Impulse Newsletter

Openness to Curiosity

VOLUME 2, ISSUE 7 MARCH 2020

INSIDE THIS ISSUE:

CONSTITUTION AS A LIVING DOCUMENT 1

DEFENCE OF INSANITY: WHETHER A LOOPHOLE FOR CRIMINALS? 3

DISASTER MANAGEMENT ACT, 2005 4

The Death Penalty: can it ever be justified? 6

Knowing a maxim 7

Campus Buzz 8

CONSTITUTION AS A LIVING DOCUMENT

Six decades have passed since the formulation and implementation of the Indian Constitution. Constitution is not an inanimate document. It is a Living document responding to changing situations. The procedure of Amendments is the best way that is adopted to meet the changing needs of the society. Even though several amendments were made in the constitution, no change was made in its Basic Structure. The basic structure of the constitution cannot be subjected to amendment. So the nature of Indian constitution can be said to be rigid as well as flexible. Because of certain reasons Indian Constitution is not subjected to any radical change in its nature, they are firstly, Indian constitution is moral therefore it does not need any change. Secondly, the farsighted and wise constitution makers framed the constitution foreseeing all the changes that would be necessary for constituting a Welfare nation.

As earlier said, the constitution is considered a living document i.e, it is dynamic in nature. Constitution

is regarded as a LIVING DOCUMENT since it keeps on evolving over the period of time. India is a developing country. To keep up with the developments in the society, it was felt necessary by the constitution makers to make a flexible constitution which can be changed to suit the demands of the society.

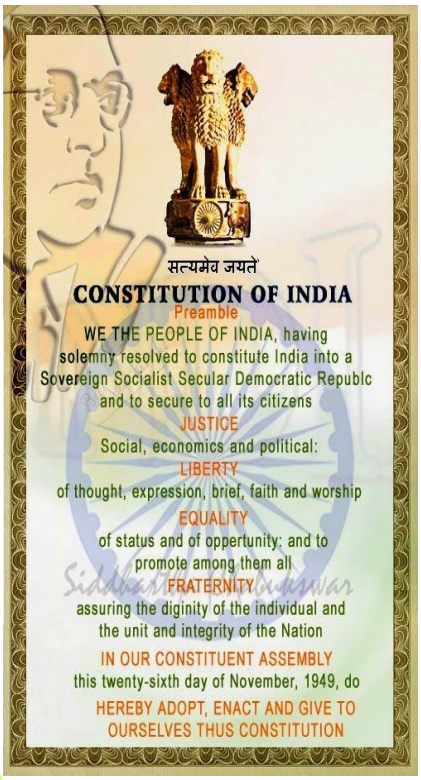
The power to make amendments in the Indian constitution is vested in the parliament. For making amendments the parliament functions as the Constituent Assembly and makes necessary changes in the constitution as per the procedure laid down under Article 368 of the Constitution. Parliament has the power to amend even the Fundamental Rights of the Constitution but only if the amendment does not alter the basic structure of the Constitution.

There are three types of constitutional amendments. They are, firstly amendments which can be made by parliament with simple majority, secondly amendments with special majority and finally amendments which can be made by parliament with special majority and ratification by half of the state legislatures.

1.AMENDMENT WITH SIMPLE MAJORITY OF PARLIAMENT

Certain provisions of the constitution can be amended with the simple majority of the parliament. No special procedure is required for

such amendments. Amendment with simple majority is really flexible. The bill for amending the constitution can be presented in either house of parliament. When both houses of parliament pass the bill with simple majority, it can be presented to the president for his assent. When president gives assent to the bill, amendment of the constitution comes into force. Provisions regarding the formation of new states and alteration of areas, boundaries or names of existing states, provisions for the creation or abolition of Legislative Councils in the states, Rules of procedure in Parliament, Privileges of the Parliament, its members and its committees, Citizenship-acquisition and termination etc. are some instances were amendment can be made by simple majority.



2. AMENDMENT BY TWO-THIRD MAJORITY OF PARLIAMENT

The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.

When both houses of parliament pass the amendment bill with special majority it can be presented to the president for his assent. The amendment comes into effect as and when president gives his assent. of the Constitution. The provisions which can be amended by this way include: (i) Fundamental Rights (ii) Directive Principles of State Policy and (iii) All other provisions which are not covered by the first and third categories.

3. AMENDMENTS MADE BY SPECIAL MAJORITY OF PARLIAMENT WITH THE RATIFICATION OF STATES

It means that the amendment bill should be supported by two- third majority of members present and voting which should not be less than the simple majority of the total membership of the house. After that it should be ratified by not less than half of the state legislature. If the bill gets the support of the special majority of parliament and at least half of the state legislatures, it can be presented to the president for his assent. When it gets the approval of president it comes into effect. Provisions regarding the election of the president, division of powers between the centre and state, Supreme Court and high courts, representation of states in parliament and power of Parliament to amend the constitution and its procedure (Article 368 itself) can be made through this procedure.

To conclude, Indian constitution is a living document. As a living substance it responds to the situations and conditions arising in the society from time to time. This is the reason for the stable nature of the constitution. The ability to be always dynamic, to be open to interpretation and the ability to respond to the changing situations are the factors which enable the constitution to continue its activities effectively. The trademark of any democratic constitution is its organic nature. In a democracy several ideas and practices will evolve periodically. A constitution which protects democracy and allows for evolution of new practices, will maintain stability. Such a constitution will get respect from the citizens. Indian Constitution is undeniably one such Constitution.

Aiswarya Thankachan
S9 B. Com. LL. B

DEFENCE OF INSANITY: WHETHER A LOOPHOLE FOR CRIMINALS?

A normal person is presumed to know the nature and consequences of his act and is therefore responsible for the same in law. It can mean that such a person while committing a crime is presumed to possess the mental intention as well as active participation that are required for it. To attract the fundamental principle of penal liability, there must be a wrongful act combined with a wrongful intention. So the act does not itself constitute guilt unless done with a guilty intent (Actus Non Facit Reum Nisi Mens Sit Rea). The law of insanity is an exception to this.

In Indian Criminal Law System "Insanity Defence" is at times a tool to save the alleged from the accountability of a crime. This law is based upon the assumption that whenever an insane person commits a crime in a state of insanity, he/she does not have a guilty mind to understand what he/she is doing, thereby exempting him/her from punishment.

In India, Section 84 of the Indian Penal Code, 1860 (IPC) deals with the "act of a person of unsound mind" and discusses insanity defense. It provides that nothing is an offence which is done by a person who at the time of doing it by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. Section 84 of IPC, 1860 is solely based on one of the case in England, R v. Daniel Mcnaughton. In this case, a man named McNaughton killed Edward Drummond mistaking him for some other person. His state of mind was not sane and therefore the court ordered for his acquittal and admitting him in a mental asylum. Due to the adverse reaction of the public, the House of Lords decided to probe into the subject. Five questions were put before the bench to make the law clear, the answers may include every man is presumed to be same and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary to be proved to their satisfaction, and that to establish a defence on the ground of insanity.

It is very hard to examine whether the person was of sound mind or unsound mind at the time when the crime was committed. The onus of proving the defence of insanity is on the accused. It can be proved by producing sufficient evidence as to the conduct of the accused at the time of commission of the offence and other relevant evidences. Hon'ble Supreme Court in Anandrao Bhosale v. State of Maharashtra, held that the time when the unsoundness has to be proven is the time when the crime is actually committed and the burden of proving this, lies on the party which is claiming the benefit of Section 84.

Insanity defence is a legal concept; this means that just suffering from a mental disorder is not sufficient to prove insanity. There is a distinction between legal insanity and medical insanity and courts

are concerned only with legal insanity. To simply differentiate the two, a person suffering from a mental illness is called “medical insanity”, however in case of “legal insanity” person suffering from mental illness also losses his/her reasoning power at the time of the commission of the crime. While considering the positive aspect, it is a solution for those who actually undergoes mental issues. Moreover it helps to prevent the insane from being penalized. On the other hand, it is a loophole for criminals i.e. the defence of insanity can be misused to escape from the punishment.

To encapsulate, insanity defence refers to a defence wherein a criminal admits the action but asserts an absence of understanding based on mental illness. It is next to impossible to prove the mental status of any person at the time when the crime was committed. It could be concluded that the defence of Insanity has lost its original zeal where it was actually meant to protect the one who is really sick or mentally ill. As of now, it acts as a tool for criminals to evade legal consequences.

Annsmaria Antony
S9 B. Com. LL. B

DISASTER MANAGEMENT ACT, 2005

The Disaster Management Act was passed by the Rajya Sabha and the Lok Sabha in the year 2005. The Act has 11 chapters and 79 Sections and it extends to the whole of India. The stated object and purpose of the Act is to manage disasters including preparation of mitigation strategies, capacity-building and more. In the popular imagination, a disaster is usually associated with a natural calamity such as a cyclone or earthquake. Even the definition of a "disaster" in section 2(d) of the Disaster Management Act states that a disaster means a catastrophe, mishap calamity or grave occurrence in any area, arising from natural or man-made cause or by accident or negligence which results in substantial loss of life or human sufferings, or damage to and destruction of property or damage to or degradation of environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area’.

A disaster is not bound by political, social, economic or geographic boundaries. When it occurs, it impacts all Globally. The impact of such a calamity, however, does not remain confined to its physical component but transcends beyond it and impacts the socio-economic conditions of affected persons and places. Floods, droughts, earthquakes, cyclones and landslides are common hazards that India faces. The Ministry of Home Affairs was entrusted with the responsibility of coordinating disaster management activities at the national level. In 2003, a framework for addressing disaster management in a holistic manner was conceptualized and outlined in the national disaster management framework prepared by the Minister of Home Affairs. Subsequently, the National Disaster Management Act (2005)was enacted and the National Disaster Management Authority was established.

Disaster Management occupies an important place in this country's policy framework. The Disaster Management Act 2005 is aimed at

Management Act 2005 is aimed at preparedness, prevention and early planning towards disasters. 'Disaster Management is defined as a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient to prevent danger or threat of any disaster, mitigation or reduce the risk or severity or consequences of any disaster, capacity-building and preparedness to deal with any disaster, prompt response to any threatening disaster situation or disaster, assessing the severity or magnitude of effects of any disaster, evacuation rescue and relief, rehabilitation and reconstruction. Disasters are not new to mankind. They have been the constant, though inconvenient, companions of the human being since time immemorial. Disasters can be natural or human-made.

The Disaster Management Act,2005 provides institutional mechanism for drawing up and monitoring the implementation of the disaster management. The Act empowers the Central Government to appoint the National Disaster Management Authority (NDMA). The National Authority has the responsibility to lay down, approve the policies, plans and guidelines for disaster management prepared by various departments of Government of India to ensure timely and effective response to disaster.. Similar to National Authority at the Centre, the State Government is to establish a State Disaster Management Authority (SDMA). Every State Government, in turn is to establish a District Disaster Management Authority (DDMA) for every district in the state. The District Authority is to act in accordance with the guidelines laid down by the National Authority and State Authority. Local Authorities subject to the directions of the District Authorities. The Central Government is empowered to constitute an institution to be called the National Institute of Disaster Management (NIDM). The institute functions within the broad policies and guidelines laid down by the National Authority and is responsible for planning and promoting training and research in the area of disaster management. A National Disaster Response Force(NDRF) for the purpose of specialist response to a threatening disaster situation or disaster is to be constituted. The general superintendence, direction and control of the Force shall be vested and exercised by the National Authority and the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director General of the National Disaster Response Force. The Central Government is empowered to constitute a fund to be called as the National disaster Response fund for meeting any threatening disaster situation or disaster .

This Act imposes punishments to persons/companies for contravening the provisions of this Act,2005 and the punishment could be imprisonment or fine or both.

Disasters results not only in the loss of life and shelter but also creates lack of food, increase in diseases and disturb socio-economic activities. Therefore it is one of the major area of concern for a developing country like India. Disaster Management has to be multi-disciplinary and a pro-active approach. Besides various measures for putting in place institutional and policy framework, disaster prevention, mitigation and preparedness initiatives taken by the Central and State Governments the INGOs and NGOs, the community, civil society organizations and the media also have a key role to play in achieving the goal of moving together, towards a safer India.

Abhirami P S
S3,BBA LL. B

The Death Penalty: can it ever be justified?

"I can recall the punishment of detention. I can make reparation to the man upon whom I inflict corporal punishment. But once a man is killed, the punishment is beyond recall or reparation . God alone can take life, because He alone gives it".

MAHATMA GANDHI,
Young India , November 8,1925

Death Penalty is also known as Capital Punishment. It falls into one of the various theories of punishment namely Preventive Theory. Basic idea of this theory is preventing or prohibiting the repetition of crime. In olden days death penalty was more in use but now there are several other methods for the prevention of crimes.

The justification for capital punishment can be said in the following words :- "A man has taken the life of another man, so he ought to be deprived of his life . "

Death penalty makes it impossible to do crimes again and again. It is permanently stopping the worst criminals from performing a crime. The death Penalty in one aspect is cruel and inhuman. Because of this larger section of society opposes the death penalty saying Capital Punishment does not deter crime nor an effective method to curb criminal activities in the society.

ADVANTAGES OF DEATH PENALTY

* It deters would-be criminals to commit felonies. Advocates of death penalty shows the comparison of crime rate when imposing the death sentence or abolishing it affected.

According to some earlier studies it has been shown that there was rapid increase in the crime rate when the death rate was abolished . Then they give examples to show the decrease in the crime rate when there is Death Penalty . So the necessity of death penalty has been proved.

* Death penalty is a punishment for crimes committed against the rights and freedoms of victims.

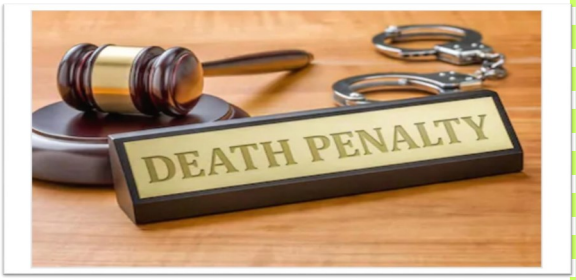
A. It is the right to every individuals to live peacefully. So crimes like murder, rape should be punished with death penalty . Since they violate the other people's life the culprit's life should be taken.

B. The Capital Punishment is cheaper as compared to other punishment like life imprisonment .

* The absence of death penalty is a synonym for increase in crime rate.
* It is not carried out with brutality. This process is carried out through the use of a lethal injection , creating a medically- imposed death that involves the least amount of pain that is possible.

DISADVANTAGES OF DEATH PENALTY

* Innocent peoples are at times



wrongly executed . In certain cases innocent people's were hanged.

* It is an added cost to the tax money. even though the opponents argue that the life imprisonment is costly ,the government spends a lot of money for conducting number of trials .So it takes a lot of money.
* Death penalty is a form of revenge . It's basic aim is that a man had taken another man's life or do something against his right then his life should be deprived of .
* It is denial of the human rights when implemented .
* There are instances were kids are executed (There are 97 kids at least who were put in death penalty in Iran since 1990.Another 145 child execution have already happened in China , Pakistan ,Sudan etc.).

Death penalty under International level.

Presently 58 nations practice death penalty .96 countries have abolished death penalty.60 percent of world population lives in countries where execution takes place namely China , India ,U.S, and Indonesia. Article 2 of the Charter of Fundamental Rights of European Union prohibits use of capital punishment. Amnesty International and Human Rights Watch are noted for their opposition to capital punishment .

To conclude death Penalty has been used to maintain the balance of justice throughout history, punishing violent criminals in the severest way to ensure justice is served and no like crimes is committed the second time. On the other hand , with inconclusive evidence as to its deterrence of crime , the higher costs involved in pursuing capital cases, and the lack of relief and closure it brings to victims families, the death penalty is not justified. Also nowadays reformation is considered to be the ideal form where the culprits could be reformed and given a chance to be back to their normal life devoid of violence or vengeance and to lead a peaceful life.

RANEESHAL FATHIMA
S3 BBA LL. B

KNOWING A MAXIM....

Volenti Non Fit Injuria

In the law of torts, if any person commits any wrongful act which causes injury to another person, he is held liable and has to pay damages or provide some other remedy which the Court determines, to the victim of such an act. But in some cases even if a person suffers some loss because of the act of another person, he cannot claim damages from that person because of the operation of defences of tort. One such defence available to a defendant is the defence of 'volenti non fit injuria' (Latin term: "to a willing person, injury is not done".), in which the plaintiff is not entitled to damages because he consents to the act which has caused injury to him.

For the application of the defence of volenti non fit injuria the 2 essential elements required are: (i) The plaintiff has the knowledge of the risk, (ii) The plaintiff with the knowledge of risk has voluntarily agreed to suffer the harm.

So, if a batsman is hit by his other player having the wrong intention then this defence won't serve as the good defence against the defendant, as the batsman has agreed to suffer the harm caused to him during the game and that too not voluntarily with the wrong intention. From the plaintiff's point of view, it can also be termed as 'consent to run a risk'. In this context, the defendant can run out of risk and can prevent himself from the tort liability arising out of the first case.

Campus Buzz



Inauguration of the **SPECIAL LECTURE SERIES** by Adv. B. A. Aloor organized by Centre for Legal Aid & Legal Awareness (CLALA)

- 02/03/2020

PROUD MOMENT OF CSL

M. G. University BBA LL. B (Hons.) Rank Holders

Albin Anto, Ameera Basheer, Mishel Ann Jacob, Amala Savy

Inauguration of Anti-Human Trafficking Cell

-08/03/2020

Campus Buzz



Celebration of International Women's Day on March 8 and honouring of Prof. Annamma John, seniormost lady faculty of CSL.


Orientation about Internship to First year students by Asst. Prof. Parvathy P. V.

-10/03/2020

IMPULSE NEWSLETTER

Openness to curiosity

A Students Initiative from Co-operative School of Law, Thodupuzha

For publishing students writeup's and articles mail @cslimpulse@gmail.com