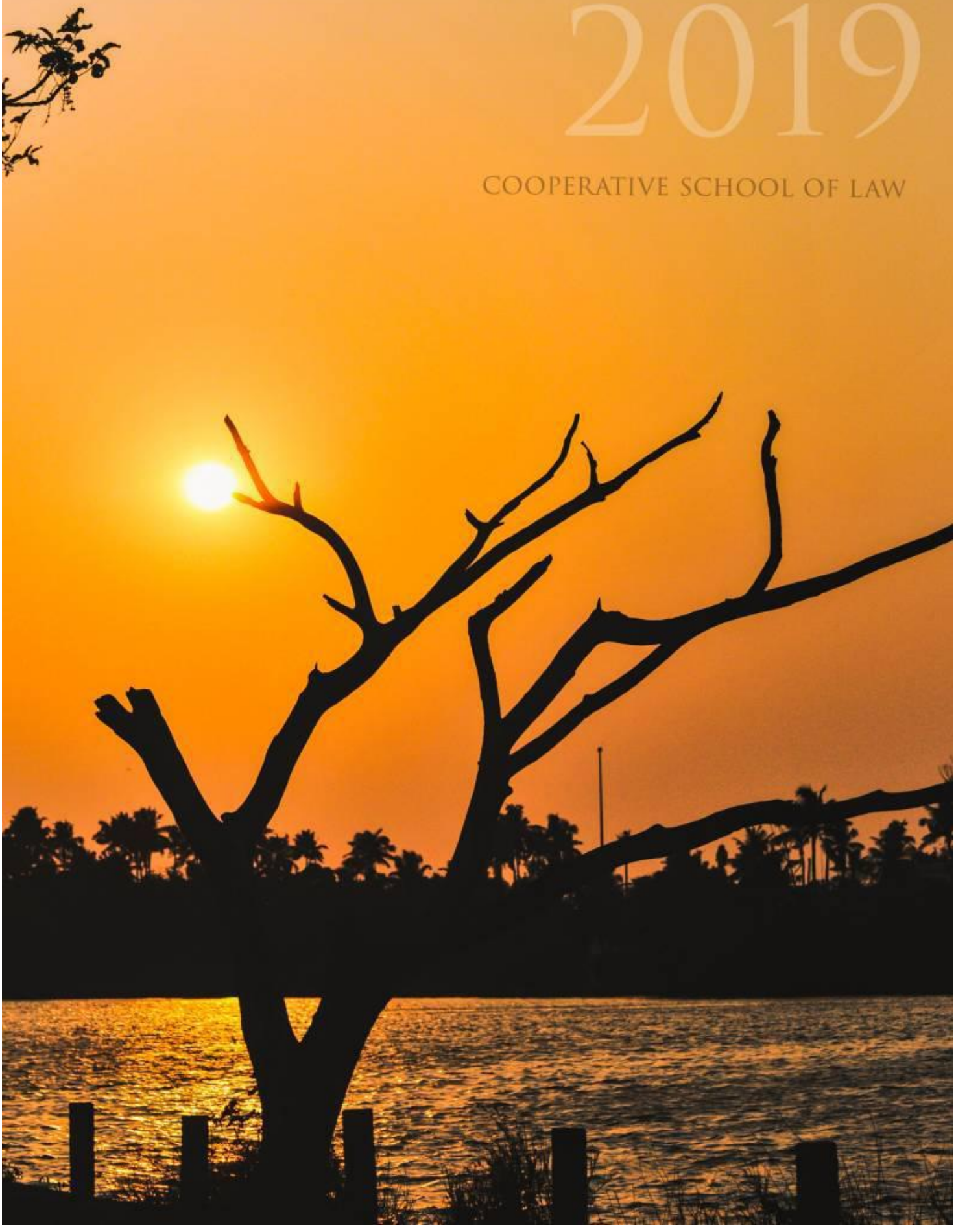
LAMATES

2019

COOPERATIVE SCHOOL OF LAW



Lamates

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PREFACE

The legal profession swears by the maxim, "**verba volant, scripta manent**" which means spoken words fly away, written words remain. This maxim explains the importance of legal writings now a day. Law schools face increasing pressure to improve instruction in practice-oriented skills. One of the most important of these skills is legal article writing. An article is a piece of writing written for a large audience. Effective writing is a skill that is grounded in the cognitive domain. It involves learning, comprehension, application and synthesis of new knowledge. Writing articles along with their professional studies will definitely help the students to increase their wisdom and knowledge

'LAMATES' is a compilation of selected research articles prepared by the students of this Law school as an extra work during their course period. We take this opportunity to thank all the students who contributed to this law magazine. We acknowledge the sincere support given by Prof. (Dr.) V S Sebastian, Principal, Co-operative School of Law for giving constant guidance and support to bring out the proceedings as an ISBN publication. We also extent our gratitude to Mr. P J George, Manager, Co-operative School of Law, Thodupuzha, who supports this initiative. We also convey our gratitude to our fellow teachers and the editorial board for their immense support for the publication of this book.

We hope that this endeavor provides a platform for the students of our college to achieve their research goals during their academic period

Staff Co-ordinators

Asst. Prof. Parvathy P V

Asst. Prof. Suresh T S

MESSAGE

A legendary proverb says, “A man without education is a strange animal.” Dr. Babasaheb Ambedkar was of the opinion that education will liberate all and hence he called each and every one to be educated, to unite and fight against the odds of the society. The encyclopedia of education defines legal education as a ‘skill for human knowledge which is universally relevant to the lawyer’s art and which deserve special attention in educational institutions. Former Justice Dada Dharmadhikari has rightly remarked that ‘legal education makes lawyer an expert who pleads for all like the doctor who prescribes for all, like the priest who preach for all and like the economist who plan for all’. Education is a radiance that shows the mankind the right path to move forward. The purpose of education is not just making a student literate but to develop rationale thinking, enhances knowledge and self sufficiency

Legal Education plays a cardinal role in building a cohesive society. Co-operative School of Law thus is totally committed to providing quality, to enable its students to address modern challenges competently and more importantly to become ethical and human law practitioners. Our college has the privilege to have a healthy and harmonious ambience. Moreover, discipline in our campus inculcates the values of time management and punctuality.

On this occasion, I am happy to convey my greetings and best wishes to the faculty members, students of the college and all those who contribute to the success of the magazine “LAMATES” and wish them success in all their future endeavors.

Best Wishes…

P J George

President

Thodupuzha Taluk Educational Co-operative Society

MESSAGE

It is really a matter of joy for me to hear that the second edition of the student's magazine, '***Lamates'*** is going to be released soon. The articles selected by the editorial board for this edition seems to be short and crisp, but carry condensed thoughts. The intellectual energy of student authors diverted and depicted in the form of short articles find its place in this magazine.

Many are the contributories to this edition Students from various batches, who have made significant presentations in weekly seminars and debates, abridged their findings and transmitted it to the Editorial board who after careful scrutiny, selected some for inclusion in ***' Lamates'.*** Efforts of students recognized in this manner would certainly foster their academic talents to a large extent. ***'Lamates'*** can grow from the present frame work to a normal law journal in future. Along with short notes, it can think of including few research articles also as its contents which would certainly add to its intrinsic value. Similarly, lead articles from teachers within and out can also be thought of for inclusion into it.

The sincere efforts of the Editorial Board under the able supervision of my colleagues Sri.Suresh T.S, and Smt. Parvathy P V, Assistant Professors of the Law School, are commendable.

I wish this effort all success.

Dr. V.S Sebastian

Principal

Co-operative School of Law

MESSAGE

We take immense pleasure in presenting the First Edition of our college Magazine **LAMATES 2019**. It is a mode to reflect our achievements. We express our sincere gratitude to the contributors. The CO-OPERATIVE SCHOOL OF LAW, THODUPUZHA finds itself in a position to adapt itself to the quick changes in the field of legal education and is committed to student's personal and professional growth under the guidance of teachers and management. We are grateful to our Manager P.J George, Principal Dr. V.S Sebastian, Staff Coordinators Asst. Professor, Suresh T.S and Asst. Professor, Parvathy P.V who extended full support to us in completing this magazine. We invite suggestions and feedback from our readers. Hope you enjoy reading it as much as we enjoyed presenting it to you.

Student Co-ordinators

Amala Savy

Ashish George

Gillet Enas

WHEN 'JUSTICE' IS ON TRIAL

Albin Anto*

"They (citizens) will not wish power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law…that…standards of conduct, both in and out of court… are designed to maintain confidence."[1] **- Justice Thomas**

Introduction

Judiciary has been able to play its role in preserving the Constitution and rule of law exceedingly well over the years. Its efforts in ensuring the good governance, and welfare of the people, by protecting, preserving and expanding the horizons of fundamental rights are worth commendable. For preserving and advancing rule of law and public good, contributions of judiciary have been at times beyond its limitation. Within the limited sphere allotted to it by the Constitution, it is of no doubt that judiciary has been able to live up to its expectation. All these were made possible only because the people of India have solemnly agreed to repose their faith and confidence upon this judiciary and obliged it with the responsibility to act as a counter-weight to executive and judiciary. Henceforth, for its existence and effective continual discharge of duties, it is the dire responsibility of this institution, to respect the solemn resolution by the people of India, to repose their faith and confidence, and see that this confidence placed, does not corrodes. Meanwhile, as indicated by the illustrations from the past, the vital organ of state, at times fails in this respect. It is however to be noted with caution that, every such failure caused by the dubious acts of its forebears, is detrimental to the trust and confidence of the people upon this institution and ultimately to the rule of law. Therefore, any deviation from the standards expected from these eminent personnel need to be checked and cured expeditiously and public trust and confidence shall be maintained without any corrosion. It is thus, the need arises to address judicial misconduct forthrightly and in the manner it deserves.

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[1]Judicial Ethics in Australia 9 (2nd Edn., 1997)

What constitutes Judicial Misconduct?

Justice Sawant Committee defines misconduct as "*any conduct or a course of conduct on the part of a judge which brings dishonour or disrepute to the judiciary so as to shake the faith and confidence which the public reposes in the judiciary".*[2]Thus, to uphold the sanctity, honour and repute of judiciary, a judge is supposed to maintain his conduct, both professional and personal, inside and outside the office, before, during and even after the holding of office[3] in every attempt, action and performance of duty[4] and by its virtue must attempt to earn, and maintain the reposed faith and respect of the people. However, this sanctity, faith and respect corrode, when judge by dubious, irresponsible and improper deeds, deviates from the standard of conduct expected from him.[5] This corrosion of confidence is fatal[6] and it is not only the profession which suffers, but the entire system of administration of justice.[7] Hence, in order to preserve and maintain the sanctity and efficiency of this sacred institution, judges are supposed to maintain "*high standards of conduct.*[8]Therefore, in common parlance, any deviation of a judge from the 'high standards of judicial conduct' expected from him is regarded as judicial misconduct. Answering the question what constitutes 'high standards of judicial conduct', it is pertinent to have a glance at the principles set out in Bangalore Principles of Judicial Conduct, 2001, prepared by a group of senior judges of Commonwealth countries under the supervision and initiation of the United Nations. The principles are independence, impartiality, integrity, propriety, equality and competence and diligence.[9] These principles are recognised as the canons of judicial conduct and the modern jurisprudence on judicial misconduct is shaped by same.[10]

Though it is difficult to comprehensively set out every instance of judicial misconduct with mathematical precision, many countries could bring out Codes of Conduct in tune with Bangalore principles, prescribing a nearly exhaustive list of judicial conduct. India also possesses a Code of Judicial Conduct in the form of Restatement of Values of Judicial Life.

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[2]195th Law Commission Report, 457 (2006)
[3] Justice Thomas, Judicial Ethics in Australia 9 (2nd Edn., 1997)
[4]In Re: C.S. Karnan MANU/SC/0814/2017
[5]Code of Conduct for United States Judges, Guide to Judiciary Policy, 2 (2019) (May, 20, 2019, 10:40 AM), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf
[6]In Re: C.S. Karnan MANU/SC/0814/2017
[7]C. RavichandranIyer v. Justice A.M. Bhattacharjee MANU/SC/0771/1995
[8] Gerald Stern, Is Judicial Discipline in New York State a Threat to Judicial Independence? 7 Pace Law Rev.2, 291, 377(1987)
[9]Bangalore Principles of Judicial Conduct,2001 (May, 20, 2019, 1:24 PM) https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf
[10]Code of Conduct for United States Judges, Supra 5

In these days therefore, mostly the acts of the judges inconsistent with the Codes are deemed to be judicial misconduct by these respective countries.

1. India and Judicial Disciplinary Procedure

So as to address the judicial misconduct, India has developed three varying judicial disciplinary procedures. Amongst them, the first and prominent means for checking and curing judicial misconduct is available under Art.124 (4) of the Constitution of India in the form of impeachment. Art. 124(4) of the Constitution provides for the removal of judges of Supreme Court *"by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two third of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity*."[11]

The procedure for the same can be initiated by a motion in House of People for presenting an address to the President praying for the removal of a judge by initiating a motion signed by 100 members of House of People or in Council of States signed by 50 of its members.[12] With the introduction of Judges Inquiry Act of 1968, if the Speaker or Chairman admits the motion, as the case may be, he has to keep the motion in abeyance and has to propose the constitution of a committee for inquiry.[13] This committee shall be a three member committee which includes one chosen from Chief Justice of India and Judges of Supreme Court, one chosen amongst member of Chief Justices of High Court and one in the opinion of Speaker or Chairman is a distinguished jurist.[14] This Committee shall not lapse with the dissolution of House of People.[15] The Committee shall frame charges and investigate the charges.[16] The Committee after conducting an investigation necessary to reach out to a conclusion shall submit its report to the Speaker or Chairman, as the case may be, within 90 days. The House may proceed with the motion only if the Committee concludes that there is a proved misbehaviour and incapacity.[17] It is to be noted in particular that the investigation is a judicial process whereas the motion is a political process. The judge concerned, whose against the

[11] Art. 124(4) of the Constitution of India
[12] Sec. 3 (1) (a) and (b) of Judges Inquiry Act, 1968
[13] Sec. 3(2) of Judges Inquiry Act, 1968
[14] Sec. 3(2) (a) and (b) of Judges Inquiry Act, 1968
[15]Sub Committee of Judicial Accountability v. Union of India, 1991(4)SCC 689
[16] Sec. 3(3) of Judges Inquiry Act, 1968
[17] Sec. 6 of Judges Inquiry Act, 1968

investigation is made, is only entitled to get the copy of the judgment after submitting it to the Speaker or Chairman.[18] The House is at the liberty to ensure the veracity of the evidence produced by the Committee and to arrive at a different conclusion.[19] Meanwhile, before passing the motion, it is mandatory to provide a reasonable opportunity of hearing to the judge concerned.[20] Once, it is passed, the President by order, shall remove him from the office.[21] The most glaring discrepancy in the procedure is that the judge concerned for no means can be kept aside from exercising judicial functions till then, even while investigation and impeachment procedures are underway.

The next manner by which the judicial disciplinary process can be initiated against a Supreme Court Judge is through filing a complaint to the Chief Justice of India (CJI) or the President of India. The CJI has to look into the complaint made to him and the complaint forwarded to him by the President, as to whether the complaint is frivolous or carries any merit. If he finds that the complaint is frivolous he may file the complaint and if, it carries some merit and needs a deeper probe, he may form an In-House Committee comprising of 3 Supreme Court Judges. The Committee shall submit a report to the CJI, and if it discloses misconduct grave enough which mandates removal from the office, the judge concerned may be asked to resign and if disagrees to do so has to be kept out of judicial functions and the President as well as Prime Minister be informed and has to forward them with a copy of the complaint.[22] Ironically, still then, if the misconduct does not warrants removal from office, the procedure has nothing to provide for minor reprimands but confines the reprimand to a mere advice.

The third mechanism of judicial disciplinary process at the Apex level is specifically designed in pursuant to the Prevention of Sexual Harassment in the Workplace Act, 2013. By virtue of 2013 and 2015 guidelines issued by Supreme Court, a Gender Sensitisation Internal Complaints Committee (GSICC) has been constituted. Any women other than the female governed by Supreme Court service rules may file a written complaint if she faces sexual harassment at the Supreme Court precincts to the GSICC.[23] GSICC, upon satisfied with the

[18]Mrs.SarojiniRamaswami v. Union of India, 1992 (4) SCC 506
[19]195th Law Commission Report421 (2006)
[20] Sec. 3(4) of Judges Inquiry Act, 1968
[21] Art. 72 of Constitution
[22]Report of In House Committee Procedure (May, 21, 2019, 1:50 PM), https://www.supremecourtofindia.nic.in/pdf/cir/2014-12-31_1420006239.pdf
[23]Rule 2(a) of Gender Sensitization and Sexual Harassment of Women at Supreme Court (Prevention, Prohibition and Redressal) Regulation, 2013

genuineness of the complaint shall constitute an internal sub-committee[24] with three members out of which two belongs to GSICC and an outside person, majority being women.[25] The internal committee within 90 days of its constitution shall complete the investigation and forward the report to the GSICC within 10 days. GSICC shall accept or reject the report and if it accepts the report shall pass an order within 45 days to end the harassment and to secure justice to the victim.[26] Aggrieved person may make a representation to the CJI and shall be preferred within 90 days of the representation.[27]

Reforming Indian Judicial Disciplinary Procedure: Need for the Hour

Any misconduct from the part of judges affects the judiciary as a whole; any defect in the curative process is fatal to the institution and if that happens with the superior level its effects are devastating both to the judiciary and to the rule of law. Henceforth, for the system to remain intact it is absolutely necessary that the judicial disciplinary process is perfect and capable enough to regain aura of public confidence and respect the lost by the dubious acts of its forebears. Meanwhile, Indian judicial disciplinary system as portrayed aforesaid, appealingly though seems to be concrete and overarching, yet in effect, is confusing and is a failure to cater its object. Various deformities present within the mechanism, undermines its purpose of restoring the lost public confidence and respect towards the institution.

Binding itself to the basic principles of disciplinary proceedings is the primary indication of an ideal disciplinary procedure. Those principles are accountability, judicial independence, fairness, efficiency, transparency and accessibility.[28] Examining the Indian system in the light of these principles, first comes, is the principle of accountability. The judicial disciplinary mechanism must be of such a quality that the judge alleged of misconduct, if found guilty shall be held accountable. Firstly, holding accountable does not always mean removal. There exist misconducts which do not warrant removal but demands minor reprimands and

[24] Rule 9 of Gender Sensitization and Sexual Harassment of Women at Supreme Court (Prevention, Prohibition and Redressal) Regulation, 2013
[25] Rule 1 of Gender Sensitization and Sexual Harassment of Women at Supreme Court (Prevention, Prohibition and Redressal) Guidelines, 2015
[26] Rule 10 of Gender Sensitization and Sexual Harassment of Women at Supreme Court (Prevention, Prohibition and Redressal) Regulation, 2013
[27] Rule 12(1) of Gender Sensitization and Sexual Harassment of Women at Supreme Court (Prevention, Prohibition and Redressal) Regulation, 2013
[28]General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985;Basic Principles on the Independence of the Judiciary,A/RES/40/32 (29 November 1985) A/RES/40/146 (13 December 1985) (May, 20, 2019, 2:17 PM)
https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx

counselling more than a mere advice.[29]If not, misconducts though not grave, but which tends to corrode the integrity of the institution, gradually, will remain without an adequate remedy. Despite, absence of such provision in the Constitution, many countries, notably like South Africa has incorporated into its statute and in many countries constitutional courts have declared it constitutionally valid.[30] Law Commission of India had already proposed for the same, but till date, it is of no effect.[31]

The second principle is the judicial independence. Judicial independence in disciplinary proceedings connotes to the independence to proceed forthrightly and appropriately without undue influence. Possibility for undue influence often sprouts when the mechanism consists solely of judges. Though it is trite that there is no other disciplinary measure effective than peer pressure[32] and though judges often concedes that the animosity amongst judges are not unknown,[33] it is also a fact that the possibilities of peer undue influence are not absent. When a complaint is filed, it has become a norm in most countries to conduct a preliminary investigation. In such an investigation, if the allegation is found to carry some substance, keeping the judge out of judicial functions till the final enquiry is conducted, can nullify chances of peer influence to a greater extent and can boost up public confidence to a larger level, particularly when the allegation is concerned with the senior most judges. Interestingly, majority countries follow the same system, for which there is no provision in India.

The next principle is fairness. Fairness contemplates fairness to both the judge concerned and the complainant. It involves complying with the principles of natural justice at every stage.[34]This compliance to the principle of fairness should not only be maintained but should also be shown to the public in the manner sufficient enough to restore their lost confidence upon this institution. Peer pressure, the measure adopted in India, admittedly though an effective weapon need not always been able to convey the idea of fairness to the public, upon whose trust this institution functions. Henceforth, including a member from the Bar as followed by the likes of New Zealand and South Africa, upon the nomination of Attorney

[29] In India, the only provision for minor reprimand is the provision for giving advice following an In- House Committee enquiry. See also Report of In House Committee Procedure,

[30]Chandlerv.Judicial Council (1970) 398 US 74, Hastings v. Judicial Conference of U.S. (1987)829 F. 2d 91 (U.S. Court of Appeals), MacKeiganv..Hickman 1989(2) S.C.R 796 (at 811-812)

[31]195Th Law Commission Report, 421 (2006)

[32]C. RavichandranIyer v. Justice A.M. Bhattacharjee and Ors. (05.09.1995 - SC) : MANU/SC/0771/1995

[33]Additional District and Sessions Judge 'X' v. Registrar General, High Court of Madhya Pradesh and Others [(2015) 4 SCC 91]

[34] General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 Basic Principles on the Independence of the Judiciary,Supra 29

General, or including a Jurist, upon the advice of House of Representatives, in the investigation panel, will improve the accountability and boost up the trust of the people. It is to be noted, at this juncture is, that the separation of power does not contemplate absolute independence to each organ, but also involves a process of checks and balance, however, without sacrificing the essence and object of the organ concerned.[35]

The fourth principle is the transparency. Currently, without much deliberation itself, it can be out rightly concluded that the procedure in India is highly complicated and cumbersome with least transparency as far as public is concerned. Most of the countries by adopting simple, concrete and overarching procedure which is codified by a single legislation and by making public the inquiry report, try to maintain transparency in the disciplinary process - ideals which India can definitely incorporate to its system. Transparency should be well maintained that the public's right to know is not hindered in the pursuit to maintain the privacy of judge, complainant and the integrity of institution. Maintaining a balance in addressing this conflict is crucial in building the faith of the public upon this institution. Further, despite the existence of Restatement of Values of Judicial Life, bringing in a nearly comprehensive Code of Judicial Conduct, incorporating Bangalore Principles as existing in most of the countries could create more transparency to the system.

Finally, the procedure must be increasingly accessible and must be devoid of cumbersome procedural formalities, free from latches and unreasonable and induced delays. For instance, as stated earlier, a female governed by Supreme Court Service Rules, 1961 is exempted from filing complaints to GSICC. However, at the same time are devoid of an option to initiate any proceedings against judges under the Supreme Court Service Rules, 1961 as judges are not servants under the rules. In effect, it creates a predicament situation whereby, a female court staff if experiences any injustice from a judge is left with no interim remedy but only with a remedy of supreme nature, which is not often accessible by an ordinary staff. Such many latches are present within the system, mandating immediate rectification.

Conclusion

It is a fact that the Indian judicial disciplinary system, relatively, is not only complicated and confusing, but also is far away from the basic standards expected from it. Comparative study clearly explains that many countries like New Zealand, Canada and South Africa could bring

[35]Supreme Court Advocates-on-Record-Association and Ors v. Union of India MANU/SC/1183/2015

out a settled mechanism to address the cases of judicial misconduct, in accordance with the basic principles set out in Bangalore Principles. In US, For the People Act, 2019 to deal with cases of misconduct of judges in the Supreme Court of the United States has been passed by the House of Representatives and is awaiting the approval of the Senate. United Kingdom and Australia, by recent changes, though not free from pitfalls, could some way or other codify the judicial disciplinary procedure. Yet the Indian system remains without any codification, with least adherence to the basic principles of judicial disciplinary procedure inviting thorough criticism. As far as India is concerned changes must happen but bringing out changes within the existing structure can no longer be effective. It is because evidently, the existing system has failed to gather public confidence, vital from its continued existence. Thus, thinking for an institutional reformation and introducing a fresh framework in the form of a new commission to handle judicial misconducts can only recapture the trust of the people upon this institution.

Any delay in introducing counter measure would cause public trust and respect to lose making it likely to repeat yet another hostility of Star Chamber which is detrimental to the administration of justice. Hence, more the delay more will be loss and devastation and more effort will have to be put to in to restore what is lost. Therefore, for the rule of law to prevail and for the administration of justice to function effectively, it is pertinent for the entire system to be made systematic with immediate effect.

RIGHT TO PRIVACY UNDER THE CONSTITUTION OF INDIA

Tijo Charlin*

Introduction

Privacy is one of the most important rights an individual may enjoy in a society and is a human right. It is a natural desire of human being to set boundaries in a civil society to preclude intrusion from others or even the government. *'A man's house is his castle'*; the saying implies the inherent right to privacy in human being. Privacy, in its simplest sense, allows each human being *'to be left alone'* in a core which is inviolable. Yet the autonomy of the individual is conditioned by his relationships with the rest of society. Those relationships may and do often pose questions to autonomy and free choice.

Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights[1].

Black's Law Dictionary defines privacy as, *"right to be let alone; right of a person to be free from unwarranted publicity; and right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned.*

The right to privacy in India is developed through a series of decisions of Hon'ble Supreme Court in the past more than sixty years. Though many societies recognised the right to privacy, the origin of right to privacy as a fundamental right as it exist today can be traced from west.

Evolution of Doctrine of Privacy in India

The most profound development in privacy law was the publication in 1890 of Warren and Brandeis's article "The Right to Privacy[2], adverted to the evolution of the law to incorporate

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[1] Justice K Puttaswami (Retd) Vs Union of India, W.P (Civil) No.494/2012 and connected matters decided on 26 Sept 2018.

[2] Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," Harvard Law Review 4 no. 5 (Dec. 15, 1890): 193, 218, available at https://www.cs.cornell.edu/~shmat/courses/cs5436/warren-brandeis.pdf .

within it, the right to life as recognition of man's spiritual nature, of his feelings and his intellect. According to Roscoe Pound, the article did "nothing less than add a chapter to our law. And Harry Kalven, Jr. referred to it as the "most influential law review article of all."

Another notable case in the matter of right to privacy is in *Roe v. Wade* **(1973)** - Norma McCorvey, called by the alias Jane Roe in the court proceedings, wished to terminate her pregnancy but found she could not do so safely or legally in the state of Texas. In the resulting Supreme Court case, the Court ruled that a woman's decision to have an abortion in the first trimester of pregnancy fell under the right of privacy and thus was protected by the Constitution. The Court did permit limits on abortion in the second and third trimesters of pregnancy. In this case the Court extended the right of privacy to the decision to have an abortion. The right to privacy is not unlimited, however: the decision in *Roe* recognized that the government may regulate abortion in the second and third trimesters of pregnancy due to compelling state interests in maternal health and potential life.

The constitution of India has not guaranteed the right to privacy as an explicit fundamental right to citizens, but the Supreme Court has construed the right to privacy as part of the life and personal liberty under Article 21 of the constitution of India through its recent judgement in *Justice K S Puthaswamy (Retd) and others Vs Union of India*[3].

The earliest recordings of 'right to privacy' in Indian jurisprudence were in the late 1800s when a local British court upheld privacy of a pardanashin woman to access her balcony without the fear of the neighbourhood gaze[4]. The jurisprudence has evolved ever since and the right to privacy was read into 'Article 21' of our Constitution by the Supreme Court as an integral part of 'personal liberty.

In fact that the privacy is not a fundamental right was first told to us by the Supreme Court in the year 1954. An eight-judge bench in *M.P. Sharma v. Satish Chandra*[5] case, while dealing with the power to search and seize documents from the Dalmia Group, dismissed the existence of a right to privacy on the basis that the makers of Constitution had not envisaged a fundamental right to privacy similar to the 4th Amendment in the U.S Our desire for a private life made a comeback after nine years before a six-judge bench of the Supreme Court

[3] Justice Puthaswami(Retd) and another Vs Union of India
[4]A brief History of Right to Privacy ,https://www.theweek.in/content/archival/news/india/brief-history-right-to-privacy.html
[5]AIR 1954 SC 300.

in the case of *Kharak Singh v. State of Uttar Pradesh*[6], only to be rejected again. Kharak Singh, an alleged dacoit, was subjected to surveillance and secret picketing of the house, visits at nights, periodical inquiries and verification of movements. The Supreme Court refused to budge and held that there is no fundamental right to privacy but went on to strike down the provision which allowed night visits for violation of 'personal liberty'. The silver lining was Hon'ble Justice Subba Rao's dissent, wherein he said even though the Constitution did not declare the right to privacy to be a fundamental right; it was still an essential ingredient of personal liberty. He went on to observe that

"In an uncivilized society where there are no inhibitions, only physical restraints may detract from personal liberty, but as civilization advances the psychological restraints are more effective than physical ones. The scientific methods used to condition a man's mind are in real sense physical restraints, for they engender physical fear channelling one's actions through anticipated and expected grooves. So also the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle"; it is his rampart against encroachment on his personal liberty. The pregnant words of that famous Judge, Frankfurter J., in Wolf v. Colorado [[1949] 238 US 25] pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one," thereby recording the existence of this right in our post-independence jurisprudence.

The need for recognising the right to privacy was evident in *Govind* v. *State of M.P*[7]. Wherein, Mathew, J. as Lord Denning indicated envisaged its gradual development thus:"*The right to privacy in any event will necessarily have to go through a process of a case-by-case development".* The court also observed that the domiciliary visits by the police should be reduced to the clearest cases of danger to the community security and not routine follow up at the end of a conviction or release from prison or at whim of a police officer.

[6] 1964(1) SCR 332
[7] AIR 1975 SC 1378

In *Additional District Magistrate, Jabalpur v. S.S. Shukla*[8] a Constitution Bench of this Court arrived at the conclusion (by majority) that Article 21 is the sole repository of all rights to life and personal liberty, and, when suspended, takes away those rights altogether. A rare moment in history , Justice D Y Chandrachud has overruled his father judgment in ADM Jabalpur case being a judgement of emergency era observing that , "The judgments rendered by all the four judges constituting the majority in ADM Jabalpur case are seriously flawed. Life and personal liberty are inalienable to human existence[9]".

The scope and ambit of the right of privacy or right to be left alone came up for consideration before the Supreme Court in *R. Rajagopal* v. *State of Tamil Nadu*[10] during 1994. In this case the right of privacy of a condemned prisoner was in issue. One Auto Shankar, a condemned prisoner, wrote his autobiography .This autobiography allegedly set out close nexus between the prisoner and several officers including those belonging to IAS and IPS some of whom were indeed his partners in several crimes. The publication of this autobiography was restrained in more than one manner. It was on these facts that the petitioner challenged the restrictions imposed on the publication before the Supreme Court.

Dealing with the origin of the right to privacy, the Supreme Court held that *"The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin - (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising - or non-advertising - purposes or for that matter, his life story is written - whether laudatory or otherwise - and published without his consent as explained hereinafter".*

After the broad interpretation of right to life in *Menaka Gandhi Vs Union of India*[11], the Indian courts have developed the right to privacy under Article 21 of the Constitution of

[8] (1976) 2 SCC 521
[9] Justice Puthaswami(Retd) and another Vs Union of India,
[10] 1995 AIR SC 264
[11] 1978 AIR SC 597

India, as evident from subsequent judgements viz *People Union of Civil Liberties Vs Union of India* [12] and *Mr. 'X' Vs Hospital 'Z'*[13],

The issue of right to privacy in India is not free from any conflicts with other right, exceptions and criticism. Initially there was an issue in that whether the right to privacy is fundamental right or not. This issue appeared in the *Kharak Singh Case*. After that in *Govind Case* that to some extent recognized the right of privacy as fundamental right but provided the exception and restriction.

The right to privacy as a fundamental right enshrined under Article 21 of the Constitution of India in an ambiguous manner in the judgement of Supreme court, in *Justice Puttaswamy (Retd.) and Anr. v Union of India and Ors*[14]., wherein the Supreme Court has upheld the overall validity of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (the "**Aadhaar Act**"). The Aadhaar Act was held to be constitutional to the extent it allowed for Aadhaar number-based authentication for establishing the identity of an individual for receipt of a subsidy, benefit or service given by the Central or State Government funded from the Consolidated Fund of India. It may be noted that the most relevant provision which was read down by the Supreme Court was Section 57 of the Aadhaar Act. This provision allowed Government entities, body corporates and individuals to use the Aadhaar number for establishing the identity of an individual for any purpose, pursuant to any law or contract. However the Supreme Court held that, the phrase '*any purpose*' is not *proportionate*, too wide and susceptible to misuse. The Supreme Court laid down that the purpose has to be '*backed by law'*. The possibility of collecting and using Aadhaar numbers for authentication pursuant to a contract was disallowed since this may result in individuals being forced to give their consent in the form of a contract for an unjustified purpose. The Supreme Court lay down that the contract has to be '*backed by law*'. Further, private entities are not permitted to use Aadhaar numbers for the purpose of authentication, on the basis of a contract with the concerned individual, since it would enable commercial exploitation of an individual's biometric and demographic information by private entities. This effectively prevents companies from using Aadhaar based e-KYC authentication of an individual's identity. However, the Supreme Court disallowed the use of individual Aadhaar numbers by any private entities for establishing the identity of the

[12] 2003(4) SCC 399
[13](2000) 9 SCC 439
[14]*Supra Note 1*

individual concerned for any purpose pursuant to a contract, on the basis that it was contrary to the fundamental right to privacy.

The lead judgment calls for the government to create a data protection regime to protect the privacy of the individual. It recommends a robust regime which balances individual interests and legitimate concerns of the state. Justice Chandrachud observed that, "Formulation of a regime for data protection is a complex exercise that needs to be undertaken by the state after a careful balancing of requirements of privacy coupled with other values which the protection of data sub serves together with the legitimate concerns of the state." For example, the court observes, "government could mine data to ensure resources reached intended beneficiaries." However, the bench restrains itself from providing guidance on the issues, confining its opinion to the clarification of the constitutionality of the right to privacy.

The judgment was interpreted as paving the way for the eventual decriminalisation of homosexuality in India in *Navtej Singh Johar v. Union of India*[15]and abolishing the provisions pertaining to crime of adultery under the Indian Legal System in the case of *Joseph Shine v. Union of India*[16].

Though the Aadhaar Judgement restricted the use of Aadhar based e-KYC authentication, there was no suggestion from the court regarding, how access of Aadhar data, monitoring of its use by corporates and government through maintaining the traces of all operations of input or output Aadhar data can be regulated for betterment of public, addressing the privacy concerns as well. The main concern of public was on providing access of such data to corporate without adequately safe guarding the personal data of individuals. The central government also failed to bring a comprehensive data protection law, which can permit machine to machine verification of personal data through Aadhaar based authentication or any other similar identification through an IT infrastructure set up, operated and controlled by the Government. This could also discourage the need for any private agencies to collect sensitive personal information and demographic data.

Government should explore technology enabled and regulatory enabled solutions, which may include necessary changes in policy. A strong data privacy measure to prevent theft and abuse of data is required. The apprehensions were based on centralised storage of data

[15] W.P (Cri) No.76/2016 , decided on 08- Jan -2018.
[16] W.P (Cri) No.194/2017, decided on 27 Sept 2018

related to the people of a country, permitting use of point of sale (POS) machines which can enable corporate to access the data of public, though it is an option, which needs to be addressed at a policy level and in the proposed data protection laws.

Conclusion

In a society where adults do not necessarily exercise most of these choices of their own free always due to multiple reasons, it is natural that the very concept of privacy seems incomprehensible. In this context that one must understand the hearings in the Supreme Court on the right to privacy as remarkable and a land mark judgement in the constitutional history of India. Although the nine-judge bench has been constituted to decide whether there is a fundamental right to privacy protected under the Constitution in the specific context of Aadhaar Act, it has gone to the extent of upholding the right to privacy under the constitution, though privacy has many more dimensions than just data protection or surveillance by the state.

A fundamental right to privacy enshrined and protected in the Constitution, would mean that all persons have the right to be left alone by the state unless such intrusion is necessitated by a just, reasonable, and fair law. The journey of declaring right to privacy as a fundamental right is remarkable and one could delightfully watch the evolution of right to privacy as a fundamental right in the Indian context. The Supreme Court discussed various data privacy principles from the United States and European Union jurisdictions, in its Aadhaar Judgement in 2018; it did not specify *which* of those principles should be adopted in the Indian context, which has left a lacuna to that extent. However it eventually helped to put an end and relieve public from the apprehension that the Government and body corporate data gathering exercise using Aadhar for various other purposes would intrude into the privacy of individuals.

The decentralisation of data related to public at each state level under the control of central government may help in addressing the concerns of data hacking and abuse to a certain extent. Further Point of Sale (POS) machines used for accessing the data for authentication should be under the operations, control and maintenance of the respective state governments at a local level in each state where the corporate can use it for verification of identity of people who opt for online verification of their proof of identity. The corporate can rely on an approval or disapproval of authenticity of proof of identity shared, which could serve their

purpose while the POS machine will still remain under the operation, control and maintenance of the government. Though investment in considerable amount of IT infrastructure is involved for making such a project a reality, the apprehensions of public can be removed if effective government control is in place for use and management of data for authentication of proof of identity of individuals. The Government is expected to act as a controlling authority rather than focussing on governance when it comes to matters related to data protection. A data protection law to be enacted addressing safe and secure use of personal data based on Aadhar or any other approved identity document of citizens, where machine to machine verification of personal data will be possible, with adequate government controls, without leaving any traces of personal data with the corporate or third parties who are using the same.

LEGAL LITERACY: MILESTONE OF INDIAN LEGAL SYSTEM

Savio Jiji*

"*Justice delayed is justice denied*" **- William E. Gladstone**

Law of the land is made for the growth and benefit of the society[1]. They are made to protect and preserve the human rights of all individuals. Law is made for better governance of the country and it becomes imperative for the people of the country to become aware of the existing laws. Every nation is governed by a system of laws for the growth and overall development of the society. It is a system of rules and regulations which are found in judicial interpretations, constitutional and legislative enactments, made by the competent authority so as to govern society and to influence behaviour of the individuals therein in the righteous manner. It is a powerful concept and also a mechanism of social control and law and order in the society.

The Legal Services Authorities Act 1987 was enacted to setup a decentralized system of legal aid in India. Under the Act, the National Legal Service Authority was setup at the central level to decide on national level policies and programs. States Legal Service Authority were setup at the state level to implement the national policies and also design programs for the state and establish, supervise and, monitor district and block level legal service committees. These bodies provide legal service to the weaker section of the society. Any person who wants to avail the services of the authority has to approach the Legal Service Authority (LSA) in the sub District/Taluk/Tehsil. It includes free legal service to the poor and needy who are unable to afford the services of an advocate for the proceedings of a case or a legal proceeding in any court and providing free and competent legal services to weaker section of the society. Legal Aid which means giving free legal services to the poor and needy who are unable to afford the services of an advocate for the conduct of a case or legal proceeding in any court, tribunal or before any judicial authority, and ensuring that opportunities for securing justice are not denied to any citizens due to economic or other disabilities.

The authorities are generally placed in Taluk Court/Dist. Court complex. For assistance you can also contact your CSC Center. Now it is common knowledge that about 70% of the

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[1]Shalini Sharma, Legal Literacy Growing Need Of The Society Scholarly Research Journal For Interdisciplinary Studies Vol.4, 2758(2016)

people living in rural areas are illiterate and even more than that percentage of the people are not aware of the right conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land.

John Austin defines law as “a rule laid down for the guidance of an intelligent being by an intelligent being having power over him”. Laws are made for the benefit of the people and are powerful, only if used correctly. Legal Literacy means bringing awareness to the masses regarding the laws of the land and their respective rights. In India, people are not aware of the legal terminologies and the available provisions which are made for their benefit. India is a country with poor literacy rate, so major population is illiterate and not aware of their rights. Govt. has been reframing the present statutes so the masses can avail their fundamental rights. Fundamental rights are a set of rights contained in part III of Indian Constitution. It guarantees rights, such that all citizens can live their lives in peace and harmony. Such rights are a symbol of democratic government, this include Right to Equality and Freedom of Speech and Expression and Right to Assemble peacefully, follow and practice any religion, etc. people being ignorant of the laws face exploitation and few who claim to know engage into faulty interpretations because they are not aware of the recent changes in the statutes. Therefore legal awareness is the present need of the society. It is patient for the overall growth, development and protection of the individuals. It is an important key to unlocking the doors of positive change and transformation in the society. India is the world’s largest democracy. “Legal literacy is essential for the survival of our constitutional democracy. the judicial setup works on the presumption that all people are aware of their rights.” People must be made aware of their rights and duties for a systematic functioning of the nation. The supreme law of our nation is the constitutional law which governs the country. The main idea behind framing of the constitution was to get governance norms and safeguarding the interests of the people of the nation. The core reason behind lack of awareness is either the inability of the authority to spread the message of the laws and relevant provisions or the faulty understanding of the common man. Lack of knowledge with regard to legal and fundamental rights is rise to problem of untouchability, child labour, human trafficking, unlawful detention etc and hence threatens the very safety of the citizens. In *Air India*

Statutory Cooperation v. *United Labour Union*[2], the concept of social justice has been explained. "The ethos of social justice is to attain equality in all phases- social, economic and political. In a country like ours there is huge economic gap between the masses, inequalities in the matter of employment opportunities, etc. but in such conditions law acts a catalyst. Law also covers aspects of ignorance. The famous legal maxims- "*Ignorantia Legis Neminem Excusat*" or "*Ignorantia Juris non Excusat*" meaning ignorance of the law is no excuse are followed in our country. Citizens are thereby responsible for their inactions where they are ignorant of their rights and duties.

To ensure justice for all, safeguard popular price, and promote legal empowerment of the society, need is always felt for making the public aware about their rights and entitlements. With the same token, such awareness can be credited for facilitating the agreed persons to quickly take resort to channels available for the redressal of grievances, through agencies like the police, the executive and the judiciary. Further the awareness of one's legal rights paves the way for participation of the masses in the decision making process.

It is due to the situation, that legal literacy has been recognized as a tool of qualitative change at the basic level as it provides them with adequate knowledge of their rights. Legal Literacy connotes the knowledge of the primary level in law. After the citizens (particularly marginalized or under privileged groups) become aware of the rights provided to them by law, they can use such awareness as a tool to fight injustices. Such awareness can transform their lives. Legal Literacy is the first step to that end. Further, the better awareness of laws is a contributing factor to help people work more effectively in diverse spheres. To give effect to such initiative, in 2005 National Legal Literacy Mission (NLLM) was adopted by the Central Government.

Need for legal literacy

Being the part of the largest democracy, knowledge of law serves the people with the tool of power and self-realization. Unless the people are aware of the rights, they cannot live in consonance with true dictates of democracy and rule of law. Legal Literacy is commonly understood as knowing the primary level in law. Need of the Legal Literacy is accentuated due to following reasons:

[2](1992) 94 BOMLR 238; (1995) IIILLJ 443 Bom

Taking into consideration the present scenario, the issues like empowerment of women and making them aware of their rights which they can use to fight injustices, becomes a distant dream in the absence of legal literacy. Hon'ble Mr. Justice Kabir has aptly remarked that lack of awareness and education are the main causes for injustices being meted out to the marginalized populations especially women. Similar observation has been made by Hon'ble Mr. Justice Pradesh Kumar, the judge of High Court of Jharkhand. He emphasized upon the women's need to be aware about the laws that safeguarding their interests, so that they can approach the right authorities with their grievances in order to ensure quick justice[3].The Beijing Declaration gives emphasis the need for access to free or low-cost legal services including legal literacy, especially focusing on women living in poverty. It also notice that women's poverty had its connection to the absence of economic opportunities and autonomy, lack of access to economic resources, including credit, land-ownership and inheritance, lack of access to education and support services and their minimal participation in the decision making process. Also the legal literacy programs had been attributed for helping women to understand the link between their rights and other respects of their lives and in demonstrating that cost effective initiatives can be undertaken to help women obtain those rights.

1 Understanding the scope of rights and challenging their violations. Legal literacy is essential as if the knowledge of law that can be used as a tool by vulnerable groups to understand and evaluate the law, to get acquainted with the scope of their rights under the law, and get their rights enforced by taking action and bringing the legal missionary into force. Knowing their rights, the people can challenge violations thereof. Article 39 A of the Constitution of India directs the state to provide free legal aid with the aid of suitable legislation or schemes. It is the awareness of rights and duties that makes the delivery of justice and balancing of various interests and easy task.

2 Transparency and accountability in the governance. Growing legal literacy opens the gate for transparent and accountable government, truly based on the 'Rule of Law'. It is the awareness about the rights, governance and the state obligations that have contributed to the changed attitude of the masses resulting in demand for justice and

[3] As state by Hon'ble Judge in the Session on Laws protecting rights of women with special focus on witch hunting(prevailing evil against women in Jharkhand)

accountability from the govt. in this regard, the contributions made by a renowned NGO, Multiple Action Research Group (MARG), is acclaimed[4].

3 Empowering the poor, legal system of a nation has a big share in empowerment of the poor people as it confers upon them rights, powers, privileges and immunities along with a strong judicial system that can be effect to these legal entitlements. The object empowerment cannot see the light unless, the target group (here the poor) are made aware of their entitlements in a legal system. Taking the note of the step to that end in international arena, in 2005, the United Nations Development Program (UNDP) hosted the, commission on Legal Empowerment of the poor. The commission realized that, the lack of understanding of legal rights and obligations serves as a barrier to access to justice for the poor.

National Legal Literacy Mission

The national legal literacy mission with its motto was launched by the Hon'ble Prime Minister of India Dr. Manmohan Singh launched. This 5 year mission had its foundation in the goal of legal empowerment of all sections of the society. Its object was to simplify the language of the law to make people able to understand laws and judgments. Special focus was laid on the downtrodden, minorities and women. As evident from the speech of prime minister, a democracy is meaningless, unless the people know their basic human rights like education, employment and the right to live a life of dignity and self-respect. Such awareness is possible only through the mechanism of legal literacy. To remove the obstacles, such as complex legal language of the statutes, in understanding their rights, the mission has been prepared as a weapon. In the words of former Chief Justice of India R C Lahoti, women, children, tribal and minority communities, victims of militancy, crime, disaster, drought-hit-farmers and sex workers needed urgent attention. Legal literacy, being the first step towards knowledge of the law, the mission aims at legal education of all sections of society. Objective of the mission, NLLM was initiated with the aim of providing legal education to the underprivileged persons, including disabled people. The subject matter of the mission was to educate the people about law, legal terminology and legal rights. Looking deep into the structure of NLLM, it had following goals:

1 To achieve 100% legal literacy.

[4] MARG – Justice Through Legal Empowerment, Section on Governance, available at http://www.ngo-marg.org/governance

2 To target the most disadvantaged, distraught, disintegrated, vulnerable and victimized populace first and progress further in the grass root level.

3 To prepare state specific plan of actions for implementation of objective of the mission.

4 To undertake survey, research documentation drive, social investigation, reporting and social audit as a learning exercise of people's problems, grievances and to understand the nature of redressal required.

5 To sensitize the judicial officers to people's cause particularly to that of women and children, and minorities, tribal and such other most vulnerable groups as well as persons in custody in addition to implementation of acts pertaining to mentally and physically challenged, the destitute and beggars, the orphans and the neglected citizens, the abandoned elderly citizens, discrimination in case of any caste, communal violence, disaster and disease outbreak.

Importance of legal literacy

Legal literacy is an instrument to bring about change in the lives of the common man. A sociological study of first world nations clearly shows the fact that better awareness of the legal provisions helps citizens to implement and exercise their rights. The different ways which can lead to favorable legal literacy are:

- Policies and constitutional mandates to be implemented effectively.
- Implementation of social mechanisms such as legal seminars, camps, workshops etc, must be undertaken to make the people aware of the present legal structure.
- Help of legal jurists, academicians, professors, advocates and other such professionals who can aid in the better understanding of laws and its working should be resorted.
- Making basic-level legal education mandatory for all.
- Legal assistance to the under privileged, uneducated citizens.

Present growth and implementation plans

The legal aid moment in India came up in the year 1952, when the govt. of India gave attention to legal aid for the poor. Later in the year 1960, govt. resolved to various guidelines for legal aid schemes. The legal aid schemes were brought forward through various dept. in different states. In 1980, committee for implementing Legal Aid Schemes was constituted at

the national level to oversee and supervise legal aid programs throughout the country under the chairmanship of the former judge of the Supreme Court, Hon'ble Justice P N Bhagwati. Later a new chapter of Lok Adalats was added to the justice dispensation system, which succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1986, in the case of *Sukhdas* v. *Union Territory of Arunachal Pradesh*[5], Justice P N Bhagwati talked about the decision of *Hussainara Khatoon'*s Dictum and thus discussed importance of Article 39A.He pointed that absence of legal knowledge is the root cause of all disadvantages to the people and they are not being benefited by the legal rights. However owing this later, enactment of Legal Authorities Act 1987 was undertaken. The year 1987 marks a golden chapter in the history of legal Aid in India. However, there is still strong need to make the people fully aware of their rights. In India, National Legal Literacy day is on November 9. More than 70% of the population lives in rural areas. They are not aware of their basic legal right which adds agony to their unfortunate situations such as arrest, detention etc. the growing deception, exploitation of the poor and illiterate is because of poor knowledge of their legal rights. Many cases of illegal arrests by the police dept. come to light, without following the guidelines issued by the apex court. Also time and again through various judgments Supreme Court is laying guidelines for lodging of an FIR but not much have been understood by the people at large. The simple reason for this is lack of legal right and information. No matter how big rules and regulations are made by the legislature, they will fail to have massive transformative impact unless the masses are made aware of the same. In the present scenario Govt. has started taking up awareness programs wherein authorities are working to create awareness. Various District Legal Service Authorities have initiated Legal Literacy Schemes- Mission Janneethi, Panchayath for redressal of village disputes. Likewise, various steps have been initiated by the Haryana State Legal Services Authority for creating legal awareness in their states:

- Legal Literacy Camps/Seminars
- Implementation of various literacy missions
- Mass awareness through print media
- Various publication of the authority itself
- Creating awareness through EDUSAT
- Awareness programs for women
- Training and strengthening of legal aid dept.

[5] AIR1986 SC pg. 991

Similar strategies are now being implemented nationwide by the Legal Service Authorities.

Conclusion

A basic knowledge of law has become necessary for all those who are engaged in administration, trade or industry. Hence, a change in the quality, content and complexion of legal education is now viewed as a great social necessity. Thus there is a need to bring awareness with people for their rights and duties, as well as remedies. In India illiteracy is still there and people don't have knowledge of the various legal provisions running for their benefit. In such changing society there is need to educate people. There is need to increase ambit of legal education in the masses. Legal Aid is an instrument by the constitution, as a right. Majority of people in our country are poor and because of their poverty, they are unable to afford expensive legal procedures and hence are denied justice. Law provides means to combat this situation but still many people are not aware of this. Article 39A inserted by constitution (Amendment) Act 1976, provides for Legal Aid and assistance to poor and indigent litigants. Many enactments have been made for society's greater good, such as Dowry Prohibition Act, Child Marriage Restraint Act, Sati Prohibition Act, etc. In many cases it was seen that under trials were given delayed justice and the main reason was inability to generate legal aid for them. Therefore the apex court in the landmark case of *Hussainara Khatoon* v. *Home Secretary, State of Bihar*[6] pointed towards the importance of Article 39A providing free legal aid, just and fair procedure as envisaged in Article 21. Therefore, the people of India was been made well versant with the changing scenario. The main reason is that legal education helps in changing the attitude of public and makes them connect to the social problems; it makes people more aware about their rights and duties and helps them to become ideal citizens.

[6]1979 SCR (3) 169

GOOD SAMARITAN LAW

Ashish George*

Introduction

The road accidents are the major cause of death, injury and property damages every year. Approximately 1.3 million people die each year as a result of road accidents. Road accidents cause considerable economic loss to individuals, families, and to the nation as a whole. The accident reports by the National Crime Records Bureau (NCRB) states that the road accidents are increasing every year. According to World Health Organization (WHO), the number of death due to traffic accidents are above 50000, and is approximately 207551 in the year of 2013[1] The factors which cause the road accidents are speeding, driving under the influence of alcohol and other psychoactive substances, non-use of motorcycle helmets, seatbelts, and child restraints, distracted driving, unsafe road infrastructure, unsafe vehicles, inadequate law enforcement of traffic laws and inadequate post-crash care etc.

Delays in detecting and providing medical care for those involved in an accident increase the severity of injuries and may adversely affect to the life of the injured. One of the main reasons behind increased death rate of accident victims are the delay in the medical assistance. When road accident occurs, bystanders will usually try to help the injured, or at least call for help. In India the scenario is different. A large number of bystanders are unwilling to help accident victims because of the fear of harassment by the police, legal hassles including repeated police questioning, and multiple court appearances and also, they have to pay hospital expenses.

Concept of Good Samaritan Law

A Good Samaritan is a person who renders medical care in an emergency to an injured person on a voluntary basis without remuneration or expectation of remuneration, at the scene of an accident or emergency. Good Samaritan rule is a doctrine which gives protection to a person who comes to the aid of accident victim, from being sued for contributory negligence. The doctrine of Good Samaritan is used by the rescuers to avoid civil liability to injuries arising from their negligence. This aims to remove the fear of legal consequences arising out of the

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[1] http://gamapserver.who.int/gho/interactive_charts/road_safety/road_traffic_deaths/atlas.html

act done by the bystanders, the consequences like harassment by police, legal hassles including repeated police questioning, and multiple court appearances and also, they have to pay hospital expenses.

The Hon'ble Supreme Court in the case of *SaveLIFE Foundation and anr v. Union Of India and anr*[2], inter alia, directed the Central Government to issue necessary directions with regard to the protection of Good Samaritans until appropriate legislation is made by the Union Legislature; and whereas, the Central Government considers it necessary to protect the Good Samaritans from harassment on the actions being taken by them to save the life of the road accident victims.

Ingredients for the invocation of Good Samaritan Doctrine

- There should be a care rendered, and the care rendered was performed as a result of the emergency such as accident.
- The emergency or injury was not caused by the person invoking the defense.
- The emergency care was not given in a negligent or reckless manner.

Rights of a Good Samaritan:

1 A Good Samaritan is not liable for any civil or criminal action for any injury or death of the accident victim.

2 The bystander or the Good Samaritan shall not be compelled to reveal his personal details, if any of the public officials coerce them to reveal their personal details, disciplinary actions should be initiated by the government.

3 Good Samaritan can choose to be an eye witness and cannot be compelled, and they should be examined in a single occasion, video conferencing may be also used for examination of a Good Samaritan in order to prevent harassment and inconvenience to Good Samaritan.

4 The hospitals cannot refuse treatment of an accident victim, lack of response by a doctor in an emergency situation pertaining to road crashes is considered as "Professional Misconduct", under the chapter 7 of Indian Medical Council

[2] Writ Petition (Civil) No. 235 of 2012

(Professional Conduct, Etiquette and Ethics) Regulation, 2002 [3]and disciplinary action shall be taken against such doctor under Chapter 8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002[4].

5 If the Good Samaritan desires, the hospital shall provide an acknowledgement confirming that the injured person was brought to the hospital by such Good Samaritan.[5]

Under the Good Samaritan law the states have adopted certain schemes or provisions

Delhi Good Samaritan Scheme

Under this scheme the state government shall provide an incentive of Rs.2,000 for the bystander of accident victim or the person who help the accident victim to reach the hospital. The scheme is adopted by the government to reduce the time for an accident victim to reach the hospital thus we can utilize the "Golden Hour". The Golden Hour is the time period in which an accident or traumatic injury being sustained by a person.

West Bengal Good Samaritan Scheme

The Government of West Bengal provides Rs.1,500 for the person who helps the accident victim to reach the hospital. The hospital authorities shall not demand any payment or admission charge from the bystander.

Karnataka Good Samaritan and Medical Professional (Protection and Regulation During Emergency Situations) 2018

Under this act the Good Samaritan shall not be required to share any of his personal information at the hospital including for the preparation of a medico-legal form or need not to fulfil any procedure related to the admission of an injured person at the hospital or need not to pay any expenses for the injured person in the hospital.

[3] Chapter 7, Section 7 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002

[4] Chapter 8, Section 8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002

[5] MINISTRY OF ROAD TRANSPORT AND HIGHWAYS NOTIFICATION, New Delhi, the 12th May, 2015 No.25035/101/2014-RS.

Kerala Road Safety Authority-'Good Samaritans' Guidelines

In view of the direction by the Supreme Court of India, the 36th Kerala Road Safety Authority meeting held on 31/08/2018 has approved the proposal for exhibiting the guidelines in bilingual language in police stations, hospitals and other public places. The task of exhibiting the 'Good Samaritans' guidelines is entrusted with the Technical Group of Kerala Road Safety Authority, they shall finalize the pattern of posters or hording and identify public places and locations where these guidelines are to be exhibited in consultation with the department/institutions concerned. Final approval of the Road Safety Commissioner shall be taken before finalizing pattern.

Recently, the state plans to protect Good Samaritans by enacting a legislation to ensure that Good Samaritans who help the accident victims are not trapped in legal dispute.

The milestone to the development of the Good Samaritan Law:

- In 2012, SaveLIFE Foundation files a petition in Supreme Court for protection of Good Samaritans who help road accident victims.
- In2014, Supreme Court directs Centre to publish guidelines for protection of Good Samaritans until an appropriate legislation is put in place.
- In 2015, The Ministry of Road Transport and Highways (MoRTH) lay guidelines making them legally applicable across the country.
- In 2016, Supreme Court provides "force of law" to the guidelines making them legally applicable across the country
- In November 2016, Karnataka introduces, Karnataka Good Samaritan Bill in Assembly
- In December 2016, Assembly passes Bill followed by Council
- In February 2017, Bill sent to president for assent
- In August 2018, President gives assent, thereby making Karnataka the first state in the country with a Good Samaritan law in place.

Conclusion

One of the main reasons behind the increased death rate of accident victims is the inability to get timely medical treatment of victims. A larger percentage of the victims could have been saved by providing emergency medical care within an hour in most of the cases, which is

considered as “Golden Hour”. Bystanders therefore have a vital role in preventing death and major injuries to the victim of such accidents. The guidelines of the Ministry of Road Transport and Highways (MoRTH) prevent the bystanders from legal and other obligations. By introducing the Good Samaritan law, it protects the bystanders from harassment of the actions being taken by them to save the life of the road accident victims. Thus it will make good in the mind of the layman when it come an accident in front of him and to save the victim of the accident.

ETHICS AND PROFESSIONAL RESPONSIBILITY IN THE INDIAN LEGAL PROFESSION

Gillet Enas*

"The Law is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favours, but by lavish homage." - **Joseph Story**

INTRODUCTION

Ethics is the science of morals; rules of conduct. Ethics examine human conduct and lays down rules of duty and ideal conduct, dealing with the value of life. Ethics concentrates on principle affecting man's conduct so as to determine the standard of right and wrong. Ethics is defined as "that branch of philosophy dealing with values relating to human conduct, with respect to rightness and wrongness of certain action and to the goodness and badness of the motives and ends of such actions." A code of ethics is an essential requirement for every profession. A basic requirement for a profession is adherence to a set of professional norms. Ethics of legal profession is the body of rules and practice which determine the professional conduct of the members of bar. Professional ethics for lawyers may be defined as a code of conduct written or unwritten for regulating the behavior of a practicing lawyer towards himself, his client, his adversary in law and towards the court.[1]

Legal profession unlike other professions, which are generally taken up with the sole object of earning money, is a profession of high dignity. Hence, an advocate should be modest, sober, patient, prompt to do his duty without anxiety, pious without going so far as superstition, conducting himself with piously in his profession and in all the actions of his life. He is a public functionary. The lawyers are considered as the protectors of justice. If he fails, entire law and order fails. Therefore, a high standard of ethical conduct is expected from the advocates. An advocate should be an upright man. He must keep himself pure in character and be diligent and devoted to his profession.

It is true that it is not possible to formulate a code of legal ethics which will provide the lawyer with a specific rule to be followed in all the varied relations of his professional life. But practicable and some ideal rules can be framed for advocates to follow in their

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[1]Dr. S.R Myneni , Professional Ethics Accountancy for Lawyers and Bench-Bar Relation90(1st Ed. , S.P Gogia C/o Asia Law House , 2002)

professional career and do justice to humanity. A model code of conduct for Lawyers may be suggested to follow as a duty towards public, court, client, colleagues in their profession.

The profession of law is a great profession, the most brilliant and attractive of the peaceful professions, with responsibilities, both inside and outside it, which no person carrying on any other profession has to shoulder. It is a great controlling and unifying institution which places upon each his obligations. It is composed of a body of men with a high sense of honor and marred by far less mutual jealousy or ill will than any other[2]. The legal profession is, amongst all the learned professions, the most independent one. Its independence, which can never be lost sight of, is the bed-rock upon which its claims to lead the country are based. No member of the legal profession ever hesitates to condemn injustice or tyranny. More than the Judge he stands for Justice as he pleads for it. These qualities which he possesses by education and by training make him the leader of society as a matter of course. It is wholly wrong to assume, as some do, that he owes his leadership to traditional or class prestige. As has been observed, 'No dignity of office can secure men's respect for itself continuously unless it can show a worthy character in those who hold it'. Where judgment and a spirit of independence are required the lawyer, easily takes the lead. He exercises great influence, acquires rank and reputation and largely contributes to the most responsible and distinguished services of the State. Perhaps no class of men earns greater social and political distinction. This place of pre-eminence which he acquires in society creates many enemies for him. In cases where human passion is excited and great interests are at stake, the lawyer is further apt, in winning a case, to make a lifelong enemy. He is one of the most suspected of men, and detractors of his rank and worth are never wanting at any time or in any country. Lawyers are looked upon 'as defeaters of the law and mockers of its majesty'.

IMPORTANCE OF LAWYERS IN SOCIETY

In every society lawyers have an important role to play. Traditionally it was argued that men and women living in mutually dependent society and relying on each other's support for their survival are bound to face differences of opinion and interests and such differences need to be settled by persons who are duly learned with different legal provisions and have requisite dispute resolution experiences, hence, lawyers were considered as an essential limb of society. In addition, lawyers are an integral part of the law and order system in a country. With their knowledge of legal and human rights, legal and constitutional obligations, legal

[2] K. KrishnaswamiAiyar , Professional Conduct And Advocacy 1 (2 ed. Oxford University Press , 1945)

entitlements and various other principles of law, they are in a position to guide the members of the society to lead a more law abiding life and avoid any legal complications and disputes in the future. An advocate holds a unique place in the administration of justice. In addition to the basic qualification of Law degree which provides elementary knowledge of different branches of law experience gained in the daily application of law and interpretation of law and are best aware of the perfection of the legal system, their close contacts with all sections of the society to constitute a most competent class of man to assist the Court in administration of justice for the common good of the people.[3]

ESSENTIAL QUALITIES OF A GOOD LAWYER

Legal profession demands a high degree of sincerity, intellect, knowledge and a hardworking nature. Judge Abbot Parry has described the essential qualities of a lawyer as *The Seven Lamps of Advocacy*[4]. According to him these seven important characteristics are- honesty,courage, industry, wit, eloquence, judgment and lamp of fellowship.

- **Honesty –** It is necessary to have honesty and integrity towards one's clients. Confidentially and fidelity are the basis of a relationship between a lawyer and his client. A client should be able to repose with confidence to his lawyer, all his secrets and confidential information, so as to enable him to provide necessary advice and strategize accordingly. It is the paramount duty of the lawyer to be always loyal and honest with his client and to the profession.
- **Courage-** Lawyers are required to boldly bring forth the relevant evidences and their legal arguments before the court. They should have the necessary strength to stand up for his client's honest claims without any fear or pressure. As an officer of the court, it is essential to be courageous and provide all necessary aid and assistance to the court in rendering justice. A confident and courageous lawyers is an asset to the legal profession.
- **Industry-** Being a hard worker has to be the second nature of a successful lawyer. A deep insight on different social issues as well as an updated knowledge of laws and judicial decisions is essential for a lawyer. It is important to be timely apprised with

[3] *Chief Executive Officer and Vice-Chairman, Gujarat Maritime Board* v *Patel Gandu Paba* AIR 1999 Guj 34 at para 9

[4] Sir Edward Abbot Parry, The Seven Lamps of Advocacy, T. Fisher Unwin Ltd., 1923

the industry's developments and have the energy to be able to take on the challenge of the legal profession and achieve success and appreciation.

- **Wit and eloquence-** Successful lawyers have exemplified the importance of witticism and eloquence in their pleadings and arguments. Drawing simple analogies, making humorous observations and using witty quotes for the purpose of substantiating an argument has been a characteristics trait of many eminent lawyers. Good public speaking and ability to interact socially is an essential virtue for all upcoming lawyers as it will help to establish a good interpersonal relationship with their client as well as help him build a good reputation before the members of the bench.
- **Judgment-** The ability to identify core legal problems and to strategize the course of action towards achieving an effective solution to the problem is a skill which every lawyer needs to develop in the course of his professional life. Legal professionals as advocates and counselors have to exercise their wise judgment at every different stage of their profession, like, suggesting the most effective course of action which a client needs to follow and strategizing the entire litigation including preparing the arguments and identifying the witnesses.
- **Lamp of fellowship-** The legal profession enjoys the benefits of an organized fraternity. Lawyers are the members of the bar who enjoy monopoly over the legal services. It is important to establish good professional relationships with the other members of the profession and be respectful towards the senior members in order to enjoy a good professional standing. It must always be remembered that the present members of the bar will become the future members of the bench before whom the lawyers need to appear and plead. In addition to these qualities, it is essential to gain high general knowledge about different issues, both contemporary and historical, in order to be reflective and analytical towards the various social and legal issues. As young lawyers, it is further necessary to practice and develop a good memory, the ability to logically think and reason, research skill and to be patient and perseverant towards their profession.

CORE PROFESSIONAL VALUES

The history of legal profession illustrates that even though the principles of legal ethics and professional values emerged many centuries ago, the emergence of formal code of conduct took place only in the early part of the 20th century. In 1648, Law Commissioner Whitelock

had identified three fundamental duties essential for a professional advocate as secrecy diligence and fidelity. Advocates are required to done various hats for the purpose of performing different functions of counselling, advising, litigation, mediating, drafting etc. this function can be successfully performed if a lawyer is able to inculcate the important values of secrecy, diligence, and fidelity towards his clients , court and towards fellow professionals. Advocates often act as confessors to whom their clients will repose their trust and faith and confide their various secrets and confidential information. It is important that the lawyers are able to uphold the trust imposed on them by their clients and will not commit any breach of that trust to determent of confidentiality in lawyers. By virtue of this duty, the moment a lawyer enters into the profession he is bound to respect the privacy of his client and maintain the secrecy of his client matters. The advocate comes under the obligation of not disclosing the secrets which lawyers to disclose the trusted information to third parties. Only in case of statutory compulsions under public interest considerations, a lawyer should be forced to disclose the confidential communications of a client.

Along with secrecy it is necessary for an advocate to be absolutely loyal and faithful towards his client. The well being of the client is of paramount importance to an advocate hard work and diligence is the tools of success for him. An advocate is required to provide constant and careful attendance to the needs of the client and work towards redressing the problem faced by the client. The legal profession across the world has recognised these professional norms as essential for laying down the standards of professional behaviour[5].

PROFESSIONAL CODE OF CONDUCT FOR LAWYERS

Legal profession has a social welfare or a public utility function. The professional obligation of a lawyer has to be balanced with the public welfare goals of the justice delivery system. It is necessary that strict compliance with the singular goals of the client do not give rights to any form of moral blindness towards the high ethical values and principles which a lawyer needs to comply. The norms of the legal ethics and professional responsibility act as a commitment towards honesty, integrity and service in the practice of law. The professional code of conduct has manifold importance. On one hand, they are deemed to be canon of conduct and etiquettes, but at the same time, they are recognised as a minimum benchmark for determining the questions of professional responsibility and misconduct. The rules have an important role in facilitating professional discipline among the young members of the

[5]Yahomati Ghosh, Legal Ethics and the Profession of Law 31 – 32(Lexis Nexis 2014)

profession as they help in identifying the proper lines of professional thinking based on identified notions of professional responsibility and also encourages them to understand the acceptable standards of profession behaviour. They act as tools, having educative and moulding effects on the professional attitude of young lawyers. The breach of the values specified in the code of conduct, often give rise to legally enforceable consequences and thereby members are discouraged from indulging in socially unacceptable behaviour. Generally, the set of rules are not exhaustive in nature, but, are a mere re-affirmation and recognition of the existence of other important rules of ethical norms and professional standards. These rules act as general guide to the members of the legal profession about the noble obligations and objectives and make it necessary to comply with the high standards of ethical norms both as in the means as well as in the ends. In addition, the codes also act as guides for the different unforeseen ethical challenges which a lawyer is likely to face in the course of his career. Thus, the professional code of conduct for lawyers is respected and complied with by the legal fraternity in different parts of the world. "Greater attention has had to be given within the profession to ethical standards because in many ways they are symbolic of how the profession sees itself. Disputes about these rules are surrogates for disputes about the future of the profession itself"[6].

PROFESSIONAL RESPONSIBILITY OF LAWYERS IN INDIA

The Advocates Act, 1961, is the governing law for the legal profession in India. The importance of professional conduct and etiquettes, for the purpose of regulating the members of legal profession has been recognized under the statute. The legislation has imposed responsibility on the Bar Council of India (BCI) to lay down the standards of professional conduct and etiquettes for advocates. Under the rule making powers as specified under Section49(1)(c) of Advocates Act, 1961, the BCI had framed the Rule on Professional Standards which have been included in Chapter II, Part VI of the BCI Rules. The rules relating to professional conduct and etiquette have multiplicity of laudable objectives to achieve. They recognise the role of an advocate as an officer of the Court and a privileged member of the community. It is deemed to be the paramount duty of an advocate to uphold the high ethical standards of the legal profession, being sentinels of the justice delivery system. As a member of the administration of justice, an advocate has primary obligations towards the Court, the Client, Opponents and Colleagues and rules recognise the core

[6]Ross Cranston, Legal Ethics and Professional Responsibility in Ross Cranston (ed.) Legal Ethics and Professional Responsibility(Clarendon Press ,Oxford(1995), p 4

responsibilities of a lawyer towards them. Speaking on the importance of 'canons of professional conduct,' Justice V.R. Krishna Iyer in the leading case of *The Bar Council of Maharashtra* v. *M.V. Dabholkar* had observed. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the key note thought for the very survival of our Republic, the integral bond between the lawyer and public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as vehicle of justice-social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of the conduct cannot be crystallised into rigid rule but felt by the collective conscience of the practitioners are right.

It must be a conscience alive to the properties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice. To the end that public confidence may be kept undiminished at all time in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a more code which would drive irresponsible judges from the profession. Without such a conscience, there should be no judge and, we may add, no lawyer. Such is the high standard set for professional conduct as expounded by courts in this country and elsewhere. Thus the fundamental aim of Legal Ethics is to maintain the honour and dignity of the law Profession, to secure a spirit of friendly co-operation between the Bench and the Bar in the promotion of highest standards of justice, to establish honourable and fair dealings of the counsel with his client opponent and witnesses; to establish a spirit of brotherhood in the Bar itself; and to secure that lawyers discharge their responsibilities to the community generally.

CONCLUSION

Lawyers are globally recognised as officers of the court and agents of the administration of justice. They are imposed with the social duty to promote rule of law in the society and fight for protecting the fundamental rights and freedoms of the citizens. In the performance of their

duties it is necessary that lawyers should be able to function without any fear or favour and it shall be the duty of the State to create an atmosphere wherein, lawyers are free to perform their duties. The 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990 recognised a list of conditions which the States are required to secure for guaranteeing proper functional space for their lawyers. The conditions are governments shall ensure that lawyers who are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel and to consult with their clients freely both within their own country and abroad; and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging functions. No court or administrative authority before whom the right to counsel is recognised shall refuse recognise the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority. It is the duty of competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide at the earliest appropriate time. Governments shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential[7]. Thus, the aim of a law student should be to strive towards excellence and work for fulfilling the constitutional idealism in promoting justice, liberty, equality and fraternity in society.

[7]Yahomati Ghosh, Legal Ethics and the Profession of Law p 10 (Lexis Nexis 2014)

LAW AND CRIMINAL PROFILING: AN OVERVIEW

Amala Savy*

Introduction

"Law is a command from the sovereign person or body in the political society to a member or members of society." [1]Any activity of an individual against law of the society or group would result in an act of crime. Crime denotes an unlawful act punishable by a state. The "term crime "does not, in modern criminal law have any simple and universally accepted definition. The statutory definitions have been provided for certain purposes. The most popular view is that crime is a category created by law. In other words, something is a crime if declared as such by the relevant and applicable law. One proposed definition is that crime is an act harmful not only to someone individual or individuals but also to a common society or the state such acts forbidden and punishable by law.[2]

The scientific study of the reasons and prevention of crime is called criminology. Criminology is the scientific study of the non legal aspects of crime and delinquency, including its causes, correction, and prevention, from the view points of such diverse disciplines as anthropology, biology, psychology and psychiatry, economics, sociology, and statistics. Criminology developed in the late 18th century, when various movements, imbued with humanitarianism, questioned the cruelty, arbitrariness, and inefficiency of the criminal justice and prison systems. Criminology in India has not been able to foster a clear cut beneficiary base. On account of being mainly associated with their parent disciplines, the researchers who made commendable contributions to criminology remained indifferent to the development of criminology in India. [3]

The basic researches in criminology India leading to the development of theories explaining the major problems of criminality in this country have been almost nonexistent. Nor do the criminologists, in most cases, have been able to prescribe policies and programs oriented research findings. Criminology in India also lacked international focus and recognition. Combined together, criminology is largely perceived as a discipline with restricted avenues and limited vertical mobility in career advancement in India. Criminology is also dealing with

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[1] 1 Austin , lectures on jurisprudence (1885) ,p.215
[2] https://renaissance law college.com.>uploads>2015/04>IPC-SCLLB-2
[3] www.legalserviceindia.com/legal/article-987-importance of criminology.html

the treatment of criminals. Psychology is the scientific study of the way the human mind works and how it influences behaviour.

Criminal Psychology

Criminal psychology is the form of psychology used in dealing with crime. The term criminal psychology does not have any accepted definition till today. Two leading criminal psychologists in the UK defined it as 'that branch of applied psychology which is concerned with the collection, examination and presentation of evidence for judicial purpose.' Criminal Psychology is that branch of Applied Psychology which is primarily used to determine the criminal's reasons for committing a crime. Criminal Psychology studies criminal's thoughts, intentions and reactions to the crimes they have committed. It assists police investigators to create profiles of a potential criminal. That is, it assists to create character sketches of a criminal in order to narrow down the search for the offender. It focuses on the criminal mind before, during and after the commission of a crime. It delves into the offender's personal history, searching his or her past for explanations of criminal behavior. It then analyses factors surrounding the crime itself. Later, the Criminal Psychologists can follow the progress of the individual once he or she has been sentenced or assigned a treatment plan. [4]

Criminal psychology is the study of views, thoughts, intentions, actions and so reactions of criminals. A leading American psychologist described criminal psychology as 'Any application of psychological knowledge or methods to a task faced by the legal system.[5]' During the 20th century the concept of criminal psychology came into force. Before that there was no recognition of criminal psychology. The branches of criminal psychology includes; forensic psychology, clinical psychology, developmental psychology, health psychology, social psychology, educational psychology, behavioral neuroscience, cognitive psychology, industrial and organizational psychology, experimental psychology and child development.

Criminal Profiling

According to Douglas and Olshaker "Criminal profiling is the development of an investigation by means of obtainable information regarding an offence and crime scene to

[4]www.egyankosh.ac.in >bitstrem>unit1
[5] Wrights man 2001,p.2

compile a psychosomatic representation of the non-architect of the crime. [6]" Criminal profiling is one of the most innovative techniques available in criminal psychology. It is an investigative strategy used by the law enforcement agencies to identify likely suspects and has been used by investigators to link cases that may have been committed by the same offender. A criminal profile includes age, sex, location, social status, intelligence, physiological characteristics etc….. Criminal profiling involves reviewing the evidence at crime scenes to determine what happened. Profilers recreate the scene of a crime and it includes:

- Location and time
- Nature of the offence
- Choice of victim
- The condition of the scene
- Similar cases
- Communication from the suspect
- Other distinguishing evidence to identify the suspect

The investigators attempt to recreate the suspect using physical evidence such as foot prints, fingerprints or other bodily indicators. They may also consider the fact surrounding the crime to reconstruct events leading up to the crime. When creating criminal profile the police investigators may try to determine the suspect's age, gender, mental and psychological traits, intelligence quotient etc. The investigators usually consider four stages of crime to gather as much information about possible suspect. The four stages are:

- Pre – offence behavior: plans or motives the suspect may have had before the crime was committed.
- Method: The manner in which the crime was usually committed.
- Concealment of evidence: If the suspect concealed or disposed of evidence, this can provide clues to the subsector's identity
- Post offence conduct: A suspect may often act differently after committing crime.

[6] Douglas and Olshaker, 1995 quoted in Muller, 2000:235

These stages of criminal conduct can provide investigators with valuable information that can lead to identifying the suspect

The concept of criminal profiling arising during 1880's, when crime scene clues were used to make predictions about British serial killer, Jack the ripper's personality. [7]It is rooted in criminal psychology. Criminal profiles have also been used over the years in criminal investigations and has been presented in court as expert evidence and has shown success rates when identifying suspects and bringing them to justice. [8]Criminal profiling has also been referred to, among less common terms, as *behavioral profiling*, *crime scene profiling*, *criminal personality profiling*, *offender profiling*, *psychological profiling*, *criminal investigative analysis*, and, more recently, *investigative psychology*. Because of the variety of profilers, their respective methods, and their various levels of actual education on the subject, there remains a general lack of uniformity or agreement in the applications and definitions of these terms across and even within some profiling communities. Consequently, these terms are used inconsistently and interchangeably. For our purposes, we will be using the general term *criminal profiling*.[9]

Influence of criminal profiling in law

Criminal profiling is diligently connected with our legal system. A legal system is necessary for the proper functioning of a society since it tries to solve numerous problems existing in the society in today's times. It is relevant as law embodies the theories of behavior. The legal rules, procedures and doctrines reflect the basic assumptions of human nature. There are three leading approaches in the area of criminal profiling:

- The criminal investigative approach
- The clinical practitioner approach
- The scientific statistical approach

These approaches assist law enforcement agencies by interpreting the offender's behavior during the crime and interactions between offender and the victim during the commission of the crime and as expressed in the crime scene. Criminal profiling can help the present

[7] Canter,2004;turvey 2011,winer man 2004
[8] Chifflet, 2014; Meyer 2008.
[9] https://link.springer.com>chapter

decision makers in making decisions by providing more accurate images and pictures of human perceptions and preferences. It helps to check the genuineness of witnesses, as eyewitnesses are often known to be influenced by or afraid of the accused. Criminal profilers psychologically evaluate the belongings retrieved from an offender to draw a social and psychological picture of the offender. Criminal profiling techniques involve an in-depth analysis of the crime scene and finding common patterns with previous incidents. Drawing a criminal profile requires the perfect marrying of psychological and rational instincts with the detail of the crime scene. Criminal psychology is the process of applying psychological aspects in crime and other legal concerns.

Advantages and Disadvantages of Criminal Profiling

The rules governing criminal profiling may differ in each locality. Some regions favor the use of criminal profiling due to the advantages offer to the investigators. For example the use of criminal profiling techniques can often save time and resources, as it tends to narrow down the range of suspects being searched for. One the other hand, criminal profile is sometimes consider socially unacceptable. For this reason, many jurisdiction employ criminal profile only sparingly. Many persons feel that criminal profile is limited and can lead to misidentification. Investigating officers often have only a limited set of facts with which to create a criminal profile. Also the criminal profiling has been raised on stereotypes, especially with regard to a suspect’s race, cultural background, religious belief etc. Much criminal identification has been challenged in court due to the suspicion that criminal profile was based on stereotype rather than hard facts.

Conclusion

Criminal psychology is an emerging field in India. Various governmental and non-governmental agencies involved in crime investigations have separate departments dedicated to psychology. Criminal Psychologists in India are not much accepted due to dishonour and other factors. But in the field of criminal psychology there are certain additional issues like; ethical issues, moral issues etc. When it comes to as ethical issue, criminal psychologists are more interested in displaying the inner feelings of the offender. And in the case of moral issue the psychologists can easily abuse the offender. As a developing field, the major drawback faced by criminal psychology is the absence of accurate statutes and rules. So, the criminal psychologist must follow the legal requirements and judicial system under which he

operates. No legal system is perfect. However, the criminal psychology is a step towards making the legal system prefect. Criminal psychologist helps the legal system by providing new outlooks to the legal issues and by providing different solutions to it. Hence, the role which criminal psychology plays in the legal system helps in maintaining justice, equity and good conscience.

FIRAGAINST AN ADVOCATE

Harikrishnan V.R*

Advocates are experts in the art of advocacy, which involves the presentation of cases in the court and the provision of advice on every aspect of litigation. An advocate plays a vital role in administration of justice. An advocate always tries to protect his client in the court and that is considered as the most important duty of an advocate.

An advocate should take care of the interests of his/her clients. There may be situations in which an advocate tries his best to protect the rights of his client but fails at times. An advocate is also a human being and he can also go wrong at times. There may arise situations were the justice is in the side of the person who loses a case. This happens because of the proficiency in the art of advocacy by the opponent advocate who won the case. On such circumstances an advocate cannot be blamed because he lose a case.The client may file cases against advocate because he failed in the case as a part of his agony in failure. So we should also protect lawyers from false and vexatious suits merely because they couldn't succeed in a case. Even if the advice of a lawyer goes wrong in some way, no case can be registered against them without any strong evidence that establish their guilt.

An advocate cannot guarantee that he would definitely win the case. They are experienced people in the profession of advocacy but they cannot assure that a case will win for sure. They can only assure that they can put their best effort for the success of the case. Therefore, no advocate can make a conclusion that he will definitely win a case. There may be win or lose as it is a battle of law and the person with just is to win. A person with just may not always wins because people with just can only win when he finds the most efficient lawyer to present the case in the court. The skill of an advocate is the most important factor which provides success to a case. This should be, therefore, kept in the mind of the client while choosing an advocate that the advocate should be having skills or else there are more chances for failure in the case if the opponent advocate is highly efficient.

The wrong advice of the lawyers can be considered negligence or professional misconduct, only when there is strong evidence. Therefore, cases cannot be filed against an advocate merely because the advice given by the advocate was wrong.

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In *Central Bureau of Investigation v. K. Narayana Rao*[1], a case was filed against a lawyer. On 30.11.2005, the CBI, Hyderabad registered an FIR against the then branch manager and assistant manager respectively of the Vijaya Bank for committing offences punishable under Sections 120 B, 419, 420, 467, 468, 471 of the Indian Penal Code, 1860 and Section 13(2) of the Prevention of Corruption Act, 1988 for abusing their official position as public servants and for having conspired with the private individuals and other unknown persons for defrauding the bank by sanctioning and disbursement of housing loans to 22 borrowers in violation of the Bank's rules and guidelines and thereby causing wrongful loss of rupees 1.27 crores to the Bank and corresponding gain for themselves. After completion of the investigation, the CBI filed charge sheet along with the list of witnesses and the list of documents against all the accused persons. In the said charge sheet, Shri K. Narayana Rao, the Respondent, who is the legal practitioner and a panel advocate for the Vijaya Bank was arrayed as accused. The duty of the Respondent as a panel advocate was to verify the documents and to give legal opinion. The allegation against him is that he gave a false legal opinion in respect of 10 housing loans. The following were the allegations put on him; firstlyhe conspired against the bank by not discharging his duty. The Court by considering the prima facie evidences held that unless there are sufficient evidences against the respondent the Court won't hear the case in the first place. The lack of facts was held due to the fact that there was no prior meeting of minds, which is a basic essential of conspiracy and it was not satisfied. Hence, it was clearly held that there was no conspiracy on the part of the lawyer.

Secondly, it was held that the lawyer didn't discharge his duty properly. While considering whether a professional is negligent or not, the courts consider whether the services provided by him are of a reasonable standard. Not everybody practicing a profession be an expert but should possess the requisite skills that the profession demands**.** The document which was submitted to the lawyer was forged. He was asked to submit legal opinion on it for which he did. Thus, there is no negligence on his side.

Hon'ble Supreme Court of India said that, *if the advice of an advocate goes wrong in somehow, even then no FIR can be lodged under Section 420 of Indian Penal Code, 1860 or something like that could have registered against a lawyer.* And thus, Supreme Court dismissed the appeal of CBI.

[1] (2012) 9 S.C.C. 512.

Implication of the decision is that the client has to put an extra effort to choose the right lawyer. But in no condition the lawyer can be accused for Section 420 or 109 of IPC, unless there is strong evidence that establish relation of advocate with criminals involved in the case. In cases where there is strong evidence are available the client who is aggrieved can file a complaint at the bar council.

Lawyers are regarded as the medium through which one can get the Justice without any hindrance. Since the incorporation of the Judiciary system in India, it has been seen and now it has become a very common practice that lawyers instead of helping out the people in getting justice are more inclined towards conning people and extracting the handsome amount of money from them. Many a time it is seen that lawyers are bribed by the other party not to fight the case properly and lose the case for a certain amount of money so that the culprit is not punished for his crime, which is done by majority of the lawyers and the victim is left to face all the problems and the process is costly and time-consuming.

Most lawyers do their most to provide the best representation possible. However, so often lawyers do not act properly or make serious mistakes, and in those cases their clients can file a complaint with the entity responsible for overseeing the practice of law in their state, that is, the bar council.

Lawyers these days are very corrupt and money minded because of which they are involved in duping their clients and extorting money from them by charging hefty fees and delaying in proceedings and in many other ways, like not being present on the date of the hearing of the case. So seeing to the needs and legal rights of the people in the country there are respective provisions under the bar council as well as the state council for the punishment for any violation of the rules and rights of the people so for the benefit of the society at large. People can file complaints against such lawyers under the following authorities; State Bar Council or the Bar Council of India.

A professional may be held liable for negligence on one of the two findings:

1 either he/she was not possessed of the requisite skill which she professed to have possessed, or,

2 He/she did not exercise, with reasonable competence in the given case, the skill which he/she did possess.[2]

To determine whether a professional has been negligent or not, has to be judged like an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which she practices.[3]Negligence should be coupled with moral turpitude or delinquency to be misconduct.

In *P D Khandekar v Bar Council of Maharashtra and Goa,* [4]the Supreme Court was dealing with the challenge against punishment imposed on two advocates on findings of misconduct. They were alleged to have given improper legal advice in two cases. In one case, they allegedly advised a man and woman that their remarriage was possible by merely affirming in an affidavit they had divorced their respective spouses. In another case, a woman acted upon their alleged advice that a gift of immovable property can be done by way of an affidavit. While deciding the matter, the apex court observed: There is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct. The Court agreed with the factual findings of the Disciplinary Committee that the advocates had given improper legal advice. However, that by itself will not support the charge of misconduct, as there was no finding that they acted with moral turpitude, added the Court.

In *KathiraKunju T A v Jacob Mathews,*[5] a client entrusted with his advocate a dishonoured cheque for filing a complaint under Section 138 of the Negotiable Instruments Act. The advocate thought it was better to file a complaint for cheating under Section 420 IPC, and therefore filed a petition before Magistrate under Section 156(3) Cr. P. C. The client approached the Bar Council stating that the advocate failed to file complaint under Negotiable Instruments Act and did not return the cheque to him. The advocate said that he had returned the cheque and he thought that Section 420 IPC complaint was a better legal

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[2]*CBI v K Narayana Rao* (2012) 9 SCC 512.

[3]*Jacob Mathew v. State of Punjab &Anr.*, (2005) 6 SCC 1.

[4]AIR 1984 SC 110.

[5]AIR 2017 SC 1041.

course than Negotiable Instruments Act. The Disciplinary Committee of the Bar Council held the advocate to be guilty of misconduct. It observed that the advocate should have obtained acknowledgment receipt from the client if he had returned the cheque.

Setting aside the findings of the Disciplinary Committee, the Supreme Court said that the act of the advocate cannot be termed as "gross negligence".

"The act of the present appellant cannot be treated to be in the realm of gross negligence. It would be only one of negligence. The tenor of the impugned order, as we notice, puts the blame on the appellant on the foundation that he had not received the acknowledgment. He has offered an explanation that he had given the cheque to the police. There has been no delineation in that regard. That apart, there is no clear cut analysis on deliberation on gross negligence by the advocate.", the Court concluded.

Hence, clients need to put an extra effort to select the perfect lawyer. Choosing a lawyer is an important decision of your life. A lawyer is not only your trusted advisor and but a friend who bails you out of legal problems or makes sure you don’t get into legal problem in the first place. A lawyer should also keep the professional ethics which is important in the field of advocacy. Therefore, a lawyer should make sure that he doesn’t make any gross negligence and should have in his mind that his duty is to provide justice to the needful and to the society as a whole.

SHOULD THE DOCTRINE OF RAREST OF RARE BE ABOLISHED IN INDIA

Steffy George*

In India, death penalty has been restricted to the "rarest of rare" cases, yet, there are still various statutes that prescribe capital punishment despite the offences not being serious enough. The Indian Penal Code 1860 prescribes capital punishment mainly for those offences like waging war against the state (section 121), murder (section 302), kidnapping with ransom (364A) and for those offences under section 120B, section 132, section 194, section 305, section 376A, section 396. Other provisions like The Commission of Sati (Prevention) Act 1987, Prevention of Terrorism Act 2002, etc prescribe offences punishable with capital punishment. Now, the most common cases involving major death convicts are terrorism and rape -cum -murder cases.[1]

WHAT IS "RAREST OF RARE "?

The term "rarest of rare" has no statutory definition; the nature and gravity of the crime are considered for determining the suitable punishment, in a criminal trial. The court is under a duty to impose proportionate punishment for those crimes which are committed not only against one particular individual but also against the society at large. If not, it shall be deemed to have failed in discharging its duty. The principle of ' rarest of rare' can be divided into 2 parts:-

1. Aggravating Circumstances
2. Mitigating Circumstances

In case of aggravating circumstances, the Judge imposes death penalty under his own will but for mitigating circumstances, the Bench shall not award death penalty under rarest of rare cases.[2]However, the Judiciary of India is under an obligation to maintain a balance between aggravating and mitigating circumstances on one hand and cry of the society on the other.

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[1]Lethal Lottery :The Death Penalty in India, PUCL and Amnesty International.

[2]Soma Sarkar: Rarest of Rare Doctrine, Law times journal, updated November 22, 2018

Evolution of "Rarest of Rare" Doctrine

In the case of *Maneka Gandhi v Union of India*,[3]it was held by the Supreme Court that the death penalty can be awarded only in special cases. It is an exceptional punishment which can be imposed only with special reason and must be properly conferred by the High Court.

Later in the case of *Bachan Singh v State of Punjab*[4], a five Judge Bench laid down the doctrine of rarest of rare. By a majority of 4:1, the constitutionality of death penalty was upheld by the Supreme Court and a principle was laid down that death penalty must be surrounded only in the "rarest of rare cases".

Then in the case of *Machhi Singh v State of Punjab*[5] the court tried to lay down criteria for assessing whether a crime fell into the category of "rarest of rare".[6]

In the case of *Santosh Kumar Bariyar v State of Maharashtra*, [7]Justice S B Sinha in his majority judgment has imposed a duty upon the court that "appropriate punishment is to be determined on a case -to-case basis. The death sentence is not to be awarded in the rarest of rare case where reform is not possible."[8]

The year 2008 accounted for the case of Prajeet *Kumar Singh v State of Bihar*[9] , wherein the court ruled exactly on what would constitute a "rarest of rare case." The court held that a death sentence would be awarded only," when a murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community."[10]

***Dhananjoy Chatterjee Alias Dhana v. State of West Bengal*[11]**

This is a historic case related to the aspect of death penalty in India. It is an evident fact that Dhananjoy Chatterjee was the first person who was lawfully executed in India in the 21st

[3]AIR 1978 SC 597
[4]AIR 1980 SC 898
[5]AIR 1983 SC 1957
[6]RaashiVashiya: The Doctrine of Rarest of the Rare, Legal Service India
[7]2009 6 SCC 498
[8]Death sentence in Rajiv case will mean a double penalty : ex-judge, The Hindu, 11 Aug 2016, Retrieved on17/08/18
[9]Appeal(crl)1621 of 2007
[10]Prajeet Kumar Singh v State of Bihar
[11]1994 SCR(1)37, 1994 SCC(2)220

century for a crime which was not related to terrorism. He was charged with the crimes of rape and murder of a 14- year-old, school girl. Dhananjoy was imprisoned and hanged.

The Trial Court awarded him with the sentence of death which was confirmed by High Court for the offence under Section 302 of IPC for the murder of a 14- year-old, school girl. The Supreme Court dismissed the appeal stating that this case comes within the parameters of " rarest of rare" doctrine as the accused was a security guard who is actually supposed to ensure the protection and welfare of inhabitants of the flats in the apartment and to gratify his lust and her murder in retaliation for his transfer, makes this crime more heinous. The Supreme Court, in its profound reasoning, concluded that the cold-blooded murder was an affront to the human dignity of the society and also added that it shocked its judicial conscience. The Apex Court also saw no mitigating circumstances in the case concerned and held that the case was "rarest of rare" and no punishment less than capital punishment could have been awarded. The death penalty was confirmed and the appeal failed.

DEATH PENALTY IN OTHER COUNTRIES

In United States

The United States has an interesting departure from the global trend in case of the death sentence. For a brief period of 4 years from 1972 to 1976, it was abolished with the ruling of the US Supreme Court in *Furman* v *Georgia*. [12]However, in 1976, the Supreme Court overturned its earlier verdict in *Gegg* v *Georgia*[13] thereby upholding the constitutional validity of the death penalty.

In 2016, 30 death sentences were imposed across the United States, making it the lowest number in 40 years. In fact, the death penalty is in decline by every measure. The death penalty has also been eliminated in six states and four more states have put a moratorium on executions. Overall, only a handful of countries (just two percent) impose death sentence in the U.S. As of April 1st 2018, 2743 are still on death row.

In England

The imposition of death sentence, in general, has been abolished by the Murder (Abolition of Death Penalty) Act, 1965 other than four offences namely:-

[12](408)US238(1972)
[13]428US195(1976)

- Treason
- Repeated murder
- Piracy with violence
- Setting fire to her Majesty's ships

For the offences of first two types, the Judge has no other choice than to award death penalty. The last two offences have been left upon the discretion of the Judge. The acid rule is that neither a minor nor a pregnant woman can be hanged to death.

In South Africa

Through one of the earlier judgments of *Makwanyane v Muhunu*a[14]abolished death penalty provided under section 277 of Criminal Procedure Act, 1927 as contrary to the country's new interim Constitution. Allowing the petition all the eleven judges of the Court drafted individual reasons in support of their unanimous conclusions. Ten of the eleven judges concluded that the death penalty constitutes cruel, inhuman, or degrading treatment or punishment.[15] The UDHR establishes an individual's right of protection from deprivation of life and proclaims no person shall be made to suffer degrading or cruel punishment. [16]The UNGA finds capital punishment violates both basic rights.

Is Death Penalty Constitutionally Valid?

It was in the case of *Jagmohan Singh v. State of Uttar Pradesh*, [17]the constitutional validity of death sentence was challenged for the first time. Section 302 of the IPC was challenged as violativeof Article 14, 19 and 21 of the Constitution. However, the Supreme Court rejected the argument that the death penalty is the violation of "right to life" guaranteed under Article 19 of the Indian Constitution and upheld death sentence as constitutionally valid.

In another case *Rajendra Prasad v State of U P,*[18] Justice Krishna Iyer has stressed that death penalty is violative of Articles 14, 19 and 21. But a year later, in the landmark case of

[14](1995)16HRLJI33
[15]John Paul Truskett, Death Penalty, International Law and Human Rights, Tulsa Journal of Comparative and International Law
[16]Ibid
[17](1973)1 SCC 20
[18]AIR 1979 SC 917

BachanSingh v State of Punjab, [19]by a majority of 4:1, the Supreme Court overruled its earlier decision in Rajendra Prasad. The constitutionality of death sentence was upheld by the Supreme Court and a principle was laid down that death penalty must be surrounded only in the "rarest of rare cases".

Later in the case of *Machhi Singh v State of Punjab,*[20]the court tried to lay down criteria for assessing whether a crime fell into the category of "rarest of rare".

PRESIDENT'S POWER TO PARDON DEATH PENALTY

The term ' pardon' simply means to forgive a person of his offence. Granting pardon wipes off the guilt of an accused and brings him to the position of innocent person, as if he had never committed the offence for which he was charged. Under Indian Law, the President can grant pardon in those cases where the sentence given is sentence of death.

A president is empowered with the power to pardon under Article 72 of the Indian Constitution. Article 72 says that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

The Supreme Court over the years has made notable changes to this power of the President. In the *Bachan Singh case (*1983) the court concluded that the award of death penalty did not violate article 14 or 21 of the Indian Constitution but should be awarded in the "rarest of rare" cases.[21]

In the *Kehar Singh case (*1989) the court said it was open to the President to exercise the power vested in him by Article 72 to scrutinize the evidence on record and decide on the sentence. The President is entitled to go into the merits of the case not withstanding that it has been judicially concluded by the consideration given to it by the Supreme Court.The court held in this case that the President had the discretion even to hear the convict orally. However, the Supreme Court's decision in 2001, on the question of Presidential Clemency said that undue considerations of caste, religion and political loyalty are prohibited from being grounds for grants of clemency.

[19]AIR 1980 SC 898
[20]AIR 1983 SC 1957
[21]NegaMohita: The Question of Death Sentence and Presidential Clemency, Your Article Library

However, in 2006 the Supreme Court held that the power of presidential pardon is subject to judicial review and it cannot be dispensed incomplete.

India prepares to carry out first ever hanging of Women convicts

Two sisters, who kidnapped 13 young children, forced them to work as pickpockets and then murdered them are about to become the first woman to be executed in India.[22]

RenukaShinde and SeemaGavit became India's most notorious serial killers when they were convicted for a series of child murders in 2001 and sentenced them to death. They had been charged with 13 kidnappings and 10 murders but found guilty for the killing of five. And now they are finally due to be hung at Maharashtra's Yerwada Jail, after India's former President Shri Pranab Mukherjee , rejected their appeal for mercy.

Death penalty for child sex abuse: POCSO Act Amended

The Union Cabinet approved amendments in POCSO Act to make punishment more stringent for sexual crimes against children .The Bill, which had been introduced earlier but lapsed in Parliament when the Lok Sabha was dissolved in May, was approved by the Cabinet chaired by PM Narendra Modi.

Sections 4, 5 and 6 are proposed to be amended to provide option of stringent punishment, including death penalty, for committing sexual assault and aggravated penetrative sexual assault crime on a child to protect the children from sexual abuse. Amendments are also proposed in Section 9 to protect children from sexual offences in times of natural calamities and in other situations where children are administered, in any way, any hormone or any chemical substance, to attain early sexual maturity for the purpose of penetrative sexual assault. Amendments are also proposed in Section 14 and 15 of the POCSO Act to levy fine for not destroying, deleting or not reporting the pornographic material involving a child with an intention to share or transmit it.

Amendments are proposed to be carried out in Sections 2,4,5,6,9,14,15,34,42 and 45

[22]Dean Nelson : Two sisters to be first women hanged in India, The telegraph, 18 August 2014

Article 21 and Death Penalty

Article 21 of the Indian Constitution states: No person shall be deprived of his life or personal liberty except according to procedure established by law[23]

Prior to *Maneka Gandhi v Union of India,* the Supreme Court in *A.K Gopalan v State of Madras* interpreted "personal liberty" to mean only liberty of the physical body and where a procedure existed to take away this liberty, Article 21 could not be said to have been infringed - notwithstanding the fairness of that procedure.

In Maneka Gandhi, however, the Supreme Court incorporated American law of "due process "in the right to life. Consequently, the ambit of Article 21 got expanded .As a result, if death penalty were to be granted, it would be legal only if :

- There is a valid law: The Indian Penal Code provides for punishments for offences ; only certain grave offences are punished with death or life imprisonment.
- The law provides for a procedure: The procedure is included in the Code of Criminal Procedure and stipulates a specific procedure for investigation, trial, judgment and appeals. The Indian Evidence Act supplements this procedure with rules regarding evidence.
- The procedure is just, fair and reasonable: The Code of Criminal Procedure and Evidence Act coupled with the landmark judicial decisions have established a procedure that:

1. Adequately safeguard individual liberty against unjust actions by the police.
2. Provides a fair opportunity to the accused to present his case.
3. Awards a reasonable punishment to the accused for his offences viz. a death penalty is only awarded in cases that fall in the category of "rarest of rare" .

Death penalty does not violate Article 21 because it is only awarded according to a procedure that is just, fair and reasonable.

[23] Article 21 of the Indian Constitution

Conclusion and Suggestions

As there is no statutory definition for the term “rarest of rare”, it is likely to have controversy each time when the court awards death penalty. There are cases where the accused has committed rape as well as murder and has been given death penalty. There are also other cases with similar facts and scenarios, where in the court does not grant death penalty. It is very difficult to find the variation that has led to a difference in these punishments.

Completely removing the concept of death penalty shall put our country to a greater risk .India has not yet become a country sufficient to experiment such extreme conditions. So what is needed is that a uniform guideline should be laid down which encompasses the grounds under which the rarest of rare case can be identified. This may help in clearing such confusions and other controversy in the mind of various jurists.

We people are mostly concerned with the decisions laid down by the courts in cases of rape. No one justifies the act of a rapist and take up his side. What the society needs is that the rapist should be punished. It is in such cases, where the doctrine of rarest of rare be abolished. The one, who is found guilty as a rapist, should be hanged to death. Such persons should not be awarded any other punishment other than death penalty. What we want is a rape free India and what we need is to have the rapist hanged to death.

However, with regard to other offences like murder, waging war against the state and terror related activities; the doctrine of rarest of rare cases should be made applicable. These offences might be committed with regard to certain intentions and may also depend upon the facts and circumstances of such cases. Therefore, any person who is accused of such offences should provide a chance to show cause their side. Death penalty should only be imposed in these cases wherein the act committed amounts to a rarest of rare case.

So, what is needed is that rarest of rare doctrine should be given clear and specific definitions. In the absence of such definition, it is at the discretion of the court to determine what constitutes a rarest of rare case. The doctrine was supposed to be society- centric, but it has rather become judge centric. If the Judiciary wants to keep this doctrine, they need to ascertain specific elements on the basis of which the fog gets cleared.

TRIPLE TALAQ IN INDIA

Ashna Sulthana Asharaf[1]

Today we are living in 21st century and it is called Modern era. Every person has fundamental rights, constitutional rights and human rights to raise voice against exploit tradition. India is a democratic country. The citizen of India follows and respect of Indian constitution. In democracy every person has rights to express their expression against some tradition, which affect human life. Now India is facing Triple talaq issue in Muslim community. Especially Muslim religion women are so much worst affected by Triple talaq problem. It is very old tradition. Talaq is an Arabic word meaning divorce. Triple talaq is meant as an instant and irreversible divorce. It is an Islamic divorce procedure. Triple talaq is followed by Indian Muslims and people who follow Islam from different countries. In Triple talaq, a Muslim husband gives divorce to his wife uttering the word "talaq, talaq," at one go. Once it is spoken, the marriage stands void. It is applicable in both forms, oral and written. In most recent times, digital formats like sending over e- mail, WhatsApp is valid.

History of Triple Talaq

This divorce is one of the 1300-year-old practices among Muslims, especially Sunni Muslims. In India, as per census 2011, this divorce practice affects around 8% of Indian women population, especially women above the age of 60 years. It comes under the personal law by Indian Muslims. Triple talaq is a practice of divorce under Sharia law.

What is Triple Talaq

Talaq is an Islamic word for divorce, denoting dissolution of marriage when a Muslim man can severe all marital ties with his wife. Under the Muslim law, Triple talaq means liberty from the relationship of marriage, eventually or immediately, where the man, by simply uttering the word Talaq, also known as Talaq-e-biddat. The Muslim Personal Law [Shariat] Application Act, 1937 had legalized and allowed the practice of Triple talaq which gave a Muslim husband special privileges over his wife. The Muslim women are always afraid with this Triple talaq. This type of tradition is practicing in India. Muslim male dominant is easy to say Triple talaq. But, it is so hard to listen those words for Muslim females. Muslims can legally divorce his wife by pronounced 3 times talaq. Pronouncement can be verbal or

[1] Seventh Semester BBA.LLB, Co-Operative School of Law, Thodupuzha

written. A divorce woman may not remarry her divorce husband unless she first marries another man called Nikaha-halala. The Muslim family affairs in India are governed by the Muslim Personal Law [Shariat] Application Act 1937 [Muslim Personal Law].

What is Instant Divorce?

There have been cases in which Muslim men in India have divorced their wives by issuing the so - called Triple talaq by letter, telephone and increasingly, by text messages, whatsapp and Skype. A number of these cases made their way to the courts as women contested the custom. Triple talaq divorce has no mention in Sharia Islamic law or the Quran, even though the practice has existed for decades. Islamic scholars say the Quran clearly spells out how to issue a divorce - it has to be spread over 3 months, allowing a couple time for reflection and reconciliation. Most Islamic countries, including Egypt, The United Arab Emirates, Pakistan and Bangladesh have a uniform set of laws on marriage and divorce that apply to every citizen.

Talaq - Different Types

As per Islamic law, in general, there are different types of talaq for men and women. For men under Islamic law, there are three types of divorce namely Talaq-e-biddat [triple talaq], Hasan and Ahsan. The major difference among these divorces is that the triple talaq is irrevocable where as the other two are revocable. Triple talaq is an instant divorce where as the other two takes some time and is not instant. In the case of women there is a traditional “fiqh khul" or also known as "khula", allowing a woman to divorce her husband through mutual consent of the husband or a judicial decree. Its reference is also available in the Holy Quran or Hadees. Hadees is known as the saying of Prophet Mohammed.

Triple Talaq Bill

Of lately, there has been much noise against the practice of Triple talaq by the male population of Islamic culture. Triple talaq has been seen as the dominance of men over women. It goes against the rights of equality and women's empowerment among Muslim women population of the country. The method of divorce does not stand with the fundamental principles of Gender Equality and Secularism. It puts a question on the dignity of woman justice and basic human rights privilege of Muslim women in the country. When Prime Minister Narendra Modi started a campaign for Uttarpradesh state elections in 2017,

Muslim women raise their voice and concerns to abolish Triple talaq. And the central government started finding a solution to the problems of such women. In August 2017 Supreme Court of India has termed Triple talaq as unconstitutional and many social, religious and legal observations have been produced against the practice of Triple talaq. Based on the atrocities faced by Indian women and judgment given by Supreme Court Triple talaq Bill has been introduced in the Indian Parliament to void the practices of Triple talaq by Indian Muslim men and a bill was passed in parliament in December 2018 and finally passed by both the houses on 30th July 2019. From 1 August 2019, It has become a law which declares that Triple talaq divorce given in the form of verbal, oral, written and digital or any form what so ever, deems to be void henceforth and it is illegal to practice. Besides the bill entitles declaration of Talaq as a cognizable and non-bailable offense. A husband declaring talaq may be imprisoned for up to three years along with a fine. In terms of allowance a Muslim women is also entitled to seek allowance from her husband for herself and for her dependent children.

What is the Triple Talaq Law?

Triple talaq law, also known as Muslim's Women [Protection of Rights on Marriage] Bill 2019[2], was passed by the Indian parliament as a law on July 30, 2010, to make instant Triple talaq a criminal offense. The Rajya sabha passed the Bill, with 99 votes in its favor and 84 against it. The Triple talaq law makes the instant Triple talaq a criminal offense and provides for a jail term of 3 years for a Muslim man who commits the crime. The law also makes Triple talaq a cognizable and non-bailable offence. Introduced in the Loksabha by minister of law and justice Ravi Shankar Prasad on June 21, 2019 the bill replaced an ordinance promulgated on February 21, 2019. As the Bill was pending for consideration in the Rajya sabha and the practice of triple talaq divorced system was continuing, there was an urgent need to take immediate action to prevent such a practice by making strict provisions in law.

Punishment for Pronouncing Triple Talaq

The clause 3[3]also states that, "whoever pronounces Triple talaq up on his wife shall be punished with imprisonment for a term which may extend to 3 years and fine". According to clause 7[c] in chapters, " No person accused of an offense punishable under triple talaq law shall be released on bail after the magistrate, on an application filed by the accused and after

[2] This Act may be called the Muslim Women (Protection of Rights on Marriage) Act, 2019.
[3] Muslim Women (Protection of Rights on Marriage) Act, 2019

hearing the married Muslim women up on whom talaq was pronounced, is convicted that there are reasonable grounds for granting bail to the accused.

Custody of Children

Clause 6 in chapter 3 of the Bill states that "a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband in such manner as may be determined by the magistrate. The Triple talaq legislation will now go to president Ram Nath Kovind for his assent.

Legal Alternatives and Related Cases

There has plethora of cases both in the Supreme Court and several High courts declaring instantaneous triple talaq to be invalid. The Apex court in *Shamim Ara .v. State of U.P* [4]has already invalidated instantaneous triple talaq. While quoting *Rukia Khan.v. Abdul Khalique Laskar*[5] the court observed:

The correct law of talaq, as ordained by Holy Quran is:

- That talaq must be for a reasonable cause;
- That it must be preceded by an attempt of reconciliation between the husband and the wife by two arbiters, one chosen by the wife from her family and the other by the husband from his. If their attempts fail talaq may be affected.

In Dagdu Pathan. V. Rahimbi Pathan[6] the full bench of High court of Bombay held that a Muslim husband cannot repudiate the marriage at will. The court added that to divorce the wife without reason, only to harm her or to average her for resisting the husband's unlawful demands and to divorce her in violation of the procedure prescribed by the Shariat is harm [7]

In Mansoor Ahamed. V. State (NCT of Delhi)[8] the High court of Delhi while interpreting the Shamim Ara judgment held that; a revocable talaq, the dissolution of marriage does not take place at the time of pronouncement but is automatically deferred till the end of the Iddat period.

[4] Appeal (crl.) 465 of 1996
[5] (1981)1 GLR 375
[6] IT(2002),DMC 315.Bom FB
[7] 2008(103)DRJ 137 (Real)
[8] 121 (2005) DLT 84, 2005 (82) DRJ 570

First case of Triple Talaq Registered in Delhi.

Parliament on August 1 approved the bill that makes instant Triple Talaq a criminal offence. A thirty year old man has been arrested for giving instant Triple talaq to his wife, the first such case registered in the National capital since the practice was criminalized. The arrest was made after a thirty year old women lodged a complaint against her husband in North Delhi's Bara Hindu rao Police station .However the man got a bail by a court.

CASE LAWS

Shayara Bano. V. Union of India[9]

Case description: A constitution bench has declared that the practice of instantaneous triple talq is unconstitutional.

Issues:

- Whether the practice of talaq-e-biddat an essential practice of Islam?
- Whether practice of Triple talaq violates any fundamental right

Background:

On 22 August 2017 the 5 bench judges of the Supreme Court pronounced its decision in the triple talaq case declaring that the practice was unconstitutional by 3:2 majorities. Shayara Bano was married to Rizwan Ahamed for 15 years. In 2016 he divorced her through instantaneous triple talaq .she filed a writ petition in the Supreme Court asking it to hold 3 parties talaq-e-biddat, polygamy, nikah-halala- unconstitutional as they violate Articles 14, 15, 21, 25 of the Constitution.

On 16 February 2017, the court asked Shayara Bano, the union of India, various women rights bodies, and The All India Muslim Personal Law Board (ALMPLB) to give a written submission on the issue of talaq-e-biddat, nikah-halala, and polygamy. The Union of India and the women rights organisation Bebak Collective and Bharathiya Muslim Mahila Andolan (BMMA) supported the Mrs. Bano's plea that these parties are unconstitutional. The

[9] Wp(c)118/2016

AIMPLB has argued that unmodified Muslim's Personal Law is not subject to constitutional judicial review and that these are essential practice of the Islamic religion and protected under Article 25 of the Constitution. After accepting the Shayara Bano's petition, the apex court formed a 5 judge's constitutional bench on 30 March on 2017. On 26 August 2017, the 5 judge bench is pronounced its decision in the triple talaq case declaring that the practice was unconstitutional by 3:2 majorities.

Mohammed Ahamed khan. V. Sha bano beegam & ors.[10]

In the case also called Sha bano case is seen as one of the milestone case on Muslims women's fight for right in India and the battle against the set Muslim Personal Law. It laid the ground for 1000's women to make legitimate claims which they were not allowed before. In this case is maintenance is seen as one of the legal milestone in battle for protection of rights of Muslim women. While the Supreme Court upheld the right to alimony, in the case the judgment set off a political battle as well as a controversy about the extent to which courts can interfere in Muslim Personal Law. The case laid the grounds for Muslim women fight for equal right in matters of marriage and divorce in regular courts, the most recent example being the Shayara Bano's case in which the Supreme Court invalidated the practice of instant Triple talaq.

Conclusion

In my view, the institution of divorce as provided under Islam, has been the subject of repeated controversy and is still a live issue capable of generating much heat and passion due to the changing concept of gender equality and the emancipation in the Western civilization and its impact in the women in general. Muslims in India are categorized in to two main sets shias and Sunnis. India comprise of a majority of Sunnis who recognized the practice of Triple talaq. The practice of Triple talaq has always been seen as a controversy by the entire world. In my view to be drowned through the abolishing of the triple talaq bill is that no Muslim will face discrimination and injustice in their life in future. The importance and role of Muslim clerics are very important in the implementation of the triple talaq bill

[10] 1985(1)Sc Ale 767 =1985 (3) SLR 844=1985(2) Scc 556 =AIR 1985 SC 945

ROLE OF JUDICIARY IN PROTECTION OF ENVIRONMENT

Annsmaria Antony*

Introduction

A Healthy Environment is the part and parcel of good quality life .It is a comprehensive term which includes all such natural and biotic factors that make possible to entertain Right to life in true spirit. The environment furnishes everything which is necessary for human existence. The existence of life cannot be possible without a natural and wholesome environment. In the quest of making life more comfortable the man has always exploited nature. The actions of man contaminated the natural resources .It includes agriculture, industrialization and infrastructural developments etc. Human activities create a variety of wastes and by- products which accumulate over a period of time and may become toxic to the living and non-living creatures. Indiscriminate use of fertilizers and pesticides has paved the way to the problem. The rapid, unplanned industrialization, expansion of factories emitting noxious gas fumes and toxic effluents, makes life more difficult on earth. These things are constantly causing damage to the environment.

It is the duty of the state to protect the environment as embodied under Article 48-A, 39 (e) and 47 of the Indian Constitution. So in order to deal with these ever-growing problems, many acts have also been enacted by the parliament but it is the Judiciary which always keeps a check on proper implementation of these enactments and it has been playing an important role in interpreting the laws to protect the environment. Our Constitution guarantees to the citizen, the right to life and liberty under Article 21 ,which says that "No person shall be deprived of his life and personal liberty except according to the procedure established by Law''. Putting emphasis on "Life " the court included right to live with human dignity ,right to livelihood ,right to health ,right to pollution free air etc as an inevitable component of 'Right to Life'. In fact 'Right to Life and Personal liberty 'under Article 21 includes Right to live in a healthy environment.

Meaning of Environment

Environment "includes water, air and the inter - relationship which exists among and between water, air, and land and human beings ,other living creatures, plants, micro-organisms and

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property."[1]In short, Environment means the surroundings in which we live which is essential for our life .It has been recognized to be an inseparable part of right to life under Article 21.The Indian Judiciary, the custodian of the Constitution, has been giving beacon light for such a valuable right. This is done by the courts using the tool of Public Interest Litigation (PIL) .Writ petitions in the form of PIL have been accepted by the Courts under Article 20, Article 47, Article 32 and Article 226 of the Indian Constitution. The PIL got constitutional sanction in the 42nd Constitution Amendment Act 1974, which introduced Article 39-A in the Indian Constitution to provide equal justice and free legal aid. The PIL encouraged the affected individuals (affected by any project), public minded individuals and voluntary organizations to move the courts to redress of their grievances. The Supreme Court and the High Courts have been entertaining environmental petitions under Articles 32 and 226 of the Indian Constitution as constituting a violation of Article 21.

Indian Constitution and Environmental protection

Article 47 of the Indian Constitution casts a duty on the state to raise the level of nutrition and the standard of living of its subjects and to improve the public health. This is one of its primary duties and it is directed, that the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 48A: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.[2]

Article 51A (g**):** It shall be the duty of every citizen of India..."to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."The above mentioned constitutional provisions impose two fold responsibilities.[3]

On the one hand they give directive to the state for the protection and improvement of environment and on the hand they cast a duty on every citizen to help in the preservation of natural environment. In *Sachidanand Pandey* v. *State of West Bengal*[4],the Supreme Court

[1]The Environment(Protection) Act ,1986

[2] Article 48A of the Indian constitution [3] Article 51A of the Indian constitution [4]1987 SCR (2) 223

observed, whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48A and Article 51A (g).

The Constitution of India under Part III guarantees fundamental rights which are essential for the development of every citizen. Right to environment is also a right without which development of individual and realization of his or her full potential shall not be possible .Articles 14, 19, 21 of this part also have a great significance in environment protection .Public Interest Litigation under Article 32 and Article 226 are also helpful in uplifting this right.

Cases dealing with Environment Protection

*T.Damodar Rao*v. *S.O Municipal Corporation*[5]**,** where the Life Insurance Corporation and Income Tax Department of Hyderabad had acquired 37 acres of land to residential homes for their employees, which was a part of 150 acres of land earmarked for recreational park. The petitioners challenged this before the High Court of Andhra Pradesh and complained that the balance acres of land as shown in the development plan ought not allowed to be used by the LIC and I.T Department. The counsels for the petitioners argued that the section 112 of the Hyderabad Municipal Corporation Act,1955 imposes a mandatory duty on the corporation to make adequate provision for public parks, gardens, playgrounds etc. The points for consideration was whether land falling in the recreational zone within the city limits of Hyderabad can be used for residential purposes contrary to municipal development plan and how a balance can be struck between the right of ownership and the question of ecology and environment.

The High Court of Andhra Pradesh observed the protection of environment is not only the duty of the citizen but also the obligation of the State and the State organs including Courts. The enjoyment of life and its attainment and fulfilment guaranteed by Article 21 embraces the protection and preservation of nature's gift. .The slow poisoning by the polluted atmosphere caused by environmental pollution should also be regarded as amounting to violation of Article 21.`The purpose of planned development is to maintain an environmental balance ,therefore ,construction of houses in area earmarked for recreational park is contrary to the provision of Article 21.The Court ultimately held that no permission can be granted to modify the development plan and thereby build houses on an area set aside for the park and

[5]AIR 1987 AP 171

this cannot be done even though municipal corporation and the State Government may have given permission contrary to development plan .Thus the fact of ecology and environmental protection was accorded priority over the housing requirement.

In the landmark case of *Ratlam Municipality* v.*Vardhichand*[6]the facts were that on the Southern side of New Road of Ratlam Municipality some houses were situated and behind this a new road was constructed by the municipality .In between this a Nala was flowing, the waste materials of alcohol plant containing chemical and obnoxious smell were released very often to this. Against this many applications were submitted to remove the nuisance but all of them failed .Even the Municipal Council and the Town Improvement Trust was drawn were proved ineffective in disposing human waste and disposal cesspools and filth menaces of the town. People moved to the Sub-Divisional Magistrate, Ratlam to take action under Section 133of the Criminal Procedure Code to abate the nuisance, by ordering the Municipality to construct drains, remove the filth and stop the despoliation. The court considered whether by affirmative action a court could compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and time-bound basis.

The Court has made effort to make the order of magistrate workable by selecting suitable tender and time framed to clean the city. Further directions were made enjoining upon the public authority as to stop the effluents from the alcohol plant flowing into the street and build and maintain sanitation facilities, instructions to the Malaria Eradication Wing to stop mosquito breeding. After being urged by the local authority, the Apex Court modified the magisterial orders. The submission of appellant counsel for insufficient funds to carry out its duties found no stand in this case. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their lockers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provisions. Thus, wherever there is a public nuisance, the presence of S.133 CrPC must be adopted. The Apex Court interpreted Article 21 which guarantees the fundamental right to life and personal liberty, to include the right to a wholesome environment and held that a litigant may assert his or her right to a healthy environment against the State by a writ petition to the Supreme Court or a High Court. The Apex Court evaluated the order of both the lower courts and relevant provisions of law with respect to the powers of the Magistrate to take action and duties of the appellant. The provisions set out in S.133 CrPC empower the magistrate to take

[6]1981 SCR (1) 97

necessary steps to abate public nuisance and has all judicial powers to take necessary action to remove public nuisance and the appellant or other executive authority are bound by the order under S.133 CrPC.

Coming on to *Vellore Citizen's Welfare Forum* v. *Union of India*[7], which is also known as tannery case a public interest litigation (PIL)was filed against the pollution which was being caused by enormous discharge of untreated effluent by tanneries and other industries in the State of Tamil Nadu. Because of this, entire surface and subsoil water of river Polar had been polluted resulting in the non-availability of potable water to the residents of the area. A huge area of agricultural land had become either partially or totally unfit for cultivation because of destruction of chemical properties of the soil.

The Supreme Court after examining the nuisance and other hardships caused to lakhs of people directed the Central Government to establish an authority to deal with the situation created by the tanners. It directed the authority to implement the precautionary principle and to identify the loss to the ecology /environment and to the individuals/families who have suffered because of the pollution, and to determine the compensation to reverse the environmental damage and to compensate those who have suffered from the pollution. The Collector/District magistrate was asked to collect and disburse the money .The Supreme Court went further to fine each of the industries the sum of rupees 10000/- each to be out into an environmental protection fund and be used to restore the environment and to compensate the affected persons.

In the recent case, *Animal Welfare Board of India* v. *A Nagaraja* [8]the court challenged the validity of Jallikettu which was a sporting event practiced in Tamil Nadu. The event has assumed extremely cruel and inhuman dimensions .Bulls were subjected to tortures thus to overpower them. The court was convinced that it has a duty under the doctrine of *parens patriae* to take of animals rights. Thus they have the right against the human beings not to be tortured and against infliction of unnecessary pain or suffering .The fundamental duty on every citizen 'to develop scientific temper ,humanism and the spirit of inquiry ,was lying dormant in Article 51A(h) that was added as a fundamental duty by the Forty-Second Amendment. The court's eco centric approach that every species has a right to life and

[7]1996 SCR(5) 241

[8] CIVIL APPEAL NO. 5387 OF 2014(@ Special Leave Petition (Civil) No.11686 of 2007)

security symbolises another significant addition to the array of rights under Article 21 of the Constitution of India.

The Precautionary Principle

It means "The discharge of toxic substances or other substances and the release of heat in such quantities and concentrations as to exceed the capacity of the environment to render them harmless must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems."[9]The inadequacy and insufficiency of the scientific knowledge was accepted as the real basis for precautionary principle. The basic tenet of precautionary principle is that it is better to take caution and thus prevent pollution of the environment but it would become irreversible. In *A.P.Pollution Control Board v. M.V.Nayudu,* the Supreme Court opined that, the environment protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake.

The Polluter Pays Principle

It means that the polluter should pay for the cost of pollution as he was under an obligation to take precautions against the pollution of the environment but if he failed and pollution did take place, he must be answerable for the same and he must bear the cost of pollution. The principle requires that the liability for the harm caused to the environment extends not only to compensate the victims of pollution but also the cost of restoring environmental degradation.

In the case of *Indian Council for Enviro legal Action v. Union of India*[10]popularly known as H-acid case .In this case a chemical plant discharged harmful industrial effluent into a nearby residential colony .The people of the village filed a PIL under Article 32 considering this as a grave environmental concern. The court interfered in this case and applied the principle of polluter pays in which the court ordered the plant to pay compensation towards the villagers.

Doctrine of Public Trust

In Environmental Jurisprudence certain entities like water, air, river, land, fire, soil are said to be under the trusteeship of the State for the common benefit of human kind. When there is a violation or hazard caused by private individuals, corporations or even by the state, the court

[9]Principle 6 of the Stockholm Declaration ,1972

[10]1996 AIR 1446, 1996 SCC (3) 212.

as a guarantor of our fundamental rights can implement the Doctrine of public trust. This doctrine places a kind of responsibility on the state to ensure the state has an implied duty directly as the trustee towards its beneficiaries. So for the benefit of common public the state acts as a trustee for whole.

Sustainable Development

The doctrine of sustainable development means development without compromising the needs of the future generation .This principle was first developed in the sustainable development Conference. The key principle of this is the integration of environmental, social and economic concern into all aspects of decision making. The concept of sustainable development aims to maintain economic advancement and progress while protecting the long term value of the environment. The various principle outlines to realise sustainable development includes polluter pays principle, precautionary principle, doctrine of public trust.

Conclusion

The independence of environmental law with other disciplines makes it a distinct branch of law. The principal sources of environmental law includes common law developed by courts through judicial decisions and the statute law comprising of Acts, rules, regulations, notifications and so on. The development of the laws in this area has been a considerable share of initiative by the judicial activism in the form of PILs, particularly through a range of cases initiated by social activists, has proved to be an effective tool in the area of environment protection. The establishment of a special tribunal called National Green Tribunal also paved the way for the protection of environment. It was set up under the National Green Tribunal Act, 2010 for the purpose of effective and expeditious disposal of environment related civil cases. So while analysing the above mentioned things , we find that Indian Judiciary particularly the higher judiciary consists of the Supreme Court of India and the High Courts of the states made a considerable share in developing the laws.

CAMPUS POLITICS IN INDIA

SUJITHA. S*

Politics is an integral part of the operation of public education. Politics in education is not just about the ways of the election of school board members or local school councils but it is an integral part of day-to-day life. All political activities are not the same. Political struggles in school and colleges have different views and objectives.

Politics:

Politics is the process and methods of making decisions for groups. Although it generally applied to governments, politics is also observed in all human group interactions including corporate, academic and religious.

According to Albert Einstein, "Politics is more difficult than physics."

According to Aristotle, "The good of man must be the end of the science of politics."

Student Politics:

Student politics is the set of some policies to be practiced for the welfare of students.

History of politics in educational institutions.

During the 1960's and the '70s, Idealism prevailed in campus politics. In 1977 onwards, after Indians voted in India's first non-congress government, the quality of student politics began to decline. The political parties were impressed by the student's successes and then they started promoting students caste politics, religious divisiveness and the commercialization of education to gain their selfish purpose. Such politics in more prevalent in the poor states like Uttar Pradesh especially Lucknow.

Today in many campuses, it is common for student politicians to stay year after year. Clashes between student groups and even murders are now a part of the political scene during election season. Atal Behari Vajpayee, the former Prime Minister who got his first start in University campaign. Another reason is the reduction of the minimum voting age for national election from 21 to 18, during 1989.This age generally coincides with student's entry into college. The

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country has no dearth of nonsense politicians who creates a lot of difference between the people in the name of religion, region, caste, and creed. It is the students' responsibility and educators to come forth and control the situation.

Is politics good for students?

Politics is important for democracy; students being the future of nations should constitute the most vibrant section of political discourse.

There are 3 stages of politics:-

- Political education and awareness:
  This is a very important stage of politics. Students should be the receptors as well as disseminators of political awareness. Conducting, discussion and debates on national and local issues are few ways to get politically educated.
- Political participation:
  Political Participation is a basic concept in political science and scholars define the concept in different ways. It may be defined as the actions of private citizens seeking to influence or support government and politics.
- Political activism:
  An illegal construction in one's colony may not be a personal issue but a politically aware citizen would know his rights and the future implications of the illegal construction on peace and security of the colony.

Reasons, students politics should be banned in India.

An engineering student of Indian Institute of Technology, Hyderabad committed suicide by jumping off from the third floor of a campus building. He sent a mail with suicide note to his friend. In his suicide note, the student attributed the reason for taking the extreme step to dressing.

In the case, for banning student politics altogether:

1. Students are forced to adopt "identity politics[1]":

[1] https://plato.stanford.edu/entries/identity-politics/

Students are supposed to be a clean slate and take whatever path they fancy. Sometimes, this choice is not made even after the completion of the education process.

2. Right not to practice politics lost in the pressure:

Most students want to stay a political but they find it difficult to do so and they are sucked into politics whether they like it or not. They find politicking students more powerful.

3. Leads to violence which is brushed under the carpet:

In most education institutions in the world, violence is discouraged and those indulging it are immediately thrown out. That is not the case in India.

4. Leads to tremendous inefficiency:

College's needs are scared to act owing to political interference. Professors are wary of doing anything radically different and will take the beaten path. Agitation overshadows studies.

5. Colleges have become a battlefield for the CPM-CONGRESS-BJP:

The two largest parties are the BJP and the Congress. They have the ABVP (AKHIL BHARATIYA VIDYARTHI PARIISHAD) and NSUI (NATIONAL STUDENTS UNION OF INDIA) respectively.

6. There will been shortage of pressure on students nowadays:

Student politics in the 1970s was different. Life was more slow-paced and leisurely. Students could still find time for both politics and studies. In 2016, that has radically changed.

7. It does not really encourage ideological debate.

Schools and colleges are supposed to be fertile grounds of debate where every old and new idea is discussed thread bare and with passion.

Advantages of politics in students life.

There are so many advantages of politics in student's life. They are:-

1. Young people make up a huge proportion of the voting population so it is important that they have sufficient knowledge about political issues.
2. Politics makes students aware of their rights and the proper values of their rights.
3. Young people have mere understanding of government or democratic process, participation in politics enlightens them about those activities.
4. If students are prepared to be engineers or doctors, they can be good politician too and serve the country when it really needs him.

5. Universities are nurseries for future politicians, and there is nothing wrong with them starting that level with the aim of joining mainstream politics.
6. Politics is a social science and its study through organized movements can create a sound administration.
7. The ignorance of politics among the mass of a country paves the way for the rise of tyranny and the fall off democracy.

Disadvantages of politics in students life.

There are so many disadvantages of politics in student's life. They are:-

1. Today’s education is more influencing than being simply informative. Teachers have become the means of imparting government propaganda to students.
2. Political discussion, political magazines, political association and political seminars inside the premises translate into lawlessness and disorders.
3. Educational institutions have become advertisers for a certain brand of politics within the campus and influence students through meetings and campaigns.
4. Students campaign at the elite Universities in India are financed by their national affiliates and they spend thousands which a complete waste of money and other resources.

CONCLUSION

I disagree with the concept of campus politics because, student politics in campuses are not good as they involves many selfish needs of political parties. Students have to get the knowledge about politics in order to serve the nation in future by entering politics. But unfortunately in campuses the Young blood students are forming and are encouraged to attack one another by various selfish political parties. This trend is damaging the weather of campuses. Students, themselves have to realize to keep college campuses away from selfish politics and keep the campuses peaceful.

ENVIRONMENTAL ISSUES – AN EXAGGERATED FEAR?

Naveen Saju*

Environment is everything that is around us, where interactions between animals, plants, soil, water, atmosphere etc are happening. Living things constantly interact with the environment and adapt themselves to conditions in it.

The earth is millions of years old and passed through various ice ages which results in a prolonged increase in the temperature of earth's atmosphere with expansion of continents. The nature we are seeing today is different from what it was yesterday and it will definitely subject to various changes tomorrow. Change in the environment forces the organisms and living beings to adapt to fit to the new environment causing it sometimes to evolve into a new species. Many species of plants and animals became extinct and new species appear. Environmental changes are caused by various ecological processes and actions that include natural disasters, human interferences or animal interaction.

Now everybody's attention is sought on climate change. It is true that climatic conditions are changing from time immemorial antiquity and that is why this world has to evolve through various ages such as ice ages. All living beings need to adapt to the changes in the climate.

All living beings in this world have to exploit the nature for their survival and well being. According to the eminent scientist Charles Darwin, survival of the fittest will be the rule among the living things in nature. These species who are better equipped to adapt to the environmental changes will survive and flourish.

For human beings, to make their life better and to stay and live in this world, natural resources are to be utilised effectively. As time progresses, the nomadic predecessors began to settle and various activities such as agriculture, shelter, clothing, taming the animals, making weapons, manufacturing tools and equipments, development of transportation, communication facilities etc came into his life. Under such circumstances, he had to harness various methods to exploit natural resources for his existence and well being. For achieving the present way of life, and sincere efforts, wonderful inventions, courageous voyages, discovery of unknown places and high thinking of so many people generations after generations was put to use for a long period of time.

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Having substantial development and well being of the people, agriculture with proper irrigational facilities is required. Life without electricity, petroleum, products, various means of transportation, communication facilities, healthcare etc is unthinkable. Mining required getting ores and raw materials are required to make finished goods. To lead this wonderful life in this world, all kinds of natural resources are to be used. Sun is the sole energy producer in our life. How effectively we can use it results in, how better we can live. All living beings need to come in the biological cycle to survive and mutual co-existence means fierce competition among various living things in this world. It is the law of the nature and no one can get rid of it.

In order to make life better and prosperous, we need to build storage dams for producing electricity, irrigating cultivable lands and to provide drinking water. Besides such dams across rivers helps in harnessing flood and overcome drought. Similarly, better transportation and mobility increases good roads, rails, airports, shipping channels etc are needed. All these developmental activities also include in today’s environment. The changes in due course have to be accepted and adapt ourselves to such changes. The nature or environment will not remain the same, if all the human activities are stalled. As they says go, ***“Nothing changes except Change”.*** The actions of human beings are miniscule when the whole world and its environment are considered. Nature’s fury could not be stopped by any of us. After every natural calamity or even routing natural happenings like rain, wind, lightning etc, the environment gets changed. The nature is so vast and vivid and it is capable of adjusting itself. The change brought to the nature by men is so small that it cannot in any way hamper the activities of the mighty world.

This mother earth maintained by itself for millions of years before the arrival of human being and any other species we see today and it will continue to maintain it long after most of the present species including human beings will perish and become extinct. The blind acceptance of the environmentalist’s argument, will lead to large scale under development and unemployment. Most of their arguments seem to be betrayal of science and reason.

The environmental regulations are to be implemented after careful thinking. One of the classic example is the creation of Costal Regulatory Zone (CRZ). The distance from the sea or other water bodies are arbitrarily fixed for human activities. But it is very clear that from very old times, human beings are utilising water transport, people are living on the sea shore and river banks and carrying out various activities. On one fine morning, the

environmentalists are telling that all such activities are doing harm to the water bodies. Then how these water bodies remain in existence till date may be a big question.

How can we construct harbours and quays, how to develop the trade and commerce etc remains unanswered. Even civilizations are developed and flourished on the banks of great rivers. When we are regulating sand mining from river beds, frequent flooding occurs and the excess sand will be flowed to the sea. There should be facilities provided to use the material available on earth judiciously for the well being of the people. Similarly, petroleum, coal, natural gas etc are natural resources that are used for the benefit of the mankind.

The so called environmentalists are creating unnecessary fear in the minds of the common man without any reason or circumstantial evidences. What is today is the environment now and a travelling to the past is impossible. Unnecessary fears such as ozone layer, inundation of large part of the earth, extinction of life etc are postulated and later discarded after the initial hiccup. There are many vested interests among the environmentalists. They are enjoying all the comforts of the life by utilising the natural resources. After that, preaching on protecting the environment will be delivered through all types of media and making loud noises for their own gains. A close scrutiny on the life of the environmentalists will reveal their vested interests and selfish motives. Creating havoc in the minds of the people seems to be their motto. It can be noted that a destructive mentality laced with sadism among many of the environmentalists.

Another grave concern of the environmental laws and regulations is the under development it brings to the world and the heavy taxes, such policies will imposes. Besides the environmental regulations inhibits the financial progress and the economy. Undue importance to the environmental protection interferes with the economic growth.

Generally, the fanatic environmentalists will hamper the interest of various sectors such as electricity generation, mining, chemical manufactures, power industries, petroleum refineries etc. Unnecessary regulations by giving over exposure to environmental issues will badly inhibit the development, economy, employment creation and above all, the welfare of the people.

Truly speaking, today’s surrounding is the present environment and to protect it as such is humanly impossible and is against the natural law of change. Thus, it is clear that the environmentalists are certainly an exaggerated and unwanted fear among the people

jeopardising the advance march of the mankind. Let us stride with the flow of the time by making effective utilisation of the abundant resources showered on us by the almighty through this beloved nature.

RELIGIOUS INTOLERANCE

Greeshma B Raj & Dilby Domy*

"*When you feel peaceful and successful, you want to extend and export that peace and love. The violence, hatred, prejudice and judgment in our world suggest that we have miles to go to reach a world of inner and outer peace."- Wayne Dyer* [1]

Introduction

Our predecessors were very talkative about religious tolerance in the world especially in India. But today it is impossible to have a look on news in the present society without scenes of hatred, violence and intolerance that took its life in the name of religion or belief of someone. Religious intolerance in the present society which pave it's cancerous roots in the minds of loving people all over the world. The ever sacrifice of Jews,the march of ISIS in Iraq and Iran, creation of rohingyans as refugees etc.. Place first in the list of religious intolerance on nowadays.

Religion and Religious Intolerance meaning

The word 'religion' is originated from the Latin word ' religare' which that ' to bind '. A religion is not merely a set of beliefs but a set of beliefs that bind the believer. It imposes a set of rules and regulations upon the believer's life.[2]

Religious intolerance is the absence of religious pluralism that is, the absence of belief that all religions are equally valid within their own culture of origin. Ignorance of our on religious values and others in its full meaning is a big issue behind intolerance.[3] Most of the people who are religiously conservatives believe and try to spread the idea that their own religion is the only one in true faith and others left were false. Religious intolerance is simply that of our favour for a religion congesting the freedom of other people to profess, practice and propagates other religious faith and traditions. There is oppression to believe and worship other religion. There were disrupting between religious sects and their subjects.

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[1] Wayne Dyer, 21 Days to Master Success and Inner Peace.
[2] https://testeverythingblog.com/what-is-religion-356908f99b7a
[3] http://www.religioustolerance.org/religious-intolerance-causes-solutions-observations.htm

History and causes of religious intolerance.[4]

The modern concept of intolerance developed out of the religious controversies between Protestants and Catholics in 17th- and 18th-century England

There are many reasons which are inherent or exherent which causes or became the factors for religious intolerance are as follows:

1) Religious politics: - Politics in democratic and secular state will divide and rule the people on communal passion for a vote and seat. There is a trend, majorly in India, that each religious group has their own religious parties in politics. Religious violence is taking by rulers to enforce obedience, loyalty and discipline. One of the worst examples was that partition of India in 1947, in which millions of people were died both in India and Pakistan due to communal clashes.

2) Religious scriptures: - Scriptures on it's behaviour and wordings may create misunderstanding or misguide lines which will cause violence and make people motivated to become warriors in the God's war against evil. Certain beliefs may pave the way to disrupt in people due to ambiguous justification. For example some believe that who will die in the battlefield for the God, should get a place in heaven. That is they will directly send to heaven. The march of ISIS in Iraq, Syria and Iran and latent bomb attack at Christian churches in Srilanka, the ever sacrifice of Jews in Israel.

3) Economic interest: - The move of government to solve inequalities and disparities in income, status and standard of living of people again create discrimination by policies which will protect one and provide favours to one group against others. For example, the strike by Pandits in North India for reservation to them, also as a minority, as Muslim. Religious propagation was the main driving force behind the colonial and imperial policies of the European nations until the Second World War

4) Community interest: - Community interest of one religious group with political support threatens and gradually weakens the ideology of another which will turn into protest by the oppressed. Creation of Rohingyans as migrants from Myanmar.

[4] https://www.hinduwebsite.com/ask/why-are-religions-destructive.asp

5) Exploitation of resources: - , Resources of a nation should be made available to all people of the country. When such resources are available only to any particular person or group of persons will provoke the opposite section, causes clashes among them.

6) Ideological conflict and misinformation: - Ideological conflict and misinformation about conventional beliefs and practices create unrest between religions.

7) Ignorance: - Ignorance of highest values of Scriptures put forth conflict between people of different religions on malicious thought that "If my religion is right then you and yours must be wrong." People become over religious with narrow understanding of others.

8) Selective knowledge: - When people with in bad faith only selectively try to understand others and their religion. They will only prefer to understand some religion, it's morals and faith, creates violence due to unawareness.

Moves for the prevention of religious intolerance.

United Nations passed the "Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief" in 1981. The primary objective of the international community was to address violations of human rights by combating religious intolerance.[5]

Under Indian constitution everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[6]

The Racial and Religious Tolerance Act 2001 took effect on 1 January 2002 and prohibits behavior that incites or encourages hatred, serious contempt, revulsion or severe ridicule against another person or group of people because of their race and/or religion.[7]

The problem of violence that arises rests with the people who practice any religion or oppose any religion as they misuse their religious affiliation or beliefs to indulge in violence or aggression. Such evil behaviour is due to their ignorance or over attachment. They use their religion to rally people against others and draw them into conflicts, instead of practicing their

[5] URGC Report 1618
[6] Constitution of India pocket edition by P M Bakshi.
[7] https://www.humanrightscommission.vic.gov.au/the-law/racial-and-religious-tolerance-act

to improve themselves and to spread peace and happiness. Religion focus to uphold certain principles and its followers simply collapse it. The only relief to cure this is from the people and their mindset. Create a feeling that our religion is only good in our knowledge, personality and character. Try to understand all religion in its wider perspective and significance and religion have its source from God but the main corpus is created by human with his intellect and ego. Therefore it is our need to distinguish truth from falsehood and make right decision.

Conclusion

As long as religions exist, because of their extremely divisive nature, religious violence is going to stay and be part of human expression. Religions become evil in the hands of evil people, religious institutions must provide right knowledge to their adherents. Governments should pass strict laws and enforce them without discrimination to discourage those who resort to violence to settle their differences. People need to focus upon the positive aspects of their religions and cultivate tolerance. Most importantly, religious extremists, to whichever religions they may belong, must be isolated and dealt with severe punishments and deterrents.

UNIFORM CIVIL CODE NEED AND CHALLENGES

Augustus S Manguzha[*]

Introduction

Uniform civil code means one country one law. It is to ensure a common law for all citizens irrespective of religion and caste. India follows a common law for the issues which is of criminal nature. It doesn't matter which religion or caste he belongs. Only concern is mensrea and actusreus. So, uniform civil code aims at a codified legal frame work for all the citizens in matters related to marriage and its dissolution, maintenance, inheritance of property, adoption, guardianships, etc. It is to be noted that Art.44 [1]of Constitution (directive principles of state policy) expects the state to consider the principles of uniform civil code while formulating the law of the land. But the concerned governments were incapable of enforcing the same in India because of infallibility of religions over people. India is a country of spirituality, by which the soul of India lies on the various religious concepts and varied heritages and culture. So, religious issues are very sensitive in nature. At present we have a various personal laws for Hindu, Muslim and Christian. Apart from being an important issue the secularism and fundamental right to practice any religion is mentioned in Art.25. It is the most controversial issues while considering a common code to all.

Definition

When we give a precise definition to the uniform civil code, it is the bill or act which is intented to treat every citizen of a nation by a common law in the matters of marriage, divorce, inheritance, adoption and guardianship without considering the religion, race and caste and it must not infringe the fundamental right of religion and secularist ideologies mentioned in the preamble of the constitution of India. It is the replacement of various personal laws by a common code.

However, Art. 44 of constitution mentioned the need for uniform civil code as: "*The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India*".

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[1] The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India

International Covenant on Civil and Political Rights, 1996 (ICCPR) and International Conventions on the Elimination of all Forms of Discrimination Against Women (CEDAW) are in relation with gender equality and natural justice has mentioned the need for the implementation of uniform civil code in the member nations as a remedial measure to put an end to the injustice in matters of marriage, inheritance, adoption and guardianship to human beings especially women. On Part II (Art. 2) and (Art. 3) of International Covenant on Civil and Political Rights 1996, describes the need for UCC as follows;

"*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*".[2]

"*The State Parties to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant*."[3]

Art.16 of the International Conventions on the Elimination of all Forms of Discrimination against Women explains,

"*State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women*."[4]

- **Art. 16** (c): The same rights and responsibilities during marriage and at its dissolution.

- **Art. 16** (f): The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount.
- **Art. 16** (h): The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

[2]Article 2 of ICCPR 1996
[3]Article 3 of ICCPR 1996
[4]Article 16 of ICCPR 1996

When we examine the Indian aspect, only the state of Goa had adopted a uniform code in the nation. However, all other states having separate personal laws for Hindu, Muslim and Christian. The personal laws are followed as to protect the religious norms as well as the customs which are prevailed from ancient times. It is hereby also protected by the Art.25 of the constitution. It was a very controversial question before the Indian courts to determine whether religious freedom or personal freedom is to be considered primarily. But the same came to an end with the landmark decision in *Mohd. Ahmed Khan* v. *Shah Bano Begum.*[5]

Need for common code:

1. **To promote secularism**: India needs a unified law to defend the communalism which is frequent now a day. The majority of a particular religion may affect the representative elections. This may lead to nepotism and only the interest of the majority will be resulted in all fields. So uniform civil code can bring a cultural interchange and help to develop a civilized and socially foresighted generations which is necessary for the contemporary world. So communalism can defend up to a certain extent.

2. **Equal treatment for everyone:** As everybody is treated by a common law no distinction is made between citizens on any of the statutes of the land. All have common criminal law, family law, and contract law etc. So no distinction is to be made by the constitution and court of law regarding the citizens. This will help in equal treatment for all.

3. **Improved women rights:** When we examine all the personal laws of past years all are violation of women rights especially on inheritance, marriage and dissolution, maintenance etc. Hindu law was violation of property right of Hindu women. They had only limited estate ownership. They have only the right to enjoy the benefit of all income out of the property buy not able to sale, mortgagee or lease and gift the property. Later the law had found to be insufficient and enact the Hindu Women's Rights to Property Act, 1937. It ensures equal property right to women too. In Muslim community also women faced inequality in property right and even denied the maintenance right of divorced Muslim women. But by the decision on *Mohd. Ahmed*

[5]1985 (3) SCR 844

Khan v. Shah Bano Begum[6], have a wide effect and gave right of maintenance for Muslim women under CrPCSec.125. This case was a breakthrough in uniform civil code debates, as SC suggested the Central legislature to enact the same. Christian law was also violation of the inheritance right of women at the earliest. But by the decision in *Mary Roy* v. *State of Kerala*[7], the Christian women also got right of property as equal as men. These all had showing that personal laws have made restrictions on women. So uniform civil code will ensure gender equality and discrimination against women can be regulated.

4. **It is necessary for the modern world:** A uniform civil code is the sign of modern progressive nation. It is a sign that the nation has moved away from caste and religious politics. While our economic growth has been the highest in the world our social growth has not happened at all. In fact it might be right to say that socially and culturally we have degraded to a point where we are neither modern nor traditional. A uniform civil code will help the society move forward and take India towards its goal of becoming a developed nation.

5. **They are loop holes for offences:** Most of the offences such as honour killing and female foeticide arise out of the conventional religious concepts. Thus personal laws are becoming as a loop hole for the escape of real offenders from the serious crimes. Thus common code will help to reduce the human right violation.

6. **National integration:** The nation has different culture, varied heritages, languages, etc. so common code will integrate the nation on variety of fields. This will build strong relationship among citizens and helps in the development of common cultures and social relations.

Challenges

Restrictions on minority's rights: Art.26 guarantees freedom to manage matters of religion in institutions established by religious denominations. Art.27 prohibits religious instruction in institutions wholly maintained out of state funds. Art.28 guarantees freedom from compulsory instruction and related freedoms. Art.29 guarantees the conservation of any language, script or culture of any minority whereas Art.30 guarantees the right of religious

[6] 1985 (3) SCR 844
[7]1986 SCR (1) 371

and linguistic minorities to establish and administer educational institutions established by them. But by the introduction of the common law may bring restrictions on minority rights which may affect their effective participation.

Large communal riots and agitations: Introduction of new regulations over personal laws may lead to the large communal riots and antinational movements against the state. As we examine India had faced several communal issues from the very beginning of independence which lastly led to the partition of nation as India and Pakistan. Sabarimala women entry verdict by SC had resulted in various riots in the state of Kerala.

Infringement over religion: As uniform civil code is a replacement of religious concepts, so that the religions can lose their basic values and will lead to materialistic life style with enjoyment of material pleasures.

Loss of moral values: The introduction of code will destroy the moral values and cultures of nation. The life blood of every nation is the culture they had from the time immemorial periods. The values and good of the Indian culture is of as old as the civilization period. The Indus valley civilization was originated in India. This shows the need for keeping the Indian moral values intact.

Disruption in family relationships: Religions play crucial role in developing family relationships as like now a day. But when uniform code had introduced religions cannot act as like present way, this will lead to the collapse of family relationships. Easy dissolution of marriage and speedy maintenance decisions may be motivating factor for increased number of divorces. The high rate of divorces in foreign countries is due to common code system.

Suggestions

- Uniform civil code is to be introduced to the Indian society only after proper awareness among general public by explaining the benefits of enactment of such a common law, because a sudden inclusion of restrictions cannot be accepted by the religions and their followers easily.
- Education is an important factor. Educationally backward sections cannot be able to understand the need for common code. Wait till the attainment of 100% education and

people started to think wisely. The need for uniform civil code must be included in the school curriculum itself.

- Minority rights should be protected by special legislations. Otherwise they will be fully get extinct from the nation without proper chance of learning and developing.
- Promote inter caste marriages.It will help to widening of common law of the land now in existence. It will result in the easy introduction of common civil code in nation.

FEMINISM

Angel Theresa*

Charles Fourier, quoting his dictum that;"by the position which women hold in a land, you can see whether the air of a state is thick with dirty fog or free and clear."

Introduction

The term "Feminism" has been derived from a Latin root word "femina" meaning "Woman". Later a French philosopher and utopian socialist Charles Fourier coined the word "feminism" to mean advocacy of women's rights.

After Parisian feminists began publishing a daily newspaper entitled "La Voix des femmes" ("The Voice of Women") in 1848, Luise Dittmar, a German writer, followed suit one year later with her journal, Soziale Reform.

Throughout most of Western history, women were confined to the domestic sphere, while public life was reserved for men. In medieval Europe, women were denied the right to own property, to study, or to participate in public life.

At the end of the 19th century in France, they were still compelled to cover their heads in public, and, in parts of Germany, a husband still had the right to sell his wife.

Even as late as the early 20th century, women could neither vote nor hold elective office in Europe and in most of the United States (where several territories and states granted women's suffrage long before the federal government did so).Women were prevented from conducting business without a male representative, be it father, brother, husband, legal agent, or even son. Married women could not exercise control over their own children without the permission of their husbands. Moreover, women had little or no access to education and were barred from most professions. In some parts of the world, such restrictions on women continue today.

Yes, In India too. Women have constantly been undermined in the eyes of our society, causing them to have to fight for the equality they deserve. The fight for equality is still now where near over. A belief that women and men should have equal rights and opportunities or

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an organized activity on behalf of women's rights and interests. Simply, it means a movement for equal rights between men and women or in other words it is an organized activity on behalf of women's rights and interests.

What is feminism exactly?

Marina Voron, Licensed Marriage and Family Therapist and co-founder of Nassau Wellness, explains*; "The term 'feminism' has been completely bastardized by pop culture and social media. It feel like anyone can do or say anything and call it 'feminism' because, in my view, it has become so loose in its definition that it has basically lost its meaning. I believe feminism is about equality, sex-positivity, body-positivity, wage equality, and opportunity for everyone regardless of their gender. However, I have a hard time (as a therapist) always buying that certain things are being done in the name of 'feminism."*

Not like the same, actually it is an active desire to change women’s position in society. Feminism should be a way for women to be heard and to light for their right for equality. In which women and their contributions are valued. It is based on a social political and economical which is equality for women. It’s a revolution that includes women and men who wish the world to be equal without boundaries.

Who is it?

A feminist is someone who advocates their support for women's rights but is not restricted to only woman, anyone who support women’s rights and equality are feminists including men.

The biggest challenge to women has always been whether women are capable of doing the same thing as men?

A question I will entertain as nothing but preposterous. The biggest challenge that women ever faced has never been their capacity to do something, it’s been the male perspective of what women, who have existed under restrictive social rules, are capable of ironically making the satirical jokes we bestow on women's abilities nothing but jokes on the restricted society we both exist in.

An Indian psychologist Taraasha Chopra explains another view of feminism;

"The more education I received, the more aware I became the conversation on feminism changed. The problems of underprivileged women became nothing more than just facts and figures on a paper. The feminist discourse became more nuanced and we moved on to talking about issues such as socialization, subtle messages of discrimination, rape culture, glass ceilings etc. So the focus of my feminism was more oriented towards the privileged, urban, educated women who were stuck in traditionalist roles while having modern mindsets."

My own opinion about feminism.

Any given person can define feminism in a different way. Some view it as a women’s movement for women, by women and against men. It can also be hard to distinguish the different types of feminism when the more radical, outspoken people or organizations can overshadow the rest.

In general, feminism is another way in which to view things, another lens in which to see the world. It is another platform for people to express themselves as whole individuals and become a voice for others that may otherwise remain unheard. Feminism as a whole takes a look at social constructs and gender norms and begins to deconstruct them to create an environment that is equal and accepting of all persons. In another way many women began to break out of the roles as housewives and mothers and speak up for equality.

In male and female relationship both the roles of the male and female should be equal. They should trust each other, share responsibilities, listen to one another, respect each other, and of course love one another equally. This type of relationship is not found now a day because of the many traditions which imply that women are inferior to men. They also imply that women should stay home all day watching soap operas, taking care of the children, and making the food for their tired husbands. My first understanding of feminism was movement for equality between men and women. This is a problematic view of feminism, because it enforces gender binary and theoretical only benefits women. Feminism has a misconception that the feminism is anti-menism. The actual meaning of feminism shows equality in all scenes. Feminism doesn’t hate men.

Feminism = man-hating?

But anyway feminism is often misunderstood. Feminism also lights for equal opportunity for women in employment and education. Feminism is the social awakening of the women of the entire universe. It is that great movement which is changing the centre of gravity in human life. It is the movement for women's full economic independence, feminists in their frantic fear of freedom for women and also come equal as men.

Inspiration

The first feminist who refused to give breast tax...

When I was in 7th standard I have read a story about a woman in my Malayalam textbook. The name of the chapter was "Nangeli" I think the story was took place during 19th century.

At the time lower caste women from Travancore were not allowed to cover their breasts unless they paid tax. This tax was determined by the size of their breasts, the Bigger the more tax they had to pay. The upper caste Brahmin societies in Travancore were behind the introduction of this archaic tax. The matter was humiliating and perverted to the woman who bore it. The tax was aimed at Nadar and Ezhava women. Repeatedly remind them so that many of them converted into Christianity to avoid this kind of humiliation. But one woman (belong to Ezhava caste) cut of her own breasts in protest of the tax. Her name Nangeli and she died from loss of blood. Even though this story has not been historically validated Nangeli is a folk hero. The story of Nangeli and her sacrifice set off a series of events that eventually led to be the abolishment of this horrendous tax. Nangeli is not my own inspiration, she is an inspiration to every woman and men those who stand for their rights and equality.

Yes. Throughout history and still today women fight against stereotypes and oppression for the sole fact that they are women. Stripped of human rights and equality in comparison to men, women deserve to stand on the same pedestal men are preciously placed upon simply because they are all human. A majority of people, including some women, invalidate the need for feminism by claiming that women often place themselves in lower positions than men.

Feminists, however, would argue that regardless of the power a woman yields, that power will always be lesser than man’s in today’s misogynistic society. The statistics support that

women suffer emotionally, physically, mentally, economically, and socially than most men. The idea that feminists are simply angry misandrist who want more privileges than men is common among people. To be a feminist is to believe that women deserve equality in all aspects, not because they are women, but because they are humans with born rights that over time have been modified or cut completely. Women have had many great break thoughts with their protest, but many still turn a blind eye to the fact that there is sexual discrimination. However the current generations are taking the movement by storm with even males supporting women in their fight. The problem of women's right at hand is not going away anytime soon, but it's going popularity gives hope to all those fighting for equality.

BRUTALITY OF MIND

Ancy John, Rajasree S Kumar, Sreelakshmi P.R*

Each life in this world is a gift from God and no one has the right to take away once life. ''Right to life is the first among human right "-Pop Francis.

Euthanasia is an act which is against this saying and it is the most debated topic in various part of the world, it is against the Article 21 [1]of Indian Constitution-Right to life, one of the fundamental rights of every citizen. Euthanasia is the termination of a very sick person's life in order to relieve them of their suffering. A person who undergoes euthanasia usually has an incurable condition. But there are other instances where some people want their life to be ended.

In many cases, it is carried out at the person's request but there are times when they may be too ill and the decision is made by relatives, medics or, in some instances, the courts.

The term is derived from the Greek word *euthanatos* which means easy death.

Euthanasia is against the law in the UK where it is illegal to help anyone kill themselves. Voluntary euthanasia or assisted suicide can lead to imprisonment of up to 14 years. The issue has been at the centre of very heated debates for many years and is surrounded by religious, ethical and practical considerations.

Euthanasia is a homicide.

In most countries killing another person is considered murder, even if the intention is to "*ease the pain*", even if the person has a terminal illness.

Even less since the advent of palliative care[2]: - Palliative care provided by a well-trained team help the patient, his family and loved ones. Good palliative care is able to control physical, psychological, social, spiritual and existential suffering. In extreme cases, palliative sedation is used. It is not only already legal, but effective. Euthanasia is incompatible with palliative care.

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

[2] https://www.who.int/palliativecare/en/

The World Health Organization says that palliative care "intends to neither accelerate nor postpone death." There has been abuse where euthanasia and assisted suicide are legal.

It is impossible to establish guidelines strict enough to limit euthanasia to persons for whom it is provided. In fact, the safeguards provided do not hold up in practice. According to Professor Etienne Montero, Dean of the Faculty of Law of the University of Namur in Belgium, it is extremely difficult to follow a strict interpretation of legal requirements once euthanasia is permitted.

There are several documented cases of abuse in countries where euthanasia is legal and in countries or U.S. states where assisted suicide is legal. For example, in Belgium deaf twins were euthanized at their request because they became blind. Also in Belgium, a woman was euthanized because she was suffering from anorexia. In the Netherlands, a woman was euthanized because she was going blind and could not see the dirt. In Oregon, United States, a woman received a letter from her insurance company refusing to pay for her chemotherapy, but offering assisted suicide instead.

The right to die implies a duty to kill.

The so-called "right to die” (for the patient) implies the duty to kill (for someone else, in this case the doctor). The medical personnel who commit euthanasia suffer personal consequences. The act of euthanasia is neither easy nor peaceful. It is a difficult thing to do, and medical personnel are adversely affected. In Belgium, doctors are entitled to psychotherapy after euthanizing a patient. It is not uncommon to see Belgian nurses take a day off when they know that euthanasia is planned. Euthanasia devalues some lives. Accepting euthanasia means accepting some lives are worth less than others. Legalizing euthanasia would send a clear message: it is better to be dead than sick or disabled. For a healthy person, it is too easy to perceive life with a disability or an illness as a disaster, full of suffering and frustration. Euthanasia is not in the best interests of the person. It is easy to imagine cases where a patient could request euthanasia, freely or under pressure, while it goes against her best interests. The diagnosis is wrong and the patient is not suffering from a terminal illness. The prognosis is wrong and the patient will not die quickly. The patient does not receive good care and suffering could be alleviated. The doctor does not know all the treatment options that could be offered to the patient. Veterinarians receive five times more training than doctors about pain management!

The request for euthanasia is often a cry for help. The patient does not really want to die, he wants to see his symptoms and fears treated and relieved. The patient is depressed and believes that his situation is worse than it really is. The patient maintains unrealistic fears about possible future pain. Euthanasia may weaken patients.

Access to euthanasia could cause an internal conflict for the patient, torn between fear of pain and the desire to continue to live rich moments with his family and loved ones. Thus, in the context of a society open to euthanasia, the patient having difficulty living with a demanding illness would bear an additional burden .Additionally, faced with a doctor who both heals and kills, the patient lives with an uncertainty that adds to her vulnerability. Euthanasia encourages vulnerable people to end their lives.

Directly or indirectly, euthanasia imposes many pressures on the patients. These pressures stem from family or society. Patients who are ill or dependent often feel worthless and a burden to their family and loved ones. The growing number of cases of abuse or neglect of elderly or those with disabilities illustrates that this is a major issue to consider. An overburdened health care system limits the quality of care and may create pressure on patients, making them choose death. Patients estranged from their family may think that euthanasia is the only solution.

Euthanasia is likely to increase the suicide rate.

Our society aims to reduce the suicide rate. Quebec even has an annual Suicide Prevention Week, an initiative that some would like to see replicated across Canada. It is important to note that in the U.S states that have legalized assisted suicide, the rate of non-assisted suicide has increased.

Death Penalty and Euthanasia.

Since the abolition of the death penalty in Canada, it is not permitted to cause another person's death. This action is irreversible.

Euthanasia would transform hospitals into unsafe places.

Many people would hesitate to seek treatment at the hospital. Euthanasia is therefore in contradiction with the demands for dignity and genuine compassion that are at the heart of medicine.

Euthanasia is not necessary to avoid heroic measures.

The law provides that every patient has the right to refuse treatment or to request that ongoing treatment be stopped.

Euthanasia will lead to the decline of care for terminally ill people.

In the Netherlands, there is a confirmed case of a patient euthanized to free up a hospital bed and in Brazil, although euthanasia is illegal, a doctor has recently been accused of seven murders after killing patients in intensive care. An investigation is underway to elucidate 300 other cases of suspicious deaths, probably caused by the same doctor. What would have happened if euthanasia was legal?

Euthanasia could become an economical method of "treating" the terminally ill.

The cost of poisons used for causing death by euthanasia is about $ 50 per injection, while a chemotherapy treatment costs thousands of dollars.

There are few studies and data on the impact of euthanasia on society.

We know that euthanasia is increasing in countries that have legalized it: an increase of 18 % in the Netherlands in 2011, and another 13% increase in 2012. Moreover, according to The Lancet, 23% of cases of euthanasia are not reported. Assisted suicides are not included in the reports on euthanasia in the Netherlands, but they account for nearly 6 % more deaths. In Oregon, where assisted suicide has been legal since 1997, the number of reported assisted suicides has increased by 306%, but it is impossible to know what the real number, because the system designed to collect the data is flow.

Euthanasia is against the intrinsic value and personal dignity.

The Universal Declaration of Human Rights[3] guarantees the right to life for every individual. It proclaims the fundamental rights of the human person, including respect for his dignity and his value. The United Nations' Convention on the Rights of Persons with Disabilities [4]promotes respect for the inherent dignity of persons with disabilities.

[3] United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A)
[4] A/RES/61/106

Human life must be respected regardless of age, gender, race, religion, social status or potential for success. Life is good in and of itself, not just as a means to achieve an end. That is the reason for the almost universal prohibition against deliberately taking the life of a person.

Danger: slippery slope.

“Voluntary” euthanasia puts us at the top of a slippery slope that leads to involuntary euthanasia of people who are considered undesirable. This scenario may seem extreme, but we should remember that ideas that were initially thought impossible and unthinkable can quickly become acceptable. Take the example of Belgium: 10 years after the legalization of euthanasia, the law (which was said to have strong safeguards) was amended to allow euthanasia for children with incurable diseases.

Arguments against Euthanasia.

Eliminating the invalid: Euthanasia opposers argue that if we embrace ‘the right to death with dignity’, people with incurable and debilitating illnesses will be disposed from our civilized society. The practice of palliative care counters this view, as palliative care would provide relief from distressing symptoms and pain, and support to the patient as well as the care giver. Palliative care is an active, compassionate and creative care for the dying6.

Constitution of India: ‘Right to life’ is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of ‘right to life’. It is the duty of the State to protect life and the physician's duty to provide care and not to harm patients. If euthanasia is legalized, then there is a grave apprehension that the State may refuse to invest in health (working towards Right to life). Legalized euthanasia has led to a severe decline in the quality of care for terminally-ill patients in Holland. Hence, in a welfare state there should not be any role of euthanasia in any form.

Conclusion

In the present world of demoralization of high moral values and ethics the people are least concerned about others life and one is always shrink to space for themselves. Euthanasia is the act of taking away once life with the protection of law it should not be allowed. It is

normally believed that that it is really a great relief to poor patients to escape them from their pathetic sufferable state but no one consider the black side of euthanasia once it is permitted there may lead to high rate of homicide . Apart from the protection of law one can only consider this as a big sin especially according to Christian belief it is all about the violation of Ten Commandments. Many believe that God has is the originator of life, so he can only have the power to destroy it. So please avoid such a brutal act and please promote kind and support towards such lives.

LINK BETWEEN UNIFORM CIVIL CODE AND GENDER JUSTICE

Gayathri Mahesh*

Introduction

India is a country of multi-religious and multi-languages. India being a diverse nation with number of people having their own culture, traditions, customs and religion, are governed by their own personal laws. There are different codes for different communities like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act, Hindu Guardianship Act, and Muslims and Christians are governed by their personal laws. But due to the different codes and personal laws, it is at times difficult to distribute justice based on religion; therefore decisive steps were taken towards national consolidation in form of idea of Uniform Civil Code, which was for the first time mooted seriously in the Constituent Assembly in 1947. In the Constitution of India, Uniform Civil Code is envisaged in Art.44, which covers every aspect of law except matrimonial laws. The object of Art.44 is that, as and when, the majority of Parliament thinks proper, an attempt may be made to unify the personal laws of the country, i.e., uniformity in law in matters of marriage, divorce, succession, irrespective of religion, community, etc. The Constitution of India in Art.44 [1]enjoins, The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

But it is more than 60 years, yet we have not been able to attain that level of sophistication to accept and adopt the Constitutional mandate. Provision of Uniform Civil Code (UCC) was made to promote unity and integrity which are cherished goal enshrined in the preamble of our constitution. Fear that implementation of UCC will infringe the freedom of religion guaranteed by Art. 25 [2]is the main road block in its implementation. An objection was taken to this provision in the constituent assembly by several Muslim members who apprehended that their personal laws might be abrogated. This objection was met by pointing out:

i. That India had already achieved a uniformity of law over a vast area;
ii. That though there was diversity in personal laws, there was nothing sacrosanct about them:

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[1] Art.44 of the Constitution of India
[2] Freedom of conscience and free profession, practice and propagation of religion

iii. The secular activities, such as, inheritance, covered by personal laws should be separated from religion:
iv. That a uniform law applicable to all would promote national unity.
v. That no legislature would forcibly amend any personal law in future if people were opposed it.

The directive contained in Art. 44 in no way infringe the freedom of religion guaranteed by Art. 25. Its implementation will no doubt help in promoting gender equality and national integrity. Clause (2) of Art.25 specifically saves secular activities associated with religious practices from the guarantee of religious freedom contained in clause (1) of Art. 25[3]. In India rights and status of women differ within religion and caste. A Kashmiri Brahmin woman will have different existential realities than a Sarayupari Brahmin woman. A Brahmin woman in West Bengal will not only have different social and religious norms than a Bengali low caste woman, but when one tries to get in to the skin of each and every such woman we find that what seems similar is actually very different in its form and nature. In such a landscape, a formula of a uniform personal law is introduced and uniformity is presented as a solution to undo all the repressive evils that have crept inside our existing personal laws. While defining gender justice Nyamu-Musembi stated "Gender justice is about more than simply questioning the relationship between men and women. It involves crafting strategies for corrective action toward transforming society as a whole to make it more just and equal and it means' a place in which women and men can be treated as fully human'. Moreover, it implies moving away from arbitrary to well-reasoned, justifiable and balanced-that is, fair-social relations."In *Valsamma Paul case*[4], it has been ruled that human rights for women comprehends gender equality and it is also traceable to the Convention for Elimination of All Forms of Discrimination against Women. Human rights for women, including girl child are inalienable, integral and an indivisible part of universal human rights. In *Kharak Singh* case[5], the court has recognized that a person has complete rights of control over his body organs and 'his person' under Art. 21. It can also said to be including the complete right of a woman over her reproductive organs. In *Vishakha* case[6], the court took a serious note of the increasing menace of sexual harassment and observed "Each incident of sexual harassment of woman at

[4] Mrs. Valsamma Paul vs Cochin University And Others, AIR 1996 SC 1011, 1996 (1) CTC 301
[5] Kharak Singh vs The State Of U. P. & Others, 1963 AIR 1295, 1964 SCR (1) 332

[6] Vishaka & Ors vs State Of Rajasthan (1997) 6 SCC 241

workplace in violation of fundamental rights of 'Gender equality' and the 'Right to life and liberty."

Demand for Uniform Civil Code by Women and Supreme Court of India

The Indian society is trapped in the vicious circle of the patriarchy dogma that they are not even able to see and respect the human rights of the women. There is a lot of controversy regarding the gender justice and the uniform civil code in being. There is a lot to consider before opting for a uniform civil code, we need to think whether or not to bring in the concept and a common civil law to everyone in the country, with so much of diversity and the legal pluralism existing in the country. Women empowerment has always been the talk of the town since decades now and not much has been done when the question of the personal laws and the women arises. Women empowerment in the core areas like the social status, gender bias, health, security and the main core empowerment are of exigent needs. The Indian state has in fact encouraged codifying the tribal communities laws but there are problems with it that they are ever evolving and keep on changing from time to time. Art. 44 of the Indian Constitution expects from the State to secure a Uniform Civil Code for all the citizens of India. There exists uniformity in the law when it comes to the legal criminal procedures but when it comes to the personal law there is no uniformity. The Colonial India witnessed many of her laws getting codified by the British such as the criminal law, the law of contract and transfer of property etc. These laws were made by the British while divesting away with all religious, cultural factors. Hence, we observe that the law of contract is purely along the law that existed in Great Britain around that time. The only sphere which was left behind was the personal laws which governed various aspects of the lifestyles of the people, such as marriage, family, succession etc. The demand for UCC by women took new stage in the year 1933 when Lakshmi Menon expressed in the All India Women's Conference that "if we are to seek divorce in the court, we are to state that we are not Hindus, and not guided by Hindu law. Since right to equality was already acknowledged to one of the most coveted rights, the unequal footing of genders through the word of law could no longer be validated. Thus, the practices which undermined a woman's right to equality would necessarily be done away the practices which undermined a woman's right to equality would necessarily be done away with .A common civil law governing the personal matters would bring all the women under one single umbrella and irrespective of race and religion the discriminatory practices would be put to an end. The members in the legislative assembly who are me will not help us in bringing any drastic changes which will be benefit to us. In *Mohd. Ahmed Khan* v. *Shah Bano*

Begum[7], the Supreme Court has ruled that a Muslim husband is liable to pay maintenance to the divorced wife beyond the iddat period. The court has regretted that Art. 44 has remained 'a dead letter' as there is "no evidence of any official activity for framing a common civil code for the country."The court has emphasized: "A common civil code will help the cause of national integration by removing desperate loyalties to laws which have conflicting ideologies" .Need of uniform civil code and how it will help in promoting gender justice was rightly observed by Chandrachud, C.J., in the above mentioned case. In his opinion: "there is no evidence of any official activity for framing a common civil code for the country…. No community is likely to bell the cat by making gratuitous concessions on the issue. It is the state, which is charged with the duty of securing a uniform civil code for the citizen of the country and unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understood the difficulties involved in ringing persons of different faiths and persuasions on a common platform. But a beginning has to be made if the constitution is to have any meaning .Inevitable, the role of reformer has to be assumed but the courts because; it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piece meal attempts of courts to bridge the gap between personal laws cannot take the place of a common civil code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case". Reviewing the various laws prevailing in the area of marriage in India, the court has said in *MS.Jordan Diengdeh* v. *S.S.Chopra*:[8] "…the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and makes a uniform law applicable to all irrespective of religion or caste…. We suggest that the time has come for the intervention of the legislature in the matters to provide for a uniform code of marriage and divorce…"The court has continued to emphasize that a common civil code will help the cause of national integration by removing the contradictions based on ideologies. The premise behind Art.44 is that there is no necessary condition between religion and personal law in civilized society.

B.R.Ambedkar and Justice V.R. Krishna Iyer on UCC: B.R.Ambedkar was also a staunch supporter of the UCC. He denied the claims that a Common Civil Code in a vast country like India would be impossibility. He stated that the only sphere which did not have a uniform law

[7] 1985 AIR 945, 1985 SCR (3) 844
[8] 1985 AIR 935, 1985 SCR Supl. (1) 704

was that of marriage and succession; rest all are of civil law, such as transfer of property, contract, and the Negotiable Instrument Act, Easement Act, Sale of Goods Act etc. were uniform in nature. He stated *"I quite realize their feelings in the matter, but I think they have read rather too much into Art.35, which merely proposes that the state shall endeavor to secure a civil code for the citizens of the country. It does not say that after the code is framed the state shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the code may be purely voluntary."*

It is a well known fact that Ambedkar has always been a great critic of the dominant Hindu religion. In 1936 he had already underlined one of the many dogmas that infested Hinduism, i.e., casteism and untouchably, to the extent that he went on to denounce himself as a Hindu. Yet in the Constituent Assembly he denied the claims of UCC being a mouthpiece of the majority, or the tyranny of the majority. He stated that the manner in which the Shariat Act, 1936 was made applicable to all the Muslims in India was nothing but an example of how convenient uniformity in laws is and was welcomed by the Muslim brethren. The Muslims which were being governed by the Hindu laws in certain specific area as were all collectively and uniformly brought under the purview of this uniform law, for their own benefit. Similarly, if certain principles of the majoritarian religion, i.e. Hinduism would be incorporated in the UCC, it would be not by virtue of them belonging to Hinduism, but because they were suitable to the progressive society. This should not be qualified as a tyranny of the majority. He stated "Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of the irreligion, certain portions of the Hindus law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by Art. 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community". This statement made by Ambedkar speaks loudly for itself and his commitment towards having an UCC to bring about the much necessary changes in the personal dimensions of an Indian irrespective of her religion and community. V.R, Krishna Iyer J. states: "Speaking for myself, there are several excellent provisions of the Muslim law understood in its pristine and progressive intendment which may adorn India's common civil code. There is more in Mohammed than in Manu, if interpreted in its humanist liberalism and away from the desert

context, which helps women and orphans, modernizes marriage and morals, and widens divorce and inheritance".

How UCC will help in Promoting Gender Justice

Court reminded the state of its obligation under Art. 44 a disused direction to It to take appropriate steps for its implementation and inform the court of such steps. Court is also of the opinion that productive to the unity of the nation. But reform in the personal laws and their codification can serve as the best method for the implementation of UCC. If implemented then UCC will help in promoting gender justice in the following ways:

i. A uniform civil code will help in improving the condition of women in India. Indian society is extremely patriarchal and misogynistic and by allowing old religious rules to continue to govern the family thus condemning all Indian women to subjugation and mistreatment. A uniform civil code will help in changing these age old traditions that have no place in today's society where women should be treated fairly and given equal rights.

ii. The various personal laws are basically a loop hole to be exploited by those who have the power. The village panchayats continue to give judgments that are against Indian constitution, human rights are violated through honor killings and female feticide throughout the country. By allowing personal laws there is constituted an alternate judicial system that still operates on thousands of years old values. A uniform civil code would change that.

iii. A uniform civil code will also help in reducing vote bank politics that most political parties indulge in during every election. If all religions are covered under the same laws, the politicians will have less to offer to certain minorities in exchange of their vote.

Conclusion

In conclusion we can say that although UCC was incorporated in the constitution as an aspect which would be fulfilled when the nation would be ready to accept it but it has remained a dead letter as nothing is done for its implementation. It is an obligation on the part of the state to implement or to take steps for the implementation of UCC because no community is likely to take the risk by gratuitous concessions on the issue. In spite of all these things we will have to look into the necessity of uniform civil code, if implemented, a common civil law, governing the personal matters also would bring all the women under one single umbrella and irrespective of race and religion the discriminatory practices would be put to an end.

Dr. B.R. Ambedkar was also a staunch supporter of UCC but his idea of UCC was different because state is duty bound to take the appropriate steps for implementation of UCC and its implementation can’t be purely voluntary in the initial state as suggested by Ambedkar because no community is likely to bell thee cat on this issue. It is better to provide justice to all rather than different notion of justice from case to case. Only UCC can serve this purpose. Women’s rights movements and civil society organizations have long called for a Uniform Civil Code. Women of minority communities, especially Muslim communities’ have also raised their voice against gender discriminatory practices in personal laws. There are now several who are propagating for reforms in personal laws. Such reforms also find backing in various judgments. So not having a uniform civil code is detrimental to true democracy and that has to change.

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