार के साथ उचित स्थान पर रहने का अधिकार होता है। **शिक्षा के अधिकार**: गरीब लोगों के बच्चों को उचित शिक्षा का अधिकार होता है। वे उच्च शिक्षा तक पहुंचने का संघर्ष देने वाली स्थानों से शिक्षा प्राप्त करने का अधिकार रखते हैं। **नौकरी के अधिकार**: गरीब लोगों को उचित रोजगार मिलना चाहिए। उन्हें अपनी क्षमता और योग्यता के अनुसार नौकरी मिलने का अधिकार होता है। **स्वास्थ्य के अधिकार**: गरीब लोगों को उचित स्वास्थ्य सेवाएं प्रदान की जानी चाहिए। (च) **स्वस्थ वातावरण का अधिकार**– स्वस्थ वातावरण का अधिकार एक मूलभूत मानव अधिकार है। यह अधिकार वातावरण, परिसर और जीवन के साथ संबंधित होता है। हर व्यक्ति को शुद्ध वातावरण और स्वस्थ परिसर का अधिकार होता है। इसके तहत, हर व्यक्ति को स्वच्छ और प्रदूषणमुक्त वातावरण, स्वस्थ वातावरण से जुड़े स्वास्थ्य सेवाओं और जीवन के लिए जरूरी सामाजिक और आर्थिक संरचनाओं तक पहुंच का अधिकार होता है। यह अधिकार लोगों को एक स्वस्थ और सुरक्षित वातावरण और समुदाय की खुशहाली के लिए जरूरी उपकरणों और संसाधनों के साथ प्रदान किया जाना चाहिए।

3.**सामाजिक, सांस्कृतिक और अर्थनीतिक अधिकार –**

(क) **शिक्षा का अधिकार–** शिक्षा का अधिकार हर मानव का मूलभूत अधिकार है। इसके तहत हर व्यक्ति को उचित शिक्षा और विद्यालयी शिक्षा के लिए पहुंच का अधिकार होता है। इस अधिकार का उद्देश्य है कि हर व्यक्ति को समान अवसरों के साथ उचित शिक्षा मिले ताकि वह अपने आप को समृद्ध और स्वावलंबी बनाने में सक्षम हो सके।शिक्षा का अधिकार इस बात का संकेत करता है कि शिक्षा केवल एक सेवा नहीं है, बल्कि एक अधिकार है जो सभी लोगों को प्राप्त होना चाहिए। यह अधिकार लोगों को न केवल स्वतंत्र विचार करने की क्षमता प्रदान करता है, बल्कि उन्हें अपने जीवन में समाज के साथ बेहतर संवाद और समझदारी विकसित करने की भी सक्षमता प्रदान करता है।शिक्षा का अधिकार लोगों को शिक्षा के समूहों और विद्यालयों में प्रवेश के लिए भी पहुंच प्रदान करता है। इसके अलावा, शिक्षा का अधिकार उन लोगों के लिए भी होता है जो नियमित विद्यालय में नहीं जाते हैं

(ख) **संस्कृति का अधिकार–** संस्कृति का अधिकार भी एक महत्वपूर्ण मानव अधिकार है। संस्कृति एक व्यक्ति या समुदाय की अद्भुत धन सम्पदा है जो उसके इतिहास, भाषा, शैली, कला, साहित्य और संगीत में प्रकट होती है। संस्कृति के अंतर्गत जीवन के विभिन्न पहलुओं, दर्शनों और संस्कृतिक गतिविधियों को समेटा जाता है। संस्कृति का अधिकार अर्थात संस्कृति के संरक्षण और संवर्धन का अधिकार हर व्यक्ति और समुदाय को होना चाहिए। संस्कृति का संरक्षण न केवल उसे नए तकनीकी विकास से बचाने में मदद करता है, बल्कि उसे संसाधनों और उपकरणों की एक अच्छी विकसित नजर से देखने में भी मदद करता है। इसके अलावा, संस्कृति का अधिकार समृद्धि और विकास के लिए महत्वपूर्ण है क्योंकि यह हमें अपने इतिहास, भाषा, संस्कृति और परंपराओं के बारे में समझ और ज्ञान प्रदान करता है।

(ग) **मतदान का अधिकार**– मतदान का अधिकार एक महत्वपूर्ण नागरिक अधिकार है जो संवैधानिक रूप से सुरक्षित है। इस अधिकार के तहत हर नागरिक को स्वतंत्र रूप से अपनी मतदान करने का अधिकार होता है जिससे वह सरकार को चुन सकता है जो उसकी जरूरतों और मांगों को पूरा कर

सकती है। इस अधिकार के माध्यम से नागरिक एक जागरूक और सक्रिय सार्वजनिक जीवन का हिस्सा बनते हुए राजनीतिक प्रक्रियाओं में भाग लेते हैं। मतदान का अधिकार एक लोकतांत्रिक राज्य की आधारभूत नीति है और इसके अभाव में न्यायालय इसे नागरिकों के लिए लागू करने के आदेश जारी कर सकता है।

(घ) **व्यापार का अधिकार–** व्यापार का अधिकार एक महत्वपूर्ण नागरिक अधिकार है जो संवैधानिक रूप से सुरक्षित है। यह अधिकार व्यक्ति को उसकी पसंद के अनुसार व्यापार करने का अधिकार देता है। इस अधिकार के तहत व्यक्ति अपनी खुद की उत्पादन और विपणन की व्यवस्था कर सकता है और अपने व्यवसाय को आगे बढ़ाने के लिए आवश्यक संसाधनों का उपयोग कर सकता है।इस अधिकार के अंतर्गत व्यक्ति आवश्यकतानुसार अपने उत्पाद या सेवाओं के मूल्य निर्धारित कर सकता है और उन्हें विक्रम भी कर सकता है। यह अधिकार उचित नियमों और विधियों के अनुसार लागू होता है जो स्थानीय, राज्य और संघीय स्तरों पर विभिन्न होते हैं।व्यापार का अधिकार समृद्धि और आर्थिक विकास के लिए महत्वपूर्ण है। यह अधिकार व्यक्ति को आर्थिक स्वतंत्रता देता है और समाज के आर्थिक विकास में महत्वपूर्ण भूमिका निभाता है।

(ङ) **कार्य करने का अधिकार**– कार्य करने का अधिकार व्यक्ति को उसके काम को चुनने और उसे अपनी इच्छा के अनुसार नियंत्रित करने का अधिकार देता है। किसी भी व्यक्ति का अधिकार होता है कि वह अपने पसंद के अनुसार किसी भी काम को कर सके, जैसे कि किसी व्यापार को शुरू करना, किसी संस्थान या कंपनी में काम करना, अपना उद्योग शुरू करना, और इसी तरह के कार्य करना जो उसे चाहिए और जो कि उसकी अर्थात्त उसके जीवन में महत्वपूर्ण है।कार्य करने का अधिकार संवैधानिक हो सकता है या किसी समाज या संस्था के नियमों और विनियमों द्वारा प्रतिबंधित हो सकता है। उदाहरण के लिए, किसी भी राष्ट्र के सेना या पुलिस में काम करने के लिए आवेदन करने के लिए नागरिकता की जरूरत होती है और नियमों और विनियमों के अनुसार लोगों को इस काम को करने से रोका जा सकता है।

1.**समानता का अधिकार–**

समानता का अधिकार एक मौलिक मानवीय अधिकार है जो सभी लोगों को उनके अधिकारों और न्याय के समान अधिकारों के लिए संरक्षण प्रदान करता है। इस अधिकार के अनुसार, सभी व्यक्तियों को समान रूप से न्याय, समानता और अवसर का अधिकार है, अन्य लोगों के साथ समान तरीके से व्यवहार किया जाना चाहिए और भेदभाव नहीं किया जाना चाहिए।समानता का अधिकार संवैधानिक और मानवाधिकारों के मूल्यों पर आधारित है, जो भारत की संवैधानिक व्यवस्था में समानता और न्याय के मूलभूत सिद्धांतों को स्थापित करते हैं। इस अधिकार के अनुसार, सभी व्यक्तियों को धार्मिक, सामाजिक और आर्थिक दृष्टिकोण से समान अधिकार होने चाहिए, और भेदभाव के आधार पर किसी व्यक्ति या समूह को अन्य से कम अधिकार नहीं होने चाहिए।समानता का अधिकार लोगों को उनके मौलिक अधिकारों के लिए संघर्ष करने में मदद करता है और उन्हें समान अवसर और समान व्यवहार का अधिकार समानता का अधिकार भारत के संविधान में मौलिक अधिकारों के तहत आता है। यह अधिकार हर व्यक्ति को भारत की संस्थाओं, सेवाओं और विकास के लाभों से समान रूप से लाभान्वित होने का अधिकार है।समानता का अधिकार सभी वर्गों और समुदायों को समान अवसर, समान वेतन, समान विचारों की सम्भावना और समान अधिकारों के साथ विकास की समान अवसर प्रदान करता है। समानता का अधिकार सभी लोगों के लिए स्थान, काम, उद्योग, और सार्वजनिक स्थानों जैसे शॉपिंग मॉल, पार्क, सिनेमाघर आदि का उपयोग करने का अधिकार भी शामिल है।इसके अलावा, समानता का अधिकार उन लोगों के लिए भी है जो दलित, अल्पसंख्यक, वंचित और सामाजिक रूप से पिछड़े हुए होते हैं। इस अधिकार के अंतर्गत, ऐसे लोगों को समान रूप से शिक्षा, रोजगार, स्वास्थ्य और समान सामाजिक अधिकारों के साथ स्थानीय सरकारों द्वारा विशेष सम्मान देने का अधिकार होता है।

2.**भारत के संविधान में स्वतंत्रता का अधिकार–**भारत के संविधान में स्वतंत्रता का अधिकार एक महत्वपूर्ण मौलिक अधिकार है जो हर व्यक्ति को स्वतंत्रता और अभिव्यक्ति के अधिकारों का अधिकार प्रदान करता है। यह अधिकार भारत की संविधान में अनुच्छेद 19 से अनुच्छेद 22 तक में संयुक्त रूप से दिया गया है।स्वतंत्रता का अधिकार व्यक्तिगत स्वतंत्रता, विचारों और अभिव्यक्ति की स्वतंत्रता, धर्म स्वतंत्रता, स्वतंत्र व्यापार और व्यवसाय के अधिकारों, जनसभा और संगठन के गठन के अधिकारों, समाज के साथ संघर्ष करने के अधिकारों और जाने जाने की स्वतंत्रता के अधिकारों को शामिल करता है।स्वतंत्रता का अधिकार सभी व्यक्तियों को अपनी विचारों, धर्म, संस्कृति और अभिव्यक्ति के

अधिकारों का उपयोग करने की स्वतंत्रता प्रदान करता है। इसके अलावा, यह अधिकार संघर्ष करने और न्याय के लिए आवाज उठाने की स्वतंत्रता भी प्रदान करता है।

3.**भारत के संविधान में शोषण के विरुद्ध अधिकार** –भारत के संविधान में शोषण के विरुद्ध अधिकार एक महत्वपूर्ण मौलिक अधिकार है जो भारत की संविधान में अनुच्छेद 23 और 24 में संयुक्त रूप से दिया गया है। इस अधिकार का उद्देश्य शोषित लोगों की संरक्षा करना है जो सामाजिक, आर्थिक और शारीरिक रूप से शोषित किए जाते हैं।अनुच्छेद 23 में श्रमिकों और निम्न वर्ग के लोगों के खिलाफ विविध प्रकार की शोषण जैसे बाल श्रम, बँधुत्व, और अन्य श्रमिकों के साथ शोषण, प्राथमिकता देने के अभाव में मजदूरी का शोषण आदि शामिल हैं।अनुच्छेद 24 में भारतीय संविधान ने शोषित वर्गों के लिए न्याय, सामाजिक आर्थिक सुरक्षा और दायित्व की व्यवस्था करने का अधिकार दिया है। इसमें नागरिकों को बेहतर जीवन की आशा है और उन्हें स्वतंत्रता का अधिकार प्रदान करता है।इस अधिकार के तहत, शोषित वर्गों को विभिन्न कल्याणकारी योजनाओं, सरकारी नौकरी विभागों में आरक्षण और

4.**धार्मिक स्वतंत्रता का अधिकार**–धार्मिक स्वतंत्रता का अधिकार एक महत्वपूर्ण मौलिक अधिकार है जो भारत के संविधान में अनुच्छेद 25 और 26 में दिया गया है। इस अधिकार के तहत, हर व्यक्ति के पास धर्म या धार्मिक उपदेश के अनुसार अपने विचारों, आचरण और धार्मिक अभिवृत्तियों का चयन करने का पूर्ण अधिकार होता है। धार्मिक स्वतंत्रता का अधिकार एक मौलिक मानवाधिकार है जो हर व्यक्ति को उसके धर्म या विश्वास को अपनी पसंद के अनुसार चुनने और उसके अनुसार अपने जीवन को जीने का अधिकार देता है। इस अधिकार के तहत, व्यक्ति को अपने धर्म या विश्वास को अभ्यास करने, अपने धार्मिक अनुष्ठानों को पालन करने और धार्मिक गतिविधियों में भाग लेने का अधिकार होता है।यह अधिकार संवैधानिक रूप से विभिन्न देशों और संस्थाओं द्वारा अनुसंधान किया जाता है और इसे अनेक मानवाधिकार संबंधी संबंधित अंतरराष्ट्रीय संवेदना पत्रों में उल्लेखित किया गया है। यह स्वतंत्रता के अधिकार का हिस्सा होता है जो हर व्यक्ति को उसके धर्म या विश्वास को चुनने और अपने जीवन को उसके अनुसार जीने का स्वतंत्रता देता है।इसलिए, धार्मिक स्वतंत्रता का अधिकार महत्वपूर्ण होता है और यह हर व्यक्ति को उसके धर्म या विश्वास के अनुसार अपने जीवन को जीने का अधिकार देता है।

5.**सांस्कृतिक और शैक्षिक अधिकार**– सांस्कृतिक और शैक्षिक अधिकार मानवाधिकारों के एक महत्वपूर्ण समूह हैं।सांस्कृतिक अधिकार वह अधिकार है जो हर व्यक्ति को अपनी संस्कृति को बचाने, उसे प्रचारित करने और उसके संस्कृतिक अधिकारों को संरक्षित रखने का अधिकार देता है। यह अधिकार संवैधानिक रूप से विभिन्न देशों और संस्थाओं द्वारा अनुसंधान किया जाता है। इसके तहत, व्यक्ति को उसकी संस्कृति को अपने अधिकार के तहत बचाने का अधिकार होता है।शैक्षिक अधिकार वह अधिकार है जो हर व्यक्ति को शिक्षा प्राप्त करने का अधिकार देता है। यह अधिकार भी संवैधानिक रूप से विभिन्न देशों और संस्थाओं द्वारा अनुसंधान किया जाता है। इसके तहत, हर व्यक्ति को उसके अधिकार के तहत शिक्षा प्राप्त करने का अधिकार होता है।इन अधिकारों को संवैधानिक रूप से स्थापित करने का मुख्य उद्देश्य है, हर व्यक्ति को उनकी संस्कृति और शिक्षा से जुड़े अधिकार है

अनुच्छेद 29 व 30 में दिए गए सांस्कृतिक और शैक्षिक अधिकार, उन्हें अपनी विरासत का संरक्षण करने और उसे भेदभाव से बचाने के लिए सक्षम बनाते हुए सांस्कृतिक, भाषाई और धार्मिक अल्पसंख्यकों के अधिकारों की रक्षा के उपाय हैं। अनुच्छेद 29 अपनी विशिष्ट भाषा, लिपि और संस्कृ ति रखने वाले नागरिकों के किसी भी वर्ग को उनका संरक्षण और विकास करने का अधिकार प्रदान करता है, इस प्रकार राज्य को उन पर किसी बाह्य संस्कृति को थोपने से रोकता है। यह राज्य द्वारा चलाई जा रही या वित्तपोषित शैक्षिक संस्थाओं को, प्रवेश देते समय किसी भी नागरिक के साथ केवल धर्म, मूलवंश, जाति, भाषा या इनमें से किसी के आधार पर भेदभाव करने से भी रोकता है। हालांकि, यह सामाजिक और शैक्षिक रूप से पिछड़े वर्गों के लिए राज्य द्वारा उचित संख्या में सीटों के आरक्षण तथा साथ ही एक अल्पसंख्यक समुदाय द्वारा चलाई जा रही शैक्षिक संस्था में उस समुदाय से संबंधिक नागरिकों के लिए 50 प्रतिशत तक सीटों के आरक्षण के अधीन है।

6.**संवैधानिक उपचारों का अधिकार**–संवैधानिक उपचारों का अधिकार उन उपायों को संबोधित करता है जो एक व्यक्ति या समूह को उनके अधिकारों को संवैधानिक रूप से संरक्षित करने के लिए उपलब्ध होते हैं। यह अधिकार संवैधानिक रूप से उन उपायों को संबोधित करता है जो संवैधानिक व्यवस्था के अंतर्गत संभव होते हैं।इस अधिकार का मुख्य उद्देश्य देश के लोगों को संवैधानिक रूप से उनके मौलिक अधिकारों के लिए संरक्षण प्रदान करना है। इस अधिकार के तहत, लोगों को संवैधानिक

उपायों का उपयोग करने की स्वतंत्रता मिलती है जैसे अदालत में मांग करना, याचिका दाखिल करना या न्यायालय में अपील करना आदि। इस अधिकार का उपयोग लोगों को अपने अधिकारों के लिए लड़ने में मदद करता है और संवैधानिक व्यवस्था को भी सुधारने में मदद करता है। यह अधिकार देश में स्वतंत्रता और न्याय के आधार को मजबूत बनाने में महत्वपूर्ण भूमिका निभाता है।संवैधानिक उपचारों का अधिकार नागरिकों को अपने मूल अधिकारों के प्रवर्तन या उल्लंघन के विरुद्ध सुरक्षा के लिए भारत के सर्वोच्च न्यायालय में जाने की शक्ति देता है। अनुच्छेद 32 स्वयं एक मूल अधिकार के रूप में, अन्य मूल अधिकारों के प्रवर्तन के लिए गारंटी प्रदान करता है, संविधान द्वारा सर्वोच्च न्यायालय को इन अधिकारों के रक्षक के रूप में नामित किया गया है।

मौलिक अधिकारों का निलंबन संविधान द्वारा प्रदत्त विशेष शर्तों के अधीन हो सकता है। संविधान में बताये गए उद्देश्यों के बिना और विशेष शर्तों के बिना, मौलिक अधिकारों का निलंबन नहीं हो सकता। इसके अलावा, निलंबन के लिए अधिकारी या न्यायाधीश की अनुमति भी आवश्यक होती है।भारत में, उदाहरण के लिए, आपातकाल के दौरान एक मुख्य निर्णय था, जिसके तहत संविधान के मौलिक अधिकारों को निलंबित कर दिया गया था। इसके अलावा, निलंबन के लिए संविधान में विशेष अधिकार भी बनाए गए हैं, जिनमें राष्ट्रपति को अधिकार होता है मौलिक अधिकारों को निलंबित करने के लिए या संविधान में संशोधन करने के लिए लाया जाए। सर्वोच्च न्यायालय द्वारा स्वप्रेरणा से या जनहित याचिका के आधार पर अपने क्षेत्राधिकार का प्रयोग कर सकता है। अनुच्छेद 359 के प्रावधानों जबकि आपातकाल लागू हो, को छोड़कर यह अधिकार कभी भी निलंबित नहीं किया जा सकता। साधारण कानूनी अधिकारों को राज्य द्वारा लागू किया जाता है तथा उनकी रक्षा की जाती है जबकि मौलिक अधिकारों को देश के संविधान द्वारा लागू किया जाता है तथा संविधान द्वारा ही सुरक्षित किया जाता है।साधारण कानूनी अधिकारों में विधानमंडल द्वारा परिवर्तन किये जा सकते हैं परंतु मौलिक अधिकारों में परिवर्तन करने के लिये संविधान में परिवर्तन आवश्यक हैं।

निष्कर्ष– भारत के संविधान में मौलिक अधिकार के महत्वपूर्ण तत्व हैं जो नागरिकों को उनके मौलिक मानवाधिकारों का संरक्षण सुनिश्चित करते हैं। इन अधिकारों के माध्यम से संविधान ने भारत के नागरिकों को जीवन, स्वतंत्रता, सुरक्षा, अधिकारों के समानता, धर्म, विचार और समूह बनाने का अधिकार जैसे बुनियादी अधिकार प्रदान किए हैं। इन मौलिक अधिकारों के माध्यम से, संविधान ने नागरिकों को अपनी व्यक्तिगत स्वतंत्रता का अधिकार दिया है जो उन्हें अन्य अधिकारों के लिए लड़ने की शक्ति देता है। ये अधिकार संविधान की मूल नीतियों को दर्शाते हैं जो नागरिकों को स्वतंत्र, समान और न्यायपूर्ण देश में जीवन जीने का अधिकार देती हैं।मौलिक अधिकार एक ऐसी शक्ति है जो नागरिकों को उनके मानवाधिकारों को संरक्षित करने के लिए देती है। इन अधिकारों का सम्पूर्ण निष्कर्ष यह है कि भारत में नागरिकों को स्वतंत्र, समान और न्यायपूर्ण देश में जीवन सभी नागरिकों के बुनियादी मानवाधिकारों को मौलिक अधिकारों के रूप में

है। संविधान के भाग–III में यह कहा गया है कि किसी भी व्यक्ति के लिंग, जाति, धर्म, पंथ या जन्म स्थान की स्थिति के आधार पर भेदभाव ना करके उन्हें ये अधिकार दिए जाते हैं। ये सटीक प्रतिबंधों के अधीन न्यायालयों द्वारा लागू होते हैं।

सन्दर्भ–

1. पाण्डेय, डॉ जय नारायण (2017). भारत का संविधान.Central Law Agency.पृ० 62

2..झा, विश्वनाथ अगस्त 2021 भारतीय संविधान के मूल तत्व को समझकर संप्रभुता की रक्षा करें छात्र सीएम कॉलेज में संविधान दिवस उत्सव पर व्याख्यान

3.''मौलिक अधिकार एवं उनका वर्गीकरण''. मूल से 10 अगस्त 2018 को पुरालेखित

4. भारत का संविधान : सिद्धांत और व्यवहार, (कक्षा 11 के लिए राजनीति विज्ञान की पाठ्य पुस्तक) राष्ट्रीय शैक्षिक अनुसंधान और प्रशिक्षण परिषद, पृष्ठ– 41

5.भारत का संविधान : सिद्धांत और व्यवहार, (कक्षा 11 के लिए राजनीति विज्ञान की पाठ्य पुस्तक) राष्ट्रीय शैक्षिक अनुसंधान और प्रशिक्षण परिषद, पृष्ठ– 41

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

संसदीय लोकतंत्र में महिलाओं की भूमिका

डॉ समरेंद्र प्रताप आजाद
विधि विभाग
महाराज बलवंत सिंह पीजी कॉलेज
गंगापुर वाराणसी

प्रस्तावना

भारत में महिलाओं की स्थिति हमेशा एक समान नहीं रही है. इसमें समय–समय पर हमेशा बदलाव होता रहा है. यदि हम महिलाओं की स्थिति का आंकलन करें तो पता चलेगा कि वैदिक युग से लेकर वर्तमान समय तक महिलाओं की सामाजिक स्थिती में अनेक तरह के उतार–चढ़ाव आते रहे हैं और उसके अनुसार ही उनके अधिकारों में बदलाव भी होता रहा है इन बदलावों का ही परिणाम है कि महिलाओं का योगदान भारतीय राजनैतिक, आर्थिक, सामाजिक एवं सांस्कृतिक व्यवस्थाओं में दिनों–दिन बढ़ रहा है जो कि समावेशी लोकतांत्रिक व्यवस्था के लिए एक सफल प्रयास हैमहिला अधिकार कार्यकर्ताओं और सांसदों ने लोकसभा में महिला आरक्षण विधेयक को पारित कराने के लिए विचार–विमर्श किया जिसमें कहा गया कि आजादी के **75** साल बाद भी महिलाएं संसद में उचित प्रतिनिधित्व पाने के लिए संघर्ष कर रही हैं

.21 वीं सदी शुरुआत से महिलाओं कि रही है. इन सालों में महिलाओं का भारत कि आर्थिक व्यस्था में योगदान बढ़ा है इसका ही परिणाम है कि आज भारत कि महिलाएं राजनीति, कारोबार, कला तथा नौकरियों में पहुँच कर नये आयाम गढ़ रही हैं. भूमण्डलीकृत विश्व में भारत की नारी ने अपनी एक नितांत सम्मानजनक जगह कायम कर ली है. आंकड़े दर्शाते हैं कि प्रतिवर्ष कुल परीक्षार्थियों में 50 प्रतिशत महिलाऐं डॉक्टरी की परीक्षा उत्तीर्ण करती हैं स्वतंत्रता के बाद लगभग 12 महिलाएं विभिन्न राज्यों की मुख्यमंत्री बन चुकी हैं. भारत के अग्रणी सॉफ्टवेयर उद्योग में 21 प्रतिशत पेशेवर महिलाऐं हैं फौज, राजनीति, खेल, पायलट और उद्यमी सभी क्षेत्रों में जहाँ वर्षों पहले तक महिलाओं के होने की कल्पना भी नहीं की जा सकती थी वहां सिर्फ़ महिलाओं ने स्वयं को स्थापित ही नहीं किया है बल्कि वहां सफल भी हो रहीं हैं

महिलाओं को शिक्षा देने तथा सामाजिक कुरीतियों को दूर करने के लिये जो सुधार आन्दोलन शुरू हुआ उससे समाज में एक नयी जागरूकता पैदा हुई है बाल–विवाह, भ्रूण–हत्या पर सरकार द्वारा रोक लगाने का का काफ़ी प्रयास हुआ है शैक्षणिक गतिशीलता से पारिवारिक जीवन में परिवर्तन हुआ है गाँधी जी ने कहा था कि एक लड़की की शिक्षा एक लड़के की शिक्षा की उपेक्षा अधिक महत्वपूर्ण है क्यों लड़के को

शिक्षित करने पर वह अकेला शिक्षित होता है किन्तु एक लड़की की शिक्षा से पूरा परिवार शिक्षित हो जाता है. शिक्षा ही वह कुंजी है जो जीवन के वह सभी द्वार खोल देती है. शिक्षित महिलाओं को राष्ट्रीय व अन्तर्राष्ट्रीय स्तर पर सक्रिय होने में बहुत मदद मिली. महिलाए अपनी स्थिति व अपने अधिकारों के विषय में सचेत होने लगी हैं आज देखने में आया है कि महिलाओं ने स्वयं के अनुभव के आधार पर अपनी मेहनत और आत्मविश्वास के आधार पर अपने लिए नई मंजिलें नये रास्तों का निर्माण किया है वर्तमान समय में भारतीय सरकार द्वारा महिलाओं के उत्थान के लिए अनेक कार्यक्रम एवं योजनाओं का संचालन किया जा रहा हैं इससे स्त्रियों की स्थिति में काफी बदलाव आए हैं इसका ही परिणाम है कि इस बार के चुनाव में बीजेपी को जो अविस्मरणीय जीत हासिल हुई है उसको दिलाने में महिलाओं कि बहुत बड़ी भूमिका रही है इसकी रूपरेखा का निर्माण कहीं न कहीं प्रधानमत्री मोदी के द्वारा जो देश व्यापी योजनायें चलाई गईं उनका काफी योगदान है केंद्र में एनडीए सरकार ने जो उज्जवला योजना, बेटी बचाओ–बेटी पढ़ाओ, सौभाग्य, जनधन, मुद्रा लोन आदि के रूप में जो योजनायें चलाई उन्होंने सीधे तौर पर महिला मतदाताओं को अपनी ओर आकर्षित किया है इसको हम चुनावी परिणामों के माध्यम से भी देख सकते हैं कि मोदी सरकार ने जिन पांच राज्यों उत्तर–प्रदेश, पश्चिमी बंगाल, बिहार, मध्य–प्रदेश, राजस्थान की 216 सीटों पर जीत हासिल की है उसमें से भाजपा ने 156 यानी 66ः सीटों पर जीत हांसिल कि है. ध्यान देने वाली बात है कि मोदी सरकार ने जो 4.30 करोड़ के करीब जो उज्वला गैस कनेक्शन बांटे हैं उनमें से 48ः कनेक्शन उत्तर प्रदेश एवं बंगाल में बांटे गए. इससे इस बात का अनुमान लगया जा सकता है कि चुनाव परिणाम आने से पूर्व उत्तर प्रदेश में बीजेपी को एसपी बीएसपी गठबंधन के चलते भारी नुकसान के जो कयास लगाये जा रहे थे उनको गलत साबित करने में उज्ज्वला योजना तथा अन्य महिला केंद्रित योजनाओं ने मुख्य भूमिका निभाई है

महिला विधायकों के प्रवेश में बाधाएं बहुत अधिक है क्योंकि वे कई सामाजिक सांस्कृतिक, आर्थिक, संस्थागत और संरचनात्मक मुद्दों से जूझती है इन चुनौतियों से पार जाने का एक तरीका आरक्षण है। महिला आरक्षण विधेयक 2008 (108वां संवधिान संशोधन विधेयक) पेश किया गया था जिसमें लोकसभा व राज्य विधानसभाओं में महिलाओं के लिए 33 प्रतिशत सीटों के आरक्षण का प्रावधान शामिल था जिसे राज्यसभा द्वारा पारित कर दिया गया परंतु लोकसभा के द्वारा लंबित कर दिया गया।

महिला आरक्षण विधेयक निश्चित रूप से आशाजनक है महिला आरक्षण विधेयक समतावादी और लिंग न्यायपूर्ण समाज के लिए अनिवार्य है। विधेयक के पारित होने से निश्चित रूप से महिलाओं को राजनीतिक क्षेत्र में आने में मदद मिलेगी और इसका सकारात्मक प्रभाव समाज पर पड़ेगा। समय की मांग है कि भारत जैसे देश में मुख्यधारा की राजनीतिक गतिविधियों में महिलाओं को भागीदारी के समान अवसर मिलने चाहिये। जिससे असमानता को समानता में परिवर्तित किया जा सके।

ःमहिलाओं का राजनीति में प्रवेश से वंचित करना लैंगिक भेदभाव और पित्तसत्तात्मक समाज को बढ़ावा देगा। महिलाओं को राजनीति में कमजोर बताए जाने लेकर तर्क दिए जाते है महिला कैंडिडेट के जीतने की उम्मीद बहुत कम होती है। महिलाओं को आरक्षण प्राप्त होने से ऐसे योग्य उम्मीदवार पीछे छूट जायेंगे जो नीति निर्माण में प्रमुख भूमिका निभा सकते है। ःमहिलाओं का सामाजिक, राजनैतिक और आर्थिक प्रतिनिधित्व बढ़ाने के लिए शिक्षा प्रमुख साधन है जिसे बढ़ावा देना चाहिए। स्टैण्ड अप योजना का क्रियान्वयन उचित रूप से होना चाहिए। महिलाओं के प्रतिनिधित्व को बढ़ाने के लिए कृ

षि, वाणिज्य एवं सामाजिक कल्याण विकास मंत्रलय को समन्वित प्रयासों को बढ़ावा देना चाहिए।

16वीं लोकसभा का अंतिम सत्र अभी हाल ही समाप्त हुआ है। संभावना है कि 17वीं लोकसभा के लिये चुनावों का एलान मार्च की शुरुआत में हो जाएगा और अप्रैल–मई महीनों में चुनाव संपन्न हो जाएंगे। चुनावी चर्चाओं में वोट शेयर, सेटों, गठबंधनों का बाज़ार तो गर्म है ही, साथ ही प्रधानमंत्री कौन बनेगा इसके कयास भी लगाए जाने लगे हैं। लेकिन संसद में महिलाओं के प्रतिनिधित्व को लेकर कोई चर्चा नहीं है और न ही इस मुद्दे पर किसी राजनीतिक दल की कोई रुचि दिखाई देती है। जहाँ तक संसद के निचले सदन की बात है तो महिला सांसदों के प्रतिशत के मामले में भारत विश्व में 193 देशों में 153वें स्थान पर है।

आजादी के 75 वर्ष बाद भी महिलाओं का संसद में प्रतिनिधत्व को लेकर राजनीतिक दलों में कोई रूचि दिखाई नहीं देती है। 17वीं लोकसभा में 78 महिला संसद जीत कर संसद में पहुँचे है जो अब तक का सर्वाधिक प्रतिनिधित्व है। संसद में उचित प्रतिनिधित्व के लिए महिलाओं का संघर्ष निरंतर जारी है। संसद में महिलाओं के कम प्रतिनिधित्व का प्रमुख कारण समाज की पितृसत्तात्मक विचारधारा है जहाँ पुरूषों को राजनीति करने और शासन करने के योग्य समझा जाता है वहीं महिलाओं को घरेलू कार्य करने के लिए बाधित किया जाता है। महिलाओं को राजनीति में रूचि न होना भी एक प्रमुख समस्या रही है जो महिलाओं को राजनीति में आने से रोकती है। महिलाओं को नीति निर्धारण में पर्याप्त प्रतिनिधित्व न मिलने के पीछे निरक्षरता भी एक बड़ा कारण है जिन्हें राजनीतिक अधिकारों के बारे में पर्याप्त जानकारी नहीं हो पाती है। राजनैतिक दल प्रतिनिधियों के चयन में प्रमुख भूमिका निभाते है जो महिला उम्मीदवारों के बजाय पुरूष को बढ़ावा देना पसंद करते है क्योंकि वे पूर्वाग्रह से ग्रस्त है। महिलाएं सुरक्षा के मुद्दों के कारण बाहर कार्य करने में सुरक्षित महसूस नहीं करती है जो महिलाओं को राजनीति से दूर सकता है।महिलाओं को चुनावी प्रक्रिया में भाग लेने के लिये प्रोत्साहित नहीं किया जाता है। जागरूकता व प्रोत्साहन की कमी के कारण महिलाओं की भागीदारी कम होती है।

विश्व आर्थिक मंच के ग्लोबल जेंडर गैप इंडेक्स 2021 में महिलाओं के प्रतिनिधित्व के मामले में भारत 156 देशों में 140वें स्थान पर है ऐसे स्थिति महिलाओं के राजनीतिक भागेदारी को बढ़ावा देना चाहिए। विधायिकाओं में पुरूषों के बराबर महिलाओं की पूर्ण सक्रिय भागीदारी न केवल अपने आप में एक लक्ष्य है बल्कि लोकतंत्र निर्माण और उसे बनाए रखने के लिए महिलाओं का प्रतिनिधित्व आवश्यक है। सार्वजनिक जीवन में महिलाओं का सर्वांगीण और निष्पक्ष प्रतिनिधित्व जीवंत और मजबूत लोकतंत्र के लिए सर्वोत्कृष्ट तत्व है। महिलाएं पुरूषों की तुलना में चिंताओं के प्रति अत्यधिक प्रतिक्रियाशील होती है। महिलाओं को अधिक कार्य करने के लिए देखा जाता है वे स्वास्थ्य, स्वच्छता, शिक्षा आदि को प्राथमिकता देती है।

अफ्रीकी देश रवांडा में हैं सबसे अधिक महिला सांसद आश्चर्यजनक रूप से लंबे समय तक गृहयुद्ध की आँच में झुलसने वाले अल्पविकसित अफ्रीकी देश रवांडा की संसद में महिलाओं की संख्या सबसे ज़्यादा है।एक रिपोर्ट के अनुसार, रवांडा के निचले सदन में 61ः संख्या महिलाओं की है। रवांडा दुनिया का पहला देश है जिसकी संसद में महिलाएँ पुरुषों से अधिक हैं। जनसंहार के बाद निर्मित रवांडा का संविधान संसद में महिलाओं के लिये तीस फीसदी सीटों का आरक्षण सुनिश्चित करता है। लेकिन उसने

पहले से ही अपने संसद में सबसे अधिक महिलाओं की भागीदारी सुनिश्चित करने का रिकॉर्ड कायम रखा है।

महिला सांसदों के वैश्विक आँकड़ों पर एक नज़रक्षेत्रवार देखा जाए तो नॉर्डिक (छवतकपब) देशों में महिला सांसदों का प्रतिशत सबसे अधिक है। इनमें डेनमार्क, नॉर्वे और स्वीडन जैसे स्कैंडीनेवियाई देशों के साथ फिनलैंड, आइसलैंड और फैरो आइलैंड शामिल हैं। यह क्रमशः 32 और 23 प्रतिशत है। देखने में यह प्रतिशत भले ही कम दिखाई दे रहा है, लेकिन वहाँ कांग्रेस के लिये हुए हालिया चुनावों में महिलाओं ने अपनी मज़बूत उपस्थिति दर्ज कराई है। यहाँ तक कि हमारे पड़ोसी देश पाकिस्तान की स्थिति हमसे बेहतर है, वहाँ की संसद में महिलाओं का प्रतिनिधित्व लगभग 20ः है।

भारत में स्थिति

2014 में हुए चुनावों में भारत की संसद के निचले सदन लोकसभा के लिये चुने गए 545 सदस्यों में 65 महिलाएँ चुनकर आईं, जो कुल संख्या का 12ः है। यह लोकसभा का 16वाँ चुनाव था। आज़ादी के बाद केवल 15वीं और 16वीं लोकसभा में महिलाओं के प्रतिनिधित्व में बढ़ोतरी देखने को मिली, जो इससे पहले 9ः से कम रहती थी। भारतीय चुनाव प्रणाली में लोकसभा में प्रतिनिधित्व जनसंख्या के आधार पर है। ऐसे में सर्वाधिक जनसंख्या वाले (लगभग 200 मिलियन) राज्य उत्तर प्रदेश से 80 लोकसभा सांसद चुने जाते हैं, लगभग 100 मिलियन जनसंख्या वाला राज्य बिहार 40 सांसदों को लोकसभा में भेजता है। इसी तरह लगभग 114 मिलियन जनसंख्या वाले राज्य महाराष्ट्र से 48 सांसद लोकसभा के लिये चुने जाते हैं।इसके विपरीत पूर्वोत्तर में असम को छोड़कर शेष सात राज्यों– अरुणाचल, त्रिपुरा, मणिपुर, नगालैंड, मिज़ोरम, मेघालय और सिक्किम से बहुत कम सांसदों को लोकसभा में जगह मिलती है। इसका एकमात्र कारण इन राज्यों में जनसंख्या बेहद कम होना है। उत्तर प्रदेश से महिला सांसदों का राष्ट्रीय औसत प्रतिनिधित्व 17.5ः (14 सांसद) अपेक्षाकृत कुछ बेहतर है, जबकि महाराष्ट्र में यह केवल 12.5ः (6 सांसद) और बिहार केवल 7.9ः (3 सांसद) है। जबकि जनसंख्या के अनुसार राज्यों में लोकसभा की कुल सीटों का आवंटन होता है, ऐसे में देश की आधी आबादी (महिलाओं) का प्रतिनिधित्व मात्र 12 प्रतिशत है, जो कि बेहद कम है और इसमें निश्चित ही सुधार की आवश्यकता है। देश में राज्यों की विधानसभाओं की बात करें तो स्थिति और भी शोचनीय दिखाई देती है। सभी विधानसभाओं में महिला सदस्यों का राष्ट्रीय औसत केवल 9ः है। इनमें बिहार, राजस्थान और हरियाणा विधानसभाओं में महिलाओं का 14ः प्रतिनिधित्व है, जबकि पुद्दुचेरी और नगालैंड की विधानसभाओं में एक भी महिला सदस्य नहीं है।

प्रमुख चुनौतियाँ

महिला आरक्षण विधेयक, 2008 (108वाँ संविधान संशोधन विधेयक) को राज्यसभा ने 9 मार्च 2010 को पारित किया था, लेकिन 9 साल बीतने के बाद भी यह लोकसभा से पारित नहीं हो पाया है। लोकसभा का कार्यकाल पूरा हो जाने की वज़ह से यह विधेयक रद्द हो जाता है। इस विधेयक में महिलाओं के लिये लोकसभा और विधानसभाओं में 33 प्रतिशत आरक्षण का प्रावधान है। महिलाओं को नीति निर्धारण में पर्याप्त प्रतिनिधित्व न मिलने के पीछे निरक्षरता भी एक बड़ा कारण है। अपने अधिकारों को लेकर पर्याप्त समझ न होने के कारण महिलाओं को अपने मूल और राजनीतिक अधिकारों के बारे में जानकारी नहीं हो पाती।शिक्षा, संसाधनों/संपत्ति का स्वामित्व और रोज़मर्रा के काम में पक्षपाती दृष्टिकोण जैसे मामलों में होने वाली लैंगिक असमानताएँ महिला नेतृत्व के उभरने में बाधक बनती हैं। कार्यों और परिवार का दायित्व महिलाओं

को राजनीति से दूर रखने में पुरुषों और महिलाओं के बीच घरेलू काम का असमान वितरण भी महत्त्वपूर्ण कारकों में से एक है। पुरुषों की तुलना में महिलाओं को परिवार में अधिक समय देना पड़ता है और घर तथा बच्चों की देखभाल का ज़िम्मा प्रायः महिलाओं को ही संभालना पड़ता है। बच्चों की आयु बढ़ने के साथ महिलाओं की ज़िम्मेदारियाँ भी बढती जाती हैं।

राजनीति में रुचि का अभाव राजनीतिक नीति–निर्धारण में रुचि न होना भी महिलाओं को राजनीति में आने से रोकता है। इसमें राजनीतिक दलों की अंदरूनी गतिविधियाँ और इज़ाफा करती हैं। राजनीतिक दलों के आतंरिक ढाँचे में कम अनुपात के कारण भी महिलाओं को अपने राजनीतिक निर्वाचन क्षेत्रों की देखरेख के लिये संसाधन और समर्थन जुटाने में कठिनाई का सामना करना पड़ता है। विभिन्न राजनीतिक दल महिलाओं को चुनाव लड़ने के लिये पर्याप्त आर्थिक सहायता उपलब्ध कराने से कतराते हैं। इसके अलावा, महिलाओं पर थोपे गए सामाजिक और सांस्कृतिक दायित्व भी उन्हें राजनीति में आने से रोकते हैं। महिलाएँ भी इसे सामाजिक संस्कृति मानते हुए सहन करने को विवश रहती हैं। जनता का रुझान न केवल यह निर्धारित करता है कि कितनी महिला उम्मीदवार चुनाव जीतेंगी, बल्कि प्रत्यक्ष और अप्रत्यक्ष रूप से जनता का रुझान यह भी तय करता है कि किस महिला को कौन सा पद दिया जाना चाहिये। कुल मिलाकर देखा जाए तो देश में राजनीतिक दलों का माहौल ऐसा है कि महिलाएँ चाहकर भी राजनीति में हिस्सा लेने से कतराती हैं। उन्हें पार्टी में अपना स्थान बनाने के लिये कड़ी मेहनत तो करनी ही पड़ती है, साथ ही अन्य कई मुद्दों का सामना भी करना पड़ता है।

यह समय की मांग है कि भारत जैसे देश में मुख्यधारा की राजनीतिक गतिविधियों में महिलाओं को भागीदारी के समान अवसर मिलने चाहिये। महिलाओं को उन अवांछित बाध्यताओं से बाहर आने की पहल स्वयं करनी होगी जिनमें समाज ने जकड़ा हुआ है, जैसे कि महिलाओं को घर के भीतर रहकर काम करना चाहिये। राज्य, परिवारों तथा समुदायों के लिये यह बेहद महत्त्वपूर्ण है कि शिक्षा में लैंगिक अंतर को कम करना, लैंगिक आधार पर किये जाने वाले कार्यों का पुनर्निधारण करना तथा श्रम में लैंगिक भेदभाव को समाप्त करने जैसी महिलाओं की विशिष्ट आवश्यकताओं का समुचित समाधान निकाला जाए। सभी राजनीतिक दलों को सर्वसम्मति बनाते हुए महिला आरक्षण विधेयक को पारित करना चाहिये, जिसमें महिलाओं के लिये 33ः आरक्षण का प्रावधान किया गया है। जब यह विधेयक कानून का रूप ले लेगा तो लोकसभा और विधानसभाओं में महिलाओं का प्रतिनिधित्व स्वतः बढ़ जाएगा, जैसा कि पंचायतों में देखने को मिलता है। 73वें संविधान संशोधन के द्वारा महिलाओं को त्रिस्तरीय ग्रामीण पंचायतों और शहरी निकायों में 1993 से 33ः आरक्षण मिलता है। राज्य विधानसभाओं और संसदीय चुनावों में महिलाओं के लिये न्यूनतम सहमत प्रतिशत सुनिश्चित करने हेतु मान्यता प्राप्त राजनीतिक दलों के लिये इसे अनिवार्य बनाने वाले भारत निर्वाचन आयोग के प्रस्ताव को लागू करने की आवश्यकता है। जो दल ऐसा करने में असमर्थ रहेगा उसकी मान्यता समाप्त की जा सकेगी।दुनियाभर में कई देशों में राजनीतिक दलों में आरक्षण का प्रावधान है। इनमें स्वीडन, नॉर्वे, कनाडा, और फ्रांस भी शामिल हैं।

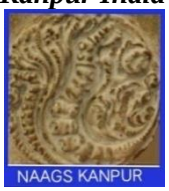
विधायिका में महिलाओं के प्रतिनिधित्व का आधार न केवल आरक्षण होना चाहिये, बल्कि इसके पीछे पहुँच और अवसर तथा संसाधनों का सामान वितरण उपलब्ध कराने के लिये लैंगिक समानता का माहौल भी होना चाहिये। निर्वाचन आयोग की अगुवाई में राजनीतिक दलों में महिला आरक्षण को प्रोत्साहित करने के लिये प्रयास किये जाने

चाहिये। हालाँकि इससे विधायिका में महिलाओं की संख्या तो सुनिश्चित नहीं हो पाएगी, लेकिन जटिल असमानता को दूर करने में इससे मदद मिल सकती है।
स्वतंत्र भारत के इतिहास में देखने पर पता चलता है कि देश की कमान लंबे समय तक महिला प्रधानमंत्री के हाथों में रही है और समय–समय पर राज्यों में मुख्यमंत्री तथा सदन के अध्यक्ष पद पर महिलाएं आसीन होती आई हैं। फिर भी विधायिका में महिलाओं के प्रतिनिधित्व के मामले में भारत का रिकॉर्ड बेहद खराब रहा है और यह हमें बाध्य करता है कि इस मुद्दे पर बहस कर परिस्थितियों में बदलाव लाया जाए। इस मुद्दे पर सरकार को भी प्रयास करने चाहिये, जिसमें सामाजिक, शैक्षणिक और आर्थिक रूप से महिलाओं की स्थिति में सुधार करना शामिल है ताकि महिलाएँ अपनी आंतरिक शक्ति के साथ, अपने दम पर खड़ी हो सकें। हमें यह नहीं भूलना चाहिये कि शिक्षा महिलाओं की सामाजिक गतिशीलता को प्रभावित करती है। शिक्षण संस्थानों में मिली औपचारिक शिक्षा महिलाओं में नेतृत्व के अवसर तो उत्पन्न करती ही है, साथ ही उनमें नेतृत्व गुणों का विकास भी करती है।

संदर्भ

1. आर्या, अशोक (2015), ''भारतीय राजनीति में महिलाओं की भूमिका'', जयपुर, जर्नल ऑफ एडवांसेज एण्ड स्कॉलइली रिसर्च इन एलीड एजुकेशन।
2. शर्मा, प्रज्ञा (2011), ''महिला विकास और सशक्तिकरण'', जयपुर, आविष्कारक पब्लिशर्स एण्ड डिस्ट्रीब्यूटर्स।
3. शर्मा, प्रज्ञा (2011), ''वुमेन इन इण्डियन सोसाइटी'', जयपुर, प्वांइट पब्लिशर्स।
4.राजनीति में महिलाओं का प्रतिनिधित्व, 2011ए 54;18
5. राजस्थान पत्रिका 17 दिसम्बर 2018
6. राजस्थान पत्रिका 13 दिसम्बर 2018
7. राजस्थान निर्वाचन आयोग रिपोर्ट 2018
8 - Indian express December 12/2018

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

नागरिकों की शिक्षा का मौलिक अधिकार

चंद्र प्रकाश शुक्ल
असिस्टेंट प्रोफेसर विधि विभाग
महाराज बलवंत सिंह पी0जी0 कॉलेज
गंगापुर वाराणसी

नागरिकों को शिक्षा का मौलिक अधिकार प्राप्त है। उक्त अधिकार सीधे अनुच्छेद 21 से उद्भूत है। तथापि यह अधिकार कोई अपरिमित अधिकार नहीं है। इसकी विषयवस्तु तथा मानकों को अनुच्छेद–41 तथा 45 के प्रकाश में सुनिश्चित किया जायेगा। दूसरे शब्दों में, इस देश के प्रत्येक बच्चे और नागरिक को 14 वर्ष की आयु पूरी होने तक निःशुल्क शिक्षा का अधिकार होगा। इसके पश्चात शिक्षा का अधिकार राज्य के विकास तथा आर्थिक क्षमता की सीमाओं के आधार पर प्रदान किया जायेगा। शिक्षा के अधिकार को, जोकि अनुच्छेद–21 द्वारा प्रदत्त वैयक्तिक स्वतंत्रता तथा जीवन के अधिकार में निहित है, संविधान के भाग चार में दिए गए नीति निर्देशक सिद्धांतों के प्रकाश में विकसित करना होगा। न्यायमूर्ति एस0 मोहन ने निर्णय में अनुच्छेद–45 को लागू करने में सरकार की उदासीनता की विशेष रूप से आलोचना की–

''अनुच्छेद–45 में निर्धारित 10 वर्ष की समय सीमा कभी की खत्म हो चुकी है। हमें स्वतंत्र हुए 43 साल हो चुके हैं (1993 में)। इसके बावजूद भी यदि अनुच्छेद–45 महज एक पवित्र इच्छा या सुखद आशा मात्र ही है, तो इससे भला प्राथमिक शिक्षा के महत्व पर क्या असर पड़ा। इस प्रावधान के तहत एक समय सीमा भी निर्धारित की गई है। ऐसी समय सीमा सिर्फ अनुच्छेद–45 में पायी गयी है। इसलिए अभी तक भी यदि ऐसा प्रयास नहीं किया गया, जिससे कि इस अनुच्छेद में जीवन का स्पंदन हो तथा यह सार्थक रूप में क्रियाशील हो सके, तो न्यायालय को ही आगे कदम बढ़ाना होगा। राज्य 14 वर्ष की आयु तक के सभी बच्चों को मुफ्त शिक्षा का अधिकार प्रदान करने के लिए बाध्य है।''

न्यायमूर्ति एस0 मोहन ने अपने निर्णय में आगे यह भी कहा कि–

''संविधान लागू होने के 44 साल बाद भी क्या ये महज एक पवित्र इच्छा है? और 44 साल बाद भी इस आधार पर, कि यह अनुच्छेद (45) शिक्षा को ''उपलब्ध कराने का संकल्प'' मात्र है तथा इसके अतिरिक्त अनुच्छेद–37 द्वारा प्रदत्त शक्ति के

बल पर इसे लागू नहीं करवाया जा सकता, क्या राज्य अपनी जिम्मेदारी से पल्ला झाड़ सकता है? क्या 44 वर्षों के समय अंतराल ने, जोकि अनुच्छेद–45 में दी गई समय सीमा से चार गुना ज्यादा है, इस अनुच्छेद द्वारा दिये गए दायित्व को लागू करने योग्य अधिकार नहीं बना दिया है?''

उन्नीकृष्णन केस में सर्वोच्च न्यायालय ने, मोहिनी जैन केस के प्रमुख प्रश्न कि ''क्या भारत का संविधान अपने नागरिकों को शिक्षा का मौलिक अधिकार प्रदान करता है?'' पर विचार करते हुए, अपने निर्णय में घोषित किया गया कि–

''132 भाग तीन में शिक्षा के अधिकार का प्रकटतः एक मौलिक अधिकार के रूप में कोई उल्लेख नहीं है। तथापि यह न्यायालय इस नियम का पालन नहीं करता कि जब तक किसी अधिकार को प्रकट रूप में मौलिक अधिकार न घोषित किया जाये, तब तक वह मौलिक अधिकार नहीं हो सकता।''

''138 इस न्यायालय का निरंतर यह रूख रहा है कि मौलिक अधिकार तथा नीति निर्देशक सिद्धांत परस्पर एक दूसरे के अनुपूरक तथा सम्पूरक हैं, तथा यह भी कि भाग तीन में दिए गए प्रावधानों की व्याख्या प्रस्तावना तथा राज्य के नीति निर्देशक सिद्धांतों के संदर्भ में की जानी चाहिए। भाग चार के विशिष्ट महत्व को मान्यता देने की हिचकिचाहट का त्याग बहुत पहले कर दिया गया था।''''141 इस न्यायालय के निर्णय द्वारा यह सुस्थापित हो चुका है कि भाग तीन तथा भाग चार के प्रावधान एक दूसरे के अनुपूरक तथा सम्पूरक हैं तथा यह भी कि मौलिक अधिकार और कुछ नहीं भाग चार में वर्णित लक्ष्यों को प्राप्त करने का साधन हैं। .....मौलिक अधिकारों का निर्माण नीति निर्देशक तत्वों के प्रकाश में करना होगा।''

वस्तुतः मोहिनी जैन से लेकर उन्नीकृष्णन केस तक के निर्णयों में न्यायिक ऊर्जा का एक बड़ा अंश मौलिक अधिकारों तथा नीति निर्देशक सिद्धांतों के मध्य अलगाव तथा प्राकृतिक भेद को दूर करते हुए, सामंजस्य को सिद्ध करने में खर्च हुआ। सत्तारूढ़ वर्चस्वशाली वर्गों ने अपने घोषित राजनीतिक ऐजेंडे के बरक्स जब भी नीति निर्देशक तत्वों को बाधक पाकर उदासीनता का रूख अपनाना चाहा, उन्होंने राजनीति विज्ञान के कुशल अध्येता की तरह निर्देशक तत्वों के गैर न्याय योग्य होने, आर्थिक व संसाधनीय सीमाओं तथा अनुच्छेद–37 के तहत इन्हें लागू न करवा पाने की न्यायिक सीमाओं का हवाला दिया। वस्तुतः अपने घोषित विकासोन्मुखी लक्ष्यों के विरूद्ध प्रायः राज्य स्वयं ही पिछड़ेपन की प्रभावी बाधा के रूप में खड़ा पाया गया। न्यायिक सक्रियता के प्रवाह में न्यायिक फटकार तथा संविधान की धाराओं की रचनात्मक व्याख्या राज्य के साथ–साथ वर्चस्वशाली वर्गों के लिए खतरे की घंटी थी। न्यायिक निर्णय राज्य की हठधर्मिता के विरूद्ध जनप्रतिरोध के प्रभावी उपकरण के रूप में उभरने लगे। यही कारण है कि भले ही संविधान लागू होने के बाद नागरिकों से संपत्ति के अधिकार को विधायी प्रयत्नों से छीना गया, किंतु उन्हें मिलने वाला एकमात्र नवीन मौलिक अधिकार संसद की बजाय न्यायिक प्रयत्नों का परिणाम था। शिक्षा के मौलिक अधिकार के विस्तार के मुद्दे को तात्कालिक परिणति प्रदान करते हुए निर्णय में कहा गया कि–

''150 .....हमने शिक्षा के मौलिक अधिकार के अंर्तनिहित तथा आधारभूत महत्व के कारण उसे जीवन के अधिकार में स्थापित पाया है। वस्तुतः हमने अनुच्छेद 41, 45 तथा 46 का संदर्भ महज उक्त अधिकार के मानकों को सुनिश्चित करने के लिए किया है।''

''149..... मुफ्त शिक्षा का अधिकार बच्चों को प्राप्त है,, जब तक कि वे 14 वर्ष की आयु पूरी नहीं कर लेते। तदुपरांत राज्य द्वारा शिक्षा प्रदान करने का दायित्व उसकी क्षमता तथा विकास की सीमाओं का विषय होगा।''

संक्षेप में, सर्वोच्च न्यायालय ने जे0पी0 उन्नीकृष्णन केस का निर्णय देते हुए संविधान के अनुच्छेद–45 में अन्तर्गत 14 वर्ष की आयु पूर्ण होने तक सभी बच्चों को निशुल्क तथा अनिवार्य शिक्षा को मौलिक अधिकार के रूप में स्थापित कर दिया। इसी के साथ शिक्षा का मौलिक अधिकार भारत भूमि का कानून बन गया। कम से कम तब तक के लिए, जब तक कि इसमें संसदीय हस्तक्षेप करते हुए, कोई उपयुक्त विधि निर्माण नहीं किया जाता। स्थूल रूप में न्यायिक निर्णय ने शिक्षा के मौलिक अधिकार को आकार तो प्रदान कर दिया था, किंतु इस अधिकार की सूक्ष्मताओं को निर्धारित करना अभी शेष था।

शिक्षा के मौलिक अधिकार के रूप में स्थापित हो जाने के साथ ही यह प्रश्न उठना स्वाभाविक ही है, कि ऐतिहासिक अनिवार्य शिक्षा अधिनियमों का क्या हुआ? उन्नीकृष्णन केस के निर्णय लिखते हुए न्यायमूर्ति एस0 मोहन ने यद्यपि भारत सरकार की ओर से मानव संसाधन विकास मंत्रालय के सहायक शिक्षा सलाहकार एच0सी0 बावेजा द्वारा प्रस्तुत अतिरिक्त शपथपत्र का उल्लेख किया है, जिसके अनुसार 14 राज्यों तथा 4 केंद्रशासित प्रदेशों में अनिवार्य शिक्षा कानून लागू किऐ गए थे।[314] तथापि न्यायालय ने न तो अनिवार्य शिक्षा कानूनों की दशा–दिशा पर और न ही असफलता–प्रभाविता पर कोई टिप्पणी की। न्यायालय ने भी शायद चुपके से शपथपत्र में घोषित उन आर्थिक–सामाजिक दबावों को स्वीकार कर लिया, जिनके चलते बकौल सरकार के अनिवार्य शिक्षा के प्रावधानों को लागू नहीं किया जा सका। इतने उपयुक्त अवसर पर भी न्यायालय द्वारा अनिवार्य शिक्षा अधिनियमों की सफलता–प्रभाविता पर कोई टिप्पणी तक न किया जाना, इस बात की ओर संकेत करता है कि 1993 के उन्नीकृष्णन केस के बाद भी अनिवार्य शिक्षा अधिनियम भले ही लागू किए जाते रहे हों, तथापि परिणामों की दृष्टि से इनकी अप्रभाविता या इन्हें क्रियान्वित न किए जाने की मनःस्थिति को कमोबेश सभी ने एक स्वर में स्वीकार कर लिया था। यह एक ऐसी उदासीनतापूर्ण मनःस्थिति थी, जिसमें कि अनिवार्य शिक्षा अधिनियम पारित भर करके संवैधानिक निर्देश की स्वतः स्फूर्त पूर्ति का सुनिश्चयन स्वीकार कर लिया जाता था। इसलिए शिक्षा को मौलिक अधिकार घोषित कर दिये जाने के बाद भी, कुछ राज्य अनिवार्य शिक्षा अधिनियम पारित करते रहे तथा आश्चर्यजनक रूप से बिना उनके क्रियान्वयन का कोई भी प्रयास किए। देखें तालिका 4.21[315]

उन्नीकृष्णन केस–1993 के निर्णय के बाद लागू अनिवार्य शिक्षा अधिनियम

क्रम	राज्य	अनिवार्य शिक्षा अधिनियम
1.	गोआ	गोआ अनिवार्य प्रारंभिक शिक्षा अधि0–1995 (गोआ अधि0सं0 4, 1996)
2.	हिमाचल प्रदेश	हिमाचल प्रदेश अनिवार्य प्राथमिक शिक्षा अधिनियम–1997
3.	सिक्किम	सिक्किम प्राथमिक शिक्षा अधिनियम–2000 (अधि0सं0 14, 2000)
4.	तमिलनाडू	तमिलनाडू अनिवार्य प्रारंम्भिक शिक्षा अधि0–1994 (अधि0सं0 33, 1995)

उपरोक्त तालिका में सिक्किम सर्वाधिक नया राज्य था, जिसने अनिवार्य शिक्षा अधिनियम को बहुत देर बाद, वर्ष 2000 में लागू किया। इन अनिवार्य शिक्षा कानूनों का

सर्वाधिक विलक्षण पक्ष यह था कि जहाँ एक ओर न्यायालय नीति निर्देशक सिद्धांत से आगे जाकर, शिक्षा को मौलिक अधिकार घोषित करने में व्यस्त थे और इसके विपरीत सरकारी मशीनरी और विभिन्न राज्य बिना क्रियान्वयन का कोई तरीका विकसित किए, अनिवार्य शिक्षा के अप्रचलित किस्म के कानूनों को लागू कर दायित्व पूर्ति कर रहे थे, वहीं शोध इस बात की पुष्टि कर रहे थे कि कुल सर्वेक्षित 95 प्रतिशत शैक्षिक प्रशासक अपने–अपने राज्यों में किसी अनिवार्य शिक्षा कानून के अस्तित्व से अवगत तक नहीं थे और जो अवगत थे वे केवल उनके नाम और अस्तित्व के ज्ञान तक सीमित थे। न्यायिक सक्रियता के विपरीत सरकारी अक्रियता के कारण भी विचित्र थे। बकौल सरकार के–

''अनिवार्य शिक्षा विधेयक विभिन्न सामाजिक–आर्थिक तथा सांस्कृतिक कारकों और प्रशासनिक तथा वित्तीय दबावों के चलते अधिनियमित नहीं हो सके। इस संबंध में भारत सरकार ने कोई केंद्रीय कानून पारित नहीं किया, क्योंकि उसका विचार था कि संविधान के अनुच्छेद–45 में उल्लिखित अनिवार्यता का दायित्व राज्य पर है, बजाय माता–पिता के। इसलिए सरकार ने बच्चों और माता–पिता को प्रोत्साहित करने की नीति का पक्ष लिया।''

यह बात अलग है कि ऐसे कोई भी दबाव उच्च शिक्षा को लेकर कभी आड़े नहीं आऐ। 1976 से समवर्ती सूची का विषय होने के बावजूद राज्य ने पुराने पड़ चुके अनिवार्य शिक्षा विषयक अधिनियमन के स्वयं कोई सार्थक प्रयास कभी नहीं किए, क्योंकि बकौल सरकार के अनिवार्यता का तत्व माता–पिता की बजाय राज्य पर लागू होता था। ऐसे में संवैधानिक दायित्व को टालने वाला राज्य ऐसा कोई विधायन आखिर क्यों तैयार करता, जो उसी की जवाबदेही तय करे तथा उसके विरूद्ध न्यायिक कार्यवाही सुनिश्चित करे। सरकार के संकुचित दृष्टिकोण तथा न्यायिक निर्णय के विरूद्ध कसमसाहट को CABE की 15 अक्टूबर 1993 को दिल्ली में आयोजित 49वीं बैठक में देखा जा सकता है। महाराष्ट्र के उच्च एवं प्राविधिक शिक्षा मंत्री श्री प्रभाकर धारकर ने उन्नीकृष्णन फैसले का संदर्भ लेते हुए यह सुझाव दिया कि– *''ऐसा दिखता है कि सामान्य शिक्षा के क्षेत्र में न्यायिक हस्तक्षेप को सीमित करने की जरूरत है।''* बैठक में पिछली बार की तरह इस बार भी पश्चिम बंगाल की वाममोर्चा सरकार के मंत्रियों ने शिक्षा के अधिकार का मुद्दा उठाया।

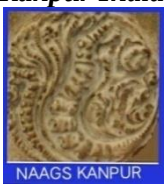
''पश्चिम बंगाल सरकार एक बार फिर देश की उच्चतम न्यायिक संस्था के निर्णय का उल्लेख करना चाहती है।.....डिवीजन बैंच ने कहा है कि प्रारंभिक शिक्षा अनुच्छेद–40 की बजाय अनुच्छेद 21 का अंग बने। कृपया इसे राष्ट्रीय शिक्षा नीति तथा प्लान ऑफ एक्शन में शामिल करें।''

यह वास्तव में आश्चर्य की बात है कि न्यायिक निर्णय से उपजी संविधान की व्याख्या से भले ही शिक्षा मौलिक अधिकार बन गई हो, किंतु सरकार और उसके रूख पर उसका कोई खास असर दिख नहीं रहा था। CABE जैसी संस्था, जिसकी बैठक का ऊपर उल्लेख किया गया है, में सभी राज्यों तथा केंद्र शासित प्रदेशों के शिक्षा मंत्रियों सहित मानव संसाधन विकास मंत्री और भारत सरकार तक का इस मुद्दे को लेकर दम साध लेना, इस बात का द्योतक है कि सरकार इस मुद्दे से बचने की इच्छुक थी, बजाय किसी वैधानिक हस्तक्षेप के। इस दौरान घटित एक प्रमुख घटना पर भी ध्यान देना जरूरी है। 73वें संविधान संशोधन अधिनियम–1992 द्वारा देश में पंचायती राज की त्रिस्तरीय व्यवस्था को संवैधानिक दर्जा प्रदान करने का महत्वाकांक्षी प्रयास किया गया।

संदर्भ

1. Unnikrishnan, J. P. and Others Vs State of Andhra Pradesh and Others, AIR-1993, SC-2178, Para 54.5.
2. N.I.E.P.A. (2003): Implications of Elementary Education as a Fundamental Right, selected readings, 5-8 Aug, 2003, N.I.E.P.A., Delhi Page 19-20.
3. Juneja, Nalini (1996): Compulsory Education in India: The Policy in Practice, Mimographed Research Report, N.I.E.P.A., Delhi.
4. Govt. of India (1997): Report of the Committee of State Education Ministers on Implications of the Proposal to Make Elementary Education a Fundamental Right, (Muhi Ram Saikia Committee), MHRD, Delhi.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published biannually by New Archaeological & Genological Society
Kanpur India



Vol. X, Issue I(A), March 2023
DOI 10.13140/RG.2.2.21942.16966
www.kanpurhistorians.org

ROLE OF ARTIFICIAL INTELLIGENCE IN DEALING WITH PRE TRIAL DISCRETION IN CRIMINAL JUSTICE SYSTEM

AMAN SINGH
B.A.LL.B. (Hons.) Xth semester
Law College Dehradun
Uttaranchal University Dehradun .
UJJWAL KUMAR SINGH
Assistant Professor of Law
Law College Dehradun
Uttaranchal University Dehradun

ABSTRACT
Criminal justice system of a nation works like a backbone of the nation. Justice delivery system must be fair and impartial to save the basic rights of citizens. Pre trial is that stage where the police and prosecutors performs the various functions and duties and use their discretion to either bring a case for a trial or to dispose it before trial on the diverse criteria. Artificial Intelligence (AI) is dominating almost every field in the society likewise; Artificial intelligence can be a boon for the criminal justice system it can help the various agencies involve in the justice delivery system in multiple ways. This article talks about the pre trial discretion which can be used by police and prosecutors also it gives an idea about how the Artificial Intelligence can help the authorities at various steps of a case.
KEY WORDS: pre trial discretion, criminal justice system, artificial intellligence, police, prosecutor

Introduction

A society must have an effective and proper operating criminal justice system in order to maintain law and order. Individual's right and personal liberty are two important aspects to ensure fair trial. Two prevalent model of criminal justice system i.e. "crime control" and "due process".[1] Crime control, which follows an inquisitorial approach, concentrates on

lowering crime in society by giving police and prosecutors more authority. Due process is an adversarial model that focuses on individual liberties and rights and is concerned with limiting government power. The three primary agencies involved in the criminal justice system are the police, the prosecutor and the judge. However, it is not possible for justice to be solely determined by the actions of one legal actor within criminal proceedings. A criminal justice system cannot be solely reliant on the actions of a judge. Police and prosecutors are the two main agencies whose functioning at pre trial stage can play a very effective role before initiation of case in a court. Pre trial stage discretion refers to the authority granted to police and prosecutors to dispose of a case at the preliminary stage based on a variety of criteria. Because statutes cannot cover every circumstance in a criminal proceeding, discretion plays an important role in supplementing the role of the court.[2] Generally a case starts either by FIR or by a complaint to magistrate in both of the case police and public prosecutor can aid in filtration of cases by eliminating the trial of trivial and undesirable matters. In the case of Rooke, Lord Edward Coke described discretion as a method or process of determining the difference between truth and falsehood, right and wrong, real substances and superficial appearances, and fair and deceptive appearances and excuses, not based on personal desires and emotions."[3] So the discretion which is to be exercised by the police must not be arbitrary and not against the principle of natural justice or rule of law, it must be in the consonance with both of them. With the rapid advancement of computer technologies, the use of electronic means of information processing is becoming increasingly prevalent in modern social interactions. So the use of AI in criminal justice system like other fields has become an important part. Artificial Intelligence refers to the new technological development of computer system that can perform various functions like visual perception, decision making, speech recognition and many more. AI has become important part of Criminal justice system. Artificial Intelligence (AI) has demonstrated its ability to perform complex tasks, including technical and creative problem-solving, and is now being used in a variety of areas of daily life, such as Smartphone face recognition and the creation of art and music.AI is growing field so it can assist the various authorities which are involved in criminal justice system.

MEANING OF PRE TRIAL AND DISCRETION

Before a trial begins, a person who has been charged with a crime goes through the pre-trial stage .During this time; the accused has the opportunity to enter a plea regarding the charges. If they plead not guilty, a judge will determine what matters will be addressed before the trial. This stage includes

---

[1]Packer, Herbert L, *The Limits of the Criminal Sanction*, Stanford University press, Stanford(1968)

[2] Choe,D.H.,*Discretion at the Pre-Trial Stage; A Comparative Study*, Springer science+Buisness Media,Dordtecht 2013

[3] Rooke's Case(1598) 5 Co Rep 996

the examination of the details related to the charges and the gathering of evidence by the defense. Usually, this phase involves pre-trial conferences and preliminary hearings, during which a skilled lawyer can work towards resolving the case in the most favorable way by negotiating with the prosecution. During the pre-trial conferences and pre hearings, during which a skilled lawyer can work towards resolving the case in the most favorable way by negotiating with the prosecution. During the pre-trial period, the legal representative may also make a motion, such as a request to dismiss the case due to insufficient evidence, to exclude evidence related to the crime from the trial, to force the prosecution to reveal certain evidence, or to change the location of the trial. Pre trial stage basically revolves around the investigation so at this stage the police are empowered with various powers like examination of witnesses by police, arrest, search and seizure etc. Pre trial stage is very crucial for a criminal trial which assist the court to deliver a fair and impartial justice.

Discretion means the power to take decision. In other words when an individual takes the decision on the basis of their mind and wisdom so it is all about the applicability of mind. Discretion is the ability of an official to make decisions about the use of their public authority in specific situations. It is centered on the idea of power and judgment. Discretion is created by the existence of a set of restrictions, which define the limits of that discretion. Individuals have discretion over their property and can choose to donate, transfer, or sell it. They also have the discretion to write a will or not to do so, and no one can interfere with their decision. However, administrative discretion, like that exercised by elements of the criminal justice system, is different from individual discretion as it must be exercised within the confines of the law. Law enforcement officers, prosecutors, judges, correction officers, and probation officers all face discretionary decision making throughout the criminal justice process, starting with the decision of a law enforcement officer to make an arrest. "Vagueness in the language of some laws often results in discretion due to the fact that words are not as precise as numbers and can often be interpreted in multiple ways."In the Criminal justice process discretion plays an important part as key role.

ROLE OF POLICE

The police are the primary administrative body responsible for investigation. Both central and state laws regulate their operations. The police department operates independently from the prosecution and judicial branches .As a general principle, it is understood that the courts do not have the authority to oversee or control the police or their investigatory processes.[4] The role of the police in detecting crime is well define and distinguished, and falls under the executive power of the state.[5] During the investigatory phase of pre-trial, police officers exercise their discretionary powers. This includes witnesses,

[4] *T.T.Anthony v. State of Kerala*,2001(2)ALD (Crl) 276(SC)

[5] *State of Bihar v. J.A.C Saldamna*, AIR 1980 SC 326

documenting their statements, gathering physical evidence, performing searches and seizures, making arrests, collecting confessions, organizing TI parade, seeking scientific reports and expert opinions, and keeping a detailed record of all these actions for each case they investigate. Police discretion in simple words is freedom of police officers to make decisions during the performance of official duties. The Police Act of 1861, through its section 23, outlines the various duties of police officers in India. These duties include gathering intelligence concerning the public peace, preventing the commission of crimes and public nuisances, detecting and bringing perpetrators to justice, and apprehending individuals authorized by law to be apprehended and for whom sufficient evidences exists. In terms of discretionary power, police officers have limited authority in certain situations such as deciding when to draw their weapon, make an arrest, issue a traffic violation, use their firearm, conduct a search, or offer assistance. There are two main categories of cases in the legal system-cognizable and non-cognizable and police officers only have discretionary powers in cognizable cases. In non-cognizable cases, police officers only have discretionary powers in cognizable cases; police are unable to investigate without a court order. It is important to note that this list of example of discretionary powers is not exhaustive, but serves as a general overview of the limited discretion that police officers have. The Police act of 1861 serves as a guide for the responsibilities and limitations of police officers in India. Public safety is a critical obligation for law enforcement, and doing so presents a number of difficulties. Luckily, technology is available to help police officers in many areas of their work. In recent years, artificial intelligence (AI) has become an essential part of global policing, notably in areas like crime prevention and prediction. Predictive policing has become a significant development as a result of this technology revolution, and other policing techniques have also experienced considerable changes to improve public safety. Law enforcement agencies like police already taking help of potential AI in various ways. Law enforcement organizations use AI techniques to find suspicious trends that a human would miss. Criminal behavior can be predicted using artificial neural networks. Security system regulators link to databases with millions of data points, such as social media posts, Wi-Fi networks, and internet IP addresses, to perform these computations. The application of AI in law enforcement also makes it possible to identify crimes like fraud and money laundering. Facial Recognition, Cameras, Predictive policing, Robots etc., are the tools which can help the police in resolving various cases. Especially for crime scenes that are too large to be surveyed on foot, police departments are turning to AI cameras for assistance. In the wake of a crime, this technology can offer insightful information and help in the hunt for answers. Also, police enforcement uses surveillance equipment to keep an eye out for potential dangers in places with huge crowds, such festivals or sporting events. In large crowds, people can also be located using facial recognition software. Courts are considering the evidences which are given with the help of AI tools, although relying on these

evidence requires a proof that is beyond reasonable doubt and generally courts needed corroboration of these evidences, court cannot rely on them solely.

ROLE OF PROSECUTORS

The function of the public prosecutor in India during pre-trial phase of a criminal case is vital in the implementation of justice. The public prosecutor holds the responsibility of filing charges against the accused person, considering the evidence available and adhering to the legal procedures. They play a significant role in the examination of the case, providing guidance's to the police and instructing them to gather additional evidence if required. During the bail hearing, the public prosecutor stands for the state and objects to the granting of bail if the accused is considered a risk of fleeing or may hinder the investigation. Additionally, the public prosecutor may participate in plea bargaining negotiations with the accused or their lawyer, where the accused pleads guilty to a reduced charge in exchange for a lighter sentence. Furthermore, the public prosecutor is responsible for preparing the case for trial, including reviewing evidence, interviewing witnesses, and presenting the case in the court. In this way, the public prosecutor ensures that justice is served and that the rights of the accused and the victims are protected. Prosecutor whether elected or appointed is one of the most powerful officials in the criminal justice system. In India prosecutors are appointed by the state to conduct criminal cases on behalf of the government. Their main goal is to maintain law and order and protect the interest of the public. These responsibilities include carrying out the prosecution of criminals, having the discretion to withdraw cases, and being responsible to the court while acting in an impartial manner. The public prosecutor has the authority to withdraw a case, not only due to lack of evidence, but also for other reasons that serves in the interest of justice.

ROLE OF ARTIFICIAL INTELLIGENCE

In recent years the criminal procedure law is more tilted and actively addressing issues of the future possibilities using Artificial Intelligence (AI). AI has advanced dramatically over the last two decades, becoming an integral part of our daily lives. This reflects the current socioeconomic and even cultural paradigm shift caused by extraordinary technological advancements, including but not limited to AI-driven tools and technologies. The concept of AI is not fully acquired in the legislation but it is developing through various theories and techniques. The basic object of AI is to replace the human cognitive mind activities with a computer. AI algorithms also explored in various disciplines like forensic science, including DNA analysis. According to research, the use of artificial intelligence in criminal proceedings in several foreign countries has shown that it offers ample opportunities to increase transparency, improve predictability, and modernize the legal system. A human mind has the ability to think, to use his cognitive mind as subjectively but in case of AI we can use it for limited purpose only. As an illustration, consider a scenario where a judge must decide whether to release a pregnant female offender who is at risk of elapsing. An AI algorithm may logically

conclude that such an individual should not be released, while a human judge might make a different decision based on the changing values that would result once the offender become a mother. Like this we can take enormous number of examples where the subjective thinking of the human cognitive mind is required so there is more possibility that AI system will not work efficiently. Therefore we believe that all the issues arising in the criminal procedures field cannot be resolve by AI. But on the other side of coin the AI system can replace various functions which are related to commands only. Nowadays the scientific evidence is of great importance before the court of law, they all are taking the help of AI. Biological identification of a person may be accomplished through medical tests i.e. Luminal Test, BCIP Test (Bromo-chloro-indoyl phosphate) Phenolphthalein Test, DNA analysis etc. AI is capable of giving more accurate and reliable reports of the various biological tests.[6] Installing CCTV cameras at various places for the night vision is also can be used as tool to detect various crimes.

ARTIFICIAL INTELLIGENCE IN CRIMINAL INVESTIGATION

Generally at the stage of investigation which is pre trial stage, the prima facie agency that is involve in whole of the process of investigation is Police.AI can be described as the increasing utilization of technologies that use algorithms to process large amounts of data , either to aid human police work or to replace it.[7] But as we knew that AI is emerging worldwide so there are number of functions which can be performed by the help of Artificial Intelligence. So the main question here arises is that whether replacing the human agency like police at the pre trial stage with an Artificial Intelligence will work efficiently? Whether the arrest, detain and use of force will be justified by the robotics? The main concern for the public is to determine whether the police are already using AI and, if so what type. This could be a technology that has already been widely adopted, such as automatic license plate recognition. The availability of numerous cameras, plate-reading algorithms, and inexpensive data storage make it possible to record billions of license plates annually. In simple words we can say that AI is the use of machines to replace human beings or we can say advanced human behaviors. According to different levels, It can be classified as weak AI, strong AI, super AI. Weak AI is the most widely used AI at this stage, which refers to AI systems that realize specific functions in a professional field, such as speech recognition, intelligent search, etc. Video investigation is one of the prominent example of AI, in this the recognition of crime is done through the data collected by video survillence; they can give more accurate explanation then human agency like police. Many police departments are focusing on using of AI to identify the suspects and places. Just for example patrolling at the night time might get replace by the drones and robots. The type of AI employed has significant outcomes and

[6] Dr.Anjum parvez,Prof.(Dr.)Rajesh Bahuguna JUDICIARY AND TRUE ASSESMENT OF SCIENTIFIC EVIDENCE:SOME ISSUES 13(1) DLR(2021)

[7] Joh, E. E. (2017). Artificial intelligence and policing: first questions. *Seattle UL Rev.*, *41*, 1139.

implications regarding power and accountability in policing. Here are some tools which can be used:

1.Machine Learning:A subfield of artificial intelligence(AI) and computer science called machine learning focuses on using data and algorithms to simulate how humans learn,gradually increasing the accuracy of the system.Machine learning is related to AI which captures and store the data like a human mind,being an computer it can store multiple data in comparison to the human mind.In the criminal justice system it can be helpful in restoring the previous case laws and the previous criminal record of the offenders.

2.Image Recognition: In order to identify criminals and missing persons using image data, police departments heavily rely on facial recognition technology. Nevertheless, the street camera photos' quality is frequently poor, making it challenging and time-consuming to evaluate them for important information. When it comes to identifying faces, AI in law enforcement is more accurate than humans while also saving officers' time. Computers can recognise faces that humans might miss using certain characteristics.

3.Natural learning process:Natural learning process aims to establish machines that can understand the the normal text or voice data and can convert that of their own like a human being OR we can say it is the capability of a machine to learn the natural language of humans and after processing it collecting the data and replying it in their own sense.Recently Supreme Court of India transcript the constitution Bench proceeding using this AI technique.

4.Robotics: Police agencies are rapidly using robots to carry out a variety of jobs, including those that are hazardous or routine, even if it is not yet feasible to completely replace human police officers with them. Robots are also capable of carrying out difficult jobs, including entering dangerous situations and spotting possible threats without endangering the lives of police officers.

5.Blockchain:Blockchain mainly functions as storimng the data and make a database of their own.In criminal justice system it can be used as clubbing all the data and proceeding of various courts which happened on day to day basis and it would be easier to access for the general public to know the status of any particular case.Beside this it can also help in restructing the data and organize in a systematic way.

CAN AI REPLACE POLICE AND PROSECUTORS AT PRE TRIAL STAGE?

Pre trial refers to the decisions made by law enforcement and prosecutors before a case goes to trial .These decisions can greatly impact the outcome of a case, and are based on variety of factors, including evidence, witness statements, and the suspected individual's criminal history. The use of artificial intelligence (AI) in the criminal justice system has been a topic of discussion in recent years, with some advocating for its use to increase efficiency and reduce bias. However, there are also concerns about the potential consequences of relying on AI in the criminal justice system, particularly in regards to pre-trial discretion. While AI can assist in certain tasks, such as analyzing data and identifying patterns, it cannot replace the

human judgement and interpersonal skills required for effective pre-trial discretion.AI can provide useful information and insights, but ultimately it is up to human decision-makers to interpret this information and make informed decisions. In addition, there are ethical and legal implications to consider when using AI in the criminal justice system. For example, there is a risk of AI systems replicating existing biases and perpetuating discrimination. AI can assist the police official in various ways here are few examples;

1. Predictive policing: AI algorithms can be used to predict where crimes are likely to occur and to allocate resources more effectively. This can help police proactively prevent crime and ensure that they are in the right place at the right time to respond to criminal activity.
2. Evidence analysis: AI algorithms can be used to analyze large amounts of data and evidence more quickly and accurately than humans. This can help police and prosecutors identify patterns, make connections, and build stronger cases.
3. Sentencing recommendations: AI algorithms can be developed to provide recommendations on sentences for crimes based on various factors such as past criminal history and the severity of the crime. This information can help police and prosecutors make informed decisions about charging and plea bargaining. Furthermore, AI systems may not be transparent in their decision-making processes, making it difficult to hold decision-makers accountable.

CONCLUSION

In conclusion, the use of AI in pre-trial discretion is a complex and multi-faceted issue. On one hand, AI has the potential to increase efficiency and reduce bias in the pre-trial process. However, the reliability and accuracy of AI algorithms have been questioned, leading to concerns about violations of the due process and fairness. The use of AI in pre trial discretion raises ethical and privacy concerns ,a well as issues related to accountability and transparency .To ensure that the use of AI in pre-trial discretion is just and fair ,it is important that proper safeguards and regulations are in place, and that the limitations and potential biases of AI are taken into account. For instance, California has already banned its usage for three years to safeguard residents' rights to privacy, and the European Commission is considering a temporary ban to prevent the misuse of facial recognition technology (FRT). The role of judges and lawyers cannot be overlooked, as they are the ones who are ultimately responsible for ensuring that the rights of the accused are protected, and that the decisions made in the pre-trial process are just and fair. Moreover, it is also important to continually evaluate and improve the algorithms used in AI systems, and to address any issues that may arise. In conclusion, the use of AI in pre-trial discretion is a complex and controversial topic, with potential benefits and drawbacks. To ensure that AI is used in a way that promotes fairness, equality, and justice, it is important to have proper safeguards and regulations in place, to be transparent and accountable, and to continually evaluate and improve AI systems.