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FOREWORD

More has been said about the writing of lawyers and judges than of any other group, except, of course, poets and novelists. The difference is that while the latter has usually been admired for their writing, the public has almost always damned lawyers and judges for theirs. If this state of affairs has changed in recent times, it is only in that many lawyers and judges have now joined the rest of the world is complaining about the quality of legal prose. My best wishes to all these student contributors, for their future endeavors. My best wishes and assurance to the readers that this will add a lot to the knowledge after reading this perfect case compilation. It's not just for the legal fraternity but for anyone who has an interest in the field of law.

By

Ishita Arora

Editorial Coordinator

PREFACE

All India Legal Forum is replenished with information to give students a ready reference to the various areas of legal issues and news. All India Legal Forum is a team of more than 400 law students across the country to tackle basic problems which a legal researcher faces in day to day life, putting forward the basic things needed for researching and drafting.

The All India Legal forum strives at providing a valuable contribution to contemporary legal issues and development. The organization seeks to bring out a platform to provide resourceful insights on law-related topics for the ever-growing legal fraternity. All India Legal Forum doesn't just publish blogs but also guides the authors. Determination and dedication are considered as ultimate requisition to be a good researcher by the All India Legal Forum, it also thrives to instill the values.

The reason behind the smoothed running of All India Legal Forum is the official structure of the organization in which different rules are allotted by considering the strengths of the students and giving them roles accordingly through various Boards and Committees incorporated in the Organisation. The Legal Fort Night subdues about the current legal issues and news happening around. It consists of the summaries of the Supreme Court and High Court Judgements of the 14 days. The Legal Fort Night Team keeps compiling the judgments of the Supreme Court and high court regularly. The Legal Fort Night not only compiles the judgments of the Supreme Court and High Court, but it also deals with the static law. We're glad to be a part of the All India Forum.

Here's an introduction to the team:

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LEGAL UPDATES

NIA Denies Hacking Rona Wilson's Laptop In Bhima Koregaon Case; Says Arsenal Consulting Has No Locus To Give Opinion Of Sub-Judice Matter

The National Investigation Agency (NIA) has denied the report by digital forensics firm Arsenal Consulting, which concluded that incriminating material including a conspiracy to kill the Prime Minister of India and overthrow the government, was planted on Elgaar Parishad - Bhima Koregaon accused, researcher Rona Wilson's laptop. The NIA made these claims in an affidavit to oppose interim relief to Wilson, stating his petition before the Bombay High Court was not maintainable.

Wilson's plea invoking Article 226 of the Constitution and Section 482 of the CrPC seeks formation of a Special Investigation Team to inquire into planting of fabricated documents in his computer over a period of 22 immediate release, as interim relief.

NIA claims Arsenal Consulting has no locus when the trial against Wilson and 15 other civil rights activists and academics in India facing charges und under the stringent Unlawful Activities (Prevention) Act, 1967 (UAPA), is pending.

The NIA states that Wilson can always approach the trial court for discharge instead of seeking quashing of the charge sheet. So far, 16 people have been arrested in the case as accused — Jyoti Raghoba Jagtap, Sagar TatyaramGorkhe, Ramesh MurlidharGaichor, Sudhir

Dhawale, Surendra Gadling, Mahesh Raut, Shoma Sen, Rona Wilson, Arun Ferreira, Sudha Bharadwaj, Varavara Rao, Vernon Gonsalves, Anand Teltumbde, Gautam Navlakh, Hany Babu and Father Stan Swamy. Most of the accused in the case were neither named in the FIR over the violence nor present during the 2017 event.

High Court Shall Apply Its Mind to the Entirety Of The Case While Deciding A Criminal Appeal, Reiterates Supreme Court

While deciding a criminal appeal on merits, the High Court is required to apply its mind to the entirety of the case including the evidence on the the record before arriving at its conclusion, the Supreme Court reiterated. The bench of Justices DY Chandrachud and MR Shah observed thus while allowing an appeal against an Allahabad High Court judgment which reversed the conviction of the accused by the Trial Court.

In this case, the accused was convicted of an offence under Section 364A of the Penal Code and was sentenced to undergo imprisonment for life, to a fine of Rs 5,000 and, in default, to undergo imprisonment for a period of one year. The Trial Court judgment was set aside by the High Court by allowing the appeal. The state, therefore, approached the Apex Court.

Consent of Parties Cannot Obviate Duty of Court to Indicate Its Reasons for Granting or Refusing Bail

SC Bench of Justices DY Chandrachud and MR Shah observed that consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refuse bail. [Ramesh Bhavan Rathodvs. VishanbhaiHirabhai Makwana Makwana (Koli)]. In this case FIR's against six persons was reg istered for offences under Sections 302, 143, 144, 147, 148, 149, 341, 384, 120B, 506(2) and 34 of the Ipc, Sections 25(1-b) A, 27 and 29 of the Arms Act and Section 135 of the Gujarat Police Act.

The matter is of a criminal nature so the Bench stated that, "The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding.

Supreme Court agrees to examine Constitutional validity of Sedition law

In a recent development, the Supreme Court on Friday decided that it will examine the validity of Section 124Aof the Indian Penal Code which criminalises sedition (Kishorechandra Wang khemcha v.Union of India). Justices UU Lalit, Indira Banerjee and KM Joseph issued notice to theCentral government on a plea by two journalists, KishorechandraWangkhemcha from Manipur and Kanhaiya Lal Shukla from Chhattisgarh challenging the validity of the provision for violation of freedom of speech and expression. The journalists contended that Section 124-A as a restriction of freedom of expression falls short of the requirements provided under International law in that it is neither "necessary" nor sufficiently "provided by law".

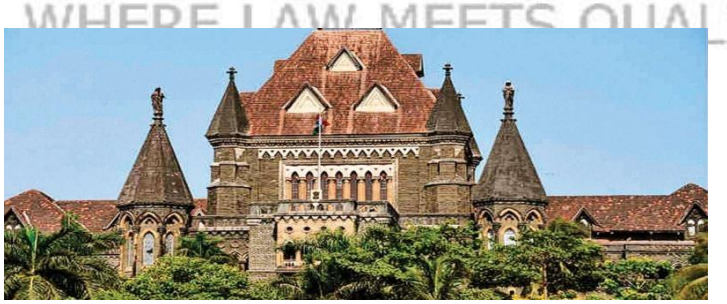
The Section came about in the Kedar Nath judgment which was rendered by a of five judges, any decision pronouncing on the validity of Section 124A can be decided only by a Bench of seven or more judges.

Kerala HC Allows Termination of 26-Week Pregnancy For 13-Year-Old Sexual Assault Survivor

Recently, Kerala High Court Bench of Justice Bechu Kurian Thomas allowed a 13-year-old survivor of sexual assault to terminate her 26-week-old pregnancy. The Court allowed the petition moved by the father of the child in a special sitting

The bench remarked that the pregnancy might remind the minor of the rape and it is not in the interest of society to have her undergo the trauma every day. Investigation revealed that the offence was committed by the 14-year-old sibling of the victim, her very brother. In the case, the contention was that the petitioner's daughter was a victim of rape by her own brother, the father of the victim approached the High Court, seeking a di rection to terminate the pregnancy of his daughter.

Bombay High Court Asks Centre To Consider Increasing Allocation Of Remdesivir For Maharashtra



The Bombay High Court has asked the Central government to reconsider its allocation of Ramsesivir injections to Maharastra.The Nagpur bench observed the reduction of vilas for the state is inconsisent with the decrese in coronavirus cases.

A division bench of justices Sunil Shukre and AvinashGharote, while hearing suo motu public interest litigation on covid management in Vidarbha region of the state, on Sunday, observed.

The active cases in Maharstra have reduced hardly by 1-2% , where as reduction in allocation in he state is about 14.5% .This mismatch needs to be reconsiderd.Now the bench told the Additional Solicitor Genral Of India , UM Aurangabadkar, that they should pass an order directing the central government to revise the new order and allign the reduction in proportion to reducing cases.

The bench refered to the centre's fresh order dated May 1, 2021, allocating Remdesivir to states across india. As per the order issued in continuation to earlier orders, Maharashtra's total allocation is 8,09,500 vials from April 21 to May 9.

However, the State's allocation was reduced from 4.35 lakh till April 30, to 3.74 lakh from May 1, 2021, for the next ten days.

The May 1 order is issued jointly by the Department of Pharmaceuticals and the Ministry of Health and Family Welfare. The State's are expected to purchase Remdesivir from manufacturers directly, based on this allocation.

The court then directed the FDA Commissioner of the State to send such a presentation, which was sent the next day after the hearing, and the increase was approved by the DGCI the day after itself.

Advocate Tushar Mandlekar, appearing for an intervenor in the PIL, submitted that the latest order on Remdesivir allocation "did not reflect that."

Maharashtra's Remdesivir allocation before April 21, 2021, was 2.69 lakh vials, which was increased on April 24 by 1.66 lakh vials to 4.35lakh vials for the period April 21 to April 30, 202

Vehicle registered in one State need not be re-registered unless kept in another State for more than 12 months: Jammu & Kashmir High Court

On 2 May 2021 Jammu & Kashmir High Court Announces a Judgement that a vechile is not to be re-registered in another state unless it kept for more than 12 months.This Judgement was given by Justices Ali Mohammad Magrey& Justice Vinod ChatterjiKoul.

Therefore, quashed a circular issued by Regional Transport Officer (RTO) mandating re-registration of Vehicles purchased from outside the UT of J&K.if the vehicle is stayed more than 12 month in other state then the owner shall be liable to apply to the registering Authority within the jurisdiction the vehicle is for the assignment as the "new registration mark" the Court held.

This whole is provided under sections 46and 47 of the Motor Vehicle Act, the Court added.The circular said that it will be compulsory for owners who have purchased their vehicles bearing registration mark from outside the UT to apply for a new registration mark as per the provisions of Section 47/50 of Motor Vehicle Act 1988 and Rule 54 of Central Motor Vehicle Rules 1989 within a period of 15 days.

The same was challenged by two vehicle owners, Zahoor Ahmad Bhat and Irshad Hussain Munshi who though residents of J&K, had purchased vehicles bearing Delhi registration.The Regional Transport Officer (RTO), Kashmir defended the decision before the High Court stating that it was taken in a meeting convened by the Secretary to Government, Transport Department for ensuring screening of the vehicles which bear the non-local registration.

Advocate General appearing for respondents also contended that circular is only aimed at ensuring of assigning of new registration mark to the vehicles, which are bearing registration mark of other states, but are plying in the Union Territory of J&K, as mandated by Section 47 of the Motor Vehicles Act, 1988.

Thus, the Court concluded that if a vehicle is once registered in any State in India, it shall not be required to be registered elsewhere in India, but when the motor vehicle registered in one State, has been kept in another State for a period of exceeding 12 months, the owner shall apply to the Registering Authority within whose jurisdiction the vehicle is for the assignment of new registration mark.

Sexual Harassment Of Woman IPS officer: Complete Probe In Six Weeks, Says HC

The Madras High Court on 30 April 2021 directed the CB-CID to complete in six weeks, the probe into the alleged sexual harassment of a woman IPS officer by a senior police official, since placed under suspension.

Justice N Anand Venkatesh also directed the investigation wing to obtain sanction from the government to prosecute all the top police officials involved in the case before filing the final report.

Earlier, the court, which had taken up the case on its own and monitoring it, was told by State Public Prosecutor A Natarajan that as many as 106 witnesses have been examined so far.

The case pertains to the alleged sexual harassment of the woman official by an Additional DGP level official, who is now under suspension.State special senior counsel AL Somayaji submitted that the Internal Complaints Committee (ICC) has already submitted the preliminary inquiry report to the state Home secretary.

The judge also refused to hear a plea from D Kannan, former SP, challenging his suspension in connection with the episode.He cannot hear the plea unless the Chief Justice orders so, the judge told him.The judge posted the matter for further hearing on June 18.

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Contempt not initiated, HC tells Centre

The Delhi High Court on Sunday remarked that it had not initiated any contempt proceedings against Central government officials while responding to the Centre's fresh application to modify the contempt portion on its May 1 order.

The High Court had on Saturday warned the Centre that it would consider initiating contempt proceedings against its officers if they failed to supply the allocated 490 metric tonnes (MT) of oxygen allocated to Delhi.We have not initiated any contempt. That's the last thing on our mind. We know how everyone is stressed. We know how officers are working," a Bench of Justice Vipin Sanghi and Justice Rekha Palli remarked when Solicitor General Tushar Mehta pleaded to consider modifying the contempt part of the May 1 order.

"We are concerned with the situation in Delhi. The situation in every State would be different. The problem that Delhi is facing in term of oxygen shortage, no other State is facing," the court said.

"That's exactly my question. Why other States are not facing the problem," Mr. Mehta said.

To this, the HC said, "Because they are getting their oxygen."

JHARKHAND HIGH COURT DIRECTS CID TO KEEP STRICT VIGIL ON BLACK MARKETING OF LIFE SAVING DRUGS

The bench of Chief Justice Dr. Ravi Ranjan and Justice Sujit Narayan Prasad of Jharkhand High court on Thursday directed State government to take necessary steps to stop black-marketing of Remdesivir, the lifesaving medicine for Covid 19 patients, besides any other medicine or thing needed in the treatment of Covid 19.

The court passed the direction while hearing a PIL filed last year related to management of Jharkhand government in tackling and treating Covid 19. But, the court suo moto took up the issue of black marketing of medicines and others during the course of hearing.

The court said that the Crime Investigation Department (CID) should be pressed to monitor if the black-marketing of medicines, oxygen cylinders and like are going on. The court directed plainclothes police officers must carry surprise inspections of government and private hospitals. In the wake of alleged black marketing of Remdesivir in the State capital; the court directed Ranchi SSP to submit a report.

Advocate General Rajeev Ranjan appearing on behalf of the State government informed the bench that the state government and administration are watchful to detect and prevent black marketing of life saving medicines, oxygen cylinders and likes. He said that actions are being taken in such cases. The advocate general said that the state government is taking all steps to increase health infrastructure to treat and tackle Covid 19 cases.

Notably, a person identified as Rajeev Kumar Singh was nabbed by Ranchi police on Wednesday for illegally selling Remdesivir at exorbitant price. He was charged for selling five vials of Remdesivir worth Rs 1.10 lakh. Sources in the police said that investigation is going to ascertain that how he used to get Remdesivir.

AFTER VICTORY MAMTA BANERJEE SAID WILL TOP COURT AGAINST POLL BODY

Trinamool Congress chief Mamata Banerjee on Sunday said that the party will move the Supreme Court against the Election Commission of India for "behaving badly" with her party in the course of the politically charged West Bengal assembly election.

Banerjee said three retired officers cannot control democracy. "We will move the Constitution bench of the Supreme Court against the Election Commission. The EC behaved very badly with us during the entire process. If they behave like this there will be no democracy. Three nominated men, who are retired officers, cannot control democracy," she said.

A three-member Trinamool Congress delegation also met chief electoral officer Aariz Aftab in Kolkata on Sunday to ask for a recount of votes in Nandigram, where Banerjee lost a high-profile battle to BJP's Suvendu Adhikari by a slim margin of 1,956 votes and discuss other issues. The party alleged that electronic voting machines were tampered with, false or invalid votes in favour of BJP were put and postal ballots were wrongly counted. It demanded a recount to preserve the sanctity of the electoral process — but ECI rejected the request.

ECI approaches SC in an appeal against 'Criminal Charges Remark' made by Madras HC

The Election Commission of India (ECI) has approached the Supreme Court of India- against the remarks passed by the Madras High Court on April 26, 2021- wherein the High Court stated that ECI was the only body responsible for the surge in COVID cases in the State and that the officials should be probably booked for murder charges for failing to ensure compliance with COVID-19 protocol during election rallies.

The ECI has sought directions from the Apex Court to be issued to media houses to confine their reports to observations recorded in orders or judgments and to refrain from reportingon oral observations made during court proceedings in a case concerning COVID protocol for vote counting in Tamil Nadu.

The Commission submitted in its plea that: “the Madras High Court being an independent constitutional authority made serious allegations of murder on another independent constitutional authority without any basis, which has ultimately dented both the institutions”.

The petition further stated that FIRs were being lodged against its officials for murder following the Court's widely reported remark that the Election Commission was singularly responsible for the COVID-19 situation in India and that it should probably be put on murder charges for failing to ensure adherence to safety norms.

The ECI had already approached the Madras High Court but the Court refused to entertain the petition and said that: “the post mortem on such aspects can wait and that the focus, for now, would be on the measures that can be put in place for COVID-19 management in the State”. The petition will be heard by a Bench of Justices DY Chandrachud and MR Shah at 10.30 am on Monday.

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No Patient shall be denied Hospitalisation, essential Drugs for lack of local residential proof: Supreme Court

The Apex Court has directed the Centre to formulate within two weeks a national policy on admissions to hospitals in the wake of the second wave of Covid-19 and said no patient shall be denied hospitalisation or essential drugs in any state for lack of local residential proof.

A 3-Member SC Bench, comprising Justice D Y Chandrachud, Justice L Nageswara Rao & Justice Ravindra Bhat also directed the Centre & state governments to notify that any clampdown on information on social media or harassment caused to individuals seeking help on any platform will attract coercive action.

"The Central government & state governments shall notify all chief secretaries, directors general of police, commissioners of police that any clampdown on information on social media or harassment caused to individuals seeking/delivering help on any platform will attract a coercive exercise of jurisdiction by this court.

The registrar (judicial) is also directed to place a copy of this order before all district magistrates in the country," it said in the order uploaded on the Supreme Court website late on Sunday night.

The bench, headed by Justice D Y Chandrachud, said till the formulation of a national policy by the Centre on admissions to hospitals, "no patient shall be denied hospitalisation or essential drugs in any state/UT for lack of local residential proof of that state/UT or even in the absence of identity proof."

The Supreme Court also directed the Centre to ensure that the deficit in the supply of oxygen to the national capital is rectified before May 3 midnight.

The Bench said that "The Central Government shall, in collaboration with the states, prepare a buffer stock of oxygen for emergency purposes & decentralize the location of the emergency stocks. The emergency stocks shall be created within the next four days & are to be replenished on a day to day basis, in addition to the existing allocation of oxygen supply to the States". It further said that emergency stocks shall be created within the next four days & is to be replenished on a day-to-day basis, in addition to the existing allocation of oxygen supply to the states.

The directions were passed in a suo motu case for ensuring essential supplies & services during the Covid-19 pandemic.

The bench has taken up issues such as the projected demand for oxygen in the country at present & in the near future, how the government intends to allocate it to "critically affected" states & its monitoring mechanism to ensure supply.The Supreme Court had earlier made clear that any attempt to clampdown on the free flow of information on social media, including a call for help from people, would be treated as contempt of the court.

REFRENCES

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Plea Filed Before Supreme Court Seeking Presidents Rule In West Bengal

Indic Collective Trust has moved the Supreme Court seeking a declaration that the Constitutional machinery in the State of West Bengal has broken down and to institute President's Rule under Article 356 in the State.

Settled by Advocate J. Sai Deepak and filed by Advocate Suvidutt M.S., the plea furthers seeks directions to the Central Government to deploy central protection forces, including armed forces, for the restoration of law and order in the State of West Bengal. It also prays for the constitution of a Special Investigation Team (SIT), headed by a retired Supreme Court Judge to look into the involvement of politicians, if any, in the targeted pogrom in the State.

Additionally, the plea seeks issuance of directions for immediate arrest of and prosecution against all individuals involved and/or responsible for the commission of heinous offences in the aftermath of the 2021 Assembly elections, along with directions for setting up and/or establishing a special court to adjudicate and dispose of matters pertaining to the prosecution of political miscreants and/or any individuals involved in the commission of heinous offences.

The plea, filed on behalf of Indic Collective Trust, submits that urgent relief is being sought in view of the widespread violence and disruption of law and order that has erupted in the aftermath of the elections, and the failure of the State machinery in protecting the life and liberty of its citizens.

"…the reliefs are imperative in order to protect the life and property of the people of West Bengal under Article 21 of the Constitution of India which is being brazenly violated in pursuance of political vendetta and supporters of the All India Trinamool Congress".

Highlighting that the election-related violence began in the State after the declaration of the results on May 2, 2021, the plea states that members and supporters of opposing political parties "have been brutally murdered, with their houses and personal property being destroyed. There have been instances of heinous crimes including bombing of localities, murders, violations against the modesty of women, riotous looting, kidnapping, arson and destruction of public property".

"It has been categorically reported that till May 3, 2021 more than ten political activists were killed and numerous were beaten up and/or injured. These instances have instilled unimaginable fear in the minds of the citizens who will now be apprehensive of exercising their fundamental right to free speech and expression against the ruling party. Such fear would lead to the death of democracy".

It is further submitted that instances of gang rape and physical assault against women have also been reported, and that there has been deliberate inaction on behalf of the State Government, leading to the State turning into a "complete lawless zone", thereby demonstrating that the violence is premeditated and targets a group of people who have exercised their voting rights against the ruling party.

"The current state of affairs in West Bengal is so dangerous and wrought with internal disturbance that urgent interventions by this Hon'ble Court and deployment of central forces in the State is the need of the hour'.

In light of the failure and neglect of the State administration and police authorities in West Bengal, the plea prays that it is imperative that the Top Court grants the urgent reliefs sought for by the Petitioner.

https://www.livelaw.in/top-stories/supreme-court-presidents-rule-article-356-west-bengal-173586

A single-judge bench of Prathiba M Singh had yesterday said that there is no doubt that there is space in JNU and the SDM and the authorities are ought to be directed to create a Covid Care Facility, which the JNU faculty and students will operate.

The Court directed the Registrar to immediately respond and file a status report as to what are the steps taken by the administration of JNU in regard of the request made by the petitioner to the SDM/ADM of the concerned area.

The Court also directed to place a status report on whether such facility can be created within the guidelines applicable to JNU and how doctors and nurses be made available or attached to a hospital.

*"*The Registrar,JNUshould also ascertain as to weather theproduction of oxygen within the campus is feasible and also if any modifications are required to the proposal. The Registrar and the Vice Chancellor (VC) should hold a meeting by today itself with six representatives of student and faculty. List for tomorrow, on May 12, 2021,*"* said the Delhi High Court.

2.Calcutta ~~High Court directs Bengal govt to disclose state of affairs over~~ Covid situation

The Calcutta High Court on Monday directed the State Government to file an affidavit disclosing the exact state of affairs as well as the facilities, medicines, infrastructure, and the vaccination drive started within the state.

The Division Bench of Justices Harish Tandon and Shampa Sarkar was hearing a PIL filed by Dipika Sarkar alleging the spread of coronavirus due to the state legislative assembly election.

The High Court observed that though the issues raised in the PIL have been diluted after the declaration of the Assembly election result and the role of the Election Commission is over, the Court feels that due to the surge in Covid-19 cases in the State, the State shall ensure all facilities, treatments and the infrastructure required to combat such situation.

Therefore, the Court directed that the State shall also ensure Extension of adequate medical facilities to the affected persons and speed up the vaccination drive in terms of the various circulars and/or the Government Orders issued in this regard.

*"*Thelearned Additional Solicitor Generalshall also discloseby way of an affidavit the steps taken by the Central Government in the perspective of the State of West Bengal and the proposed plan of action for the affected persons on the next date,*"* the Court ordered while posting the matter for next week.

3.Bar Council of India refuses to accede to demands placed in Punjab and Haryana HC Bar Association resolution

The Bar Council of India (BCI), in its recently held meeting, refused to stay the May 7 order of the Bar Council of Punjab and Haryana (BCPH). The BCPH had stayed the operation of a resolution of the High Court Bar Association, which had sought a transfer of the Chief Justice of the court.

On May 6, the High Court Bar Association had passed a resolution against the CJ, seeking his transfer on the ground that there were serious irregularities in the matter of listing of cases. It claimed that out of 49 judges, only 12 were allotted work, causing a large backlog of cases. The resolution said even urgent matters like regular and anticipatory bails were not being taken up.

The Bar Council of Punjab and Haryana passed a reasoned and Speaking Order and stayed the operation of the resolution passed by the High Court Bar Association on the same day. The High Court Bar Association challenged the stay order of the state bar council on the ground that the order of stay passed by the chairman of the state bar council was against the principle of natural justice and it was done in a very hasty manner. On this ground, the High Court Bar Association preferred a Revision Petition before the Bar Council of India.

The high court bar association had resolved to boycott the chief justice's court, till such transfer was effected.

4. Allahabad HC grants anticipatory bail to builder fearing catching Covid in jail

The Allahabad High Court on Monday observed that fear of death on account of reasons like the present pandemic is valid ground for grant of anticipatory bail.

A single-judge bench of Justice Siddharth passed this order while hearing a Criminal Misc. Anticipatory Bail Application U/S 438 filed by Prateek Jain.

The anticipatory bail application has been filed with a prayer to grant an anticipatory bail to the applicant, Prateek Jain, in Case under Section 420, 467, 468, 471, 506, 406 IPC, Police Station-Sihani Gate, District- Ghaziabad.

There are allegations against the applicant that he along with other co-accused persons is director of a builder company. The applicant applied for a flat being constructed by the company and paid Rs. 3,25,000 by cheque as booking amount. Thereafter, he took a loan and paid the total amount of Rs 27,27,875. He has not been given possession of flat.

The counsel for the applicant submitted that he is not the director of the builder company in dispute. He is only related to the other directors and hence he has been falsely implicated in

this case. On account of demonetization and the slump caused in the real estate business, the present dispute arose.

Additional Government Advocate has opposed the prayer for anticipatory bail of the applicant. He submitted that in view of the seriousness of the allegations made against the applicant, he is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

5.Delhi HC directs Delhi Govt to consider plea to convert vacant stadiums into inoculation centres

The Delhi High Court on Tuesday has directed the Delhi Government to treat a plea as a representation seeking directions for conversion of open spaces for eg. Vacant stadiums and for setting up of drive-in vaccination centres in Delhi according to the government policies and rules.

The petitioner has submitted that the citizens can drive into a vaccination centre and get themselves vaccinated without coming in contact with others and maintaining social distancing, similar to the ones set up by the Brihanmumbai Municipal Corporation in Mumbai.

The Division Bench of Chief Justice D.N. Patel and Justice Jasmeet Singh has asked the Delhi Government to consider the pleas made in the Writ Petition as a representation filed by

Delhi based trader Amandeep Aggarwal.The Petitioner has filed the present petition seeking conversion of open spaces for eg. Vacant Stadiums and seeking a direction to the Government to set-up drive-in vaccination centres in Delhi whereunder the citizens can drive into a vaccination centre and get themselves vaccinated without coming in contact with others and maintaining social distancing, similar to the ones set up by the Brihanmumbai Municipal Corporation in Mumbai.

6.Covid infected judicial officers in dire straits, Delhi High Court told

The situation of Covid infected judicial officers who have exhausted their funds for treatment was presented before the Delhi High ourt bench of Justices Vipin Sanghi and Rekha Palli today.

The bench is hearing Covid related issues of the Capital on a day-to-day basis. Advocate Tanveer Ahmed Mir, while mentioning the issue, also talked about judicial officers who have died. *"*In some of the cases judicial officers have exhausted their savings, paid as much as Rs 9 lakhs for treatment,*"* Mir said. He pointed out that notice was issued on May 10 and the matter is listed for June. *"*By that time the cause will be over,*"* he said. *"*Judicial officers should not be asked to vacate beds due to lack of funds.*"*

Justice Sanghi: *"*Is it a general application, or have you mentioned any specific officers? Judicial officers may contact the Registrar General of this court and on the administration side whatever can be done, will be done.*"*

Mir: *"*Can I request a direction that the matter be listed before division bench 1?*"*

Justice Sanghi: *"*You can make a mentioning before DB 1 and in case of any difficulty, they can reach out to the Registrar General for any help.

7.Supreme Court to hear suo motu case on conditions in prison, remand homes during Covid crisis

ILNS: The Supreme Court will tomorrow hear the suo motu writ petition for dealing with the crisis arising out of coronavirus in prisons and remand homes.

The bench of Chief Justice N.V. Ramana, Justice L. Nageswara Rao and Justice Surya Kant will take up the matter tomorrow. Earlier, the bench of the then Chief Justice S.A. Bobde, Justice L Nageswara Rao and Justice Surya Kant had passed a slew of directions in the matter. The committee had also directed the authorities to take precautionary measures to ensure the safe conveyance of

nder Trial Prisoners and release them on an urgent basis on receipt of bail orders.

8.Intervention plea filed in Supreme Court on availability of hospital beds, oxygen, drugs for Covid-19 patients

An intervention application has been filed in the Supreme Court seeking regarding credible, accurate and up-to-date information about the availability and utilization of hospital beds, oxygen supply and essential drugs in hospitals during the Covid-19 pandemic, to ensure timely medical treatment for citizens

The application, filed by senior transparency and accountability activist Anjali Bhardwaj through Senior Counsel Prashant Bhushan, submitted that it is crucial that credible, accurate and up-to-date information about the availability and utilization of hospital beds, oxygen

supply and essential drugs is made available in the public domain through Central and State governments on a regular basis on their websites, as well as at hospitals.

The availability of this information will not only help Covid-affected patients and their families in locating life-saving resources in a timely manner, but also prevent black-marketing, hoarding, extortion and cornering of resources by vested interests by enabling public monitoring.Information should be proactively disclosed by the authorities in the public domain, in both online and offline modes and in such form, manner and language that it is most accessible to people, as also envisaged by Section 4 of the Right to Information Act.

The applicant stated that in terms of availability of hospital beds, the following parameters of information must be placed in the public domain by state governments for all Covid-designated hospitals in the state and by the Centre for Central government hospitals, both through dedicated websites and physically outside each hospital:

a. Name and address of the hospital.
b. Total number of designated Covid-19 beds.
c. Total number of available designated Covid-19 beds.
d. Number of beds available in ICU with ventilator.
e. Number of beds available in ICU without ventilator.
f. Number of general hospital beds available with oxygen.
g. Number of general beds available without oxygen facility.
h. Date and time when this information was last updated.

I, Name and mobile number of the nodal officers for admission To the hospital.

i. Link to GPS location of the hospital (only for website).

a. Name and address of the hospital.
b. Total number of designated Covid-19 beds.
c. Total number of available designated Covid-19 beds.
d. Number of beds available in ICU without ventilator.
e. Number of general hospital beds available with oxygen.
f. Number of general beds available without oxygen facility.
g. Date and time when this information was last updated.

"We Are Not Aware and We Don't Want To Be Aware (The Inside Story)": Courtroom Exchange In Central Vista Hearing

The Supreme Court on Friday required the plea seeking the suspension of the Central Vista construction amid the peak of the pandemic in Delhi to be mentioned before the Chief Justice of the Delhi High Court on Monday to be listed as early as possible.

The Supreme Court bench of Justices Vineet Saran and Dinesh Maheshwari was considering the SLP against the Delhi High Court's adjournment to May 17 of the plea for suspension of all kinds of construction activity in relation to the Central Vista Redevelopment Project in compliance of the orders issued by the Delhi Disaster Management Authority in wake of the covid 19 surge in the national capital.COVID-Plea Before Supreme Court Seeks Compensation For Families Of Patients Who Died Due To Oxygen Shortage, Action Against Authorities

A PIL has been filed before the Supreme Court seeking compensation for families of COVID-19 affected patients who died due to oxygen shortage, stricter punishments for

violation of COVID-19 protocols as well as action against authorities for gross negligence. The plea also prays for the submission of a comprehensive "National Plan" before the Apex Court which not only deals with the prevailing second wave, but also indicates whether any preparation has been put in place for tackling a possible third wave of the virus. It also seeks initiation of proceedings against concerned representatives and officials for committing gross negligence, leading to the spread of the virus and deaths due to covid-19.

Lastly, the plea seeks urgent directions to be issued to the Centre and States to provide financial and medical assistance for the treatment of all such patients who contracted COVID-19 while attending the Maha Kumbh Mela and those who contracted the virus while attending election rallies and participating in the election process in States of West Bengal, Assam, Tamil Nadu, Kerala and Puducherry, and Uttar Pradesh.

Drafted by Advocate Nachiketa Vajpayee and filed by Advocate Sriram Parakkat on behalf of social activist Deepak Raj Singh, the plea submits that it addresses the gross negligence on part of the Respondents, leading to inhumane deaths of thousands of COVID positive patients due to (i) lack of oxygen, medicines, beds and other healthcare facilities and; (ii) arbitrary and unreasonable grant of permissions for conducting Kumbh Mela, election rallies in various parts of India and other mass public gathers, despite reasonably foreseeing the fatal consequences of the same.

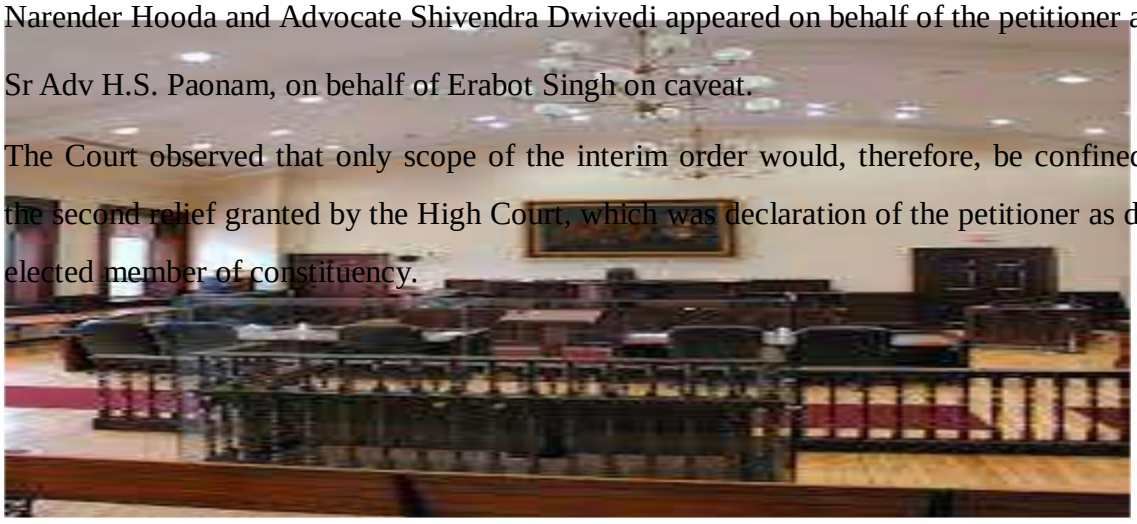
The Respondents herein have violated the spirit of Article 47 of the Constitution of India while showcasing sheer mis-governance and have failed to discharge their various statutory duties, particularly under Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005, while grossly violating the Right to Life and Personal Liberty of thousands of Indian Citizens, guaranteed under Article 21 of the Constitution of India.

The plea also suggests that the Centre and States should endeavour to ensure compulsory and free vaccination of all Indians. They should also jointly formulate and implement schemes to provide free education to children up to 21 years of age, especially those who have lost their families/parents to COVID-19.

Supreme Court Admits BJP Leader Okram Henry Singh's Plea Challenging HC's Order Declaring His Election From Manipur Constituency Void, Gets Partial Relief

A three judge Bench of Justice UU Lalit, Justice Indira Banerjee and Justice KM Joseph has directed that the opposite candidate YumkhamErabot Singh, having been sworn-in as a Member of the Legislative Assembly, will be entitled to represent the electorate in the House and to participate in the debates, , but will not be entitled to cast any vote on the floor of the House or in any committee of the House.

The Court has clarified that it has only passed interim directions which will be operative till the present appeal is disposed of by this Court. During the hearing, Senior Advocate Narender Hooda and Advocate Shivendra Dwivedi appeared on behalf of the petitioner and Sr Adv H.S. Paonam, on behalf of Erabot Singh on caveat.



The Court observed that only scope of the interim order would, therefore, be confined to the second relief granted by the High Court, which was declaration of the petitioner as duly elected member of constituency.

In the circumstances, we pass following interim directions which shall be operative till the present appeal is disposed of by the Court:

a) Having been sworn-in as a Member of the Legislative Assembly, respondent no.1 shall be entitled to represent the electorate in the House and shall be entitled to participate in the debates.

b) However, respondent no.1 shall not be entitled tocast any vote on the floor of the House or in any committee of the House.

c) He shall also not be entitled to draw any monetary benefits in respect of the office of the Member of Assembly.

Non-Examination Of Independent Witnesses Not Fatal To Prosecution Case, Reiterates Supreme Court

The Supreme Court reiterated that non-examination of independent witnesses is not fatal to the case of the prosecution when other prosecution witnesses is not fatal to the case of the prosecution when other prosecution witnesses are found to be trustworthy and reliable.

The court observed thus while dismissing an appeal against Allahabad High Court judgment which had reversed the judgment and order of acquittal passed by the trial Court acquitting the accused in a murder cause. One of the accused approached the Apex Court by filing an appeal. Before the Apex Court, he contended that all the prosecution witnesses, so called eyewitnesses, are all related and interested witnesses. It was further contended that no

independent witness has been examined and that the prosecution witnesses are chance witnesses.

Considering the aforesaid facts and circumstances of the case and on re-appreciation of the evidence, when the High Court has come to the conclusion that the findings recorded by the learned trial Court while acquitting the accused were perverse and even contrary to the evidence on record and/or misreading of the evidence, the High Court has rightly interfered with the judgment and order of acquittal passed by the learned trial Court and has rightly convicted the accused. In the present case, the appellant – original accused no.4 was specifically named right from the very beginning in the FIR. He has been attributed the specific role. The same has been established and proved from the evidence of PW4 (even if the deposition of PW2 is for the time being ignored). No error has been committed by the High Court in interfering with the judgment and order of acquittal passed by the learned trial Court.

The Apex Court stated that, "In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court reversing the acquittal and convicting the accused. We are in complete agreement with the view taken by the High Court. The present appeal is accordingly dismissed."

"My Values Are Not In Consonance With The Current Functioning Of EC": Election Commission's Panel Counsel At Supreme Court Resigns

Stating that his current values are not in consonance with the manner in which the Election Commission of India is functioning, its panel counsel in the Supreme Court, Mohit D. Ram, has tendered his resignation. In the letter he has stated, 'It was an honour to represent the Election Commission of India (ECI). I had a cherishing milestone of my career, in the journey which began with being part of the office of Standing Counsel of ECI and progressed as one of the panel counsels of ECI (since 2013).

However, I have found that my values are not in consonance with the current functioning of the ECI; and hence I withdraw myself from the responsibilities of its panel counsel before the Supreme Court of India. I undertake to ensure smooth transition of files, NOC and vakalatnamas in all pending matters with my office.'

In related news, the Supreme Court on Thursday dismissed the plea made by the Election Commission of India to restrain media from reporting the oral remarks of judges.

We Want Union To Supply 700 MT Oxygen To Delhi On Daily Basis, We Mean Business': Supreme Court Directs Centre

The Supreme Court has clarified that it wants Central Government to continue supplying 700 MT of liquid medical oxygen to Delhi on a daily basis until further orders. A bench comprising Justices DY Chandrachud and MR Shah told Solicitor General Tushar Mehta that an order to that effect has been passed, which will be uploaded during the course of the day. "We want 700 MT to be supplied to Delhi on a daily basis. We mean business. Please don't force us to be in a situation where we have to be firm," Justice Chandrachud told Solicitor General Tushar Mehta. "The purpose is to ensure that the supplies which have been allocated are reaching their destination; that they are being made available through the distribution network to the hospitals or, as the case maybe, the end users efficiently and on a transparent basis; and to identify bottlenecks or issues in regard to utilization of oxygen."

LEGAL NEWS AS ON 8TH MAY 2021

1. Justice delivered: How Indian agencies pooled resources to help a wronged Indian couple in Qatar

Amid the complete chaos of politically motivated cases and indictments in India, there still remains the silver lining of judgment, of powerful investigating agencies doing their duties as they should. An example of this came to light recently, when a newly wedded couple unknowingly fell into a drug-mule trap and spent two years in a Qatar jail, before Indian agencies secured their release and also caught the criminals. It is justice delivered, almost like a Bollywood movie script.

It was the great work of the Narcotic Control Bureau (NCP), Mumbai Police, the PMO, the Foreign Ministry and the Indian Embassy in Qatar, who, all together, finally secured the release of the couple.

The Mumbai couple, Oniba and Shariq, were college friends and lovers, who finally married in April 2018. However, their happy soon turned into a nightmare when, on July 4, 2019, Shariq received a call from his aunt Tabassum, offering him a four-day honeymoon package, fully sponsored by her, to Qatar. The offer from his aunt was there since his marriage, but they were not eager to take it up.

But Tabassum's insistence finally had its way and the couple accepted the offer. The flight was booked via Bengaluru, even though direct flights were available from Mumbai. Hotel arrangements had already been made by his aunt. Tabassum gave him a bag, saying that it is a parcel for Tabassum's relative. "You just have to deliver it in Qatar," Tabassum had said. Shariq had asked his aunt about the contents of the bag, but she had convinced him that it

was nothing but 'Manikchand Zarda' which is not available in Qatar. She also instructed them how many sets of clothes they were to carry,

On July 6, 2019 Shariq, along with his three-month pregnant wife, landed in Doha, Qatar where immigration authorities asked them to pick up their luggage were taken to the customs office where they were asked to wait.
Customs officials asked them to take out all the goods from their suitcase – the one Tabassum gave – and when they put the blank suitcase in the scanner, things went wrong. 4kg and 10 gram of hashish (charas) was found in the bag. The couple was immediately taken into custody and presented before the lower court which gave them a 10-year prison sentence.

In Mumbai the family of the couple was waiting to ask them about their well-being, but when they got no call in a few days, family members approached Tabassum. Initially, she denied any knowledge of their whereabouts, but later admitted that they had been caught with drugs by Qatar customs. She also confessed that the drugs were in the bag she had given them.
Shariq's family immediately rushed to Qatar and with the help of a local advocate they filed an appeal in the higher court of Qatar with some additional evidence. However, no proof was taken into consideration by the higher court and in October 2019 higher court upheld the lower court's order and send them to 10 years of imprisonment.

Somehow, the family managed get the mobile phone of Shariq from which all the phone call recordings were available between the Shariq and his aunt Tabassum.

After the family came back to India, they filed an FIR with Mumbai Police against Tabassum and her associate Nizam Kara. Later, Nizam Kara was arrested with 11gm of drugs. Nizam Kara was sent to jail. Mumbai Police was unable to proceed further in the case, since they had limited powers in the case where the issue involves two countries.

In October 2019 the father of Oniba, Shakeel Ahmed Qureshi, wrote a letter to the Director-General of the Narcotic Control Bureau (NCB) and narrated all the incidents and also submitted the mobile phone of Shariq in which all the call recordings between Tabassum and Shariq were available.

The call recordings prima facie proved the innocence of the couple and that they had been trapped by their aunt Tabassum. DG RakeshAsthana immediately acted on the same and formed a team headed by Deputy Director of NCB KPS Malhotra, who was in the news during the actor Sushant Singh Rajput death case.

Surveillance was put on Tabassum and Nizam Kara, but Nizam Kara was in the custody of Mumbai Police. NCB waited for his release. In the meantime NCB got the lead that the wife of Nizam Kara, Shaheeda Kara, was about to send a couple out in the same way as Oniba and Shariq was send with drugs in a bag. This time the drug was to be supplied from Kullu. NCB raided and arrested four people with 1.5kg drugs, along with Rs 3 lakhs in cash.

The arrested people confessed that this was given by Shaheeda Kara. NCB arrested Shaheeda Kara and Nizam Kara but that was March 2020 and the whole nation went into lockdown. The operation was put on hold.

During interrogation Tabassum and Nizam Kara accepted that the drug was given by them to Oniba and Shariq and the couple has no clue about the same.

A similar confession was made before the Mumbai Police also, but since confessions before the police are not admissible in court under section 25 of the Evidence Act, therefore it is not admissible in any court of any other country either. However, under section 67 of the NDPS Act, any statement made before NCB is admissible in Indian Courts, therefore it is also admissible in the Courts of other Countries.

NCB Director Rakesh Asthana contacted the Prime Minister Office and the Foreign Ministry and through the Indian Embassy, presented all the proofs to the Qatar administration.

An appeal was filed in the Supreme Court of Qatar and on January 11, 2021, the Court directed the lower court to hear the matter again and lower court fixed the hearing for March 29, 2021. On the day of Holi, the Qatar court found them innocent and they were released, with their daughter Aayat, born in custody and by now one year old.

2. SC's Juvenile Justice Committee takes stock of child care, protection during Covid second wave

The Juvenile Justice Committee of the Supreme Court of India in coordination with UNICEF held a review meeting and took stock of actions taken by various states on child care, protection and well-being of children during the second Covid-19 wave.

They deliberated upon the possible measures and actions need to be taken to ensure every child in need gets appropriate care and protection during this difficult time. The review meeting was held with the Chairpersons and Members of Juvenile Justice Committees of various High Courts.

The conference was also attended by the Joint Secretary, Ministry of Women and Child Development (MWCD), Government of India and officials of Departments of Women and Child Development/Social Welfare Departments, Health Department from various states and union territories.

Justice S. Ravindra Bhat, Judge, Supreme Court of India and Chair of the Supreme Court Juvenile Justice Committee, emphasized the need to step up measures to ensure better care, protection, and well-being of children. The chairperson said some children have lost either one or both parents to Covid-19 and there are children without parental supervision and care when their parent/s are in hospital or under medical care. These children are more vulnerable now than ever before. Concerted efforts should be made by all key stakeholders to ensure the care and protection of children during the second wave of Covid.

Justice Bhat further stated on the need to develop a mechanism to address interim care needs of orphans, separated, or unaccompanied children, including clear guidance on steps to be taken in the event such a child has been exposed or has symptoms of the virus and requires a period of isolation and treatment. He further emphasized that care-givers and employees of care institutions- both government managed and private, should be vaccinated, as frontline professionals and also that the services of these institutions should be declared as essential services.

Judges of all High Courts and officials of various States/Union Territories presented measures being undertaken in their respective states. Some of the measures by the state and union territories are setting up a state-level nodal officers and district taskforce for rapid response for care and protection children during the current pandemic, sponsorship for the children lost parent/s or the bread earners lost income or facing economic hardship. High Court juvenile justice committees represented by judges, as well as state and Union Territories also highlighted the measures they are taking to stop the spread of Covid-19 in child care institutions and the medical treatment and care of the children who contracted the disease.

Aastha Khatwani, Joint Secretary, Ministry of Women and Child Development, Govt. of India said, “Considering the emergency need, Ministry has issued the advisory to stop illegal adoption and care and protection of the children who have lost one either or both the parents to Covid.” She added the Ministry has developed clear, coordinated, easy to understand, community messaging on children’s unique risks, vulnerabilities and need of care and protection during Covid-19 and these messages are disseminated and broadcast through social media and other channels.

Vandhana Kandhari, Child Protection Specialist, UNICEF India, highlighted, “In most cases, parents will be able to rely on other family members and relatives to step in to care for their children when they are in hospital or under medical care; however, in some cases, alternative care arrangements will be needed. Efforts to pre-emptively scale up the capacity of family-based care and social protection systems are critical to enhance family resilience and prevent unnecessary recourse to residential care.”

Kandhari further added, “In order to provide interim care to the children, extended family members, trusted friends, good neighbours and or community members can be declared “fit person.”

3. Plea in Supreme Court seeks direction to Ministry of Corporate Affairs to fill up vacancy of NCLAT chairman, NCLT president

A plea has been filed in the Supreme Court seeking direction to the Ministry of Corporate Affairs to fill up the vacancy of the Chairman of NCLAT and President of NCLT without any delay.

The Plea also sought, inter-alia, the following direction to Ministry of Corporate Affairs:-

- Appointment to the selected candidate, in pursuance of the selection procedure initiated by the Respondent No. 1 in 2019.
- To expedite the process of recruitment and to fill up the existing vacancies and vacancies of members of NCLAT and NCLT likely to arise in May and June 2021.
- Direction to extend the term of the Members of the National company Law Appellate Tribunal and National Company Law Tribunal' for 5 years, who shall be completing their tenure by May and June 2021.

The plea highlighted that the existing strength of the NCLAT consists of its officiating chairperson and a total number of members, which is below than the sanctioned limit of 11 members and NCLT consists of its Acting president and a total number of 38 members, which is below than the sanctioned limit of 63 members.

The plea read that one of the Technical Members of the NCLAT and 6 members of the NCLT, shall be completing their tenure of 5 years in May and June 2021, but they shall have enough period of service left for them to serve, till they attain their age of 65 years or 67 years, as the case may be, in terms of the Companies Act.

The plea pointed out that the ongoing Covid-19 pandemic has caused a delay in the entire selection process of the members for the NCLAT and NCLT. The process for recruitment of members of the NCLAT and NCLT which was initiated during the year 2019 has been held up, as no appointment of new members has been made, till date. And several selected candidates for the post of members of the NCLT have not received their appointment letters by the Ministry of Corporate Affairs.

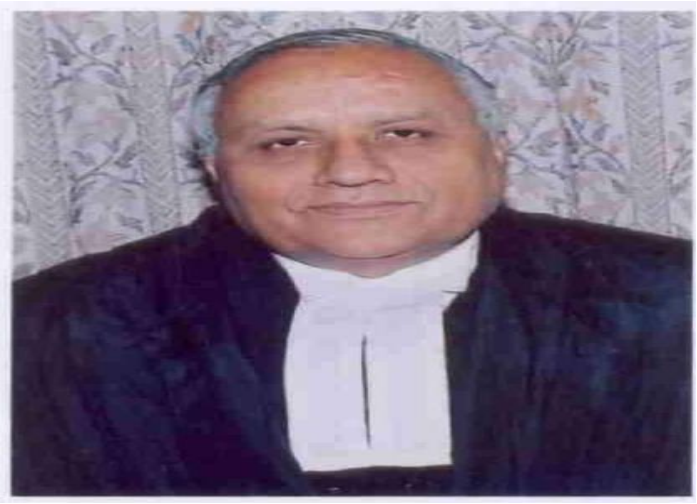
Therefore, the plea urged that due to delay in appointment, there is a dire need of strength of members in the NCLAT and NCLT

On January 29th, 2021 National Company Law Tribunal & Appellate Tribunal Bar Association made a representation to Ministry of Corporate Affairs to consider the reappointment of the Members for another term in the NCLAT and NCLT, so that Tribunals can function smoothly, without depriving the litigants of their rights.

To which Ministry of Corporate Affairs replied via its letter of 9th April that a member willing to be considered for re-appointment for another term of five years, subject to the age limit provided in the companies Act, has to apply in response to the advertisement to be issued for selection and appointment of the members at appropriate time.

The plea raised the concern that no further process of recruitment has been initiated to fill up the large number of existing vacancies and the more vacancies are likely to arise in the May to July 2021.

4. Ram Janmabhoomi dispute verdict judge passes away, Justice Dharamvir Sharma was 74



Retired Justice Dharamvir Sharma, who was part of the Lucknow bench of the AllahabadHigh Court that gave the landmark verdict in the Ram Janmabhoomi title suit on September30, 2010, died on Friday.

The 74-year-old Sharma resided in Sector 12, Noida. He had been hospitalized in Noida on Friday morning when his condition deteriorated.

Justice Sharma was born in the Haveli family of Danpur Nagar in Bulandshahar. He did his graduation in Arts in 1967 and passed LL.B. in 1970.

He served as Principal Secretary, Parliamentary Affairs, Government of Uttar Pradesh, Lucknow from August 2003 to August 2004 and Principal Secretary (Judicial) and L.R. Govt. of U.P., Lucknow from Aug. 2004 to Oct. 2005.

Dharamvir Sharma was appointed in P.C.S.(J) in the year 1972 and promoted in Higher Judicial Service in the year 1985. Later promoted in the year 2002 as District and Sessions Judge. He took oath as permanent Judge of the Allahabad High Court on September 17, 2007.

Sharma, who was unmarried, was the eldest of six siblings. He believed in the principle of simple living – higher thought. The great proof of his simplicity is that despite being held in such a large and respected position, he used to cook his own food.

Sharma delivered the landmark Ram Janmabhoomi verdict as part of the three-member HC bench. He retired the next day.

In the verdict, Justice Sharma differed from the other two Justices S.U. Khan and Sudhir Aggarwal. While Justices Khan and Aggarwal said the land should be divided into three parts and an equal share should be given to the Hindu community, the Sunni Waqf Board and the Nirmohi Akhara.

But Justice Sharma said the disputed campus is the birthplace of Lord Ram. At this site, Mughal ruler Babur broke the temple and built a mosque, so the entire campus should be given to Hindus, he had said in his differing opinion.

5. BCI writes to CJI: Alleviate the sufferings of advocates and judges

The Bar Council of India (BCI) on Friday requested the Chief Justice of India (CJI) and other brother judges of the Supreme Court to pass appropriate order/ directions to alleviate the sufferings of advocates, judges, their staff, and families devastated by the second wave of Covid-19 across the country.

The BCI's request was in the light of its May 5 resolution which was taken by the body after a flood of letters it received from various state bar councils and bar associations of the country highlighting the plight of lawyers during the second wave.

The general council of the BCI passed the resolution requesting and authorizing the chairman of the BCI, Manan Kumar Mishra, to write to the CJI, also treating it as a letter-petition concerning the state of legal fraternity from the metro cities to remote towns.

The BCI has requested the CJI to treat the letter /PIL to be listed urgently or as an Interlocutory Petition in the present Covid-19 concerning suo-motu writ case.

The BCI has made the following prayers:

1. Appointment/ Designation of District Judge(s), Registrar General(s) of high courts and Supreme Court as nodal officers for facilitating and extending medical assistance to advocates and judges, their family members and staff.
2. Directions for state government and district administration to provide oxygen supply to the advocates and judicial officers, their families and staff upon request of state bar council/ bar association(s) to the nodal officers if any advocate is capable of managing the illness at home.Advocates and their families and staff should be provided with oxygen immediately, bed or ICU bed in Hospital, or Remdesivir (or any other prescribed life-saving drug) on recommendation of concerned nodal officer. In case of judicial officers/ judges, their families and staff, no need of recommendation of bar association is required.

The letter reads: “In the last few weeks, the bar in the country starting from the Supreme Court to the trial courts has lost many eminent and brilliant advocates and judges. This is a huge loss not only to the bar and bench, but, to society also and for the administration of justice as a whole. During the pandemic advocates, judges and court staff are also currently working and serving the society like doctors, medical workers, police and media persons.”

6. West Bengal govt moves Supreme Court seeking free Covid vaccine across the country

The West Bengal government has filed a plea in the Supreme Court, demanding free vaccination against Novel Coronavirus for the entire country.

The affidavit was yesterday filed in the case, where the Supreme Court has taken Suo Motu Cognisance for the distribution of essential supplies and services during pandemic.

The plea said, "The Covid-19 vaccination policy must be underpinned by the principle that we are as strong as our weakest link. A single person deprived of vaccination would be to the collective detriment of a large section of society." Therefore, not a single person should be left without administering vaccination, it added.

The petition contended that Article 21 of the Constitution provides Right to Life and also covers the under-marginalised, poor people of the country, who cannot afford vaccine. Hence, the Central Government should make the vaccine of Covid-19 free of cost.

The plea highlighted, "Currently, only 1.54 percent of the Indian population has been fully vaccinated and only around 8.4 percent of the population has received one dose of the vaccine. If India wants to cover at least 80 percent of its eligible population, or 80 percent

of the population above 18 years of age by the end of this year, then it must increase its vaccination rate by about 100 million or 13 doses per month.

LEGAL UPDATES OF 09TH MAY :-

1. Senior advocate R Shanmugasundaram will be next advocate general of Tamil Nadu:- The development comes after the Dravida Munnetra Kazhagham (DMK)party led by MK stalin. He formed new government in Tamil Nadu to their success in the recently assembly elections. On 1st May , a day before the declaration of elections results, former advocate general Vijay Narayan had resigned from the post.

Shanmugasundaram had earlier served as a member of parliament in the Rajya Sabha , representing the DMK party . Prior this, he had also served as a state public prosecutor.

2) Do not compromise with subjugation, discrimination, violence :-Justice GitaMittal was speaking at the biennal conference of the International Association of women judges (IAWJ) where she was also presented with Airline Pacht Global vision award 2021. The COVID-19 pandemic, like all other adversities, have had a disproportionate impact on women, she said while expressing hope that the pandemic ends soon and normalcy is restored.“Let your pens speak up for rights, my sisters – do not compromise with subjugation, with discrimination, with violence of any genre or

hue. Let each of you be celebrated for your impartiality, your commitment, your honesty, your humility, your hard work and your fairness," she said. Justice Mittal is the first Indian judge who received this award. The other recipient of the award this year is Margarita Luna Ramous from Mexico. The IAWJ, founded in 1991, is an ecosystem more than 6000 global women judges from over 100 countries. Many distinguished jurists of the International community have been its members including chief justice Brenda Hale from the UK, Beverly Mc Lachlin from Canada; Georgina wood from Ghanal, Dame Sian Elias from New Zealand ; Graciela Dixon from Panama; Sushilakarki from Nepal and several Supreme court judges among others. From the Indian judiciary , justice Sujata Manohar and Justice Ruma Pal from the Supreme court and several High court judges have been its members. Justice Mittal has been a member of IAWJ since 2005.

Justice Mittal said that the faith instilled by sister judges at the IAWJ led her to undertake path breaking judicial initiatives and interventions. Justice Mittal started her law practice in 1981 and was appointed as judge of Delhi High court in 2004. She took charges as acting chief justice of Delhi High court in 2017 and thereafter sworn appointed as chief justice of

Jammu and Kashmir High court in 2018. Currently, she is the chairperson of the Broadcasting content complaints council and a member of many non-governmental organisations. She had earlier received Nari Shakti Purushkar award in 2018. In year 2019 , she was bestowed with the justice PN Bhagwati award by the capital foundation in recognition of her outstanding contribution in the field of judicial administration.

3) Non-compliance with deadline under Section 35 of POCSO Act will not entitle accused to default bail: Karnataka High Court :-

The Court issued a few directions to ensure effective implementation of the Act Non-compliance of Section 35 of the POCSO Act cannot be the basis for releasing the accused on bail as that would be a misreading of the provision.Karnataka High Court further observed that there maybe be many reasons for which trial under POCSO may be extended to over a year. However, the same does not translate as a right for the accused to be released on bail against the interests of the child.

"As discussed above, there may be various reasons and circumstances beyond the control of the Special Court under which the conclusion of the proceedings within a period of one year may not happen. As already noted, the reasons for the same have been discussed above. Under such circumstances, the accused cannot enforce the right to be released on bail. No such right is envisaged under the said provisions of the Act and the same cannot be read into it by way of an interpretation which may go against the interest of the child victim".

Background :-

HanumanthaMogaveera, who was arrested under the POCSO Act, approached the Karnataka High Court seeking bail as the proceedings before the special court were not completed within a year. He relied on the order of High Court in Vinay v. State of Karnataka to buttress his case. However, a single judge dismissed the plea observed that the expression "as far as possible" is used in Section 35(2) of the POCSO Act has to be borne

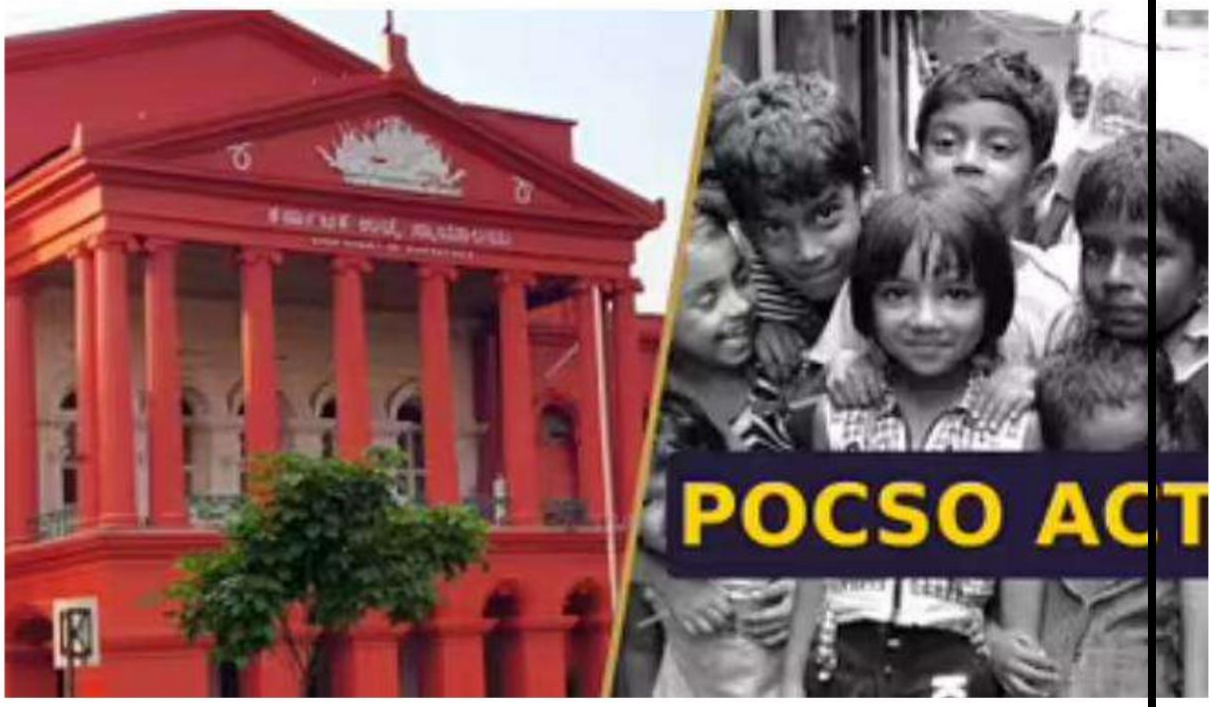
in mind while reading the intent of the Act. Since, this position was in conflict with order in Vinay, the matter was referred to a Division Bench.

Judgment :-

When the matter came up, before the Bench, it looked into the legislative intent of Section 35 of the POCSO Act which provides for completion proceedings of cases within one year."The main reason being, the victim child must not only be rendered speedy justice but, at the same time, it is necessary to get over the legal proceeding at the earliest, so that the child could concentrate on rehabilitation and get on with his or her life. Prolonging the trial before the Special Court for years together, like any other sessions case, would be futile and frustrate the intention of the parliament as well as the object of POCSO Act," the judgment noted.

Further, the Court noted that in Section 35, the expression "as far as possible", is used by the Parliament, having regard to the genuine difficulties faced in the conclusion of a trial concerning a victim child. The Court also said that the docket explosion under the POCSO Act is not commensurate with the sufficient number of Special Courts being constituted with the requisite human resources as well as infrastructure to deal with POCSO cases.It may be practically impossible for the trial court to conclude the trial within one year from the date of cognizance by the said Court in a majority of the cases, opined the Court.

The Bench also held that the statement recorded under Section 164 of the Code of Criminal Procedure cannot be considered to be evidence under Section 35 of the POCSO Act."Section 35 of the POCSO Act, being under a special enactment, would prevail over the general provisions of Cr.P.C., particularly when there is any inconsistency between the said Section and Cr.P.C., as per the provisions of Section 42A of the POCSO Act," the judgment said. On the dictim of the order in Vinay vs. State of Karnataka, wherein the accused was granted bail on the premise there has been a delay in recording evidence, the Court held that the same is 'not good law' and therefore, it cannot be a precedent for future cases. With these observations, the Court rejected the bail application of the accused and disposed of the plea.



4)If SLP is dismissed by Supreme Court without granting leave, High Court will not be precluded from exercising review: Jammu & Kashmir High Court.When Supreme Court dismisses SLP without granting leave to appeal by way of a non-

speaking order, such an order would not stand substituted in place of the order under challenge, the High Court.

4) Justice DK Basu, former judge of Calcutta High Court and petitioner in DK Basu v.State of West Bengal, passes away.

In D.K Basu vs. State of West Bengal, Supreme Court had taken cognizance of custodial torture and deaths and laid down detailed guidelines for police to follow while making arrests and detention.

1. Health activist moves SC, seeks uniform protocol for Covid treatment, calls for national body of experts

The Supreme Court on Thursday will hear a petition seeking directions to the Centre to constitute a body of experts at the national level who shall formulate a standard protocol of treatment about the line of treatment and/or usefulness/requirement of any particular medicine. The plea stated that the same shall be given wide publicity in English, Hindi and regional languages so as to dispel any misgivings about the medicines.

The petition will be listed before the three-judge bench of Justices D.Y. Chandrachud, L. Nageswara Rao and S. Ravindra Bhat. It also seeks directions to be issued right from the stage of testing of Covid followed by proper treatment as per the standard protocol formulated by the national body of experts.

It further seeks directions that the expert body so constituted at the national level should continue to function and review/revise the treatment protocol and suggest additional guidelines from time to time as the virus is mutating (changing its form and nature) and may continue to mutate and therefore, national preparedness for any emergency situation should not only be for the present but also for the future.

The plea has been filed by health activist and public health expert Amulya Nidhi through AOR Abhimanue Shrestha and settled by Senior Advocate Sanjay Parikh.

The petitioner has submitted that the present petition has been filed under Article 32 of the Constitution of India in extreme urgency and required to be considered by the Court at the earliest so that people who are facing the severity of coronavirus or its mutants do not continue to remain in panic and suffer due to uncertainty and confusion regarding clinical diagnosis, treatment and hospitalization at various stages of the corona mutant.

It said, "The said body of experts should continue to function till the corona crisis continues as the virus has a tendency to mutate (change its form or nature) creating further complications. This body should be independent and transparent, providing correct information to the people. This is now required in the national interest. People have a right to know, under Art. 19(1)(a), about the correct protocol of treatment and to protect their health and life from the deadly corona infection, under Art.21.

2. Flight crew breath check: Delhi HC asks DGMS to consider if test can be held in open because of Covid aerosol fears

The Delhi High Court has asked the Director General Medical Services (Air) to consider whether the breath analyzer test (BAT) can be conducted in an open area with mobile electrical connectivity so that the spread of coronavirus through suspended particles/ aerosols in a confined room can be avoided for the safety of the cabin crew, ATCs and pilots.

The Delhi High Court vide order dated 27th April 2021 sought a report from the Medical Committee formed by the DGMS (Air) on the issues related to continuation of Breath Analyzer Test were raised to which the Committee has commented-The learned counsel,

Anjana Gosain, appearing for Director General Medical Services (Air) submits the document which lays down the Compliance protocol of Civil Aviation Requirements

with modifications carried out by the DGCA in respect of the number of crew members, cabin crews, ATCs which says" 10% of flight crew member and the cabin crew member shall be subjected to random preflight Breath-Analyzer test for entire operation of an Organization of India" and "ATCO shall be subject to random Breath Analyzer test before commencement of duty at each station on daily basis."

The counsel further submitted that the last order the DGCA, obtained data from various airlines which reveals that most of the airlines are conducting testing using breath analyzers, which is much higher than 10% and in some airlines, even close to 30%.

The learned counsel, Piyush Sanghi appearing for Air Traffic Controllers (ATC) raised an apprehension before the Court that the breath analyzer test is conducted in an enclosed space and that the air blown into the equipment is released out in open from the other end by placing reliance upon the judgment of this Court in Saurabh Sharma v. SubDivisional Magistrate (East) &Ors. [W.P.(C) 6595/2020, decided on 7th April, 2021] and studies by various international agencies, including the WHO and LANCET that it is now established that Covid-19 spreads through aerosols and droplets which are suspended in the air.

The court, on May 5, after hearing the counsel for the parties and considering the data asked the DGMS (Air) to consider the following issues in compliance of its previous order dated 27th April 2021-

i) Whether the BAT can be conducted in an open area with mobile electrical connectivity so that the spread of Covid-19 through the suspended particles/aerosols in a confined room can be avoided for the safety of the cabin crew, ATCs and pilots?

ii) Whether the DGMS (Air) approves the percentages mentioned in the order dated 27th April, 2021 or should the same be random for all categories of employees – i.e., ATCs, pilots and cabin crew?

iii)Whether the cabin crew, ATCs and other personnel who have to undergo the BAT could be first subjected to a rapid antigen test and thereafter be made to undergo the BAT?

iv) Whether the percentages need to be changed and if so, to what extent.

The court further directed the airlines to strictly abide by the percentage of testing which are mentioned in the 27th April, 2021 order issued by the DGCA and accepts the said opinion of the Committee that the blood alcohol testing is not possible at this point.

3. Declare Covishield essential commodity, cap price at Rs 157 per vial, says plea in Supreme Court

The Supreme Court on Thursday will hear a plea filed by ChirumamillaKranthi Kumar seeking directions to quash the liberalized pricing and accelerated national Covid-19 vaccination strategy and to declare Covishield vaccine as an essential commodity.

A bench of Justices D.Y. Chandrachud, L. Nageswara Rao and S. Ravindra Bhat will hear the plea which has alleged that the Serum Institute's profiteering and vulture-like pricing shouldn't be allowed to remain and a price cap of "cost price" for the time of the pandemic should be imposed based on the following premises.

Firstly, the Serum Institute of India neither invented the vaccine nor is paying any substantial royalty to the inventors for the time of the pandemic. They obtained sub-license to make vaccine easily available to lower and middle income countries likes India at no profit or minimal profit pricing and it was alleged that the Serum Institute is violating the policy.

Secondly, the profiteering of the Serum Institute of India at jacked up prices to the tune of over 380% of the already profit-making prices is severely limiting the access to the lifesaving vaccine in the midst of the pandemic and is causing consumer harm and is therefore denying the Right guaranteed by the Article 21.

Thirdly, the Clause 8 (ii) of the "Liberalized Pricing and Accelerated National Covid19 Vaccination Strategy" further allowed the vendors to choose the prices at which they would sell 50% of the vaccines produced at a price other than that which is sold to the Central Government (Rs 157.5), such discriminatory order should not be allowed to sustain.

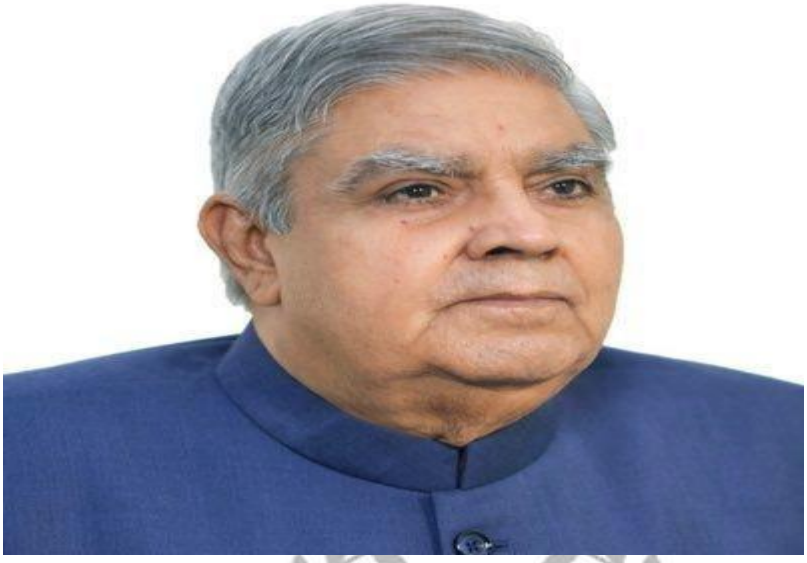
Fourthly, the discriminatory Vaccine Pricing strategy of the Union government will drain the coffers of the already incapacitated state governments during the pandemic and would impact the state's ability to utilize the money on critical medical infrastructure.

Fifthly, it is necessary and expedient that the Union Government declare the Covishield vaccine as an essential commodity and to announce an affordable and no profit price invoking the powers under Section-3 of the Essential Commodities Act, 1955 for increasing the supply at fair prices.

Sixthly, the Serum Institute is holding a dominant and monopolistic position in the Covid-19 vaccine market of India by holding over 80% of the market share whereas same vaccine is being sold in developed markets like European Union (EU) for 2-3 US dollars, which is considerably less than the prices sold in India.

The present petition has been filed in regard with hiked price of Covishield vaccine by Serum Institute, Pune and suspend the operation of Liberalized Pricing and Accelerated National Covid-19 Vaccination Strategy proposed by the Ministry of Health and also asked to appoint a fact-finding committee to ascertain the true cost of the vaccine by SII.

4. Dhankhar orders CBI investigation, but how?



The West Bengal Governor, Jagdeep Dhankar, has sanctioned a Central Bureau of Investigation probe into certain Trinamool Congress ministers – Subrata Mukherjee, Firhad Hakim, and Madan Mitra – as well as a former Trinamool and current BJP leader Sovan Chatterjee – who were allegedly involved in the Narada scam. This is a stated fact, as of now. However, the debate may arise as to whether the Governor has the power to sanction such an investigation when the state government has withdrawn its consent to the CBI for any fresh probe into cases in West Bengal.

Technically, the CBI's primary jurisdiction is confined to Delhi and the Union Territories. This is because the CBI draws its power from the Delhi Special Police Establishment (DSPE) Act. The Home Ministry, through a resolution, set up the agency in April 1963. Under Section 5 of the Act, the Central government can extend its powers and jurisdiction to the States, for the investigation of specified offences. However, this power is restricted by Section 6, which says its powers and jurisdiction cannot be extended to any State without the consent of the government of that State.

Hence withdrawal of consent by a state government means the CBI cannot investigate a new crime – it can still investigate an old case that it had already been investigating before withdrawal of consent by the state government, which is not the case here – in West Bengal.

The press release from the Governor's House in West Bengal takes shelter under a curious argument. A May 9 statement by the Governor's office said: "Governor Jagdeep Dhankhar has accorded sanction for prosecution in respect of Firhad Hakim, Subrata Mukherjee, Madan Mitra, and Sovan Chatterjee, for the reason that all of them at the relevant time of the commission of the crime was holding the position of ministers in the Government of West Bengal."

5. Delhi Police issue lookout notice for Navneet Kalra in oxygen concentrators black marketing case

A lookout notice has been issued on Monday against the main accused Navneet Kalra in the case of recovery 524 oxygen concentrators from three restaurants, including Khan Chacha, located in Delhi's Khan Market.

Meanwhile, the accused has filed an anticipatory bail plea in Delhi's Saket court. The court refused to grant anticipatory bail to the accused. Now the matter will be heard tomorrow. The Court has asked the Delhi Police to file an reply on the anticipatory bail plea of businessman Navneet Kalra.

Kalra, the main accused in the recovery of 524 oxygen concentrators from the hotels, is still absconding. Several teams of the crime branch have raided more than 20 places in Delhi, UP and Uttarakhand in search of the accused, but no clue has been found.

It is said by the Police official that Kalra mobile phone went off at his farm house in Chhatarpur shortly after raiding Khan Chacha Restaurant on Friday. During the investigation, the police have learned that Navneet, along with his entire family, has left Delhi with two luxury cars and is suspected to be hiding in Uttarakhand.

A senior Delhi Police official said that the police team had raided Navneet's farm house and Sainik Farm's house in Chhatarpur, South Delhi, to investigate the case, but the accused was not found there. Police has collected some evidence from both the places.

The police has come to know that the accused had sought a consultant from China through a private company. Nearly 150 of these contractors had sold by the employees of Navneet Kalra. Apart from this, the accused had also taken advance rupees in the name of the oxygen concentrators from many people.

6. Centre says vaccination policy arrived at after several rounds of discussion

The Central Government defends vaccination policy before the Supreme Court saying that the policy was formulated after several rounds of discussions with experts, State Govts and vaccine manufacturers.

In the affidavit filed by Govind Mohan as Additional Secretary, in the Ministry of Home Affairs contended that the policy was framed keeping in mind limited availability of vaccines, the vulnerability of age groups, and the fact that vaccinating the entire country was not possible in one go due to the suddenness of the pandemic, as the prime considerations.

The Central informed the Apex Court that the differential pricing of coronavirus vaccines is intended to create an incentivised demand for private producers, resulting in market-driven low prices.

The Centre also stated that the price factor would have no effect on the ultimate beneficiary, i.e. the individual who is qualified to receive the vaccine, since all state governments have already announced their policy decision that each state will provide vaccine to its citizens at no cost.

The Centre said that in the times of such grave and unprecedented crisis which the nation is fighting the disaster of an unprecedented magnitude, the executive functioning of the government needs the discretion to formulate policy in the larger interest.

In an affidavit in a suo motu case initiated by the apex court over Covid-19 management in the country, the center said that "In the context of a global pandemic, where the response and strategy of the nation is completely driven by expert medical and scientific opinion, there is even little room for judicial interference. Any overzealous, though well-meaning judicial intervention may lead to unforeseen and unintended consequences, in absence of any expert advice or administrative experience, leaving the doctors, scientists, experts and executives very little room to find innovative solutions on the go."

7. Punjab Government to make NCERT, CISCE certified books for private unaided schools mandatory, says Punjab and Haryana High Court

The Punjab and Haryana High Court recently has issued notice to the State in the plea filed by the CBSE Affiliation Schools Association challenging the order of the Punjab Government to make it mandatory upon the private unaided schools to prescribe only those textbooks published by the institutes and certified by the NCERT and CISCE. (CBSE Affiliated Schools Association v State of Punjab &ors)

A bench of Justice Sudhir Mittal has sought the response of the State Government on a plea which has challenged the Government order dated 12.03.2021 issued by the Office of Director Education Department, Punjab as well as letter dated 09.04.2021 issued by the Secretary School Education, whereby schools affiliated to CBSE/ICSE and Punjab School Education Board have been directed to prescribe only NCERT/CISCE authorized textbooks.

Earlier, the senior advocate appearing for CBSE affiliated school association submitted that the orders released by the Education Department is contrary to the circular released by CBSE which states the Rules of Recognition do not empower the Punjab Government to lay down such restriction.

The petitioner Association contended that the members are being forced to prescribe only NCERT and CISCE approved text books under the threat of withdrawal of recognition/ NOC, which is totally illegal and high-handed. The session is in progress and students are likely to suffer in case the threat of withdrawal of recognition/NOC is carried out.

SUBMITTED BY – RITU GOYAL

11th May Legal Update:

Constitutional right of a person in detention to consult with the lawyer of his choice cannot be diluted by the state: Delhi High court grants relief to Shifaur Rehman.


Observing that it is a constitutional right of a person in detention to consult with the lawyer of his choice which cannot be diluted by the state, The Delhi High court has last week granted relief to Shifa Rahman president of the alumini association of the Jamia Millia Islamia arrested charged under UAPA in connection with the Delhi riots that break out in the national capital last year.

Background of the case:

The petitioner claims that the impound order has been passed in violation of the principles of natural justice and his violation of rights under article 21 of the constitution of India the petitioner claims that he was not awarded adequate opportunity to oppose the the respondents application for extension of period for completion of the investigation as he was not granted access to legal assistance despite orders passed by the concerned quotes he was not provided any opportunity to consult or instruct his lawyers. The petitioner was arrested on 26.4.2020 he states that at the material time he was in Mawana. He came that he was arrested outside Mawana and thereafter brought to Delhi he was produced before the court on the next day that is 27.4.2020 and was remanded to police custody for a period of 10 days till 6.5.2020 the police moved another application seeking extension of petitioner's custody he said application was allowed by the concerned court and the petitioners custody was extended for for the period of 10 days thereafter he was remanded to judicial custody. The period of 90

days for the completion of investigation as contemplated under section 167 of the code of criminal procedure 1973 expired on 26.7.2020, since the FIR also included of offences punishable under u a p a the provision of section 167 of the CrPC as modified by the virtue of section 43 D(2)(b)of UAPA,the period of detention could be extended beyond the period of 90 days for a period of 180 days provided that the conditions are stupid later there in work satisfied. furthermore Rehman also challenged the order dated 14th August 2020 reminding him to the police custody thereby praying from the High court that his custody beyond the period of 24th August 2020 which was the last date for completing the investigation in terms of the earlier orders passed by the concern court be declared as illegal. it was also the case of Rahman that despite various request made by his counsel to the jail authorities for granting facility of visa consultants in the same was denied repeatedly it was submitted on behalf of admin in the High court that the important order was passed in violation of principle of natural justice as he was deprived of his right to consult his lawyer and make any meaningful submission to oppose the state application for extension of time to complete the investigation moreover it was also submitted that he had not been granted a fair opportunity to be heard.

Judgement:

Analysing the status report by jail superintendent file in the matter the code opened that the same was incorrect and that Rahman was granted any opportunity to consult with his lawyer at the material time court observed that undeniably the petitioner has a right to consult a legal practitioner of his choice the petitioner was effectively denied this constitutional right to consult with his advocate for the more the code added that the principle that a person against whom an adverse order may be passed is required to be provided full material on the basis of such order may be premised is required to be curtailed to the Aforesaid extend but no further the petitioner has to be afforded an opportunity however truncated it is to present his reason why for the time for investigation may not be granted the contention that the petitioner has no right to oppose the extension of time for completion of investigation is not persuasive.

Telangana High court strictly criticised State government for stopping ambulance carrying covid-19 patients at border said at it is unconstitutional:

The Telangana High court on Tuesday criticized the state government for preventing ambulance's patience from neighbouring states from entering Telangana in the absence of prior secured hospital admission, Justice Hima Kohli Seth this is a black and violation of the constitution you are denied medical treatment of people. The state has sealed borders for ambulances transporting covid-19 patients from neighbouring states to Hyderabad. on the face of it is in gross violation of the rights of citizens protected under article 14 and 19 of the constitution that entitles the citizen to move freely throughout that territory of India without any fetters the bench said .bench enquired as to who had issued this order the court was informed that perhaps oral instructions have been made to the police officers and a proper order is yet to be issued, Justice Kohli asked how can you do this? you are stopping people from entering? without any official order and without getting the public know who permitted you to do this? as we approach the centre telling then you cannot comply with their order for free interstate movement. She said that even if the state government was proposing to impose any restrictions it was incumbent for it to issue a circular advisory informing the public well in advance as to the manner in which it proposes to moment at borders of adjoining states instead of reacting in such a" knee jerk manner".

The court has now ordered that until such an advisory is issued by the state Telangana police shall not prevent any ambulance carrying covid-19 patient in the state from another state for medical treatment, during the hearing the advocate general for the state right to defend the

move by submitting that large number of people from neighbouring states were crossing over even when there is a scarcity of beds in Telangana due to this head officials have to be

deployed and borders to verify the condition of patients he said this chief justice came down heavily upon the a for depriving medical treatment to citizen of its own country on the basis of their residence she pointed out that on an earlier occasion when the bench had inquired from this state as to whether it proposes to place any restrictions on borders from neighbouring states the state had filed an affidavit allowing to an order issued by centre providing free moment.

Justice Reddy stated that:

You cannot stop people from entering Telangana this is a very dangerous thing these are extremely critical time you can't describe people of medical treatment this is violative of article 15 and 21 how can you stop them at condition of medical certificate for admission people will come and secure admission it is there prerogative they can enter the state and secure hospital animals they are there have you referred to article 19 of the constitution he suggested that if all there is shortage of medical facilities in the state and appropriate way will be to be issued an advertisement in neighbouring states informing people that Telangana does not have space in hospitals. Now this matter is fixed for hearing on May 17.

Formation of three member pandemic public grievance committee for every district in Uttar Pradesh ordered by Allahabad High court

The Allahabad High court on Tuesday ordered the the Uttar Pradesh government to form three member pandemic public grievance committee in every district of the state to redress grievances of people with regard to covid-19 issues. A division bench comprising of justice Ajit Kumar and justice Siddharth Verma state that the committee should include chief judicial magistrate or judicial officer of similar rank to be nominated by district judge professor of a medical college to be nominated by principal of such medical college and if there is no medical college than a level of 3/4 doctor of district hospital to be nominated by chief medical superintendent of that district hospital and an administrative officer of the rank of additional district magistrate to be nominated by the district magistrate,

The court ordered:

This three member pandemic public grievance committee shall I come into existence within 48 hours of passing of this order and necessary directives to this effect shall be issued by the chief secretary up to all the district magistrates similarly in rural areas complaint can be made directed SDM of concern tehsil and he/ she will transmit the same to pandemic public grievance committee.

Allahabad High court asks state to consider enhancing compensation awarded to families of polling officers who passed away after getting infected by covid-19 during election duty from rupees 30 lakh rupees 1 crore.

The High court on Tuesday did not approve of the quantum of compensation awarded to families of polling officers who had passed away after getting infected by covid-19 during election duty, The government had earlier said that they would be given compensation of rupees 30 lakh but the court however said that the amount of compensation is very less considering the fact that the the deceased person had not volunted to render his our services during election but it was made obligatory to those assigned with election duty even while they showed their reluctance.

Court added that:

To compensate the loss of life of the bread earner of the family and that too because of the deliberate upon the part of state and state election commission force them to perform duties in the absence of RTPCR support the compensation must be at least of the tune of rupees 1 crore the amount of compensation for families polling officers who had passed away is very less it must be at least rupees 1 crore. It will become a matter of India's national security if char dham road project would be opposed: centre opposite petitioners request for adjournment.

Supreme court order on September 8 that width of char dham Highway will be 5.5m due to ecological concerns in Himalaya but mod wants it 7m for security reasons. The matter has got again a stay for 3 weeks due to covid

Background:

The SC had, on 8 September, ordered that the road width on the entire stretch — in the ecologically fragile Himalayan region — should be 5.5 metres, according to the Union Ministry of Road Transport and Highways' 2018 guidelines for major roads built in mountainous terrain. This was also recommended by the HPC. Of the total 816-km stretch of the Char Dham route that is being expanded, the highway ministry has already done hill cutting for building a 10 metre-wide road for a 537-km stretch. It has already finishing build 365 kms of the road. The defence ministry's fresh application, filed Tuesday, said in view of the "recent face-off with Nepal on the Lipulekh side in 2020, all these sectors are highly sensitive", and "critical for movement of security forces, deployment pattern, and mobilisation in case of emergency". The Centre had been in favour of a two-lane highway with a width of seven metres. However, some members of the HPC, including its chairman Ravi Chopra, opposed the Centre's proposal, contending it would be dangerous for the fragile Himalayan ecology that is highly susceptible to landslides. In its report, the HPC had cited the Chief of Army Staff's statement made in September 2019 that said the requirements of the Army in the Bhagirathi eco-sensitive zone are adequately fulfilled by existing roads.

Judgement:

A three judge bench comprising of justice Nariman, sinha and Indira Banerjee took into consideration the current situation with regard to the ecosystem and fragility of the mountain Terrains to order that the width of the road would remain at 5.5 metres. The 2018 circular

prescribes of width of 5.5 metres for the intermediate plane configuration along with two linear structures for national highways in hilly and mountain terrains. solicitor general Tushar Mehta contended that it was only a minority view of the committee that the 2018 circular be compiled with adding that since the root covers the India China border that is movement of army vehicles,the width of the carriageway must be 7 metres wide not 5.5 metres.

Refusing to accept the submission justice Nariman arrested that the 2018 circular will alone apply.

Conclusion:

The char dham project is a 900 km all weather Highway project which connects four towns state of Uttarakhand including yamunotri Gangotri Kedarnath and Badrinath. On August 8 2019 a bench comprising justice Nariman and Suryakant had modified the NGT order approving the chardham highway project and constituted a high power committee to assess and study the impact of the project on Himalayan valleys in a meeting held on July 2020 the HPC could not reach on animals decision on the road width for the proposed Highway resulting in the matter reaching before the bench. Now the matter has again on a stay for three weeks due to covid reasons.

JUDGMENT (May 13, 2021)

CASE: NARESH MAIMOM Vs. UNION OF INDIA &Ors.

This writ petition, filed in public interest, raises various issues in relation to the ongoing crisis faced by our nation due to the second wave of the COVID-19 pandemic. Primarily, the petitioner, an Advocate by profession, seeks to highlight issues and difficulties being faced by the people of Manipur due to insufficiency of oxygen supplies and hospital infrastructure. While so, it is significant to note that the Supreme Court passed an order on 06.05.2021 in Union of India vs. Rakesh Malhotra & another [Special Leave Petition (Civil) Diary No.11622 of 2021] in relation to oxygen supplies and concomitant issues. A National Task Force was constituted by the Supreme Court to facilitate a public health response to the pandemic, based on scientific and specialized domain knowledge. The terms of reference of the Task Force were detailed therein and include assessment and making recommendations for the entire country based on the need for, availability and distribution of medical oxygen, apart from formulating and devising the methodology for

allocation of medical oxygen to the States and Union Territories on a scientific, rational and equitable basis. The Task Force also has to make recommendations for augmenting available supplies of oxygen, based on present and projected demands likely during the pandemic. More particularly, the Task Force has to constitute sub-groups/committees for each State/Union Territory for the purpose of conducting audits to ensure accountability for proper distribution of oxygen supplies made available to them. These audits are to determine whether supplies allocated by the Union of India reach the concerned State/ Union Territory; the efficacy of the distribution networks in distributing supplies meant for hospitals, healthcare institutions and others; whether the available stocks are being distributed on the basis of an effective, transparent and professional mechanism; and accountability with regard to utilization of oxygen supplies allocated to each State and Union Territory. The Task Force is also to review and suggest measures necessary for ensuring availability of essential drugs and medicines and the remedial measures to ensure preparedness to meet the present and future emergencies that may arise during the pandemic. The Task Force is also to make general recommendations with regard to other issues of pressing national concern to find effective responses to the pandemic.

In the light of the comprehensive mandate visited upon the National Task Force and the committees to be constituted by it, it would be appropriate to await the suggestions and recommendations that emerge from the exercise undertaken by these identified experts and the response of the Supreme Court thereto. It would therefore not be proper for this Court to issue any directions at this stage as to how the available supplies of oxygen in the State of Manipur should be utilized. Though Mr.M.Devananda, learned counsel, would assert that the Regional Institute of Medical Sciences, Imphal, respondent No.4 herein, has a far greater requirement of oxygen compared to its present allocation, we are of the opinion that this is also an issue that would have to be placed before the committee that would be constituted for the State of Manipur by the National Task Force, in terms of paragraphNo.25 of the aforestated order dated 06.05.2021.

It would however be necessary for the State of Manipur to inform this Court as to the steps being taken for making available sufficient ICU beds; for maintaining uninterrupted power supply to local oxygen plants; and for making the oxygen plants at Thoubal and Churachandpur operational at the earliest, apart from exploring the possibility of installing more oxygen plants. The Union of India would have to indicate as to what effective measures

have been taken and are being taken in terms of the aforestated order dated 06.05.2021 passed by the Supreme Court.

Further, this Court must take note of the fact that a curfew has been imposed in various parts of the State of Manipur, including Imphal city, and citizens attending to their near and dear ones, admitted in hospitals due to the pandemic or other medical conditions, are being put to great inconvenience in providing them necessary aid and succour. This Court is informed that no facilities are available in some major hospitals, such as RIMS, Imphal, and JNIMS, Porompat, for catering to the nutritional needs of patients and food has to be supplied from elsewhere. The patients' families must necessarily attend to these needs. The State Government shall therefore ensure that appropriate measures are taken to facilitate movement of the attendants of patients for supply of essentials, including food, to them.

PLEA IN DELHI HIGH COURT SEEKS STOP ON RELEASE OF MALAYALAM MOVIE, "AQUARIUM"

The Delhi High Court is tomorrow scheduled to hear a plea by a Catholic nun urging for issuance of directions to stop the release of Malayalam film 'Aquarium', which is set to air on an OTT platform on May 14, on the grounds that it is "blasphemous" in nature and would hurt the religious sentiments of the Christian community at large.

The petitioner, Jessy Mani, is a catholic nun and a psychologist by profession - a native of Kerala, settled in Delhi. She has opposed the release of the film on the grounds that it allegedly "depicts the sexual relationship of nuns with two priests" and an "emotional relationship with Jesus Christ". The plea seeks steps to be taken by the Union of India and Saina Infotainments Pvt Ltd which runs the OTT platform "Saina Play". Starring actors Sunny Wayne, Honey Rose and Rajshri Ponnappa in lead roles, the film is alleged by the petitioner to be portraying the "religious life of catholic priests and nuns...merely as sex

toys". The plea elaborates that "there are scenes of sexual relationships among same-sex, between priests and nuns and sex with animals," which "in a highly derogatory manner," end up "tarnishing the reputation of the Catholic Church and its members." The overall effect is alleged to be "demoralizing of the the members who joined in the priestly order and nunship."

Jessy Mani states that the movie which was originally completed in 2012-13 and named 'PithavinumPuthranumParisudhathmavinum' meaning "Father, Son and the Holy Spirit", had the word Parisudhathmavinum deleted later by the producers to remain non-controversial. Further, the film was also denied certification by the Central Board of Film Certification, for violating censorship standards, after which public exhibition attempts of the movie were "dropped in 2015". However, the producers with revived hopes are releasing the movie on the OTT platform, "Saina Play" by merely changing the title. The petition prays for a writ of mandamus to direct the Union to take steps to stop the release of the movie, for being blasphemous in nature, and hurting the religious sentiments of Christians at large.

Alternatively, the plea seeks for directions to the Union and "Saina Play" to take necessary decision on its representation on the subject matter, thereby deferring the release of the movie, till a decision is taken on it.

POLICE SHOULD AVOID EXCESS FORCE AGAINST LOCKDOWN VIOLATORS: KARNATAKA HIGH COURT

The Karnataka High Court has observed that police should avoid excess force against lockdown violators. Amicus Curiae Advocate Vikram Huilgol brought to the attention of a

bench comprising Chief Justice Abhay S Oka and Justice Arvind Kumar reports about police lathicharge against violators of lockdown rules. He informed the court about the order issued by the court on March 30, 2020 by which it had directed the Director General of Police to issue a circular not to use excessive force to implement lockdown. Justice Kumar orally observed that "Excess force should be avoided. If people are not cooperating, make the people sit in the nearest police station, for the entire day." The Advocate General Prabhuling K Navadgi said "Police standing there are being exposed to corona. Statements of no force being used are all ok...but they (police) are working under tremendous pressure." Chief Justice Oka said "Ultimately, if there is a direction of lockdown, citizens should cooperate and these incidents of excess should be avoided."

The court brought to the notice of the Advocate General its order dated March 30, in which it was noted that "It will be appropriate if the Director General and Inspector General of Police of the state issues similar guidelines (As those issued by Commissioner of Police, Bengaluru) to the police personnel all over the state. If such guidelines are issued which would be applied across the state, we are sure that there may not be an occasion to make allegations regarding police excesses and police indulging in lathi charge. Navadgi requested the court to not pass any orders and said he would take up the matter with DGP himself. Accordingly the court noted "Our attention is invited to what is observed in para 2 of order dated March 30, 2020. Advocate General says he will take up the issue with concerned authority so that necessary action can be taken."

A GIRL, LADY OF 23 YEARS IS GOOD ENOUGH TO DECIDE RIGHT OR WRONG: DELHI HC GRANTS BAIL TO AMN ACCUSED OF RAPE, MAKING OBSCENE VIDEO

This is third bail application filed by the petitioner before this Court seeking bail in FIR No. 46/2019, under Sections 376/506/174A IPC, registered at police station Mukherjee Nagar, Delhi.

Petitioner's first bail application [BAIL APPLN. 3161/2020] was dismissed as withdrawn vide order dated 19.10.2020 by this Court. His second bail application [BAIL APPLN. 630/2021] was disposed of by this Court on 18.03.2021 while giving him liberty to approach the trial court tourge the pleas taken herein. Thereafter, petitioner approached the learned trial court and vide order dated 08.06.2020, his bail application was dismissed. He again moved two applications for bail before the trial court and the same were dismissed vide order dated 24.09.2020 and 31.03.2021 respectively.

At the hearing, Mr. Tanmay Mehta, learned counsel for petitioner submitted that the petitioner is innocent and he has been falsely implicated in this case. He submitted that the complaint, on the basis of which FIR in question has been registered, was filed by the prosecutrix at the instance of Rajinder Singh, his brother-in-law (Jija), who has married with

his two real sisters and is having strained relations with him. He further submitted that as per the FIR, the alleged incident took place in the February, 2018 whereas the FIR was registered in January, 2019 and no plausible reason is forthcoming for the delay.

Learned counsel also submitted that no PCR call was made by the prosecutrix in Mohali against the petitioner and that petitioner has no connection with the Wagon-R car, last digit 8500 and he never forced prosecutrix to make relations with him when he came to Delhi. He also submitted that no material has been brought on record to substantiate the.

Lastly, learned counsel submitted that petitioner has clean antecedents and no other case is pending against him and that charge sheet in this case has already been filed and also that petitioner has been languishing in jail since 03.09.2019 and trial shall take substantial time, so, petitioner deserves to be released on bail.

On the contrary, Mr. G.M.Farooqui, learned Additional Public Prosecutor for respondent/ State submitted that the allegations levelled against the petitioner are serious in nature. He submitted that the prosecutrix has alleged that petitioner raped her on several occasions against her wish and had also prepared her obscene video and whenever she refused to get physical with him, he threatened her saying that he will make the said video public. Further submitted that petitioner's threat to prosecutrix had gone to the extent of firing a gun shot on the leg of prosecutrix and in this regard two FIRs, one FIR No.173/2019, dated 03.04.2019, under Section 336 IPC and Sections 27/54/59 of Arms Act and another, FIR No. 262/2019, dated 05.07.2019, under Sections 25/54/59 Arms Act, 1959, both registered at police station Mukherjee Nagar, Delhi have been registered by the prosecutrix.

Learned Additional Public Prosecutor next submitted that petitioner/accused avoided judicial process of law and was declared proclaimed offender by the trial court. Further submitted that petitioner does not deserve concession of bail and this petition deserves to be rejected.

Learned counsel for respondent No.2/prosecutrix also appeared and supported the submissions made by leaned Additional Public Prosecutor for State and submitted that if the

petitioner is released on bail, he may again threaten the prosecutrix and influence the material prosecution witnesses.

The rival contentions raised by both the sides were heard in detail and material placed on record has been perused.

The case of the prosecution is that on 23.01.2019, respondent No.2/prosecutrix, aged 26 years, lodged a complaint that in the year 2016 when she had gone to Mohali, Chandigarh to visit her Aunt (massi), petitioner who happens to be her first cousin, forced her to join coaching classes there for bank exams. Accordingly, she joined the classes thinking that it would help her in future. But soon, she at the insistence of petitioner, missed those classes and started visiting malls, PVR, showrooms etc. with petitioner and during this time, petitioner recorded her obscene video and started black mailing her to have physical relations with her. The prosecutrix further alleged that petitioner threatened her that if she would refuse to make relations with him, he would make that obscene video public. She also alleged that after her return from Mohali to Delhi in April, 2017, petitioner on

25.02.2018 came to Delhi and reached her PG in white colour Wagon R car, last digit 8500 and took her somewhere and showed her the said obscene video and raped her in the car itself and promised her that he would delete the said video. It is further alleged that petitioner returned Mohali thereafter and did not call her, but again on 14.01.2019, he called her up and when she did not respond to his repeated calls, however, on 16.01.2019 he sent the same video clip to her on face book messenger. Thereafter, she made a complaint to the police and the FIR in question was registered against the petitioner.

There is no iota of doubt that the allegations levelled against the petitioner are serious in nature. This Court is informed that charge sheet in this case has already been filed and charge is yet to be framed. Though at this stage this Court is not required to dwell upon the merits of the case but for the purpose of grant or refusal of bail, a prima facie opinion has to be formed and, therefore, the material placed on record has been considered by this Court.

This Court has also gone through the contents of FIR No. 262/2019, dated 05.07.2019, registered at police station Mukherjee Nagar, Delhi for the offences under Sections 25/54/59

Arms Act, 1959, wherein complainant/ prosecutrix has stated that she could not notice the bike number and could not identify the bike riders, who were two boys with their covered face and had fired a shot in the earth near her legs. During investigation, though one empty cartridge was recovered from the spot but prosecutrix did not receive any injury. Moreover, in the said FIR also petitioner has not been named as an accused/suspect.

Pertinently, proceedings in the aforesaid two FIRs are independent to the case in hand and since the name of accused/suspect does not find mention therein, the prosecutrix is yet to establish how these FIRs are connected with the present case against the petitioner.

As per status report, petitioner had surrendered before the court concerned on 03.09.2019 and since then he is in custody in this case. It is not disputed that no other case is pending to the credit of petitioner. Charge sheet in this case has already been filed and trial will take substantial time. Accordingly, without commenting on the merits of the prosecution case, the petitioner is directed to be released on bail forth with upon his furnishing personal bond in the sum of Rs.25,000/-, with one surety in the like amount to the satisfaction of the Trial Court/Duty Magistrate, subject to the

Condition that:-

Petitioner shall not directly or indirectly influence the witnesses or tamper with the evidence;

Petitioner shall not directly or indirectly approach the prosecutrix or his family members;

The present petition is allowed in aforesaid terms and is accordingly disposed of.

A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information and compliance.

COVID THIRD WAVE POSSIBLE: KARNATAKA HIGH COURT DIRECTS STATE TO COME OUT WITH ACTION PLAN

The Karnataka High Court has directed the State Government to in two weeks time come out with an action plan and vision statement dealing with state of preparedness for dealing with third possible wave of Covid-19. A division bench of Chief Justice Abhay Oka and Justice Aravind Kumar said : "Though during the last few days we have dealt with immediate measures to deal with the enormous challenge posed by Covid-19, it is high time that the state government starts preparation for dealing with the third wave. By projecting estimates of the requirement of beds/drugs, oxygen, medical personnel etc. We direct the state to prepare an action plan and vision statement dealing with the state of preparedness for dealing with the third possible wave of Covid-19." The direction followed after the court was informed by the state government that a total of 45,754 beds supported by oxygen are available in the state. 5305 ICU beds available and 4109 beds with ventilators are available. However, the requirement project by the Central government is of 66,333 Oxygen supported beds, 13969 ICU beds and 8332 Ventilator beds. "Thus it can be said that there is a huge shortage of beds at the state level," the court observed." The bench also noted the fact that as far as areas covered by BBMP is concerned at 2.45 pm today, 49 HDU beds, 16 ICU beds and 7 ICU with ventilator beds were available. It said "Thus the situation in Bengaluru regarding availability of beds continues to be critical especially when over 15,000 cases are reported everyday in the city." The court also directed the state government to place on record a detailed chart giving details of availability of beds in each district and estimated requirement of beds in each district.

NHRC issued an advisory to the governments for protecting the dignity and the rights of the dead by keeping in view of the reports of mishandling Covid dead bodies in the media. NHRC previously had issued a notice to the Centre governments and state governments of Bihar and Uttar Pradesh about the floating of dead bodies in the river Ganga.

The Commission has said: "It is a well-accepted legal position that the right to life, fair treatment and dignity, derived from the Article 21 of the Constitution of India, extends not only to the living persons but also to their dead bodies. It has noted that despite High Court and the Supreme Court judgements, international covenants, guidelines by WHO, NDMA, Govt. Of India regarding the maintenance of Covid protocol upholding the dignity of the dead, reports are coming in the media about lowering the dignity of the dead during Covid-19 pandemic."

The commission has asked for the implementation of its recommendations given in the Advisory and the report on action taken within four weeks. The letter was addressed to the Union Home Secretary, Union Health & Family Welfare Secretary and the Chief Secretaries/ Administrators of States and Union Territories by Secretary-General, Mr. Bimbadhar Pradhan of NHRC.

Some of the recommendations among others are written below-

- To enact specific legislation for protection of the rights of the dead;
- It should be the duty of every citizen to inform, after noticing any incident of death, immediately to the nearest police station and/or to emergency ambulance services or the administrative/ legal authorities, whichever feasible
- Every State should maintain a district-wise digital dataset of death cases
- Police administration should make sure that post mortem should not be delayed
- Documents such as Aadhar card, Bank Account, Insurance, etc should simultaneously update the death of the person

- By explicitly prohibiting the hospital administration to retain any dead body because of pending bill payments; unclaimed bodies should stored under safe conditions

- Local authorities to ensure that facilities to transport a dead body should be available at the request of the family and the ambulance services must be curbed from charging non arbitrary and exorbitant rates

- NGO's should come forward for the proper last rites of the unacclaimed bodies

- Persons who handle dead bodies should be provided protective gears and vaccination

Kerala High Court to operate virtually from May 17

The Kerala High Court, already notifying e-filing rules last week, has now passed a notice to operate virtually from May 17 upon resuming work after the summer vacation. The guidelines for the same will be available on the web site of HIgh Court.

Some of them are provided below-

- Even when all the submissions were online, physical copy of every case should be submitted to the registry by the advocate within 45 days of such e-filing.

- Advocates or the desirous party who wants to move again through e-filling mode will have to submit a memo containing brief facts and the reason why it is urgent.

- Court will revisit the decision of continuing e-filing after a month.

- Court has further notifyd the the name of persons who will be available for the grievance and redressal for e-filling mode.

Preponement of Summer vacation of Delhi District Courts

This decision is taken in view of alarming rise in Covid cases and its effect on health and lives of judicial members and staff of District judiciary, the Summer Vacation for the year 2021 and District Courts of Delhi (except the courts of Metropolitan Magistrates) will remain close for Summer Vacation from 17th May to 3rd June of 2021 i.e. Monday to Thursday (including both days).

Under the Delhi Judicial Service (Leave) Rules, 2011, the period of 30 days from 17 May to % June is declared as vacation period For Delhi Judicial Service Members.

It was further ordered that the cases which are listed for the days between 17 May to 3 June shall be taken up from 14 June to 30 June on the corresponding working days.

It further advised that all the Principal District and Sessions Judges (Family Court) should ensure the presence of only minimal staff physically and the rest majority staff should work from home.

Kerala High Court Seeks response from the State Government on plea for inclusion of Advocates, Judges in Covid Vaccine Priority Group

Division Bench → Jus ces Raja Vijayaraghavan and MR Anitha today by Advocate Saiby Jose Kidangoor

Advocate Saiby points that State of Chhattisgarh had declared lawyers as part of the priority category for vaccination and that the Kerala Government had included media as frontline workers.

Justice Raja Vijayaraghavan replied practically that there are no vaccines here, so what is the point. What can be done?

Advocate Saiby was persistent with his argument adding that lawyers and Judges have to work round the clock. They are working even in the lockdown that is why he wants to seek the priority otherwise he is ready to stand in the queue.

He further informed that he had emailed his request to the State Chief Secretary and the Secretary of the Ministry of Health and Family Welfare, New Delhi.

The court then posted the matter to be heard on Monday, after the instructions obtained by the State.

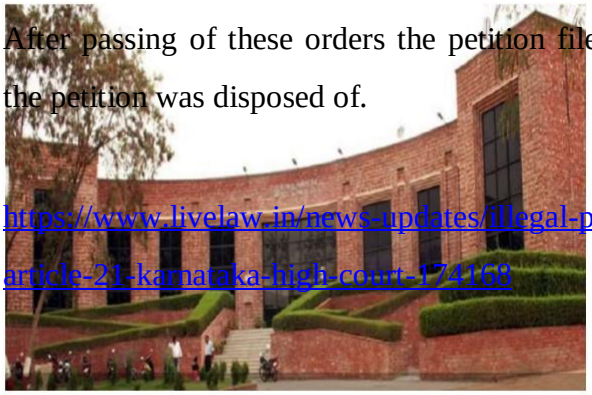
Legal news 15th May

Karnataka High court: illegal parking amounts to violation of fundamental right (Article 21).

Karnataka High court said that it is basically the responsibility of the higher authority to see that the footpaths are maintained properly and no one is obstructing it by parking any vehicle over there. It is the right of the people streets with proper footpath facility as it is their fundamental right under article 21 of the constitution of India and if the foot parts are being encroached upon in any way, then it will be considered as a violation of the fundamental right which is guaranteed under article 21.

The court has also directed the government to take strict action against this by implementing the provisions in the motor vehicle act in order to prevent illegal parking or encroaching of footpaths. It is also stated that the state government is responsible to ensure that relevant provisions has been made under the motor vehicle act so that the rules are being followed properly. The problem consisting of photo parts are very important and the violators of this act shall be punished with criminal charges. The court has also directed the state government to issue the directions for the encroachment of footpaths within a period of six weeks and it has also told the government to increase the finance for the violation of

provisions which sailed under the act, because of the mile penalty the people usually pay that and they again come at the same time but if the fine will be extended to around 10000 rupees, then the people will think about it and maintain proper discipline.



After passing of these orders the petition filed by advocate DS Ramachandra Reddy the petition was disposed of.

https://www.livelaw.in/news-updates/illegal-parking-footways-public-streets-violate-article-21-karnataka-high-court-174168

Justice Pratibha m Singh directed that there is an immediate need of creating a covid health centre with all the facilities like oxygenated beds and ventilators in the campus of JNU as there are around 12 to 15 thousand people who are residing in the campus and large number of people are covid positive, this can only be done with the help of SDM concerned and Delhi government.

The petition was filed by a student union and the Teachers union of the JNU
The court observed that the campus medical centre is very small as compared to the people residing there

because of which there is a certain need to take further steps by the covid pass force and the response team the court directed that a covid care centre should be e setup in the premises University. It was also said that the court expect the students and the faculty to work together for the betterment of their people during the case hearing it was informed to the court that a covid task force of 9 members has already been set up since 18th of April and several patients has been aided.

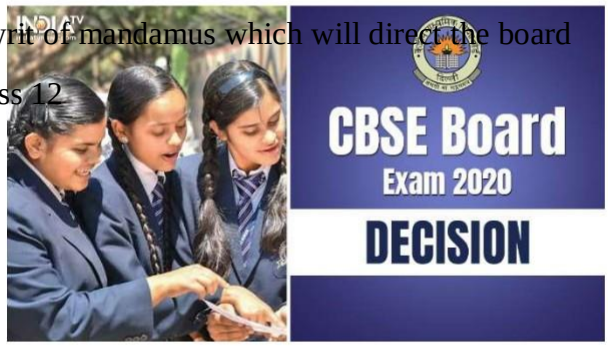
Also added that there are around hundred volunteers who are attending phone calls of people who have a positive for covid-19, help is also taken from different NGO such as Khalsa and art of living to provide proper medical care. Around 385 peoples who were living inside the campus of JNU has been tested positive for covid-19 during the regular check-up including all the students staff member faculty and other people. Lastly the government said that there are sufficient beds which are available there inside the campus to take care of the covid-19 positive people.

The next hearing date of this matter is 28th of May.

https://www.barandbench.com/news/litigation/delhi-high-court-directs-covid-care-centre-inside-jnu-isolation-residents-covid19-positive

Cancel class 12 CBSE , ICSE exams: plea in supreme court.

A plea has been filed by Mamta Sharma a lawyer to cancel class 12 board exam for both CBSE and ICSE as the exams are postponed for now but due to the rising cases of covid-19 the petitioner is demanding to cancel the board exam in order to protect the health of the students. The petitioner asks to issue a writ of mandamus which will direct the board to cancel the exam and declare the result of class 12 within a specific time frame.



A similar case of Amit Bathla vs CBSE was cited which was held previous year where uh the respondent it was directed to declare the result of class 12th student based on their earlier grading as their final exam and the respondent this year also wants the same thing to be happened as they want the same method to take place and the results to be out soon. As the CBSE and ICSE has cancelled the exam of class 10th therefore they should also look before cancelling the exam for class 12 also as health of student is equally important.

Postponement of the exams is creating a lot of pressure mentally on the students therefore the board should not keep quiet, instead they should speak up to cancel the exam and declare the result of around 12 lakh students….

Oxygen concentrators, pulse oximeter to be considered as essential commodities.

The country is going through the pandemic a lot of people due to the lack of medical facilities or infrastructure has lost their loved ones. The burden on the hospitals is creating a ruckus even the resource gap has given rise too many black marketing, even the demand for life saving drugs has been increased artificially because of which the prices are touching the sky. At this situation it is the responsibility of the government and the legal framework to step in and control the situation. As previous year the price off face mask and hands and given a slab or a permanent price this year it is necessary to find a pillar to support the price of oxygen gases, pulse oximeter, oxygen concentrator and the lifesaving drugs. The people are charging whatever they want from different peoples as artificial demand is created in the market and the supply is limited.

Recently 7 of may Delhi police court few people running a massive oxygen concentrator racket by conducting a raid, the manufacturer company is also indulging into these activities and promoting black marketing due to which they are earning high profits even in these hard times where II the life of people is at risk. These instruments should be considered as essential commodities as once article is considered as an essential commodity under the essential commodity act, and order regulating is price is passed out under section 2a r/w section 3 of essential commodities act and any breach would entail punishment up to 7 years with fine and seizure of the property and different other penalties Even Kerala government recently fix

the price of pulse oximeter and oxygen mask under the Kerala essential articles control act 1986.

Clat 2021 postponed, application date extended till June 15

The common law admission test 2021 has been postponed till further notice due to the increasing case of covid-19 across the country.

This decision was taken by the executive committee of the Consortium of National law universities in a meeting hello on Saturday.

It was stated that due to the increasing case of covid-19 in the country the Consortium will not risk the rise of the student in order to take physical exams therefore they decided to shift a date till next notice and extend the time for application to June 15. The dates will be decided after seeing the condition of the covid.

Preventing ambulance from entering Telangana violation of fundamental right:

Telangana High court.

Telangana High court restricted the state governments order to restrict the entry of patient from across the state border in to Telangana due to the increasing case of covid-19 pandemic on May 11. As these orders were restricting the fundamental right given to the citizen that is prohibition of discrimination under article 15 and article. ….. 19 1 d that is freedom of movement and article 21 that is right to life and personal liberty of the Indian constitution.

The court also said that by putting restriction they are violating fundamental right and by giving such a short notice they cannot do so because it will not be accessible to the people to act accordingly, is the government want to do such things then they should give a prior notice so that the people can act accordingly to that. After this incident was over on May 14 the media people showed that the state is again asking the ambulance carrying the covid-19 patient orders to enter their state because of which this case again came into the court.

The court stated the order of Telangana government will issue in your notice in the public interest litigation petition which was challenged.

<u>Patient should be treated properly even at these difficult times. Delhi High court to AIIMS</u>

Delhi High court ordered AIIMS to conduct different medical services to the people even at these times of emergency as a petition was filed for a surgery on cancer patient being delayed due to covid-19 service.

Court ordered to fix a date and resume the surgery of a 44-year-old cancer patient whose treatment was delayed as the administration of the hospital decided to close all surgeries in view of the covid-19 pandemic as they were directing most of their infrastructure to covid care centres. The courts made that they are confident that the team of AIIMS will ensure that current balance is given to both the covid-19 pandemic and the regular surgeries which are being taken place as both are necessary.

Summer vacation prepone for Delhi district court, seeing the condition of COVID -19

After seeing the rising case of covid-19 in the City summer vacation for Delhi district court was preponed from May 17 to June 30.

And the cases which was listed between 17th may to June 3 shall be taken up from June 14 2013 and the existing hearing can continue till June 30 it is also advised that the session judge and the member should ensure that minimum staff is present physically in the court and

that most of the staff should work from home till the situation becomes normal of the rising corona case.

ARTICLES

IMMORAL TRAFFIC IN WOMEN AND CHILDREN:

THE SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND CHILDREN ACT, 1956 WAS GIVEN ASSENT ON 30TH DECEMBER 1956 AND WAS MADE APPLICABLE TO THE WHOLE OF INDIA. THE ACT WAS MADE TO SUPPRESS IMMORAL TRAFFIC IN PERSONS AND OF THE EXPLOITAITON IN OTHERS IN NEW YORK ON 9TH MAY 1950.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

1. Short title, extent and commencement. This Act may be called the Immoral Traffic Prevention Act 1956. It extends to the whole of India. This section shall come into

force at once; and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

As we all know sound evidence, hard facts and statistics should underpin action and this article aims to do just that. It is indeed shocking that government figures state that every eight minutes a child goes missing in India and forty percent of them are never found!

Another statistic hard to come to terms with is that Of the three million people engaged in sex work, more than forty percent of them are below the age of eighteen years, some as young as five. Many trafficked children remain unreported, untraced and invisible. Though some statistics are available, they are inconsistent and huge chunks of data are missing. Without consistent, comparative, scientific data to capture the real scale of child trafficking in India, the efforts to limit this growing crime remains fragmented and under resourced. These crimes are occurring worldwide. Trafficked minor girl children are used for prostitution, forced into marriage, illegally adopted, used as cheap or unpaid labour, used for sport and organ harvesting. Some children are recruited into armed groups. Minor girl Child prostitution has the highest supply of trafficked children.

The main objectives of present research paper is:

1. To examine the causes and modes of child trafficking in India especially minor girl child.

2. To analyse the crimes related to trafficking in India.

3. To suggest Preventive measures regarding child trafficking in India and laws to protect the minor girl child.

Definitions;

In this Act, unless the context otherwise requires,—

(a) "brothel" includes any house, room conveyance or place or any portion of any house, room conveyance or place, which is used for purposes of sexual exploitation or abuse for

the gain of another person or for the mutual gain of two or more prostitutes, "child" means a person who has not completed the age of sixteen years

(b)corrective institution" means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which 9 persons, who are in need of correction, may be detained under this Act, and includes a shelter where 10[undertrials] may be kept in pursuance of this Act

(c) "magistrate" means a magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occours and which is specified in the first column of the Schedule

* "major" means a person who has completed the age of eighteen years;

* "minor" means a person who has completed the age of sixteen years but has not completed the age of eighteen years

(d) "prescribed" means prescribed by rules made under this Act "prostitution" means the sexual exploitation or abuse of persons for commercial purpose, and the expression "prostitute" shall be construed accordingly.

(e) "protective home" means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which persons, who are in need of care and protection, may be kept under this Act and where appropriate technically qualified persons, equipment and other facilities have been provided,] but does not include— a shelter where undertrials may be kept in pursuance of this Act, a corrective institution, "public place" means any place intended for use by, or accessible to, the public and includes any public conveyance;

(i) "special police officer" means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act "trafficking police officer" means a police officer appointed by the Central Government under sub-section (4), of section 13.

Punishment for keeping a brothel or allowing premises to be used as a brothel;

person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine. For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are beig used as a brothel, if; A report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act.

IMMORAL TRAFFIC (THE CONSTITUTION OF INDIA)

The Indian Constitution specifically bans the traffic in persons. Article 23, in the Fundamental Rights section of the constitution, prohibits "traffic in human beings and other similar forms of forced labor". Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement /transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users etc., exploit the vulnerability of the trafficked person. Trafficking shows phenomenal increase with globalization. Increasing profit with little or no risk, organized activities, low priority in law enforcement etc., aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs.

Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sex -based and (b) Non-Sex-based. The former category includes trafficking for prostitution, Commercial sexual abuse, Pedophilia, Pornography, Cyber sex, and different types of disguised sexual exploitation that take place in some of the massage parlors, beauty parlors, bars, and other manifestations like call girl racket, friends clubs, etc. Non sex based trafficking could be for different types of servitude, like domestic labor, industrial labor, adoption, organ transplant, camel racing marriage related rackets etc. But the growing traffic in women is principally for the purpose of prostitution. Prostitution is an international problem which can be found in both developing and industrialized nations.

Unfortunately, society remains tolerant of this abominable crime against women. There are ways of getting women into prostitution that are common to many countries; then there are particular methods unique to a country. Probably the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions.

The law permitted penalization of a woman found to be engaged in prostitution under certain conditions. For example, Section 7(1) penalized a woman found engaged in prostitution in or near a public place. Section 8(b) did the same for a woman found seducing or soliciting for purposes of prostitution. The law also permitted a magistrate to order the removal of a person engaged in prostitution from any place and to punish the person upon refusal. Offenses under SITA were bailable, but a woman picked up from the street by the police usually did not have either the money or the influence to keep her out of custody or free from fines.

Several studies across India have shown that this is the most abused section of the ITPA, used more as a tool for harassment and extortion by the law enforcement. Women are apprehended from known red-light areas whereas their brothel keepers and pimps are left untouched. In cases of organized prostitution, this results in continual debt bondage for the amount paid by her keepers as a fine or as a bail amount. In fact, sometimes the brothel keepers are alleged to collude with policemen and arrange the arrests of "their" women so they can continue to serve in bondage. India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organized and a commercialized vice. However, it commits itself to opposing trafficking as enshrined in Article 23 of the Constitution which prohibits trafficking in human beings. India is also a signatory to international conventions such as the Convention on Rights of the Child (1989), Convention on Elimination of all forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002).

A trafficked victim is therefore, a victim of multiplicity of crimes, and extreme form of abuse and violation of human rights. The constitution of India, under article 23 specifically prohibits trafficking in human beings. At present the legal regime to trafficking of women and children for commercial sexual exploitation includes the following.

a. Indian Penal Code 1860

b. ITPA-1956

c. J.J. Act-2000.

d. Special laws of various states.

e. Rulings of Supreme Court and High Court.

The lack of understanding of trafficking by the legal system could arise from one or more of these factors: first, there is no definition of "trafficking" or "trafficker" under the Act. Therefore, the police and the judiciary do not have an understanding of the complexities involved when a woman is trafficked, the different types of traffickers, and their strategies. Neither does the court attempt to hear the trafficked woman and her experiences. Second, the Act also focuses on establishing "the purposes of prostitution" for every offence which conveniently takes the attention away from trafficking. For example, even to convict a trafficker for the act of keeping a brothel, it becomes important to establish that prostitution was taking place. So, when a woman who is trafficked is kept in captivity for a period of time, it cannot amount to an offence unless the place satisfies the criteria of a "brothel." Similarly we find that in every case involving a raid there is also an elaborate description of how the woman was clothed when the raiding party found her in order to prove that she was getting ready for sexual intercourse with the decoy witness and thus her existence for the "purpose of prostitution" could be established beyond "reasonable doubt." That the clothing or actions of a woman at that point of time should not negate the fact that she was trafficked seems to slip away from the adjudication process. The Act thus misses out on what actually constitutes trafficking--the elements of force, deception, and coercion, which go on overtly and covertly over a period of time. Thirdly, in spite of the definition of prostitution having

changed from "the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise" to "sexual exploitation or abuse of persons for commercial purpose," there is no perceptible attitude shift in the lawmakers and enforcers from taking efforts to curb prostitution to curbing trafficking. Moreover no powers are given to the Magistrate to order eviction of traffickers. Thus there exists a need for a specialized legislation in India to deal with trafficking even though the existing Indian Penal Code (IPC), 1860, deals with the offences of kidnapping, abduction, and buying and selling of minors (Sections 359-373 of IPC). The IPC is narrower in scope to deal with the wide range of activities involved in trafficking which do not neatly fit into "kidnapping" or "abduction." For example luring, coaxing individuals in vulnerable positions with false promises of better jobs, contract work as domestic workers, mail order brides, and situations where the women are sold in connivance with the parents or husband. The IPC is thus less adept in dealing with the nuances involved in organized trafficking.

In order to ensure effective implementation of the existing law there is a need for sensitization of all concerned in the criminal justice system, including judicial officers, prosecutors, medical experts, Police officers. Moreover there should be partnership with the NGOs so as to ensure law enforcement, rescue, prevention, counseling, rehabilitation, reintegration, social empowerment etc.

CHILD TRAFFICING….

According to UNICEF is "Child Trafficking" defined as "any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country." There have been a lot cases where children just disappear overnight, as many as one every eight minutes, according to the National Crime Records Bureau. India also is a source, destination, and transit country for trafficking for many purposes such as commercial sexual exploitation. Trafficking is within the country in large scale but there are also a large number trafficked from Nepal and Bangladesh. But 40% of prostitutes are children, and there is a growing demand for young girls in the industry.

NGOs evaluate that 12,000 - 50,000 women and minor child are trafficked into the nation yearly from neighbouring states for the sex trade. Many minor girls are trafficked from Bangladesh and Nepal. An expected 1,000 to 1,500 Indian children are imported illegally out of the nation consistently to Saudi Arabia for asking amid the Hajj. Trafficking Andhra Pradesh, Karnataka, West Bengal and Tamil Nadu have the biggest number of individuals trafficked. Minor girl trafficking is high in Rajasthan, Assam, Meghalaya, Bihar, Uttar

Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu and Maharashtra in Intra state/ district area. Delhi and Goa are the main targeted states. Trafficking from north eastern states is high however regularly over looked. Trafficking of minor girl child the second-most pervasive trafficking wrongdoing - surged 14 times throughout the most recent decade and expanded 65% in 2014, as per new information given by the National Crime Records Bureau (NCRB)

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

It has been passed by Parliament of India. It aims to replace the existing Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that juveniles in conflict with Law in the age group of 16â€“18, involved in Heinous Offences, can be tried as adults. The Act came into force from 15 January 2016. It was passed on 7 May 2015 by the Lok Sabha amid intense protest by several Members of Parliament. It was passed on 22 December 2015 by the Rajya Sabha. The bill introduced concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 which were missing in the previous act. The bill introduces foster care in India. Families will sign up for foster care and abandoned, orphaned children, or those in conflict with the law will be sent to them. Such families will be monitored and shall receive financial aid from the state. In adoption, disabled children and children of physically and financially incapable will be given priority. Parents giving up their child for adoption will get 3 months to reconsider, compared to the earlier provision of 1 month.

A person who gives alcohol or drugs to a child shall be punished with 7 years imprison and/ or Rs. 100,000 fine. Corporal punishment will be punishable by Rs. 50,000 or 3 years of imprisonment. A person selling a child will be fine with Rs. 100,000 and imprisoned for 5 years.

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

Introduction

The National Commission for Protection of Child Rights (NCPCR) is an Indian statutory body established by an Act of Parliament, the Commission for Protection of Child Rights (CPCR) Act, 2005. The Commission works under the aegis of the Ministry of Women and Child Development, Government of India. The Commission began operational on 5 March 2007. It shall come into force on such [date] as the Central Government may, by notification in the Official Gazette, appoint. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms agree with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.

The Commission visualizes a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District and Block levels, taking care of the specificity and strengths of each region. In order to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences gathered at the field are taken into consideration by all the authorities at the higher level. Thus the Commission sees an indispensable role for the State, sound institution-building

processes, respect for decentralization at the local bodies and community level and larger societal concern for children and their well-being.

Definition

•Chairperson means the Chairperson of the Commission or the State Commission, as the case may be;
•child rights include the children's rights adopted in the United Nations Convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992;

•Commission means the National Commission for Protection of Child Rights constituted under section 3;

•Member means a Member of the Commission or the State Commission, as the case may be, and includes the Chairperson;

•notification means a notification published in the Official Gazette;
•prescribed means prescribed by rules made under this Act;
•State Commission means a State Commission for Protection of Child Rights constituted under section 17;

Abstract

The National Commission for Protection of Child Rights (NCPCR) emphasises the principle of universality and inviolability of child rights and recognises the tone of urgency in all the child-related policies of the country. For the Commission, protection of all children in the 0 to 18 years age group is of equal importance. Thus, policies define priority actions for the most vulnerable children.

For the Commission, every right the child enjoys is seen as mutually reinforcing and interdependent. Therefore the issue of gradation of rights does not arise. A child enjoying all her rights in her 18th year is dependent on access to all her entitlements from the time she is

born. Thus policies interventions assume significance at all stages. For the Commission, all the rights of children are of equal importance.

About NCPCR

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005.

It works under the administrative control of the Ministry of Women & Child Development.

The Child is defined as a person in the 0 to 18 years age group.

The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child.

The mandate of NCPCR

The Commission's Mandate is to ensure that all the Policies, Programmes, Administrative Mechanisms, and Laws are in conformity with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child.

The NCPCR visualizes a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District, and Block levels, taking care of specificity and strengths of each region.

To ensure that no child is left out, it seeks a deeper penetration to households, communities. It also expects that the ground experiences gathered at the field are taken into consideration by the higher level authorities.

Therefore, the Commission sees an indispensable role for the State, sound institution-building processes, respect for decentralization at the local bodies and community level and larger societal concern for children and their well-being. The National Commission for

Protection of Child Rights (NCPCR) emphasizes the principle of universality and inviolability of child rights and recognizes the tone of urgency in all the child-related policies of the country. For the Commission, protection of all children in the 0 to 18 years age group is of equal importance.

The composition of the Commission

This commission has a chairperson and six members of which at least two should be women. All of them are appointed by Central Government for three years.

The maximum age to serve in commission is 65 years for Chairman and 60 years for members.

The Central Government can remove the Chairperson from his office on the ground of proved misbehaviour or incapacity.

The Chairperson of NCPCR should be a person of eminence who has done outstanding work on promoting the child rights.

Functions and Powers

The Commission shall perform all or any of the following functions, namely:

1) Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation.

2) Present to be central government, annually and at such other intervals, as the commission may deem fit, reports upon working of those safeguards;

3) Inquire into violation of child rights and recommend initiation of proceedings in such cases;

4) Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

5) Inquire into complaints and take suo moto notice of matters related to: Deprivation and violation of child rights.

Non-implementation of laws providing for protection and development of children. Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring the welfare of the children and to provide relief to such

children or take up the issues arising out of such matters with appropriate authorities Such other functions may consider necessary for the promotion of child rights and any

other matter incidental to the above functions.

6) Such other functions as it may consider necessary for the promotion of Child Rights and any other matter incidental to the above function.a state commission or any other commission duly constituted under any law for the time being in force.

7) The Commission shall not enquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

8) Analyse existing law, policy and practice to assess compliance with Convention on the rights of the Child, undertake inquiries and produce reports on any aspects of policy or practice affecting children and comment on proposed new legislation related to child rights.

9) Present to the Central Government annually and at such other intervals as the Commission may deem fit, reports upon the working of those safeguards.

10) Undertake formal investigation where concern has been expressed either by children themselves or by concerned person on their behalf.

11) Promote, respect and serious consideration of the views of children in its work and in that of all Government Departments and Organisations dealing with Child.

12) Produce and disseminate information about child rights.

13) Compile and analyse data on children.

14) Promote the incorporation of child rights into the school curriculum, training of teachers or personnel dealing with children.

The commission consist of the following members namely:

A chairperson who, is a person of eminence and has done a outstanding work for promoting the welfare of children; and Six members, out of which at least two are woman, from the following fields, is appointed by the Central Government from amongst person of eminence, ability, integrity, standing and experience in,-

Education;

Child health, care, welfare or child development;

Juvenile justice or care of neglected or marginalized children or children with disabilities; Ms PragnaParande

Elimination of child labour or children in distress; Ms.RosyTaba

Child psychology or sociology; Dr.R.G.Anand

Laws relating to children. Shri Yashwant Jain

Childrens Courts

For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a Court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences:

•Provided that nothing in this section shall apply if

(a) a Court of Session is already specified as a special Court; or

(b) special Court is already constituted, for such offences under any other law for the time being in force.

Special Public Prosecutor

For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Grants by Central Government

(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section

Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Commission, the State Commission, or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission, or the State Commission of any report or paper.

Power of State Government to make rules

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

•terms and conditions of service of the Chairperson and Members of the Commission and their section 6.

•the procedure to be followed by the Commission in the transaction of its business at a meeting under sub-section (4) of section 10;

•the powers and duties which may be exercised and performed by the Member-Secretary of the Commission under sub-section (2) of section 11;

Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Working of the Commission

The Commission may take any of the following steps upon the completion of an inquiry:

It may recommend to the concerned government or authority the initiation of proceedings for prosecution or such other suitable action against the concerned person.

It may approach the Supreme Court or the High Court concerned for the necessary directions, orders or writs.

It may recommend to the concerned government or authority for the grant of necessary interim relief to the victim.

The Commission submits its annual or special reports to the Central Government and to the state government concerned. These reports are laid before the respective legislatures, along with a memorandum of action taken on the recommendations of the Commission and the reasons for non-acceptance of any of such recommendations within one year.

Bare act Related to Children

Commissions for Protection of Child Rights (Amendment) Act 2006 (, 242 KB)

Commission For Protection of Child Rights Rules, 2006 (English) (, 919 KB)

Commissions for Protection of Child Rights Act, 2005 (, 4021 KB)

Right of Children to Free and Compulsory Education Rules , 2010 (English and Hindi) (, 4595 KB)

Right of Children to Free and Compulsory Education Act 2009 (, 1520 KB)

Protection of Children From Sexual Offences Rules, 2012 (Hindi & English) (, 3583 KB)

The Juvenile Justice (Care and Protection of Children) Act 2015,Rules, 2016 (Hindi & English) (, 2259 KB)

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 (, 328 KB)

Protection of Children From Sexual Offences Act, 2012 (English & Hindi) (, 7431 KB)

Juvenile Justice (Care and Protection of Children) Amendment Act, 2011 (, 656 KB)

Juvenile Justice (Care and Protection of Chidlren) Rules, 2007 (, 477 KB)

Juvenule Justice (Care and Protection of Children) Amendment Act, 2006 (, 2567 KB)

Juvenile Justice (Care and Protection of Children) Act, 2000 (, 177 KB) Child Labour (Prohibition and Regulation) Rules, 1988 (, 118 KB)

Child Labour (Prohibition and Regulation) Act, 1986 (, 175 KB)

Children (Pledging of Labour) Act, 1933 (, 28 KB)

Bonded Labour System (Abolition) Act, 1976 (, 171 KB)

Factories Act, 1948 (, 179 KB)

Guardians and Wards act 1890 (, 141 KB)

Hindu Minority and Guardians Act 1956 (, 77 KB)

Immoral Traffic (Prevention) Act, 1956 (, 93 KB)

Medical Termination of Pregnancy Act, 1971 (, 14 KB) Mines Act, 1952 (, 150 KB)

National Food Security Act, 2013 (, 1589 KB)

Prohibition of Child Marriage Act 2006 (, 1913 KB)

Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (

, 151 KB)

Young Persons (Harmful Publication) Act, 1956 ( , 13 KB)

Conclusion:

This Committee, in response to the first India Country report submitted by the Government of India in 1997, recommended in its Concluding Observations, that India should establish a statutory, independent Commission for children to monitor the implementation of the Convention and look complaints of child rights.

Submitted By: Bhupesh Bansal

AIR 1984 SC 802 : (1984) 3 SCC 161

Bench= Justice P.N. Bhagwati, Justice R.S. Pathak, Justice A.N. Sen

Bandhua Mukti Morcha.. Petitioner;

Versus

UNION OF INDIA AND OTHERS..Respondents.

Writ Petition No. 2135 of 1982, decided on December 16, 1983

INTRODUCTION

Bonded labour are the persons who have pledged their services to their masters for repayment of adebt or any kind of advance. There origin can be traced from the ancient times as Lower strata of the society i.e. Shudras offered their services to the upper castes and their income was dependent on the kindness of those in the upper caste. When these poor need to take loans they have nothing to pledge as a collateral, so they pledge their services in return, which never seems to end.

The principal amount which they owed may not be much but the interest on which they were given these loans or advances were usually huge which can not be repaid for generations, thus, leading to bonded labour. They are termed as labourers but they are treated more like slaves of the person in power. They are not free to go without the permission of the owner, they have to do work as told by the owner- no questions can be asked. The conditions in which they live are like animals, with no proper food and water or a roof on their head.

Bonded labour after all this time is still present in India. Bonded Labour System (Abolition) Act, 1976 was passed with the intention to curb the practice of Bonded Labour and to put a duty on the government officials to ensure that there is no bonded labour in their area.

This case focuses on the same issue, that is upliftment of the conditions of the bonded labour and to rehabilitate them in their hometowns, as petitioner observed a large number of bonded labourers in the District of Faridabad, Haryana.

Background

The petitioner, Bandhua Mukti Morcha (Bonded Labour Liberation Front) is an organisation whichworks for release of bonded labourers in the country. Petitioner addressed a letter to a judge of the Supreme Court alleging that in two named stone quarries in Faridabad, a large number of labourers are working under inhumane conditions, most of them are bonded labourers.

In the letter, petitioner stated that besides the cases of bonded labourers, there were countless cases of deaths and fatal accidents while crushing the stones or dynamiting the rocks. Many died due to tuberculosis or are reduced to mere skeletons due to tuberculosis or other diseases from the stone dust pollution. Petitioner stated that workers were not provided with any medical facility, even clean drinking water was not accessible. Labourers were forced to live without any roof on their head, only with scanty clothing unable to protect them from forces of nature.

Apart from all this, they were further exploited by 'Thekedars', middlemen who take 30% of the wages of laborers in unloading the trucks as their commission. The letter was further attested by thumb impressions of some of the labourers to show that the labourers were forced to work there. Petitioner wanted this letter to be treated as a writ petition under Article 32.

Court appointed two advocates as commissioners, namely Ashok Srivastava and Ashok Panda to visit the stone quarries in order to interview each of the persons named in the petition and to analyze their conditions in which they were working. Commissioners also had

to question the labourers whether they were forced or not. Court also appointed Dr. Patwardhan of IIT to carry out a socio legal investigation.

After visiting and examining the workers and their conditions, commissioners gave the report stating the facts of petition as true and ended by observing that the condition of the workers "presented a picture of helplessness, poverty and extreme exploitation at the hands of moneyed people" and they were found "leading a most miserable life and perhaps beast and animals could be leading more comfortable life than these helpless labourers".

Issues

- The learned additional Solicitor General of the State of Haryana raised the issue that a letter cannot be considered as writ petition under the scope of Article 32 as the petitioner is not the one whose rights are infringed.

- It was further argued that the Court can not appoint commissioners to investigate. Even if so appointed by the court, their findings can not have evidentiary value because it is not cross-examined.

- Respondents contended that those labourers may be forced labourers but not Bonded Labours strictly under the definition provided under Bonded Labour System (Abolition) Act, 1976.

Judgement

Court opined that the scope of Article 32 of the constitution is very wide. The Constitution makers were very careful in drafting Article 32 because they did not mention any specific form of proceedings but only mentioned "appropriate proceedings". As per Judge A.N. Sen, the constitution very appropriately leaves the question as to what will be considered

appropriate proceedings in the hands of the court. According to Justice PN Bhagwati, the interpretation of Article 32 must receive the light from trinity of provisions which permeate and energize the constitution, which are, Preamble, Fundamental Rights and Directive Principles of State Policy.

To further deal with the issue, court cited the Judges Appointment and Transfer Case, in that case court held that any public spirited person can come to the court for infringement of Fundamental Rights of any other person, otherwise the purpose of fundamental rights will be defeated because poor people and those who are not aware of their rights will never be able to get a remedy under Article 32 or 226. Court held that Bandhua Mukti Morcha sent this letter bona fidely for the protection of rights and therefore it will be considered as a petition under Article 32.

As to the second issue, the court interpreted clause 2 of Article 32 and said it grants wide powers to the Supreme Court not only to issue high prerogative writs namely Mandamus, Habeas Corpus, Certiorari, prohibition and quo warranto but also to issue any order, direction or writ including high prerogative writs. Court further extended this power to the high courts under article 226 for infringement of fundamental rights and also for infringement of any legal right.

After discussing various provisions of Civil Procedure Code, Evidence and Supreme Court Rules, the Court ruled that Order 47 Rule 6 of Supreme Court Rules provide that nothing in those rules should affect the inherent powers of the court to make such orders as are necessary for the ends of justice. Therefore, Courts are free to appoint commissioners but the evidentiary value of such reports by the commissioner will be determined by the various affidavits filed during the proceedings.

When it is proved that a labourer is made to provide forced labour, court will make a presumption that he is required to do so in favour of an advance or other economic consideration therefore Bonded labour and the employer or the government may rebut this presumption. Court fixed the liability on the Government of Haryana because it is the owner of those quarries in respect of Haryana Minerals(Vesting of Rights) Act, 1973. Moreover, the State of Haryana was bound under the obligation to maintain the rights of labourers under various provisions of Contract Labour Act, Mines Act 1952, Mines Rules, 1955, Bonded

Labour System (Abolition) Act, 1976, Minimum Wages Act, 1948. It was also held that the Government of Haryana was bound to ensure that provisions were observed by the Thekedars.

Employers were also held accountable as they were even not providing clean drinking water. So, they were ordered to submit a certificate from a competent health officer or analyst as to the fitness for water consumption. Court further stated that for proper sanitary conditions urinals and bathrooms should be built for proper health and hygiene prescribed under Mine rules, 1955.

Court also ruled that either of two devices- keeping a drum of water above the stone crushing machine or installation of a dust sucking machine should be fitted on the stone crushing area to reduce the dust from the air in which these labourers breathe.

Analysis

This is a landmark judgment as it extended the scope of Article 32 to the furthest extent. It shows that courts are willing to adopt methods and procedures apart from procedural laws to make sure the rights of the people are not infringed. The Court has referred to the judicial intent to interpret the scope of Article 32 and understood the need of poor and downtrodden sections of the society by making it easier for them to reach the court of law. Court has further progressed to relax the adversarial procedures so that people who are weak or suppressed and not able to provide relevant evidence can be given parity with those who are rich and can manipulate the system.

If it wasn't this judgment then the rights of the bonded labourers may never be protected in such an effective way. This judgment takes the higher ground from those who are in power to manipulate the system and bring them on equal ground with the downtrodden sections of the society.

By fixing the obligations of the Government officials of both Centre and the State to look for the upliftment of bonded labourers, court have given a message that mere passing of Acts does not remove the burden of the State, it have to work actively on its own to make sure that the purpose of those Acts are not defeated. Further, the State was held to be duty bound under the constitutional scheme to bring socio-economic orders to uplift the marginalised in the society and to bring equality of status and opportunity for all.

Court further observed that even if the government is satisfied that the laborers are not bonded or forced even then it should not hesitate in an enquiry by the court. The bench made it clear that when a court accepts a Public Interest Litigation, it is not to tilt the executive authority or to usurp it but to ensure that Fundamental rights are not infringed on persons who cannot fight for their rights, which in turn is a constitutional obligation of the state. Therefore, the court is only fulfilling constitutional objectives.

This judgment made a major change in the existing law by extending the scope of Article 31 and appointment of commissioners. It has set a precedent for the upcoming case of infringement of fundamental Rights. This judgment also shows the concern of the courts for rehabilitation of the aggrieved labourers, as it took various measures to ensure the proper rehabilitation of the labourers by directing the Central govt and the Haryana govt to make sure the area under them should not have any bonded labourers. Court recognised the need to educate the labourers of their rights because only then they can with their employers, so, it directed Vigilance Committees and the District magistrate to take help from non- political social groups and agencies for implementation of the provisions of the bonded act plus to organise camps in the areas of labourers to educate them about their rights.

Conclusion

The judgment is very reasonable one. In this judgment the court has gone out from the invisible limits of Anglo-Saxon system of administration of justice by holding that any person can complain about the infringement of fundamental rights of other persons. Also, the court had maintained true equality between the downtrodden sections of the society and the persons who have resources and knowledge about the system by enhancing the scope of appropriate proceedings in Article 32. Within the same judgment, the court answered the questions on appointment of commissioners and admissibility and relevancy of their reports.

The judgment also marks the importance of Directive Principles of State Policy along with Fundamental Rights in uplifting the poor and marginalised labourers from the shackles of social evils which have tortured them for centuries.

Case comment on P.Unni Krishnan vs. State of Andhra Pradesh.

AIR-1993

2178

Date of ruling: Feb 4,1993

Forum: Supreme Court

KEYWORDS: Unni Krishnan, Article 21, Article 41,petition, appeals, Andhra Pradesh, Fundamental right, Educational rights.

BACKGROUND

These are a string of writ petition and civil appeals filed before the Hon'ble Supreme Court of India. The question arose on the determination of the extent of Article 21 i.e., the Right to Life and Personal Liberty under the Indian Constitution. The petitions were presented with the prayer that the professional education must also be a part of the right to education. The major contention on the side of the petitioner is that since the right to education is applicable to primary education, it is also applicable to the professional education. The bench of the Hon'ble Supreme Court disapproved with such a contention and the petition was dismissed.

A BRIEF SUMMARY

Facts of the case:

Writ petitions filed by certain private professional educational institutions challenging the constitutionality of state laws regulating capitation fees charged by such institutions.

Right to establish Self Financing educational institution which can be regarded as business venture under article 19(1) g.

Cost of educating an engineer or medical graduate is very high.

Discourage private initiative in providing educational.

Did not create an agency to fulfil its obligations under the constitution.

Questions of laws which were in front was:

Whether the right to life guaranteed by article 21 includes the right to education or not?

Whether there is a fundamental right to education for a professional degree that flows from article 21?

Whether right could be recognised as a fundamental right even though not expressly mentioned?

Whether private unaided recognised or affiliated educational institutions running professional courses like engineering and medical courses and title to charge a fee higher than that charge by government institutions?

The bench giving the decision consists of:

Justice SC Agarwal

Justice S Mohan

Justice SP Bharucha

Justice SR Pandian

Justice BP Jeevan Reddy

Decision of the court:

The right to basic education is implied by the fundamental right to life that is article 21 when read in conjunction with the directive principle on education article 41 and article 45 the court ruled that there is no fundamental right to education for a professional degree that flows from article 21 and justice civil right names right which cannot be in force before any court. The court added the right to free education is available only to children until they complete the age of 14 years thereafter the obligation of the state to provide education subject to limits its economic capacity and development the provisions of part 3 and part 4 are supplementary and complementary to each other private unaided recognised affiliated educational institutions running professional courses like engineering and medical courses entitled to charge a fee higher than that charge by government institutions, If those institutions needed finances they must find them through the nations etc.

The profession institution can admit can arise to the extent of only 5% of their total impact. Right to education flows from article 21 as well as article 41 article 45 as well as article 46 and state cannot give Liberty to private educational institutions to charge unlimited fee. Private institutions they play a very important role and when the state grants them recognition affiliation then definitely the private educational institutions are performing a function which should have been primarily performed by the state.

Outcome was in the case of MC Mehta vs State of Tamil Nadu and others 1996 the SC stated that article 45 has acquired the status of a fundamental right following the constitutional bench decision in Unni Krishnan Case.

The state responded to this declaration of Unni Krishnan case 9 years later through the 86th amendment to the constitution by inserting article 21 A which provides for the fundamental right to education for children between the ages of sets and 14 which was implicit under article 21. Court also recognised the overburden on state and also it also respected the importance of financial position and administration of private educational institutions the judgement also gave a comparative analysis comparative analysis of judgement rendered by the high court of different states pertaining to the issue moreover importance is given to the practical application of the judgement by demarcating issues relating to right to education and write to establishment educational institutions. as in that period court said that government institutes are help or aided by government grants but private institutes does not enjoy this opportunities so it is not reasonable to expect private institutes to cut their fees as much as government institutes, but court also said that those private institutes which gets aided by government grants must reduce or make their fees equivalent or according to government institutions. Court also advised that irrespective of charging very much High fee private institutes and said there ceiling for fees like they can charge Fee reasonably higher than govt institutions. In addition, the Court said that, in order to treat a right as fundamental right, it isnot necessary that it should be expressly stated as one in Part III of the Constitution: "the provisions of Part III and Part IV are supplementary and complementary to each other". The Court rejected that the rights reflected in the provisions of Part III are superior to the moral claims and aspirations reflected in the provisions of Part 4.

Let's see article 21 and article 41 we have mentioned above for basic idea.

Article 21 has two types of rights:

Right to life

Right to personal liberty

Right to life

Right to life is a fundamental aspect of life without which we cannot live as a human being and it includes all those aspects of life which go to make a human being's life meaningful, complete, and worth living. It is only the article in the constitution that has received the widest possible interpretation. Under Article 21 of the Indian Constitution, the right to shelter, growth, and nourishment are mentioned. Because it is the bare necessity, minimum and basic requirements that are essential and unavoidable for a person for the right to life and other rights.

Right to personal liberty

The protection of our liberty is the mere responsibility of our law as our Constitution of India quoted. As we see Article 41 aims to secure work, education and public assistance rights forpersons in cases of unemployment, old age, sickness, disablement, and undeserved want. The Supreme Court is the guardian of the Constitution of India. So according to this Supreme Court has the mere responsibility to protect and guarantee fundamental rights. As a citizen of India, we have all the fundamental rights which are established by law. So we can enforce it through the Supreme Court whenever our fundamental rights get violated.

Article 41

Article 41 of our Indian constitution talks about aims to secure work education and public assistance right for person in cases of unemployment old age sickness disablement and undeserved want. The state shall within the limits of its economic capacity and development make effective provision for above mentioned in this article.
Now we have seen its brief summary,let us understand in deep this whole case.

FACTS:

The case comes into subsistence through petitions filed by the private educational institutions to challenge the state laws. These state laws were enacted to regulate the capitation fee charges in the states of Tamil Nadu, Karnataka, Andhra Pradesh and

Maharashtra. Some educational institutions in those states have resisted and challenged the same before the Apex Court. Moreover, the ambit of Article 21 of Constitution of India is discussed with its extension to the right to Education. The important question posed before the Court is whether the right to education under Article 21 extends to adult professional education. As right to education flows from article 21 to article 45 as well.

Challenged questions:

Whether a citizen has a fundamental right to education for a medical, engineering or other professional degree?

Whether the Constitution of India guarantees a fundamental right to education to its citizens?

Whether there is a fundamental right to establish an educational institution under Article 19(1)(g)?

Does recognition or affiliation make the educational institution an instrumentality?

ARGUMENTS:

As per petitioner,

The running of an educational institution is an industry.

It is the duty of the State to provide education to all immaterial of the social and economic conditions. Moreover the previous some judgements broadened the scope of education.

The state has no monopoly in rendering education and it is in contradiction with Article 19 (1) (g) of the Constitution of India as imparting education can be considered as a business adventure.

The government has exercised unnecessary state control which influences the market forces (demand and supply) and affects free play.

The establishment of educational institution is no different from forming any other business venture or institution it is immaterial whether the institution is formed for profit motive or not. It is also pertinent to note that recently there is no financial assistance or charitable contributions from people.

The petitioners have the right to establish a self-financing educational institution where the autonomy is given to collect fees and money from people. The needs like expansion, improvement, diversification and growth differs from institution to institution and the stat must respect this autonomy.

By virtue of mere recognition or affiliation, the educational institutions will not become instrumentalities of the state.

As per defendant,

The affidavit was presented by the respondent to show the attempts taken by the government in implementing Article 45.

The state has the duty only to provide primary education to the children as Article 45 mandates only providing free and compulsory primary education for children of 14 years age or less than fourteen years age.

Moreover the cost involved in higher education is humungous and it is dependent on the economic and social circumstances of the country.
The accessibility of the primary schools have also been increased which makes the children to approach schools easily within walkable distance.

14 states and Union territories have enacted the legislation to make the primary education compulsory with corresponding rules and regulations.

It was contended that there would be huge financial mismanagement in providing education to medicine. It was mentioned that 3.2% of the total financial share was given for health sector where share is given to the medical education. Priorities were given to the health sector

dealing with issues like promotions of primary health and hospital services. Moreover, certain statistical data were give regarding the cost incurred in medical education.

The very concept of collecting the cost for education is against the public policy which is nothing but exploitation.

Imparting education to people is a state function which must be subjected to the rules and regulations of the state to which the private educational institutions are not exceptions.

It was also mentioned that its almost impossible for state to provide higher professional education to this much large population, as there are n number of professional courses and limited sources or finances that state have.

Court found out:

1. The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State. 2. The obligations created by Articles 41, 45 and 46 of the Constitution can be discharged by the State either by establishing institutions of its own or by aiding, recognising and/or granting affiliation to private educational institutions. Where aid is not granted to private educational institutions and merely recognition or affiliation is granted it may not be insisted that the private education institution shall charge only that fee as is charged for similar courses in governmental institutions. The private educational institutions have to and are entitled to charge a higher fee, not exceeding the ceiling fixed in that behalf. Court elaborated that there must be a ceiling to charge a higher fees. 3. A citizen of this country may have a right to establish an educational institution but no citizen, person or institution has a right much less a fundamental right, to affiliation or recognition or to grant-in-aid from the State. The recognition and/or affiliation shall be given by the State subject only to the conditions set out in, and only accordance with the scheme continued in Part-Ill of this Judgment. No Government/University or authority shall be competent to grant recognition or affiliation except in accordance with the said scheme. The said scheme shall constitute a condition of such recognition or affiliation, as the case may be, in addition to such other conditions and terms which

such Government, University or other authority may choose to impose. Those receiving aid shall, however, be subject to all such terms and conditions, as the aid giving authority may impose in the interest of general public.

Outcome:

The state responded to this declaration nine years later by inserting, through the Ninety-third amendment to Constitution, Article 21-A, which provides for the fundamental right to education for children between the ages of six and fourteen. In addition, several States in India have passed legislation making primary education compulsory. These statutes "have however remained un-enforced due to various socio-economic and cultural factors as well as administrative and financial constraints. There is no central legislation making elementary education compulsory."

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M.C Mehta v. State of Tamil Nadu and others.

Name of case - MC Mehta vs State of Tamil Nadu

Citation – AIR 1997 SC 699

Year of the case – 1996

Appellant – MC Mehta

Respondent – state of Tamil Nadu and others

Bench - justice Kuldeep Singh, justice BL Hansaria and justice SB Majumdar.

Important sections –

Article 24 of the Indian constitution.

Article 39(e) of the Indian constitution. Article 9(f) of the Indian constitution. Article 41 of the Indian constitution.
Article 47 of the Indian constitution.

This case was brought up in the supreme court due to child labour first discuss what child labour is, child labour is an evil practice of employing small children in industries or on other works as a part time worker or a full-time worker. The children who are involved in such practices does not enjoy their days of childhood and the working condition in the

industry is so poor that they also suffer from a lot of problem be it of mental or physical health as they are exposed to a lot of things at early age.

Facts of the case.

In this case a town in the state of Tamil Nadu called Sivakashi was one of the worst towns in terms of child labour in the country as most of the child living there was involved in some or the other business, according to article 24 of the Indian constitution it is the duty of the state to provide every child below the age of 14 with free and compulsory primary education, this was considered as a fundamental right after the case of Unni Krishnan. Therefore, MC Mehta show the condition of the down and was disturbed by this site so he filed a petition under section 32 of the Indian constitution as the state is not taking measures in providing primary education to the child which is compulsory. He also said that the child is being employed in dangerous industries which are making matchsticks where they are being forced to work with explosive materials which is causing a harm to their health as there in healing a lot of in toxic substance by working day and night. No objections were made by the government because of which the court issued directions which suggested to improve the life of the children who are being affected by this and provide proper working environment to the workers, even after this an accident occurred in one of Sivakasi fireworks factory. After this incident the government acted against those industries.

There were a lot of problem in front of the court as child below the age of 14 were involved in such hazardous activity which is destroying them internally and externally and because they are forced to work day and night the issue also races of their education and development as they are the pillar of the new India.

Sections mentioned.

Article 24 in the constitution of India - this article prohibits the employment of children in factories that is no child below the age of 14 shall be employed to work in any factory or on any other hazardous place/ environment.

Article 39 (e) in the constitution of India - this article refers to the health of the children it states that the health and strength of worker, be it a man a woman for that child of age below 14 years who are not allowed to work are getting proper environment to work on and are not abused or force by economic necessity to enter those work which do not suit their age or stand or they incapable or overburden to do.

Article 39 (f) in the constitution of India - this article speaks about the growth and development of children in this it is mentioned that children are given opportunities and facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 in the constitution of India - it talks about the right to work, in this right to work to education and to public assistance in some cases the state shall within its boundary of its economic capacity and development should make effective provisions to secure the right to work to education and to public assistance for all the people of the society.

In this the child below the age of 14 should be imparted with primary education as it is the responsibility of the state to provide so to the underprivileged children. The state is also responsible for their overall development and provide primary education.

Article 45 in the constitution of India – this article talks about free and compulsory education of children in India, the state shall try to provide free and compulsory education to the children until they complete the age of 14 as they are under privilege and they cannot afford a school it is the responsibility of the state to provide so.

Article 47 in the constitution of India - it tells about the duty of state to raise the level of nutrition and the standard of living and to improve health, the state should be responsible to raise the level of nutrition and the standard of living of their people so that they can work effectively and efficiently e with less health issues, setting up or improving the health sector is also a primary duty of the state as the poor people cannot afford high charges of a private hospital so the state shall improve the health infrastructure in their state. The state

shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs to protect the health of the individual.

Factories Act ,1948

Section 67 - this section prohibits the employment of young children. The child who are below the age of 14 shall not be employed by anyone as at that age is they should be e given proper education and the chance of developing themselves to prove as a strong youth.

Plantation labour Act ,1951

Section 24 - the child who has not attained the age of 12 years should not be e allowed to work in any plantation or farming activity.

Mines Act ,1952

Section 45 (1) – this section says that any child should not be allowed to be employed in any of the mines and they should also not be allowed to be present near or at any part of the mine which is below the ground or at any e mining operation which are being carried on.

Section 45(2) – in this section it is stated that after the notification by the central government no person who is below the age of 18 shall be allowed to be present in any part of the mine be it above or below the ground or where any operation of mining is going on.

The Motor Transport Workers Act ,1961

Section 14 - this section provides us with the working hour for adolescent employee as a transport worker, in this section it is mentioned that no adolescence shall be employed or required to work as a motor transport worker in any motor transport undertaking for more than 6 hours a day including rest interval of half an hour and between the hours of 10 p.m. and 6 a.m.

International commitment.

India has signed the convention on the right of children in which the children rights should be protected and they should be developed continuously all over the world.

International labour organisation has also laid down points to eliminate child labour and India being a part of international labour organisation must follow it.

1) Prohibition of children labour

2) Attacking the basic cause of child labour

3) Helping children to develop and adopt a better future

4) Protect the children from the people who force them to work ok.

The court also presented the cause of child labour in India which player

1) Poverty

2) Inequality in wage

3) Absence of scheme for allowance

4) Large family

5) Children being available at a low wage rate

6) Illiteracy and ignorance of parent

7) Unemployment.

The case which is related

Unni Krishnan case – in this case is compulsory education for all children till the age of 14 was given status of fundamental right. Mentioned in article 45.

Judgement

The court held that child labour is not only for issue in Sivakasi alone but it is also spread nation wise because of which protecting the rights of the children is a very important the articles 24, 39 (e), (f), 41,45 and 47 of the Indian constitution were protecting the rights of the children. In this article as we have seen above it is stated about development and growth of children providing free and compulsory education to them providing a proper standard of living to the children and these are the responsibility which the state has towards there young masses. We have also seen about that different apps also protect the right of the children such as motor transport workers act, mines act, factories act and many more these all state that the child should not be exposed to an explosive environment or harmful environment and they should not work industries making harmful or dangerous things. The court also quoted various articles such as child labour in India by Ahmad Shah in which they can see the causes of exploitation of child labour in India and the reasons such as poverty low wage rate unemployment absence of schemes large family and many more problems.

After listening to all this the court concluded that the reason for increasing child labour is the unstable or the decreasing financial condition of the family which is comparing the children to work and earn as there are more mouth than working hands in a family because of which the children who should enjoy their childhood by learning new experiences and being educated are forced to work in a factory field of explosive materials and dangerous things destroying their health and future. After seeing this the court ordered the formation of a child labour rehabilitation cum welfare fund, in which if a person is court employing a child into a work, then he must pay a sum of 20,000 which will be deposited in this fund and further this fund will be used for the growth and development of the child by providing him education and other benefits.

The court also ordered that if a child is working in a hazardous job and is seen by the officials then the government should see that an adult of that family in which the child was employed

should get a job so that the child does not have to work. In return the member who has got the job should ensure that the child receive full education and is provided with all the necessities. But the court noted that attainment of employment of these adults might prove to be a burden on state that is why the government decided to contribute rupees 5000 to the child labour rehabilitation cum welfare fund for the education of that child.

The court also ordered that the government shall carry out survey of child labour within 6 month, they should also see the areas of employment which is hazardous for employment it and that there is no child working there, the government should also try to provide employment to any one member of the working child's family and if employment is not provided then amount of rupees 85000 to be paid to the parent of the child to provide education to their children and if the parents does not do so the payment shall be ceased and that the inspector should also see that the education is provided free of cost as mandated under section 45 of the Indian constitution in the case of Unni Krishnan.
After the accident in Sivakasi where around 39 that's where reported the court ordered a committee to be formed which shall provide comprehensive report on various aspects relating to child labour.

The committee consisted of 1) Shri RK Jain, senior advocate

2) Ms. Indira Jai Singh, senior advocate

3) Shri KC Dua, advocate.

The committee made many recommendations which is as follows-

1) The children should not be involved in production of fireworks to see this is the responsibility of the state.

2) The children who are involved in packaging of matchstick should work in separate premises and those children should be above the legal age.
3) Working hours for a child should be 6 hours a day only.

4) The children should be provided with the transportation facility by the industry to travel from their workplace to their home.

5) The industry or the company e should ensure that they are giving proper diet to the child.

6) The wages paid to the children should be equal to the other men or women.

7) All the workers working in the industry should be covered under the insurance scheme.

8) Different facilities should also be provided to the students such as education and recreation facility.

9) The employee should be directed to deposit rupees to per month per worker to world so that the state can contribute in protecting them and giving them basic facilities.

10) Are national commission answerable to the supreme court should be formed which shall ensure the abolition of child labour.

Outcome.

After filing of the petition by MC Mehta and the Sivakasi accident the attention of the government and the supreme court was drawn towards the problem of child labour which was prevalent in India due to a lot of reason mentioned above such as poverty, unemployment etc. After listening to the case supreme court formed different welfare funds and committee which help in reducing child labour and in providing a better involvement to work to the other workers with less inequality. Child labour persist in India but with the help of Government and the state it is decreasing as the parents are being aware of the importance of education to curb poverty.

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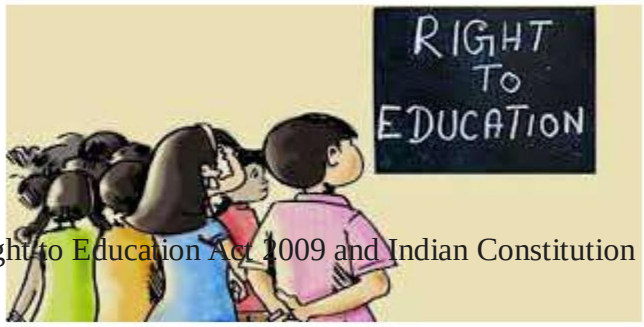


Right to Education Act 2009 and Indian Constitution

What is the Act about?

1. Every child between the ages of 6 to 14 years has the right to free and compulsory education. This is stated as per the 86th Constitution Amendment Act via Article 21A. The Right to Education Act seeks to give effect to this amendment

2. The government schools shall provide free education to all the children and the schools will be managed by School Management Committees (SMC). Private schools shall admit at least 25% of the children in their schools without any fee.
3. The National Commission for Elementary Education shall be constituted to monitor all aspects of elementary education including quality.

Main Features of Right to Education (RTE) Act, 2009

Free and compulsory education to all children of India in the 6 to 14 age group.

No child shall be held back, expelled or required to pass a board examination until the completion of elementary education.

If a child above 6 years of age has not been admitted in any school or could not complete his or her elementary education, then he or she shall be admitted in a class appropriate to his or her age. However, if a case may be where a child is directly admitted in the class appropriate to his or her age, then, in order to be at par with others, he or she shall have a right to receive special training within such time limits as may be prescribed. Provided further that a child so admitted to elementary education shall be entitled to free education till the completion of elementary education even after 14 years.

Proof of age for admission: For the purpose of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the Provisions of Birth. Deaths and Marriages Registration Act 1856, or on the basis of such other document as may be prescribed.No child shall be denied admission in a school for lack of age proof

A child who completes elementary education shall be awarded a certificate.
Call need to be taken for a fixed student–teacher ratio.

Twenty-five per cent reservation for economically disadvantaged communities in admission to Class I in all private schools is to be done.

Improvement in the quality of education is important.

School teachers will need adequate professional degree within five years or else will lose job.

School infrastructure (where there is a problem) need to be improved in every 3 years, else recognition will be cancelled.

Financial burden will be shared between the state and the central government.

History

Article 21A of the Constitution - Constitution (Eighty - Sixth Amendment) Act, 2002.
December 2002

86th Amendment Act (2002) via Article 21A (Part III) seeks to make free and compulsory education a Fundamental Right for all children in the age group 6-14 years.
October 2003

A first draft of the legislation envisaged in the above Article, viz., Free and Compulsory Education for Children Bill, 2003, was prepared and posted on this website in October, 2003, inviting comments and suggestions from the public at large.
2004

Subsequently, taking into account the suggestions received on this draft, a revised draft of the Bill entitled Free and Compulsory Education Bill, 2004

June 2005

The CABE (Central Advisory Board of Education) committee drafted the 'Right to Education' Bill and submitted to the Ministry of HRD. MHRD sent it to NAC where Mrs. Sonia Gandhi is the Chairperson. NAC sent the Bill to PM for his observation.
14th July 2006

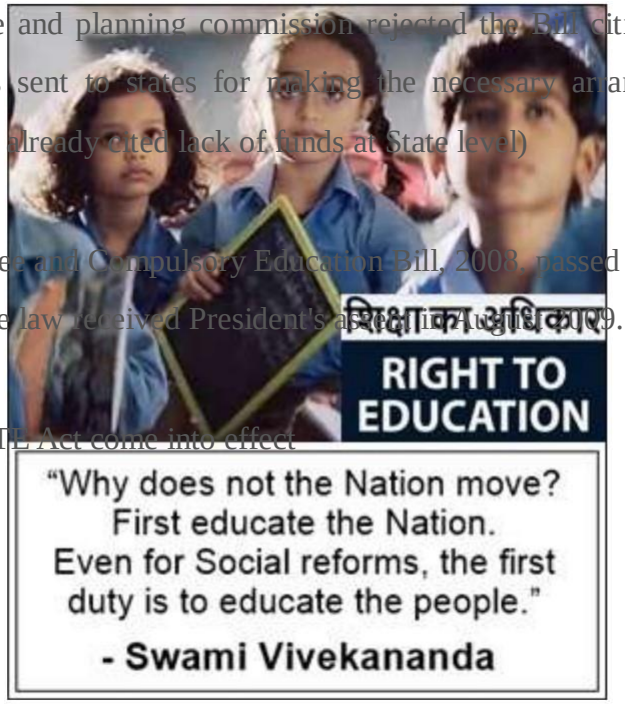
The finance committee and planning commission rejected the Bill citing the lack of funds and a Model bill was sent to states for making the necessary arrangements. (Post-86th amendment, States had already cited lack of funds at State level)

2009

Right of Children to Free and Compulsory Education Bill, 2008, passed in both Houses of Parliament in 2009. The law received President's assent in August 2009.

1 April 2010

Article 21-A and the RTE Act come into effect



FAQ

Why is the act significant and what does it mean for India?

The passing of the Right of Children to Free and Compulsory Education (RTE) Act 2009 marks a historic moment for the children of India.

This Act serves as a building block to ensure that every child has his or her right (as an entitlement) to get a quality elementary education, and that the State, with the help of families and communities, fulfils this obligation.

Few countries in the world have such a national provision to ensure both free and child-centred, child-friendly education.

What is ‘Free and Compulsory Elementary Education’?

All children between the ages of 6 and 14 shall have the right to free and compulsory elementary education at a neighbourhood school.

There is no direct (school fees) or indirect cost (uniforms, textbooks, mid-day meals, transportation) to be borne by the child or the parents to obtain elementary education. The government will provide schooling free-of-cost until a child’s elementary education is completed.

What is the role envisaged for the community and parents to ensure RTE?

The Right of Children to Free and Compulsory Education (RTE) Act 2009 insists upon schools to constitute School Management Committees (SMCs) comprising local authority officials, parents, guardians and teachers. The SMCs shall form School Development Plans and monitor the utilization of government grants and the whole school environment.
RTE also mandates the inclusion of 50 per cent women and parents of children from disadvantaged groups in SMCs. Such community participation will be crucial to ensuring a child friendly “whole school” environment through separate toilet facilities for girls and boys and adequate attention to health, water, sanitation and hygiene issues.
How does RTE promote Child-Friendly Schools?

All schools must comply with infrastructure and teacher norms for an effective learning environment. Two trained teachers will be provided for every sixty students at the primary level.

Teachers are required to attend school regularly and punctually, complete curriculum instruction, assess learning abilities and hold regular parent-teacher meetings. The number of teachers shall be based on the number of students rather than by grade.

The state shall ensure adequate support to teachers leading to improved learning outcomes of children. The community and civil society will have an important role to play in collaboration

with the SMCs to ensure school quality with equity. The state will provide the policy framework and create an enabling environment to ensure RTE becomes a reality for every child.

How will RTE be financed and implemented in India?

Central and state governments shall share financial responsibility for RTE. The central government shall prepare estimates of expenditures. State governments will be provided a percentage of these costs.

What are the key issues for achieving RTE?

RTE provides a ripe platform to reach the unreached, with specific provisions for disadvantaged groups, such as child labourers, migrant children, children with special needs, or those who have a "disadvantage owing to social, cultural economical, geographical, linguistic, gender or such other factor." RTE focuses on the quality of teaching and learning, which requires accelerated efforts and substantial reforms:

1. Creative and sustained initiatives are crucial to train more than one million new and untrained teachers within the next five years and to reinforce the skills of in-service teachers to ensure child-friendly education.

2. Families and communities also have a large role to play to ensure child-friendly education for each and every one of the estimated 190 million girls and boys in India who should be in elementary school today.

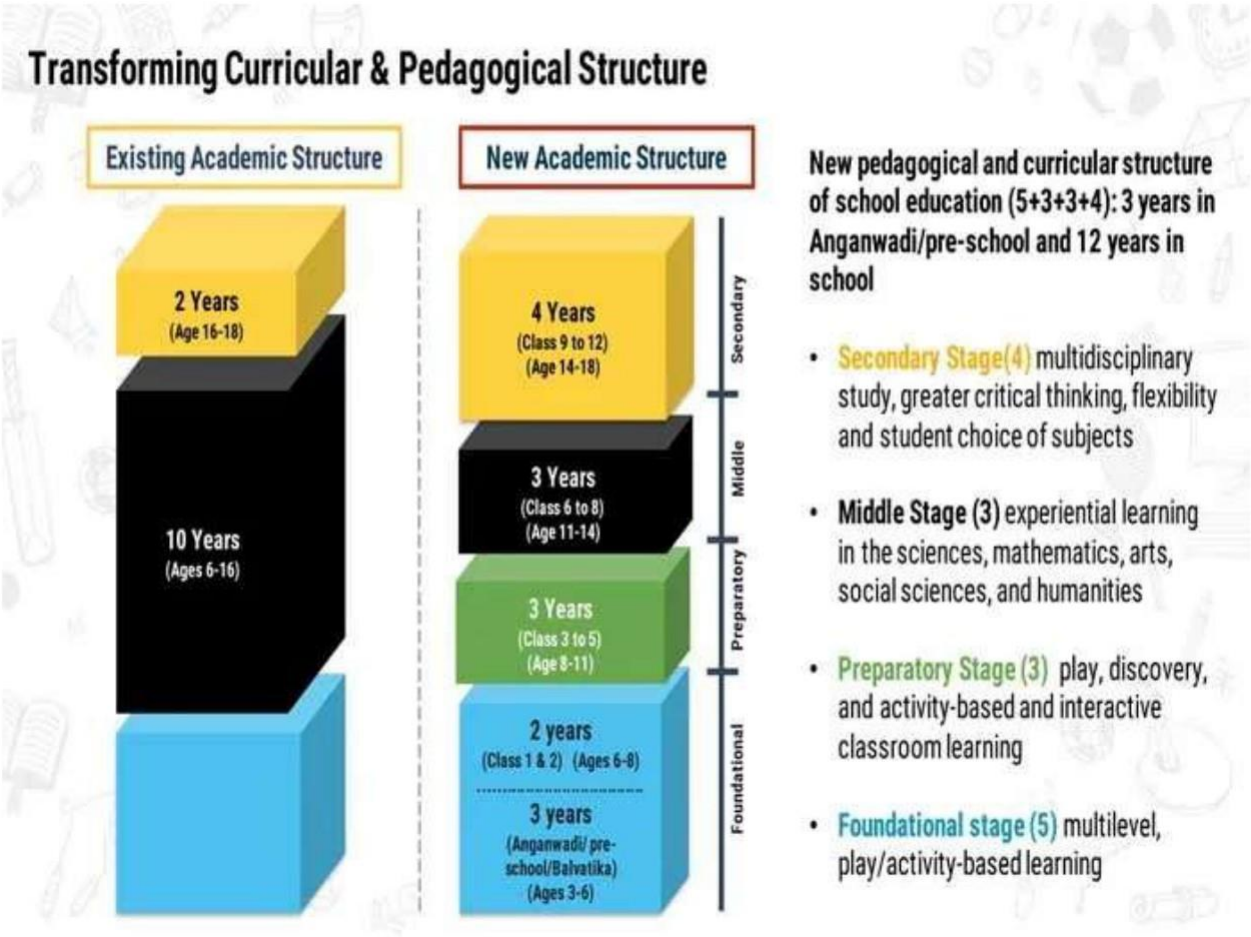
3. Disparities must be eliminated to assure quality with equity. Investing in preschool is a key strategy in meeting goals.

4. Bringing eight million out-of-school children into classes at the age appropriate level with the support to stay in school and succeed poses a major challenge necessitating flexible, innovative approaches.

What is the mechanism available if RTE is violated?

The National Commission for the Protection of Child Rights shall review the safeguards for rights provided under this Act, investigate complaints and have the powers of a civil court in trying cases.

States should constitute a State Commission for the Protection of Child Rights (SCPCR) or the Right to Education Protection Authority (REPA) within six months of 1 April, 2010. Any person wishing to file a grievance must submit a written complaint to the local authority.. Appeals will be decided by the SCPCR/REPA. Prosecution of offences requires the sanction of an officer authorised by the appropriate government.



Right to Education Bill

In 2002, education was made a fundamental right in the 86th amendment to the Constitution. Six years after an amendment was made in the Indian Constitution, the union cabinet cleared the Right to Education Bill. Key provisions of the Bill include: 25% reservation in private schools for disadvantaged children from the neighbourhood, at the entry level. The government will reimburse expenditure incurred by schools; no donation or capitation fee on admission; and no interviewing the child or parents as part of the screening process. The Bill also prohibits physical punishment, expulsion or detention of a child and deployment of teachers for non-educational purposes other than census or election duty and disaster relief. Running a school without recognition will attract penal action.

The Right to Education Bill is the enabling legislation to notify the 86th constitutional amendment that gives every child between the age of six and 14 the right to free and compulsory education.

25% quota for poor

The Supreme Court upheld the constitutional validity of Right of Children to Free and Compulsory Education Act, 2009, on April 12, 2012 and directed every school, including privately-run ones, to give immediately free education to students from socially and economically backward classes from class-I till they reach the age of 14 years.

The court threw out the challenge by private unaided schools to Section 12(1)(c) of the Act that says every recognized school imparting elementary education, even if it is an unaided school not receiving any kind of aid or grant to meet its expenses, is obliged to admit disadvantaged boys and girls from their neighbourhood.

A Roadmap to Ensure Right To Education

The National Commission for Protection of Child Rights (NCPCR) has been designated as the agency to monitor provisions of the Right to Free and Compulsory Education (RTE) Act.

School Admissions According to RTE Norms

A series of measures have been taken by the NCPCR to ensure that school admission procedures all over the country are in accordance with the Right of Children to Free and Compulsory Education (RTE) Act, 2009. This was necessitated by the fact that schools in some states were carrying out a screening procedure for admission of children in the elementary stage of education prohibited by the Act.In April, the NCPCR wrote to the chief secretaries of all the states asking them to issue Government Orders to ensure that school admission procedures were in accordance with the RTE Act. This was prompted by the Directorate of Education, Government of National Capital Territory of Delhi (GNCTD), issuing a notice in March inviting applications for admission to Class VI in the Rajkiya Pratibha Vikas Vidyalayas run by the Directorate.

The NCPCR's intervention in April came in response to an admission notice that had been issued by the GNCTD's Directorate of Education in all leading newspapers as well as in the Directorate's website, inviting students to purchase application forms costing Rs 25 each and thereafter sit for an entrance exam. Since the RTE Act prohibits any kind of screening

procedure and permits admissions into any school through random selection only, the notice was clearly in contravention of the Act.

As the nodal body monitoring the implementation of the RTE Act, the Commission wrote to the Principal Secretary, Education, GNCTD, asking the admission notice be withdrawn and a notice in Conformity with the provisions of the RTE be issued instead. It also requested that Government Orders (GO) be issued to all schools in the GNCTD within a week regarding the provisions of the Act so that the schools made the required changes in their procedures and modes of functioning.

As the Directorate did not comply with this request, it was summoned by the Commission in June and given time till July to re-conduct the admission in accordance with RTE procedures. To ensure that the RTE Act was not similarly contravened in other states, the NCPCR has in its letter to the chief secretaries said that the GO they issue to schools on the matter must specify that:

1. Admission procedures be made in accordance with the RTE Act

2. 25 per cent reservation is ensured for weaker sections in all 'specified category' schools and private unaided schools, and reservation norms for government aided schools are to be followed

Further, private schools recognized by the government must also be mapped out and issued notice regarding provisions in the Act as well as the procedures by which children in the neighbourhood could claim admission to the schools. Also, the task of finalizing State Rules on the RTE Act must be completed at the earliest.

In response to queries regarding Navodaya Schools which have been designated as 'specified category' schools in the RTE Act, the NCPCR clarified that the provisions of Section 13 of RTE Act applied to all schools without exception.

The relevant provision of Section 13 of the Act is:

No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardians to any screening procedure. Any school or person, if in contravention of the provisions of sub-section (1):

1. Receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged

2. Subjects a child to screening procedure shall be punishable with fine which may extend to Rs 25,000 for the first contravention and Rs 50,000 for each subsequent contravention.

No Screening for Admission to Navodaya Schools

The National Commission for Protection of Child Rights (NCPCR) has written to the commissioner, Navodaya Schools, as well as the state education secretaries against any kind of screening for admission of children to elementary education (Classes 1 to eight). The NCPCR intervened to check violation of RTE provisions after it got reports of Navodaya schools screening students in Delhi and other states.

Quoting Section 13 of the RTE Act 2009, the NCPCR has pointed out that while admitting a child to school, the Act prohibits schools or persons from collecting capitation fees or subjecting the child or the parents and guardians to any screening procedure. Any school or person receiving capitation fees, it has pointed out, could be punished with a fine which could be ten times the capitation fee charged.

Subjecting a child to screening could lead to a fine of Rs 25,000 for the first contravention and Rs 50,000 for each subsequent contravention. Section 13 applies to all schools even the Navodaya schools which have been designated special category schools in the RTE Act.

Screening procedures being conducted by Navodaya Schools are a violation of the RTE Act, it clarified. NCPCR has also requested state governments to issue orders to all schools regarding the provisions of the Act so that the required changes in their procedures and modes of functioning are made within a week.

Eligibility for Teachers

The following persons shall be eligible for appearing in the TET:

1. A person who has acquired the academic and professional qualifications specified in the NCTE Notification dated 23rd August 2010.

2. A person who is pursuing any of the teacher education courses (recognized by the NCTE or the RCI, as the case may be) specified in the NCTE Notification dated 23rd August 2010.

3. The eligibility condition for appearing in TET may be relaxed in respect of a State/UT which has been granted relaxation under sub-section (2) of section 23 of the RTE Act. The relaxation will be specified in the Notification issued by the Central Government under that sub-section.

Each child to get free uniform, books under RTE

Each child from class I to class VIII in the country will be provided free textbooks and uniforms, if a raodmap prepared by the Centre to implement the Right To Education Act (RTE) is accepted by the states.

The roadmap to implement the Right of Children to Free and Compulsory Education Act was discussed at a meeting of state Education Secretaries recently. According to the minutes of the meeting:

1. Nearly 7.8 lakh additional classrooms and seven lakh girls' toilets will have to be created to implement the new law which has come into force from April 1. The government will spend Rs 1.71 lakh crore in the next five years for implementing the Act.

2. Each child will be provided uniforms at Rs 400 per annum. Many states are already providing uniforms from their own budget. "But the uniforms will have to

be provided by the state governments. They need to agree to this provision and incorporate it in their rules," a HRD Ministry official said.

3. Every child will be provided free textbooks while a child with special need will get Rs 3,000 per annum for inclusive education. Similarly, Rs 10,000 will be given for home-based education for severely disabled children.

4. There will be a requirement of additional 5.1 lakh teachers to meet the pupils-teacher ration of 30 for one as per the RTE Act. In UP, there is a requirement for 1.5 lakh teachers, followed by Bihar and Gujarat (0.5 to one lakh each), according to the minutes of the meeting.

5. The Rs 1.71 lakh crore will be spent on provision of access, infrastructure, training of untrained teachers and for intervention for out-of school children. The teachers' salary and civil work will have maximum financial requirements of 28 per cent and 24 per cent respectively.

6. Nearly 17 per cent of the total estimate will be spent on child entitlement, while nine per cent will go to special training for out-of-school children. School facilities will require eight per cent of this money and inclusive education will need six per cent.
7. The 7.6 lakh untrained teachers will be provided training in next five years. Maximum number of untrained teachers are in Bihar, Jharkhand and the northeastern states.
8. The RTE stipulates barrier-free education for children with special needs and one classroom per teacher. About 7.8 lakh additional classrooms will be required. Majority of these classrooms will be Uttar Pradesh and Bihar (2.5 lakh each) followed by West Bengal (1.3 lakh) and Assam (30,000).

9. There are nearly 27,000 'kuchcha' school buildings which will have to be upgraded. Nearly seven lakh toilets for girls will be required, including 90,000 in Bihar, 63,000 in Madhya Pradesh and 54,000 in Orissa. About 3.4 lakh schools will require drinking water facility.

Submitted by- Ritu Goyal

ABORTION LAWS IN INDIA

INTRODUCTION

Abortion in India is legal under various circumstances. It can be performed until 24 weeks of pregnancy. In exceptional cases, a court may allow a termination after 24 weeks.
When a woman gets a pregnancy terminated voluntarily from a service provider, it is called induced abortion. Spontaneous abortion is the loss of a woman's pregnancy before the 20th week that can be both physically and emotionally painful. In common language, it is called a miscarriage.

Till 2017, there was a bicameral classification of abortion as safe and unsafe. Unsafe abortion was defined by WHO as "a procedure for termination of a pregnancy done by an individual who does not have the necessary training or in an environment not conforming to minimal medical standards." However, with abortion technology now becoming safer, this has been replaced by a three tier classification of safe, less safe, and least safe permitting a more nuanced description of the spectrum of varying situations that constitute unsafe abortion and the increasingly widespread substitution of dangerous, invasive methods with use of misoprostol outside the formal health system.

Safe abortion: provided by health-care workers and with methods recommended by WHO.

Less-safe abortion: done by trained providers using non-recommended methods or using a safe method (e.g. misoprostol) but without adequate information or support from a trained individual.

Least-safe abortion: done by a trained provider using dangerous, invasive methods.

Comprehensive Abortion Care (CAC), a term "rooted in the belief that women must be able to access high-quality, affordable abortion care in the communities where they live and work", was first introduced in India by Ipas[5] in 2000. The concept of CAC encompasses care

through the entire period from conception to post abortion care and includes pain management.

The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy (MTP) Act, 1971 provides the legal framework for making CAC services available in India. Termination of pregnancy is permitted for a broad range of conditions up to 20 weeks of gestation as detailed below:

When continuation of pregnancy is a risk to the life of a pregnant woman or could cause grave injury to her physical or mental health;

When there is substantial risk that the child, if born or dead would be seriously handicapped due to physical or mental abnormalities;

When pregnancy is caused due to rape (presumed to cause grave injury to the mental health of the woman);

When pregnancy is caused due to failure of contraceptives used by a married woman or her husband (presumed to constitute grave injury to mental health of the woman).

The MTP Act specifies – (i) who can terminate a pregnancy; (ii) till when a pregnancy can be terminated; and (iii) where can a pregnancy be terminated. The MTP Rules and Regulations, 2003 detail training and certification requirements for a provider and facility; and provide reporting and documentation requirements for safe and legal termination of pregnancy.

Who can terminate a pregnancy?

As per the MTP Act, pregnancy can be terminated only by a registered medical practitioner (RMP) who meets the following requirements:

(i) has a recognized medical qualification under the Indian Medical Council Act
(ii) whose name is entered in the State Medical Register

(iii) who has such experience or training in gynaecology and obstetrics as per the MTP Rules

Where can a pregnancy be terminated?

All government hospitals are by default permitted to provide CAC services. Facilities in the private sector however require approval of the government. The approval is sought from a committee constituted at the district level called the District Level Committee (DLC) with three to five members. As per the MTP Rules, 2003 the following forms are prescribed for approval of a private place to provide MTP services:

1. Form A [Sub-Rule (2) of Rule 5]: Application Form for Approval of a Private

Place: This form is used by the owner of a private place to apply for approval for provision of MTP services. Form A has to be submitted to the Chief Medical Officer of the district.

2. Form B [Sub-Rule (6) of Rule 5]: Certificate of Approval: The certificate of approval for a private place deemed fit to provide MTP services is issued by the DLC on this format.

Whose consent is required for termination of pregnancy?

As per the provisions of the MTP Act, only the consent of women whose pregnancy is being terminated is required. However, in case of a minor i.e. below the age of 18 years, or a mentally ill woman, consent of guardian (MTP Act defines guardian as someone who has the care of the minor. This does not imply that only parent/s are required to consent.) is required for termination. The MTP Rules, 2003 prescribe that consent needs to be documented on Form C as detailed below:

1. Form C [Rule 9] Consent Form: This form is used to document consent of the woman seeking termination. Pregnancy of a woman who is above 18 years of age can be terminated with only her consent. If she is below 18 years of age or mentally ill, written consent of the guardian is required.

Whose opinion is required for termination of pregnancy?

The MTP Act details that for terminations up to 12 weeks, the opinion of a single Registered Medical Practitioner (RMP) is required and for terminations between 12 and 20 weeks the opinion of two RMP's is required. However, termination is conducted by one RMP. The MTP Regulations, 2003 prescribe opinion of RMP/s to be recorded on Form I as detailed below:

1. Form I [Regulation 3] Opinion Form: This form is used to record opinions of the RMPs' for termination of pregnancy. For termination up to 12 weeks of gestation, opinion of one RMP is required whereas for the length of pregnancy between 12 and 20 weeks, opinion of two RMPs is required.

The MTP Regulations, 2003

1. Form III [Regulation 5] Admission Register: This template is used to document details of women whose pregnancies have been terminated at the facility. The register needs to be retained for a period of five years till the end of the calendar year it relates to.

2. Form II [(Regulation 4(5)] Monthly Statement: This form is used to report MTP performed at a hospital or approved place during the month. The head of the hospital or owner of the approved place should send the monthly report of MTP cases to the Chief Medical Officer of the district. MTP Act, Amendments, 2002

The Medical Termination of Pregnancy (MTP) Act 1971, was amended in 2002 to facilitate better implementation and increase access for women especially in the private health sector.

1. The amendments to the MTP Act in 2002 decentralized the process of approval of a private place to offer abortion services to the district level. The District level committee is empowered to approve a private place to offer MTP services in order to increase the number of providers offering CAC services in the legal ambit.

2. The word 'lunatic' was substituted with the words 'mentally ill person'. This change in language was instituted to lay emphasis that "mentally ill person" means a person who is in need for treatment by reason of any mental disorder other than mental retardation.

3. For ensuring compliance and safety of women, stricter penalties were introduced for MTPs being conducted in unapproved sites or by untrained medical provide by the act.

4. MTP Rules, 2003

The MTP Rules facilitate better implementation and increase access for women especially in the private health sector.

Composition and tenure of District Level Committee: The MTP rules 2003, define composition of the committee stating that one member of the committee should be a gynecologist / surgeon/ anesthetist and other members should be from the local medical profession, non-government organizations, and Panchayati Raj Institution of the district and one member of the committee should be a woman.

Approved place for providing medical termination of pregnancies: The MTP Rules 2003, provide specific guidelines pertaining to equipment, facilities, drugs, and referral linkages to higher facilities required by an approved place for providing quality CAC and post abortion services.

Inspection of private place: The MTP Rules 2003 state that an approval can be inspected by the Chief Medical Officer (CMO), as often as may be necessary with a view to verify whether termination of pregnancies are being done therein under safe and hygienic conditions.

Cancellation or suspension of a certificate of approval for a private place: As per the MTP Rules 2003, if the CMO of the District is satisfied that the facilities specified in rule 5 are not being properly maintained therein and the termination

of pregnancy at such place cannot be made under safe and hygienic conditions, she/he shall make a report of the fact to the Committee giving the detail of the deficiency or defects found at the place. The committee may, if satisfied, can suspend or, cancel the approval of the place provided that the committee gives the

owner of the place a chance of representation before the certificate issued under rule 5 is cancelled.

Proposed Amendments to the MTP Act, 2014

The Government took cognizance of the challenges faced by women in accessing safe abortion services and in 2006 constituted an expert group to review the existing provisions of the MTP Act to propose draft amendments. A series of expert group meetings were held from 2006– 2010 to identify strategies for strengthening access to safe abortion services. In 2013 a national consultation was held which was attended by a range of stakeholders and further emphasized the need for amendments to the MTP Act. In 2014, MoHFW shared the MedicalTermination of Pregnancy Amendment Bill 2014 in the public domain. The proposed amendments to the MTP Act were primarily based on increasing the availability of safe and legal abortion services for women in the country.

Expanding the provider base
Increasing the upper gestation limit for legal MTPs

Increasing access to legal abortion services for women Increasing
clarity of the MTP law

Expanding provider base: In order to increase the availability of safe and legal abortion services, it has been recommended to increase the base of legal MTP providers by including medical practitioners with bachelor's degree in Ayurveda, Siddha, Unani or Homeopathy. These categories of Indian System of Medicines (ISM) practitioners have Obstetrician and Gynecology (ObGyn) training and abortion services as part of their undergraduate curriculum. It has also been recommended to include nurses with a three and half-year's degree and registered with the Nursing Council of India, into the base of legal providers for abortion services. In addition, it has also been recommended that Auxiliary Nurse Midwives (ANM) posted at high case load service delivery points be included as legal providers of MMA only. These recommendations are supported by two Indian studies that conclude abortion care can safely and effectively be provided by nurses and AYUSH practitioners.

Provisions to increase the gestation limit for abortions: It is recommended to increase the gestational limit for seeking abortions on grounds of fetal abnormality beyond 20 weeks. This would result in making abortion available at any time during the pregnancy, if the fetus is diagnosed with severe fetal abnormalities. In addition, further to the above recommendations, it is also proposed to include increasing the gestation limit for safe abortion services for vulnerable categories of women expected to include survivors of rape and incest, single women (unmarried/ divorced/ widowed) and other vulnerable women (women with disabilities) to 24 weeks. The amendments to the MTP Rules would define the details for the same.

Increasing access to legal abortion services for women: The Act in its current form imposes some operational barriers that limit women's access to safe and legal abortion services. The amendments propose to:

Reducing the condition of requirement of the opinion of two health care providers for second trimester pregnancies to one health care provider only, as this is seen as a hindrance in access to safe abortion services by women in situations where two providers are not available: In 1971 when the MTP Act was passed about four decades ago dilatation and curettage (D&C) was the only available technology for termination of pregnancies. D&C now is an outdated invasive medical procedure that requires the use of a metal curette for removing products of conception. The provisions in the MTP Act for opinion of two medical providers or third party authorization for ensuring women's safety needs to be reduced in light of newer and safer technological advancements that make abortion a very safe out-patient medical procedure. The WHO 2012 guidance on Safe abortion: technical andpolicy guidance for health systems also recommends reducing third party authorization. The WHO 2012 guidance defines a woman seeking an abortion as an "autonomous adult", which means that "mentally competent adults do not require the authorization of any third party", stating that "health-care providers should not impose a requirement of third-party authorization unless required by law and related regulations".

Extending the indication of contraception to include unmarried women: As per the provisions of the MTP Act, contraceptive failure is the only condition that applies to married women.

The proposal for amendment includes making contraceptive failure applicable for all women and their partners as with other reasons for termination of pregnancy under the MTP Act.

Increasing clarity on the MTP Act

The MTP Act does not have a definition of termination of pregnancy. For this purpose, it has been recommended to include a definition for termination of pregnancy.

It has been recommended to replace the term "registered medical practitioner" with "registered health care provider". This would cover the expanded provider base being suggested, by bringing in Nurses and ANMs as well as Ayurveda, Unani, Siddha and Homoeopath practitioners as legitimate providers of abortion service.

Before 1971 (Indian Penal Code, 1860)

Before 1971, abortion was criminalized under Section 312 of the Indian Penal Code, 1860, describing it as intentionally "causing miscarriage". Except in cases where abortion was carried out to save the life of the woman, it was a punishable offense and criminalized women/providers, with whoever voluntarily caused a woman with child to miscarry facing three years in prison and/or a fine, and the woman availing of the service facing seven years in prison and/or a fine.

It was in the 1960s, when abortion was legal in 15 countries, that deliberations on a legal framework for induced abortion in India was initiated. The alarmingly increased number of abortions taking place put the Ministry of Health and Family Welfare (MoHFW) on alert. To address this, the government of India instated a committee in 1964 led by Shantilal Shah to come up with suggestions to draft the abortion law for India. The recommendations of this committee were accepted in 1970 and introduced in the Parliament as the Medical Termination of Pregnancy Bill. This bill was passed in August 1971 as the MedicalTermination of Pregnancy Act.

CAN I GET AN ABORTION IF THE SEX OF THE FOETUS IS FEMALE?

NO,

It is a crime to get an abortion because you or your family do not want a girl child. If you get an abortion after you come to know the sex of the foetus, you can be punished with jail time of up to three or seven years depending on the stage of pregnancy (Section 312 IPC 1860).

However, please remember that an abortion is otherwise legal (subject to conditions mentioned in questions 2 and 3) – it is abortion which follows sex-determination that is unlawful.

It is a crime to conduct any kind of test or procedure (like an ultrasound) to try and make sure the foetus is of a particular sex or to check the sex of your foetus under another law called thePre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Any procedure or technique performed on a man or woman for the purpose of sex-selection is illegal. Any procedure or technique performed on a woman for the purpose of

sex-determination is illegal. Since, abortion of female foetuses is high in India, both you and your doctor can be punished for conducting a diagnostic test to figure out the sex of the child. You are only allowed to get such tests or procedures in order to detect certain abnormalities of the foetus or if you are above 35 years of age or if you suffer from certain health specific problems.

WHO CAN BE PUNISHED FOR COMMITING AN ILLEGAL ABORTION?

Abortion of under 4 to 5-month pregnancy - The punishment for getting an illegal abortion is jail time of up to 3 years and/or fine. Both you and your doctor are considered to have committed a crime unless it was done in good faith to save your life.

Abortion of over 5-month pregnancy - If abortion takes place when you can sense the movement of the foetus, the punishment is higher. This is generally known as quickening and usually takes place between 17 and 20 weeks. Both you and your doctor can be punished with jail time of up to seven years and fine unless it was done in good faith to save your life.

Abortion without your consent - If anyone else forces you to have an abortion or performs one without you agreeing to it, the punishment is jail time of up to 10 years and fine.

Abortion resulting in death - If the patient dies because of a botched abortion or an abortion carried out by an unskilled person, the doctor who conducted the operation can be punished with jail time of up to 10 years and fine. If the abortion was conducted without the patient's permission, the punishment is jail for life.
Intentionally causing the death of a foetus can also be prosecuted under other provisions of the Indian Penal Code, 1860 under which the punishment can extend up to 10 years.

CASE LAWS

1. Family Law | MunishKakkar v. Nidhi Kakkar, C.A. No. 9318 of 2014 SC
2. Family Law; Acj Vs. Rj

3. Sushma Devi v. State of Himachal Pradesh

4. Brajbhan Singh Baghel v. State of Madhya Pradesh

5. MakrajLimboo v. State of Sikkim

6. Neelam Devi v. Vikas Singh

1. https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/policies-and-acts-1/law-on-abortion#:~:text=It%20is%20a%20crime%20to,(Section%20312%20IPC%201860).

2. https://en.wikipedia.org/wiki/Abortion_in_India

3. https://caselaw.in/search/abortion+law

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) AMENDEMENT ACT, 2002

INTRODUCTION:-An act further to amend the pre-natal diagnostic techniques (Regulationand Prevention of misuse) Act, 1994. It is enacted by parliament of India.The main purpose of enacting the act is ban the use of sex selection techniques before or after conception and prevent the misuse of prenal diagnostic technique for sex selective abortion.

Offences under this act include conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units, sex selection on a man or woman , conducting PND test for any purpose other than the one mentioned in the act, sale , distribution , supply , renting , etc. of any ultra swound machine or any other equipment capable of detecting sex of the foetus.

AMENDEMENTS :- 1) The act was amended in 2003 to improve the regulation of thetechnology used in sex selection.

2) The act was amended to bring the technique of pre conception sex selection and ultrasound technique within the ambit of the act.

3) The amendement also empowered the central supervisory board and state level supervisory board was constituted.

MAIN PROVISIONS IN THE ACT ARE:-

1) The act provides for the prohibition of sex selection , before or after conception.

2) It regulates the use of pre natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect few cases.

3) No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.

4) No person, including the one who is conucting the procedure as per law, will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other methods.

5) Any person who puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of notice , circular , label, wrapper or any document , or advertises through interior or other media in electronic or print form or engages in any visible representation made by means of hoarding, wall painting ,

signal, light , sound , smoke or gas can be imprisoned for up to three years and fined Rs.10,000.

6) The act manadates compulsory registration of all diagnostic laboratories , all genetic councelling centres, genetic laboratories , genetic clinics and ultrasound clinics.

THE SILENT FEATURES:- Pre conception and pre-natal diagonostic technique act, 1994 wasenacted to arrest the declining sex ratio. It is a subject of discussion now, because an all time low child sex ratio of $9\bar{1}4$ was reported in the 2011 census data. The main purpose of enacting the act is to ban the use of sex selection techniques before or after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortion.

Offences under this act includes conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units, sex selection on a man or woman , conducting PND test for any purpose other than the one mentioned in the act, sale , distribution, supply, renting, etc. of any ultrasound machine or any other equipment capable of detecting sex of the foetus.

FEMALE FOETICIDE :-

Female foeticide refers to 'aborting the female in the mother's womb'. The activity methods of killing girls through selective sex abortion and passive methods like discrimination in care and nutrition are used to eliminate the girl child.

REASONS BEHIND PREVALENCE OF FEMALE FOETICIDE :-

The Indian society generally shows cultural bias against women. Any kind of investment in girl's education and empowerment is considered as investement in failed enterprise. Their physical security is added responsibility on the family. Practice of dowry puts extra burden

on the parents and all these results into general preference for son and girl foeticide and infanticide. Illiteracy, poverty is also main reason behind femal foeticide.

IMPACT OF FEMALE FOETICIDE :-

The low sex ratio resulting from female foeticide which are manifesting themselves in various way like trafficking of women for sexual work and marriage. Such marriages are not sustainable because of cultural differences and results into instances of physical, mental and sexual abuse of the bride. Increased crimes against women like sexual harassment, lewd remarks against women, and instances of eve teasing.

STEPS TAKEN TO STOP IT :-

1) BETI BACHAO BETI PADHAO (BBBP) :-

This programme have been launched to ensure survival , protection and empowerment of girls by eliminating the differential in the sex ratio, infant mortaslity rate and improving their nutritional and education status.

2) SUKANYA SAMRIDHI YOJANA :- It is acomponent of BBBP programme aims to ensure equitable share of the girl child in family savings. The savings can be used for the education og girl child and her marriage, thus helping in the empowerment of girl and reducing the economic burden that families face at the time of marriage.

3) BALIKA SAMRIDDHI YOJANA :- It is a scholarship scheme designed to provide financial support to young girls and their mothers who are below the poverty line. The key objective of the scheme is to improve their status in society, increase the marriageable age of girls and improve the enrolment as well as retention of girls in schools.

4) PCPNDT ACT (PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUE) ACT, 1994 :- It was enacted to ban the use of sex selection techniques before and after conception and prevent the use of pre-natal diagnostic techniques for selective abortion.

CURRENT NEWS FOR KILLING INFANT GIRL :-

In kadi town of Meshana parents booked for killing infant girl. At the time of murder she was only 33 day old baby girl, her name was Mishti, murder allegedly executed by none other than her own parents, who were yearning for a male child.

Baby girl's parents had hospitalized her in a local hospital in December and told to the doctors that she died due to suffocation while breastfeeding. However , doctors there noticed some marks on Mishti's neck and informed to police that registered a case of an accidental death.

The postmortem conducted in Ahmedabad revealed that she had been strangulated. Police loged a case against her parents Hardik patel and Reena. The Postmortem report confirmed that she was strangled to death. Along with Hardik and Reena, police have also booked charges of murder and criminal conspiracy against her grandparents.

In my point of view if they didn't want baby girl they should have given up for adoption. Sure there are childless couple who would wish to adopt the baby girl.

PUBLIC INTEREST LITIGATION (PIL) FILED BY CENTRE FOR HEALTH AND ALLIED THEMES (CEHAT) AND OTHERS IN THE SUPREME COURT OF INDIA IN 2000 :-

ABSTRACT :- The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse)Act, 1994 now renamed as as pre-conception and Pre-natal Diagnostic Techniques (Prohibition of sex selection) Act, 1994 came into operation with effect from 01.01.1996. The implementation of the act rests with the states and UTs. At that time Public Interest Litigation (PIL) filed by centre for Health and Allied Themes (CEHAT) and others in the Supreme Court of India in 2000. The Supreme Court intervened in response to this PIL and taking cognizance to the situation and prayers of the petitioners, ordered strict enforcement of the Act and gave number of directions in its several hearings. The court heard the matter about 20 times since 2001. The PIL was disposed of in its last hearing on 05/09/2003. The final judgement was given on 10/09/2003 reiterates all the earlier directions of the Supreme Court issued to central government, states/UTs for proper implementation of the Act.

CEHAT along with MASUM and Dr. Sabu George (independent activist) filed a PIL in February 2000 to review that 'pre-natal Diagnostic Techniques (Regulation and Prevention

of misuses) Act 1994'.PIL had been filed to prevent sex selective abortions. The case has reasonable success with improved implementation by states, a national debate regarding the issue of declining sex ratio an amendement of the PNDT Act. Currently active advocacy us being persued for awareness generation and action against defaulting medical practioners. Along with the government answers to frequently asked question have been developed along with ministry of health and family welfare , government of India and UNFPA to clarify legal and ethical issues regarding the practice for lay persons, doctors and appropriate authorities. Resources material like posters, pamphlets have been developed to spread awareness on this issue.

MISUSE OF REPRODUCTIVE TECHNOLOGIES BY MAKING PCPNDT ACT:-

It was 1975 when a report found on the status of women ," towards equality" the issue declining of sex ratio as an indicator of the status of women was brought into thye public discourse. Mazumdar , the main architect of the report , points out , 'For the committee on the status of women in India, the declining in sex ratio was both a discovery and the most convincing measure to provide body and substance to its grim findings.' It was around this time that amniocentesis was introduced in the All India Institute of Medical Science in Delhi. The test which was mainly to detect congential abnormalities. But by the time the purpose of test was misused and the main purpose became sex selection and sex-selective abortion started.

A sample survey of amniocentesis in AIIMS to find out about the foetal genetic conditions managed to enroll 11,000 pregnant women as volunteers for its research. The main interest of these volunteers was to know the sex of the foetuses. Once the results were out, these volunteers who were told that they were carrying female foetuses expressed the desire for an abortion. This was followed by a protest launched by women's group . This experience prompted the Health minister at the centre to ban sex determination tests in government run hospitals in 1978. Since then, the private sector started expandin its tentacles in this field so rapidly that by the early 1980s test became bread and butter for many gynaecologists.

The active involvement of women's groups, women,s movement and civil society groups emerged at this stage of the development of the issue. Women,s groups in Delhi, Mumbai and other places issued a statement against such tests. A loose coalition of such groups was formed with the centre for women,s development studies, research unit on women,s studies, SNDT university , Mumbai and the voluntary health association of India. The main purpose of this coalition during this phase was to create a pressure group which would highlight the issue mainly in the media. In 1985, a group of activists from women,s group and people Science groups in Mumbai agreed on the need for more consistent action in banning sex determination tests, seeing the extent to which they had spread. A joint action group called the forum against sex determination and sex pre-selection (FASDSP) was formed at this stage. Keeping in mind that one of the primary weaknesses of the earlier attempts at building up coordinated action was lack of a broader perspective , it was decided that this campaign would consider the issue at multiple levels. The question of sex determination and pre-selection was then primarily seen as :-

a) An internal part of women' s oppression and discrimination.

b) A misuse of science and technology against people in general and women in particular and

c) A human rights issue.

The focus of the campaign was to highlight the issue of discrimination between boys and girls and also an attempt to show that sex determination was yet another form of violence against women , part of the chain made up of female infanticide, wife-burning , sati , etc. It was then that an immediate regulation of pre-natal diagnostic techniques was sought, leading to seeking of the support of the state and the legal machinery. The problem that the forum countered here was how not to overlap over the Medical Termination of Pregnancy (MTP) Act as they did not want to curtail women's right to abort. The alternative was a new law which was formulated with the regulation and prevention of misuse of prenatal diagnostic techniques in mind. Signature campaigns , a massive media campaign highlighting the issue and pilot studies on the prevalence of sex determination were part of vthe

process of putting pressure on the government to pass the act. In June 1988, the act came into being in the state of Maharashtra. The forum realized soon that the act was limiterd in many ways and effective only in marginally reducing the number of clinics, it is also recognized that it had resulted in a nation-wide interest in the issue. Soon three other state governments announced their intension to introduce similar legislation. This emphasizes on the written consent of the pregnant woman and prohibits communication of the sex of the foetus. It also provides for the constitution of a central supervisory board to monitor the implementation of the act and the creation of appropriate and advisory committees to implement the act.

The offences and penalties for contravention include imprisonment which may extent to three years and fine which may extent to Rs.10,000. It prohibits any advertisement in any manner regarding with pre-natal determination of sex available at any centre , laboratory, genetic clinic or any other places. The offence under this act is cognizable, non-bailable and non-compoundable. Now, you may ask what is cognizable offence, it means police may arrest without a warrant the offender or a person who is suspected of committing the offence on reasonable belief. The offence is non-bailable means bail is not given to the accused. It may only be granted or refused based on the discretionary power of the court. It is also non-compoundable

offence which means no settlement between parties is possible to drop the criminal proceedings. The Act, as can be seen by the provisions, was a comprehensive piece of legislation which included all aspects of the issue. However, reading of the Act reveals a distancing from the issue of sex selection as discrimination or violence against women. The basic features of the Act are focused around the issue of sex determination and not sex-selective abortion. The emphasis to keep the act separate from the MTP Act may have been one of the primary reasons for doing so.

CONCLUSION :- By reading many articles on this topic I think that illiteracy andpoverty are the main reasons behind sex-determination foetus abortion. People thinks that when girl child attains majority and at the time of her marriage boy's family demand dowry without dowry he does not marry with her daughter. This is the big issue in our surrounding for foetus abortion. There are many laws such as dowry act also exist but not implement in every situation. Some parents do not file case of dowry due to fear. So, people needs to literate. Spend their money for higher education not elsewhere waste. When our generation will be literate then, they must understand importance of female and our reproducing cycle also maintain.

CASES :- 1) CHAKRESH KUMAR JAIN V. STATE OF M.P. AND ORS.

This petition has been filled under Section 482 of c.r.p.c. for quashing the chargesheet and any other consequential proceedings registered at police station city Kotwali, District at crime number 113/2012 under sections 23(1), 23(3) and 25 of Pre-conception and Pre-natal Diagnostic Techniques Act and under section 168 of I.P.C, pending in the court of chief judicial Magistrate.

Facts in brief are that respondent number-2 filed a private complaint against the petitioner and one Dr. Subhash Gupta in the court of chief judicial magistrate district bhind under section 156(3) of c.r.p.c. On the basis of the aforesaid application , crime number 113/2012 under section 23(1), 23(3) and 25 of preconception and Pre-natal diagnostic techniques Act has been registered. After investigation, the charge sheet has been filed in the court of chief judicial Magistrate, Bhind. It is submitted by the learned councel for the petitioner that is no prima facie

evidence constituting the offence against the petitioner. The petitioner is neither a doctor nor a technical expert and has no knowledge to operate such type of technical machine. It is further submitted that petitioner himself made an application to chief Medical officer district, Bhind alleging that Dr. Subhash Gupta is not working properly and there is no other doctor available to conduct that work. So that machine is packed in the carton by the petitioner on 1.03.2011 . It is further submitted that incident alleged to have been taken place on 5.07.2010 and the F.I.R was lodged on 11.04.2012 . It is prayed that the F.I.R and consequential proceeding be quashed.

Learned counsel for the respondent submitted that prima facie material is available against the petitioner and the learned trial court has framed the charge under section 23(1), 23(3) and 25 of pre-conception and pre-natal diagnostic techniques Act. Hence, prayed for dismissal of the petition. In view of the submissions of the learned council for the parties, I have persued the record. In application under Section 156(3) of the Code of Criminal procedure, the allegation against the petitioner is that nonapplicant was having ultrasound machine without having any registration and submitted Form-F as provided under Section 23(1), 23(3) and 25 of pre-conception and pre-natal diagnostic techniques Act. On the basis of the aforesaid complaint the crime no. 113/2012 has been registered and after due investigation charge sheet has been filed. The non-applicant filed a certified copy of the charges framed by the learned chief judicial magistrate. Considering that the charges has been framed by the learned chief judicial magistrate on the basis of the material placed before the chief judicial magistrate , therefore, the contention raised on behalf of the petitioner can very well be raised before the learned chief judicial magistrate at appropriate stage. No ground is made out for exercising of extra ordinary powers under section 482 of the code of criminal procedure code to quash the proceeding. Hence, this petition is hereby dismissed.

2) MANISH V. STATE :-

Judgement heared learned councel for the petitioner and learned public prosecutor. Persued the material available on record. The instant bail application under section 439 c.r.p.c. has been preferred on behalf of the petitioner who is in custody in

connection with F.I.R. NO. 20/2017 , registered at police station PBI, Medical and health services , Jaipur for the offences under section 5(2) , 23 and 25 of the conception and pre-natal diagnostic techniques act, 1994 and section 420 IPC. Having regard to the facts and circumstances available on record but without expressing any opinion on the merits of the case , this court is of the opinion that the petitioner deserves to be released on bail.

Accordingly, the bail application under section 439 c.r.p.c. is allowed and it is directed that the petitioner Manish Sreemali arrested in connection with F.I.R. NO. 20/2017 , registered at police station PBI, medical and health services , Jaipur shall be released on bail provided he furnishes a personal bond of Rs. 50,000/- and two surety bonds of Rs.25,000/- each to the satisfaction of the learned trial court with the stipulation to appear before that court on all dates of hearing and as and when called upon to do so.

OVERVIEW OF JUVENILE JUSTICE ACT, 2015

The Juvenile Justice System in India is structured around the Constitutional mandate prescribed in the language of Articles 15(3), 39 (e) & (f), 45 and 47, as well as several international covenants, such as the UN Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules). In India, a person below the age of 18 years is considered a ‘child’. The Juvenile Justice system contemplates the legal response with respect to two categories of children, namely those who are ' in conflict with law (an individual under the age of 18 years who is accused of

committing an offence); and those 'in need of care and protection' (children from deprived and marginalized sections of society as well as those with different needs and vulnerabilities).

The Legislation that deals with all the matters concerning ‘Children in need of care and protection’ and ‘Children in Conflict with Law’ is Juvenile Justice (Care and Protection of Children) Act, 2015.

The said Act came into force from 15th January, 2016. It replaced the juvenile delinquency law and the Juvenile Justice (Care and Protection of Children) Act, 2000/2006. The provisions of the Act, 2015 apply to all the matters concerning Children. The new Act strengthens the protective approach provided by the juvenile justice system towards children in conflict with law as well as children in need of care and protection. The 'Juvenile' in conflict with law has been redefined in the Juvenile Justice Act 2015 as a 'child‘ in conflict with law. Offences have been categorized as petty/ serious/ heinous offences. Children in the age group of 16 - 18 years may be tried as adults in cases of heinous offences after preliminary assessment by the Juvenile Justice Board.

A child in conflict with law will be sent to an Observation Home temporarily during pendency of inquiry. The child will be segregated according to age, gender, physical and mental status and nature of offence. A child who is found to have committed an offence by the Juvenile Justice Board will be placed in a Special Home. A Place of Safety will be setup for children above the age of 18 years or children of the age group of 16 - 18 years who are accused or convicted for committing a heinous offence. The Place of Safety will have separate arrangement and facilities for under trial children and convicted children. The Juvenile Justice Board will conduct regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the Observation Home [Section 8 (3) (m)].

The preliminary assessment by the Juvenile Justice Board is to be conducted within three months before transferring the case to the Children ‘s Court. The Act mandates that in case the child is tried as an adult by the Children ‘s Court, it shall ensure that the final order includes an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker. The Children ‘s Court shall ensure that the child is kept in place of safety till he attains the age of twenty -

one years. When he attains the age and the term is still pending, the Children ‘s court shall evaluate whether he need to be transferred to jail or if he has undergone reformative changes and could be spared incarceration. The Act puts a complete embargo on capital punishment or life imprisonment without the possibility of release for the child offenders who come to be treated as adults by the juvenile justice administration. The decision whether the child is to be released or sent to jail after attaining the age of 21 years will be taken by the Children ‘s Court.

The JJ Act, 2015 includes a separate chapter on offences against child and several of the offences listed in this chapter were so far not adequately covered under any other law. These include sale and procurement of children for any purpose including illegal adoption, corporal punishment in child care institutions, giving children intoxicating liquor or narcotic drug or psychotropic substance or tobacco products, use of child by militant or adult groups, offences against disabled children and, kidnapping and abduction of children. Further, the JJ Act , 2015 prescribes punishment for the various offences against children such as enhanced punishment for cruelty to children from six months to three years. The selling or buying of children will be a punishable offence with imprisonment of five years. Corporal punishment within a Child Care Institution will be a punishable offence. Adoption without prescribed procedures shall be punishable with imprisonment up to three years or fine of Rs.1 lakh or with both. For the effective implementation of these provisions, JJ Model Rules, 2016 provides for child friendly procedures for reporting, recording and trial.

Implementation of the Juvenile Justice Act should be made heavily. Act without hands willing to implement it is ineffective and dangerous. Therefore, the Government should see that the act is properly implemented by the authorities. India should not have common Juvenile age for every crime. The System can be made on the lines of USA, UK and FRANCE to categorize and divide the Juvenile Justice system into different age groups. Case of Juvenile should not be transferred to the adult court.

Every Juvenile Justice board should work with local child welfare organizations to improve their effectiveness in providing abused and neglected children with safe shelters.

Members of the Juvenile Justice Board should work with local child welfare organizations to improve their effectiveness in providing abused and neglected children with safe shelters. Possibility of creating Non-Judicial Juvenile Justice System should be examined. Ensuring and enhancing the quality of the process of the juvenile correctional services would bring about justice to juveniles in conflict with the laws. The age with reference to Juvenile should not be reduced at all, because it will have a far-fetching impact on the Criminal Justice System in India which will detrimental to the growth of Justice and Equity.

The restoration and protection of a child shall be the prime objective of a Children 's Home/ Specialized Adoption Agency/ Open Shelter. The Child Care Institution shall prepare Individual Care Plans for children in need of care and protection or children in conflict with law, preferably through family-based care. Any child leaving a child care institution on attaining 18 years of age may be provided with financial support.

The existing law for juvenile justice in India is the Juvenile Justice (Care and Protection of Children) Act, 2015. It was enacted to adopt a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this law. A very important provision of 'children's court' had been made, which was absent in the 2000 statute. Under this, a court is established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions is having jurisdiction to try offences under the Act.

The Juvenile Justice Act, 2015 provides for 16 basic or general principles as guidelines to the Government and also the institutions and authorities constituted under it. These are provided for in section 3 of the Act and are as follows:

“Presumption of Innocence: Every child who has been accused with the commission of any offence shall be presumed to be innocent and no criminal intent or mala fide intention will be attributed to the child.

Best interest: Any decisions made under the Act with regard to the child shall be so made keeping in mind the best interest of the child.

Principle of Participation: Every child has the right to participate in all the processes and decisions affecting his interests and the child has the right to be heard and put across his or her viewpoint in the matter which may be taken into consideration based on the age and maturity of the child.

Principle of dignity and worth: This is a universal principle and should also apply to the Act. All humans are to be treated with equal dignity and rights.

Family responsibility: The first and foremost responsibility of the child is on the biological family or adoptive parents. It is their responsibility to care for, nurture and protect the child.

Positive measures: The measures taken should be positive in nature and the best interests of the child should be taken into consideration. These measures include promoting well-being and facilitating the development of the child by providing an inclusive and enabling environment so as to reduce the need for intervention under this Act. Safety: The child’s safety is of extreme importance and all types of measures should be taken to ensure the same. The child should be shielded from harm, abuse, and maltreatment.

Principle of non-stigmatising semantics: Adversarial or accusatory words should not be used in the processes pertaining to the child.

Non-waiver of rights: The child cannot waive his rights. No waiver of rights is permissible or valid.

Privacy and Confidentiality: Every child has the right to protect his privacy and confidentiality.

Equality and Non-discrimination: Discrimination on any basis including cast, gender, sex, etc should not be done at any cost. Every child should be treated equally and should have equal opportunity.

Principles of Natural Justice: The basic principles of natural justice are to be followed. These include basic procedural safeguards and standards of the right to a fair hearing and the rule against bias.

Principle of institutionalisation as a last resort: A child should not be placed in institutional care unless absolutely necessary and as a last resort. A proper inquiry must be done before the child is placed in institutional care.

Fresh Start: Every child has the right to a fresh start and to enable this all past records are to be erased except in special circumstances.

Principle of repatriation and restoration: Every child in the system has the right and should be reunited with his family at the earliest. The child should be restored to the same socio-economic and cultural status unless this goes against the child's best interests.

Principle of diversion: Judicial proceedings must not be used unless in the best interests of the child. Alternate measures for dealing with a child in conflict with law should be promoted and used."

CONCLUSION

The loopholes in the execution of different safeguarding plans for children needing care and assurance depend on the circumstantial investigation it believes. The broadened gaps due to misuse of laws and enactment need proper evaluation as we're not done before. Juveniles security administrations at the region/city/state level, still to the huge educated child needing care and education are outside the wellbeing net, inadequate projects and subsidizing which bring Juveniles to be included in poor kids, a lopsided portion of irrelevant assets, no appropriate spotlight on institutional and non-institutional administrations, absence of coordination of projects/benefits, no opportune reclamation of kids with families, absence of

qualified experts, absence of parallel linkages with Education, Health, Police, judiciary, Services for the handicapped, and so forth. Additionally, featured explicit holes, for example, the absence of gauges in the institutional foundation in the workplace of Child Welfare Committees (CWC) and juvenile justice Boards (JJB), lacking offices for the viable working of Child Welfare Committee and Juvenile Justice Board, Inadequate under-qualified members in Child Welfare Committee and Juvenile Justice Boards. They are lacking behind in compelling observing and assessment of the juvenile justice system, no legitimate offices for home alone kids, abandoned children. Just a couple of children have profited through Non-Institutional Care choices like Adoption, Foster Care and Sponsorship and many who are deprived of all support.

According to a 2015–16 economic analysis, it is found that there is a sharp decrease in government school enrolments in provincial regions from 2007 to 2014. It stressed the need to build these numbers significantly to accomplish the Universalization of Education. However, considering such proposals, funds assigned to the Sarva Shiksha Abhiyan was raised by a minimum percent. There exists just a single welfare scheme identified with child labour scheme for the welfare of working children in needing care and security and that too saw a certain decline in funding.

It is appropriate to take note of those children needing care and security just as children in conflict with the law scarcely discover whether there any place in the budget allocation. An expansion in wrongdoings against juveniles and juveniles makes them much progressively powerless, henceforth the absence of consideration regarding child security is perturbing. Deficient financing for essential plans will undoubtedly negatively affect the reformative and rehabilitative methodology received by the acts of 2000 and 2015. Juvenile Justice (Care and Protection) Act 2015 was passed in light of the failure of Child protection. Yet at the same time there exists a similar circumstance due to the absence of duty and commitment, coordination between different partners in Child Protection and due to the absence of experienced and logical social work experts in the usage of ICPS at state to grass-root level.

Child protection should go under a single organization following with a positive, adequate and proficient hierarchical structure which should root till the village level. The rising rates of juvenile delinquency and crime committed by juveniles is a pertinent issue today and due focus must be provided. Though the Government has passed statues dealing with this issue, these statutes have shown to do nothing to neither reform juveniles, nor deter them from crime.

It can be concluded that a separate legal system for juveniles is necessary for better handling of cases related to juvenile delinquency. The reformist aspect of juvenile criminal jurisprudence must be focused upon, over its deterrent aspect. It can be seen that the 2015 Act, albeit its criticisms, achieves the balance between the penal and the protective, such that the minor is sufficiently rehabilitated and dissuaded from crime at the same time.

LEGAL STATUS OF CHILD MARRIAGE IN INDIA:-

ABSTRACT:-

Marriage is one of the important social institutions and it is a means of establishing a family through which the society perpetuates. This social process is expressed in the form of rituals and symbols. In India 45 percent of girls are wedded below 18 year. The Niger is top country

(74.5%) in the world for child marriage below 18 years of the age, followed by Chad, Mali, Bangladesh, Guinea and Central African Republic, their percentages are 71.5, 70.6, 66.62, 63.1 and 57 respectively. Majority of girls who were married below 18 year are

from poor and below poverty line (BPL) families. Nearly 80 percent girls are facing the domestic violence (beaten, slapped or threatened), health problems. Most of the girls who are married before 18 year are likely to get pregnancy problems and there were death case reported. Girls younger than 15 are five times more likely to die in childbirth than women in their 20s. The age group below 18 year has high fertility. Child brides often show signs symptomatic of sexual abuse and post-traumatic stress such as feelings of hopelessness, helplessness and severe depression.

KEYWORDS:-

Prevalence, Restraint, Prohibition, Offences.

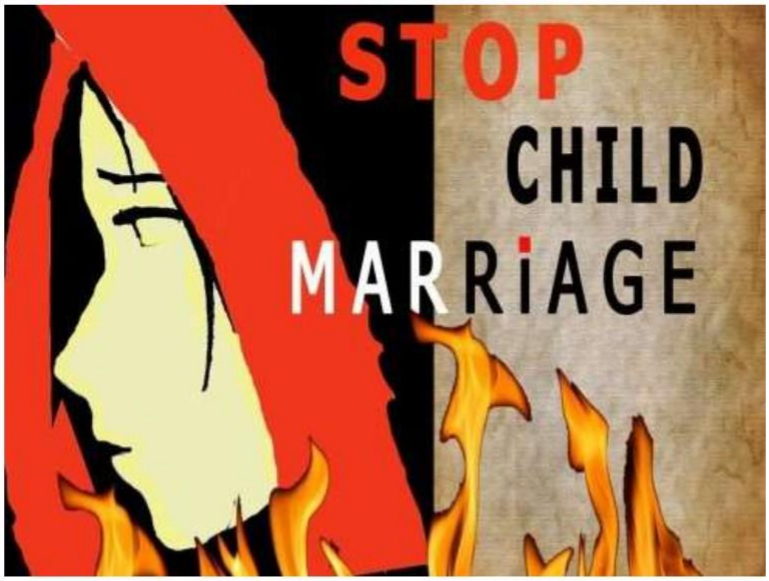
INTRODUCTION:-

Child marriage is marriage of child younger than 18 years old, in accordance of Article 1 of the convention of right of child. In a simple way we say that child marrige is a marrige of a child before he/ she attend the age of majority. According to Indian constituion it is voilation of Human Rights. While child marriage efect both the sexes, girls are disproportionately affected as they are the majority of the victims. Child marriage and child betrothal are oftentimes practices that are related to customary and religious beliefs, they occour globally in many parts of Asia, Africa and to some extnt in America. Globally 36% of women aged 20-24 were married or in union before they reached 18 years of age. Estimated 14 million adolecentsbetwwen age 15- 19 give birth each year. Girls of this age group are twice as likely to die during pregnancy and child birth as women in there twenties. Most often in arrange marrige children especially girls, are married off early. Someties just after puberty, and sometimes even before.so as to bring some money for family as monetry earing. These girls may be too young to marry , it doesn’t matter that the man is she married off to, is easily double, triple or evenly four times of her age. Child marrige violates children right and

place them in a high risk of violence, explortion, and abuse. India have the largest nuber of brides in the world one third of the global total. Bangladesh has the highest rate of child marriage in Asia(The fourth highest rate in the world).Nepal has also the largest child maarige rate in Asia.

Child marriage is decling (63% in 1985 to 45% in 2010) as per census in South Asia, with the decline being espacially marked for girls under 15(32% in 1985 to 17% in 2010). The marriage of age 15-18 is however still common place, so more efforts are needed to protect older adolesecents from marriage.

Child marriage is the result of the interplay of economic and social forces. In communites where the practise is prevelent, marrying a girl as a child is a part of a cluster of social norms and attitude that reflect the low value accorded to the human rightsof girls.



THE PREVALENCE AND IMPACT OF CHILD MARRIAGE IN INDIA:-

Child marriage in India continues to thrive by and large in the rural areas more than elsewhere in the country. The factors that encourage its subsistence are usually a combination of poverty, the lack of education, continued perpetration of patriarchal relations that encourage and facilitate gender inequalities, and cultural perspectives that encourage the phenomenon to thrive. Child marriages work as mechanisms that are quick income earners. A girl child is seen as a leeway to a large dowry, to be given to her family upon her marriage. Girls in many communities are not seen as assets in the family they are born into, but rather, as liabilities – especially since they are seen as more mouths to feed and no hands to work. From the economic perspective, child marriages are preferred by families that are poor, in a bid to reduce costs on the family, and to enable its economic strength by making money available for food, health and even education of the sons born to the family. Child marriage is a substantial barrier to social and economic development in India, and a primary concern for women's health. We assessed the prevalence of child marriage i.e, before 18 years of age in young adult women in India, and the associations between child marriage and women's fertility and fertility-control outcomes. While many clinics have and do retain and ensure that the ban imposed on sex-selection and prenatal sex determination remains steadfast, the law is not enforced enough to combat unsafe abortions of the female foetus, and to deal with the abandonment of the girl child after birth. Owing to this, in rural parts of northern India, particularly in Rajasthan, the

declining sex-ratio has allowed the festering of a practice known as Atta Satta where a daughter is exchanged for a daughter-in-law, irrespective of her age. There is also the prevailing threat that holds girls back from fighting the yoke of child marriage – honour killings. Girls that are married against their will are not allowed to fight back – for that would induce their families to kill them to preserve the "honour" of their family names and reputations. Another major factor that contributes to the prevalence of child marriage is the declining sex-ratio. While many clinics have and do retain and ensure that the ban imposed on sex-selection and prenatal sex determination remains steadfast, the law is not enforced enough to combat unsafe abortions of the female foetus, and to deal with the abandonment of the girl child after birth. Owing to this, in rural parts of northern India, particularly in Rajasthan, the declining sex-ratio has allowed the festering of a practice known as Atta Satta where a daughter is exchanged for a daughter-in-law, irrespective of her age.

Lastly, Undoubtedly, child marriage continues to thrive in India. In 2007-2008, as many as 42.9% of the surveyed segment of married women in the age group 20-24 years were married before Eighteen.

An astounding number of 23 million women in the age group of 20-24 were married before they attained their eighteenth birthdays. With that astounding percentage, India contributes as many as 40% of world's child brides

General Law On Child Marriage:-

The law has failed to curb the prohibition of child marriages that are taking place across the religions, specifically Hindus in most of the cases. Many NGOs are fighting to eradicate the same and a movement is going on regarding the same. Even public interest litigations filed could not bring about any substantial difference. There is a need for sensitization in society regarding child marriage. Many attempts have been made to regulate child marriage even before the Independence of India and the commencement of the Indian constitution. Below mentioned are the general laws aimed at to regulate child marriage, though there has been no complete abolition of the same.

The child Marrige (Restraint) Act,1929:-

This was the first of its kind legislation regulating the "child marriage" by prescribing the required age of marriage for both the parties to the marriage across India. This act aims to restrain the child marriage. The Child Marriage Restraint Act also known as Sarda Act was enacted on September 28, 1929 and came into force on first day of April 1930 with an objective to control child marriage in India. The Act was amended in 1940 and thereafter in 1978 to rise the age of children both male and female. In 2006, the Indian Parliament enacted Prohibition of Child Marriage Act with slight modifications in the 1929 Act.

The Child Marriage Restraint Act, 1929 defines 'child' as a person who has not attained the age of twenty one years in case of a male and the female shall not attain the age of eighteen years. 'Child Marriage' according to the Act means the marriage where either of the parties to the marriage is a child. The Act penalizes a male who attained the age of eighteen and below twenty one years for performing or enter into contract to perform child marriage. Moreover the Act also punishes a male above the age of twenty one years for entering into contract of child marriage. Where a person is unable to prove that he has not performed or formalized child marriage, he shall be punished with imprisonment and fine specified in the Act. The parent or the guardian of a minor child promotes or helps in the solemnization of marriage between children, such person shall be penalized. Such person shall also be punished if he willfully neglects the prevention of child marriage, but a woman shall not be punished with imprisonment.

In the case of SushilaGothala vs. State of Rajasthan the court stated that the minimum required age for marriage is 18 years for girls and 21 years for boys.

The Prohibition Of Child Marriage Act, 2006:-

The Prohibition of Child Marriage Act, 2006, is aimed to

1. Punish the ones involved in the performance of child marriage and,

2. to provide a legal opportunity to both the spouses of child marriage to repudiate the marriage, by way of a decree of nullity. (Voidable & Void)

The present law is gender neutral in providing the right to both the boy and the girl child of forced marriage. The Prohibition of Child Marriage Act, 2006, may be viewed as:

1. General and secular legislation (which is applicable to all the citizens of India).

2. Penal legislation.

3. Social and progressive legislation.

4. Matrimonial legislation, only to regulate "child marriage", having a uniform application (Status of child marriage).

The Indian Penal Code- Child Marriage and offence of Rape:-

Under IPC of Indian Constituion,the primary consequences of child marriage are a physical relationship between the husband and a girl and the procreation of children. These consequences are to be seen in the light of Section 376 of the Indian Penal Code, 1860 wherein in certain cases sexual intercourse with a woman with or without consent is an offense of rape. Section 376, Exception 2 states that “Sexual intercourse or sexual act by a man with his own wife, the wife not being under the age of 15 years, is not rape.

But in Certain situations and the offense of rape are as follows:

Above 18 +Consent= No Rape

Above 18 + No Consent= Rape

Below 18 + With or without consent= Rape

Above 15 + Girl being Wife + With or without consent= No Rape Below 15 + Girl being wife + With or without consent: Rape

Keeping in view the above scenario, it appears that the Indian Penal Code has saved the institution of marriage, and endorsed, indirectly, the fact of child marriages taking place in the society and as per personal laws (because sexual intercourse with a wife who is between 15-18 years of age, does not constitute rape).

Law Commission of India, 205 Report on Child Marriage, 2008:-

The Law Commission of India Report in 2005 recommends the following things:

The child marriage below 18 for both girls and boys should be prohibited.

The marriage below the age of 16 be made void and while those between 16 and 18 be made voidable.

The provision relating to maintenance and custody should apply to both void and voidable marriages.

Registration of marriage be made compulsory.

CONCLUSION:-

Child Marriage is a menace that cannot be curbed without support from the society. There have been demands to make child marriage void ab initio under the Prohibition of Child Marriages Act, but Indian society is complicated and complex and making child marriages void will only jeopardise the rights of women who are victims of child marriage. Mere

legislation will not serve the purpose unless there is support and backing from the society. Uniform Civil Code would also help in preventing child marriage to some extent.

Related Case laws:-

HARDEV SINGH V/S HARPREET KAUR & ORS:-

Bench headed by :- Justice Shantanagoudar, Justice Bose.

Facts:-

In the present case, Appellant (Hardev Singh) and Respondent (Harpreet Kaur) have married each other without the consent of their parents. Due to the problems created by the parents of Respondent, they sought police protection. High Court in lieu of the same granted protection order. Subsequently, on an application made by the Respondent's father, High Court recalled its protection order and ordered registration of FIR under Section 9 of the Prohibition of Child Marriage Act, 2006 against the Appellant. This order was passed on the ground that the Appellant had stated his age as 23 where as per his school records he was 17. Therefore, the impugned order stayed by the Supreme Court and the interim order passed by Supreme Court is in continuance.

Issues:-

1. Whether the High Court's order of directing a criminal appeal against the Appellant under Section 9 of the Prohibition of Child Marriage Act, 2006 is valid?

2. Whether the High Court is within its powers to recall/review an order passed by it in criminal matters?

Judgement:-

The Supreme Court set aside the order of Punjab and Haryana Court which initiated criminal proceedings against the Appellant and stated the following:

The High Court has committed an error as the age of the Appellant as per school records was 17 years i.e below 18 years of age and thus Section 9 cannot be applied thereto.

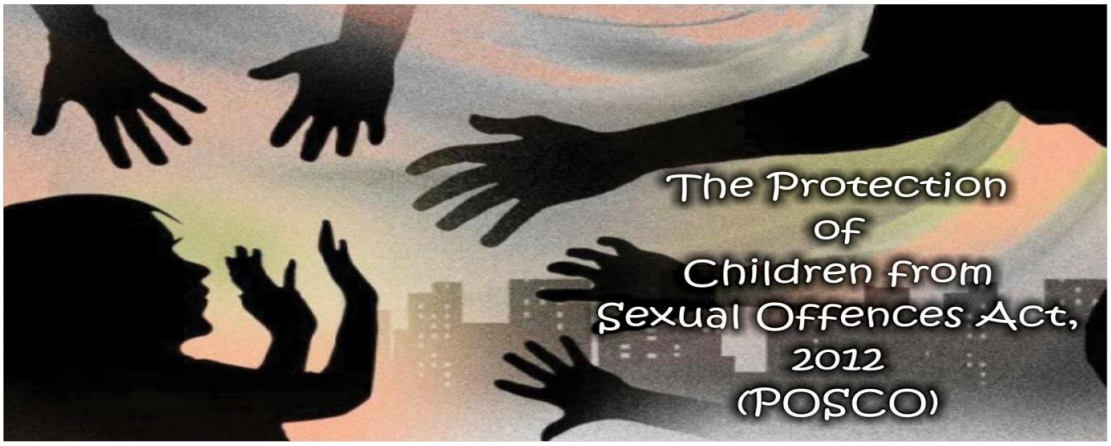
According to the literal interpretation of Section 9, it states that if a male is below the age group of 18-21 years and if the female is above 18 years, and they contract marriage, the adult female will not be punished and the male who is a child himself (below 21 years of age) will be punished as per Section 9 of the Prohibition of Child Marriage Act, 2006. The Court observed that the above interpretation is against the object of the Act as borne out in its legislative history.

This Act was passed with the motive to provide protection to child brides in particular. It was also noted that child marriages take place where husbands are much older than the girl child thereby hampering their development.[2]The Court also stated that it is essential that Section 9 of Prohibition of Child Marriage Act, 2006 should be interpreted in the backdrop of the gender discrimination and violence against females.

Thus, Supreme Court inferred that the reason behind punishing male adults who contract child marriage is to protect minor female children. The Act nowhere conveys its intention to punish a male aged between 18-21 years contracting a marriage with female adults. It provides recourse to the male who is a child to get the marriage annulled under Section 3 of the Prohibition of Child Marriage Act, 2006. The Court in conveying the same resorted to the marginal note provided under Section 9 “male adult above 18 years of age marrying a child”.

With respect to the review of the order by the High Court, Supreme Court stated that there is no such power to review or recall the earlier order under Section 482 of Criminal Procedure Code, 1973 as there is no provision with respect to review or recall of orders in criminal matters

Protection of Children from Sexual Offences Act 2012



Introduction

In order to effectively address the heinous crimes of sexual abuse and sexual exploitation of children through less ambiguous and more stringent legal provisions, the Ministry of Women and Child Development championed the introduction of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

The Act has been enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and related matters and incidents.

The Act was amended in 2019, to make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child.

Definition

(1) In this Act, unless the context otherwise requires, --

(a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;

(b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;

(c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;

(d) "child" means any person below the age of eighteen years;

1[(da) "child pornography" means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child and image created, adapted, or modified, but appear to depict a child;]

€ "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

(f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988).

(i) "sexual assault" has the same meaning as assigned to it in section

7;

(j) "sexual harassment" has the same meaning as assigned to it in section 11;

(k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the offence lives or has lived at any time in a domestic relationship with the child;

(l) "Special Court" means a court designated as such under section 28;

(m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

(2)The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), 2[the

Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)] and the Information Technology Act, 2000 (21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts

Abstract

The very inadequacy of Indian Penal Code and absence of any stringent legislation for effectively addressing and tackling heinous crimes such as sexual exploitation and sexual abuse of children birthed the commencement of Protection of Children from Sexual Offences (POCSO) Act, 2012 as the very intention of Government establishments was to protect the children from offences of sexual assault, sexual harassment and pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters incidental connected with child sexual abuse crimes. This was in due compliance of Article 15 of Constitution of India which mandates the states to protect the children of this nation and in lieu of United Nations Conventions on the Rights of the Child which prescribes the set of standards to be followed by state parties in securing the best interest of the child.

Though this legislation is general in nature and applies to everyone irrespective of their caste, creed, gender, religion etc. particularly, it punishes the offenders committing crimes against the children in rural as well as urban areas of the country.

This Article analyses the POCSO Act, 2012 in its entirety with a bird eye view. Upon making a qualitative analysis, this article provides an overview of the Act thereby enumerating the important provisions of the said legislation. Further, it elaborates the sexual offences prescribed in the Act.

Penetrative sexual assault

A person is said to commit "penetrative sexual assault" if—

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

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

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

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Punishment for penetrative sexual assault

- Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than 2[ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

➢ Whoever commits penetrative sexual assault on a child below

sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

- The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

Salient features of the Act and its amendment

•The Act is gender neutral and regards the best interests and welfare of the child as a matter of paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of the child.

•The Act defines a child as any person below eighteen years of age, and regards the best interests and well-being of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.

•It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be *"*aggravated*"* under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor.

•People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.
•It defines "child pornography" as any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child;'

Punishments for Offences covered in the Act

•Penetrative Sexual Assault (Section 3) on a child – Not less than ten years which may extend to imprisonment for life, and fine (Section 4). Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

•Aggravated Penetrative Sexual Assault (Section 5) — Not less than twenty years which may extend to imprisonment for life, and fine (Section 6)

•Sexual Assault (Section 7) i.e. sexual contact without penetration — Not less than three years which may extend to five years, and fine (Section 8)
•Aggravated Sexual Assault (Section 9) by a person in authority — Not less than five years which may extend to seven years, and fine (Section 10)

•Sexual Harassment of the Child (Section 11) — Three years and fine (Section 12)

•Use of Child for Pornographic Purposes (Section 14) — Not less than Five years and fine and in the event of subsequent conviction, seven years and fine Section 14 (1)

•Use of child for pornographic purposes resulting in penetrative sexual assault : Not less than 10 years (in case of child below 16 years, not less than 20 years)

•Use of child for pornographic purposes resulting in aggravated penetrative sexual assault : Not less than 20 years and fine

•Use of child for pornographic purposes resulting in sexual assault :

Not less than five years which may extend to seven years

•Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography – Fine of not less than Rs 5,000; in the event of second of subsequent offence, fine not less than Rs 10,000.

•Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description : Upto three years of imprisonment, or with fine, or both.

•Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction : Not less than three years of imprisonment which may extend to five years; or with fine or with both. Second or subsequent conviction: not less than five years and upto seven years and also fine.

<u>Provisions related to conduct of trial of reported offen</u>

- The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process.
- The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include:

- Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector.

- No child to be detained in the police station in the night for any reason.

- Police officer to not be in uniform while recording the statement of the child.

- The statement of the child to be recorded as spoken by the child.

- Assistance of an interpreter or translator or an expert as per the need of the child.

- Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled

- Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.

- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor. 13. Frequent breaks for the child during trial. Child not to be called repeatedly to testify.

- No aggressive questioning or character assassination of the child in-camera trial of cases.

- The Act recognizes that the Intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized.

- The attempt to commit an offence under the Act has been made liable for punishment for upto half the punishment prescribed for the commission of the offence.

❗The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence.

- The Act makes it mandatory to report commission of an offence and also the recording of complaint and failure to do so would make a person liable for punishment of imprisonment for six months or / and with fine. 18.1t is a Punishable action if Police / Special Juvenile Police Unit fails to report a commission of the offence under this act [Section- 2141]]

- For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted to the accused. This provision has been made keeping in view the greater vulnerability and innocence of children.

- To prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If false complaint is made against a child, punishment is higher (one year) (Section 22).

- The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year (Section 23).

- For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible (Section 35).

- To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.

❗ The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.

❗ Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370,370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860),then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

❗ The Provisions of this Act is in addition to and not in derogation of any other provisions of any other Law. In case of any consistency the provisions of this act will have an overriding effect on any other provisions.

The POCSO Act is only applicable to child survivors and adult offenders. In case two children have sexual relations with each other, or in case a child perpetrates a sexual offence on an adult, the Juvenile Justice (Care and Protection of Children) Act, 2000, will apply.

<u>Awareness generation and capacity building.</u>

❗ The Central Government, or as the case may be, the State Government shall prepare age-appropriate educational material and curriculum for children, informing them about various aspects of personal safety, including –

- Measures to protect their physical, and virtual identity; and to safeguard their emotional and mental well being
- Prevention and protection from sexual offences;
- Reporting mechanisms, including Child helpline-1098 services
- Inculcating gender sensitivity, gender equality and gender equity for effective prevention of offences under the Act

Medical aid and care

(1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of

urgent medical care and protection, such officer, or as the case may be, the local police shall, within 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

(2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

(3) No medical practitioner, hospital or other medical facility center rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

Legal aid and assistance

(1) The CWC shall make a recommendation to District Legal Services Authority (hereafter referred to as "DLSA") for legal aid and assistance.

(2) The legal aid and assistance shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act, 1987 (39 of 1987).

The Legislative Process

The POCSO Act defines offences of sexual assault, sexual harassment, pornography and safeguarding interest and well-being of children. It also lays down a child-friendly procedure regarding the recording of evidence, investigation and trial of offences, establishment of special courts and speedy trial of cases. The aim of the Act is to provide protection to the child at every stage of judicial process.

Upon a preliminary reading the POCSO Act may qualify as the ideal legislation to protect children from sexual offences. However, there are certain conceptual problems in it. For example, the Act does not give any room to the idea of consent given by persons under 18. This would mean that if a seventeen year old boy or girl had a nineteen year old sexual partner, the partner would be liable to be booked under the provisions of the POCSO Act. The Act also does not provide any clarity on what happens when two minors engage in any kind of sexual activity. Technically, they are both Children in Need of Care and Protection

(CNCP) and Children in conflict with law (CCLs). In practice though, the police declare girls to be CNCPs and the boys to be CCLs.

Another problem is faced by the victims in proving the age of the child. Since the POCSO Act is silent on what documents are to be considered for determining the age of the child victim, the provisions of the Rule 12 of the Juvenile Justice Rules has been read by Courts as applying to child victims as well.

This rule recognises only the birth certificate, the school certificate of the child, or the matriculation certificate. However, children who are only able to produce other documents – even a legal document such as a passport – have to undergo a bone ossification test. This test can give a rough estimate of the age of the child at best. There needs to be a clear provision in the POCSO Act that lays down what documents should be considered for proving the age of the child, and whether the benefit of the doubt should be given to the child if the ossification test cannot do an exact assessment.

Judiciary and Delivery of Justice

One of the cornerstones of the POCSO Act is its mechanism to provide speedy justice to children who are victims of sexual assault. However, many serious institutional bottlenecks affect the legal protection of children below the age of 18 years.

An obvious example is the timeline for child testimony and conclusion of the trial laid down in Section 35 of the POCSO Act. This requires the child testimony to take place within a month of the taking of cognisance by the Court, and the trial within a year of the same.

However, these provisions are more often flouted than complied with due to the overburdened nature of courts in India.

Under Section 33 (2) of the POCSO Act, the Special Public Prosecutor while recording the examination-in-chief, cross-examination or re-examination of the child, should first communicate the questions to the child to the Special Court and then those questions should be put to the child. The child should also be given frequent breaks between questions.

Conclusion

In conclusion, the progress report of the POCSO Act gives mixed results. While the mandate of the legislation is truly radical in that it aims to protect children against sexual abuse, and provides for a victim sensitive criminal justice process, there are several snags in its implementation. Our three pronged analysis shows what creases need to be ironed out. We are at a time in our country's history, where serious open discussion on child abuse can and is taking place. We need to use this momentum to make lasting systemic change; for our children, it is the least we can do.

Submitted By: Anpurna

Child Labour (Prohibition and Regulation)Act ,1986

Introduction

The Government of India had promulgated the legislation of The Child Labour (Prohibition and Regulation)Act ,1986 to regulate provisions related to child labour practices in India. The Government made substantial changes in the provisions of the Act in the year 2016 and from thereon a complete prohibition has been imposed on the employment of children who are below the age of 14 years. Many provisions have been made under the Act regarding the employment for the children who are above the age of 14 years.

The Declaration of the Rights of Child, 1959

Declaration of the Rights of Child ,1959 was adopted by the United Nations General Assembly. The rights of the children were defined for the first time by the Declaration of the

Rights of Child, 1959. The Declaration was drafted by EglantyneJebb and is also known as the Geneva Declaration of the Rights of the Child. The Declaration is a document that consists of the rights of children. It was first adopted in 1924 by the League of Nations and then in 1959 by the United Nations. The Declaration includes the following rights:

The child must be provided all those means which are essential for their normal development. If a child is found to be hungry or sick then the child must be fed and nursed.

If a child is backward or delinquent then the child must be helped and recovered.

In case the child is an orphan or abandoned then shelter should be provided to the child. In times of distress, relief must be provided to children first.

The children must be protected from every kind of exploitation when they are put in a position to earn

a livelihood.

The children must be made conscious of the fact that the talent they possess should be devoted to the service of their fellow men.

This document was endorsed by the League of Nations General Assembly in 1924 as the World Child Welfare Charter. It was reaffirmed in 1934 by the League of Nations General Assembly.

The International Convention on the Rights of the Child, 1989

The International Convention on the Rights of the Child, 1989 is a human rights treaty that includes the rights of children which are related to civil, political, social, health and cultural rights. A child is defined by the Convention as a human being who is under the age of eighteen years unless the law applicable to the child specifies a different age clause for the age of majority.

The Nations which ratified the Convention are bound to follow it under international law and compliance of the same is checked by the UN Committee on the Rights of the Child. The

Nations that have ratified the Convention are required to report to the United Nations Committee on the Rights of the Child. The Committee checks on their advancement in the implementation of the Convention for providing rights to children in their respective Nations.

The Convention works for the basic needs and rights of children in order to protect their interests. A child has a right to life which includes the right to identity, and the right to be raised by both parents even in case they are separated. The Convention works towards preserving such rights of children by putting an obligation on parents to perform all their responsibilities towards their child as parents. The Convention protects children from any kind of exploitation and excessive interference.

The disputes which involve a child have to be tried separately with care and the child's viewpoint has to be heard in such cases. Courts are not allowed to sentence a child with capital punishment. It is an obligation of Nations to ensure that no child is sentenced with cruel or degrading forms of punishment.

Rights of Child and the Indian Constitution

According to the Indian Constitution, the rights are ensured to the citizens of the country. The children are also given rights under the Constitution as they are considered citizens of the country. Considering their special status, special provisions are made for children under the Constitution. The Government can make special provisions for the protection of the rights of children.

The leading amendment made for the protection of the rights of children is the 86th ConstitutionalAmendment i.e. Right to Education. Right to Education was made a Fundamental Right in order to protect thebasic right of children to receive an education. 86th amendment guarantees the following:

The right to free elementary education that was made compulsory under Article 21 A of the Indian Constitution.

Right to protection till the age of fourteen years from any kind of hazardous employment which is provided under Article 24 of the Indian Constitution.

Article 39(e)of the Constitution protects children from any kind of abuse or forced employment which is not suitable for their age and ability.

The children are provided with equal opportunities, facilities, freedom, dignity, and protection under Article 39 (f) of the Indian Constitution.

Article 45of the Constitution ensures early childhood care and education to the children until the age of6 years.

Besides the special provisions which are made under the Constitution, the children also have equal rights as any other adult citizen of the country.

Prohibition of Employment of Children in certain occupations and processes

Child Labour (Prohibition and Regulation) Act, 1986aims to eradicate any kind of child abuse in the form ofemployment and prohibit the engagement of children in any kind of hazardous employment, who have not completed 14 years of age. The Act prohibits the employment of children in certain occupations and processes. The occupations which are prohibited are mentioned in the Act under the Schedule in Part A. The prohibited occupations for children under 14 years are:

Occupations that are related to the transport of passengers, goods or mails by railway; Cinder picking, clearing of an ash pit or building operation in the railway premises;

Working in a catering establishment which is situated at a railway station and if it involves moving from one platform to another or from one train to another or going into or out of a moving train;

The occupation which involves work related to the construction of a railway station or any other work where such work is done in close proximity to or between the railway lines; Any occupation within the limits of any port;

Work which involves the selling of crackers and fireworks in shops having a temporary license; Working in Slaughterhouses.

Prohibited processes for children under the age of 14 years are mentioned under the Schedule in Part B. They are as follows:

The process involving the making of Bidi;
The process which involves carpet-weaving;
Manufacturing cement or bagging of cement;
The processes such as Cloth printing, dyeing, and weaving;
The processes that involve the manufacturing of matches, explosives, and fireworks; Mica-cutting and splitting;
Any manufacturing process such as shellac manufacture, soap manufacture, tanning; The process of wool-cleaning;

Work that is related to the building and construction industry; Manufacture of slate pencils;
Manufacture of products from agate;
Manufacturing processes in which toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos are used; Cashew and Cashew Nut descaling and processing;
Soldering processes in electronic industries.
The Act in total prohibits approximately 13 occupations and 51 processes for the employment of children.Article24of the Indian Constitution includes the provision for the prohibition of employment of children in factories.The Act also lays down certain guidelines for employers, which is to be followed in case the employee is a child of age less than 14 years. According to the Act, the employer cannot make a child employee work between 7 p.m. and 8 a.m. and no overtime is allowed for them. It is not allowed for an employer to make a child work for more than 3 hours without an interval of at least one hour and in total, an employer should not make a child work for more than six hours a day. Adequate provisions must be made by the employer for the health and safety of the child employees. Basic facilities such as drinking water, toilets, disposal of waste, ventilation, etc must be provided by the employer. The employer needs to notify the Factory Inspector if in case he employs a child for employment. Production of age certificate of the child employee is also needed according to the rules of the Act.

Power to amend the Schedule

The Central Government has the power to amend the Schedule after giving notification in the Official Gazette. The notification for such amendment must be given in advance of not less than three months. The notice can be given by notification to add any occupation in the schedule or any process to the schedule. After such notice is provided to Official Gazette to add any occupation or process, it is deemed to be amended accordingly.

Child Labour Technical Advisory Committee

The Central Government may, if it thinks it to be necessary can constitute an advisory committee i.e. the Child Labour Technical Advisory Committee by giving notification about it in the Official Gazette. It is the duty of the Committee to advise the Central Government if there's a need to add occupations or processes to the Schedule. The Central Government appoints the members of the Committee but the Committee should not exceed more than 10 members. The Committee shall also consist of a Chairman. There isn't any limitation on the number of meetings Committee shall have. The Committee shall meet whenever they feel necessary and the meetings shall be regulated according to the procedure which shall be decided by them.

The Committee may itself constitute one or more sub-committees if they feel a need to do so. The Chairman and other members of the Committee are entitled to an allowance.

Regulation of Conditions of Work of Children

There are certain regulations provided under the Child Labour (Prohibition and Regulation) Act, 1986 which the employer needs to follow while employing a child in the establishment. Proper work conditions are to be provided by the employer.

Application of Part

The provisions of this Part of the Act shall apply to an establishment or any class of establishments in which the occupations or processes which are referred to in Section 3 are not being carried on.

Hours and period of work

As per the Act, no child employee shall be allowed to work in any establishment in excess of the number of hours that have been decided on and prescribed for such an establishment or class of establishment. The number of hours shall be fixed by the establishment and the child employee must not be allowed to work for more than three hours without a break of one hour. The total number of hours of work for a child employee shall not exceed six hours. Six hours shall also include one hour of interval. According to the Act, the employer cannot make a child employee work between 7 p.m. and 8 a.m. and no employer must permit the child employee to work overtime. If a child has already worked in an establishment in a day, then such a child must not be permitted to work in another establishment on the same day.

Weekly Holidays

Every child who is employed in an establishment shall mandatorily be allowed a holiday each week. The holiday must be for a whole day. The day of the week must be decided on which it would be a holiday for the employees of the establishment and the notice regarding the same must be exhibited in a conspicuous place of the establishment. The notice should be of a permanent nature and should not be altered more than once in three months.

Notice to Inspector

Notice is needed to be sent to the Inspector within whose local limits the establishment is situated by the employer of such establishment if he employs a child employee or by the

occupier of an establishment in which a child is employed or is permitted to work. The notice to be sent must be in writing. It must contain the following particulars:

the name of the establishment and place in which it is situated, name of the person who manages the establishment,

the postal address of the establishment,

the details such as the nature of occupation or process which is carried on in the establishment.

Every employer who permits a child to work in his establishment is needed to send a notice within 30 days to the Inspector within whose local limits the establishment is situated. Where a process is carried on by the occupier with the aid of Government or it receives assistance or recognition from Government for it then such establishment shall not be subject to the provisions of Section 7, 8, 9 of the Act.

Dispute as to age

In case if a question arises between an Inspector and an occupier on the age of the child who was permitted to work by the occupier in an establishment then the Inspector can prescribe a medical authority to decide on the age of such a child in case of absence of an age certificate.

Maintenance of register

The occupier shall maintain a register which shall include information with respect to children who are employed or permitted to work in his establishment. The register which is made available by the occupier for inspection at all times shall contain:

The name and date of birth of the children who are employed by the occupier;

Number of hours and period of work for which the child employee is made to work; The nature of employment and the work which the child employee is made to do; Other particulars which may be prescribed.

Display of notice containing abstract of Sections 3 and 14

The notice containing abstract of Sections 3and14 of the Act shall be displayed by every occupier of the establishment in a conspicuous and accessible place of the establishment and in case the employer is a railway administration or a port authority then the notice must be displayed in a conspicuous and accessible place at every station or within the limits of a port as the case may be. The notice must be written in a local language and in the English language.

Health and Safety

The Government may by giving a notification to the Official Gazette make rules for the health and safety of the children who are employed or permitted to work in an establishment or any class of establishments if the Government feels necessary to do so. According to the Act the rules which must be followed by the establishment for the purpose of safety and cleanliness are as follows:

The cleanliness of the place of work must be taken care of and it should be free from any kind of nuisance;

There must be a proper place for disposal of wastes and effluents;

Proper provisions for ventilation should be made and an adequate level of temperature should be maintained in the place of work;

Provisions should be made to reduce dust and fumes; Artificial humidification shall be made;

Lighting must be proper in the place of work;

Drinking water must be provided;

Toilets must be made in the place of work for the employees;
Spittoons should be provided in order to keep the workplace clean; The machines which are in the workplace should be fenced properly;
Children must not be allowed to work near machinery which is in motion; Children must not be permitted to work on dangerous machines;
Children must be instructed, trained and supervised in relation to the employment of children on dangerous machines;

Device for cutting off power should be used;

Self-acting machines should be used in the workplace; Easing of new machinery;
Proper floors should be made and proper means to access through stairs shall be made; Pits, sumps, openings in floor shall be made;
Child employees shall not be permitted to lift excessive weights while working; Protection for eyes must be provided;
Children must not exposed to explosives or inflammable dust, gas, etc; In case fire is used in work, proper precautions must be taken;
Proper maintenance of buildings and machinery shall be taken.

Miscellaneous

Penalties

When an employer employs a child or permits a child to work in contravention of the provisions of Section 3, the employer shall be liable for punishment with imprisonment for a term which may extend to one year or with fine and the fine imposed shall not be less than rupees ten thousand and which may extend to rupees twenty thousand or with both.
Whoever is convicted of the said offence under Section 3 and repeats the same offence again in future then he shall be punished with imprisonment for a term which shall not be less than six months and can be extended to two years.
When an employer fails to give a notice as stated under Section 9 or fails to maintain a register comprising the details of child employees as required by Section 11 of the Act or if the employer makes any false entry in any such register, or fails to display a notice containing

an abstract of Section 3, or if the employer fails to comply with or contravenes any other provisions of the Act or any of the rules which are made thereunder, he shall be punished with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both imprisonment and fine.

Modified application of certain laws in relation to penalties

In case a person is found guilty and is convicted of a contravention of any of the provisions which is mentioned in the Act, then he shall be liable to pay penalties as per sub-sections (1) and (2) of Section 14 of this Act.

The provisions which are referred to in Section 14(1) of the Act are as follows :
Section 67of the Factories Act, 1948,
Section 40of the Mines Act, 1952
Section 109of the Merchant Shipping Act, 1958
Section 21of the Motor Transport Workers Act, 1961

Procedure relating to offences

A police officer, Inspector or any person can file a complaint against an employer for the commission of an offence under the Act. A complaint can be filed under this Act in any court which has competent jurisdiction for it.

In cases where there is a question as to the age of a child employee, every certificate as to the age of a child that is granted by a prescribed medical authority shall be considered to be conclusive evidence as to the age of the child employee to whom it relates.

No court shall try a case of an offence under this Act which is inferior to that of a Metropolitan Magistrate or a Magistrate of the first class.

Appointment of Inspectors

The Government may appoint Inspectors for the purposes of securing compliance with the provisions of the Act and any Inspector who is appointed by the Government for such a purpose shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Power to make rules

The Government may make rules subject to previous publication by giving notification in the Official Gazette.

The rules may provide provisions on the following matters:

The term of office of the Chairman and members of the Committee, or the provisions related to the manner of filling casual vacancies, or provisions related to allowances payable to the Chairman and members of the Child Labour Technical Advisory Committee.

Number of hours for which a child may be required or permitted to work under Section 7 (1) of the Act. Rules related to grant of certificate when the question arises as to that of the child employee. A charge may be made for the certificate by the Government for issuing such a certificate. No charges must be made for the issue of a certificate if the application for such a certificate is accompanied by evidence of the age of the child.

Rules related to the particulars of the register which is to be maintained by the occupier who permits a child to work according to Section 11 of the Act.

Rules and notifications to be laid before the Parliament or State legislature

Every rule which is made by the Government under this Act and every notification which is issued under Section4, shall be laid before each House of Parliament as soon as possible. The rules and notifications must be laidbefore the Houses of Parliament while they are in session for a period of 30 days. It may be comprised in one session or in two or more successive

sessions. If both houses agree jointly on a modification that is to be made in the rule or notification, then such notification or rule can be made or issued only when such a modification is made otherwise, the rule or notification cannot be made at all. The rules made by the Government under this Act shall come into practice as soon as it is made.

Certain provisions of law not barred

Subject to the provisions which are mentioned in Section 15 of the Act, the provisions of this Act and the Rules made by the Government under this Act shall be in addition to and not in derogation of the existing provisions of the Factories Act, 1948(63 of 1948),the Plantations Labour Act, 1951(69 of 1951) andthe Mines Act,1952(35 of 1952).

Power to remove difficulties

In case, if any difficulty arises in giving effect to the provisions of the Act, then the Government may make such provisions which are not inconsistent by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act by an order which shall be published in the Official Gazette. The order which shall be published shall not be made after the expiry of a period of three years from the date on which the Act received the assent of the President. Every order that is made under section 21 of this Act shall be laid before the Houses of Parliament as soon as it may be possible.

Repeal and Savings

The Employment of Children Act, 1938was repealed by the Child Labour (Prohibition and Regulation) Act, 1986.Notwithstanding such repeal, anything that is done or any action that has been taken or claimed to have been done under the Act which has been repealed, then, in so far as the provisions of the repealed Act is not inconsistent with the provisions of this Act shall be deemed to have been done or taken under the corresponding provisions of the present Act.

Amendment of Act 11 of 1948

Through the Amendment of Act 11 of 1948,the word ‘adolescent’, ‘adult’, ‘child’ was defined inSection 2 of the Minimum Wages Act, 1948. According to the Amendment, ‘adolescent’ refers to a person who has completed 14 years of age but did not complete 18 years of age. ‘Adult’ refers to a person who has completed 18 years of age. ‘Child’ refers to a person who has not completed 14 years of age.

Amendment of Act 69 of 1951

Amendment of Act 69 of 1951was made inSection 2, Section 24andSection 26of the Plantations Labour Act,1951. In Section 2 the word ‘fifteenth’ was substituted with the word ‘fourteenth’. Section 24 and Section 26 of the Act were omitted. The words ‘who has completed his twelfth year’ in Section 26 of the Act were omitted.

Amendment of Act 44 of 1958

Through the Amendment of Act 44 of 1958, the word ‘fifteen’ was substituted with the word ‘fourteen’ inSection109of the Merchant Shipping Act, 1958.

Amendment of Act 27 of 1961

Amendment of Act 27 of 1961was made inSection 2of the Motor Transport Workers Act, 1961. The word‘fifteenth’ was substituted with the word ‘fourteenth’.

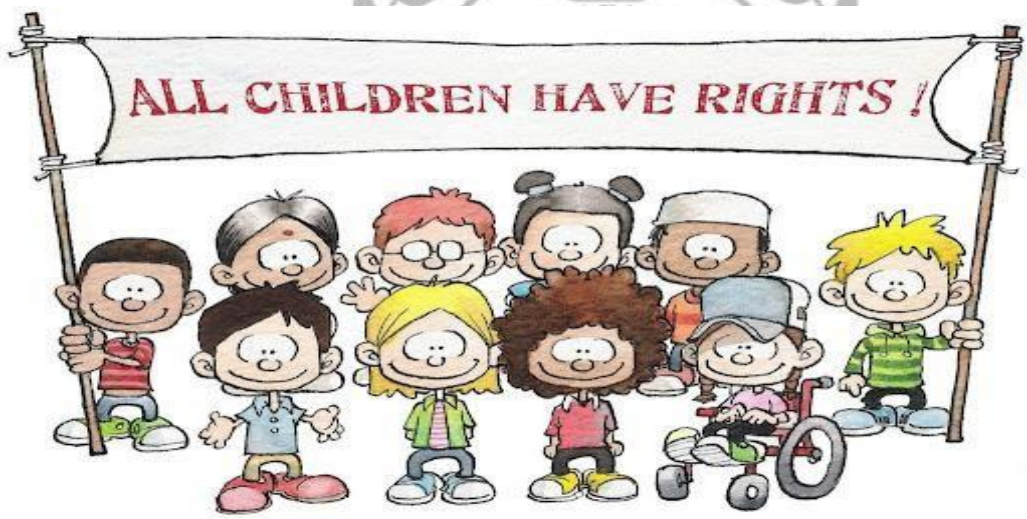
Conclusion

The Child Labour (Prohibition and Regulation) Act, 1986 prohibits children from working in hazardous employment. The Act provides a minimum age limit for employment as 14 years. The provision of the Act has helped in reducing the rate of child employment in India. It has reduced various hazardous risks to which child employees are exposed at the workplace as well as the exploitation by laying down the provisions for maximum number of hours or period of work and various other related issues. The Act has played an important role in reducing hazardous employment for children in India. If it is found that the employer is employing a child in contravention of the provisions of the Act then, such employer will be

liable for punishment which includes imprisonment or fine or both. Although the Act has reduced the number of child labors, this evil is still lingering in our society due to the socio-economic issues i.e. poverty and illiteracy and for overcoming the evil of child labor, collective responsibility has to be taken up by the society at large as Justice Subba Rao, the former Chief Justice of India rightly said that; "Social justice must start with the child. Until and unless a tender plant is properly tended and nourished, it has a small chance of growing into a strong and useful tree. So, the first preference in the plate of justice should be stated to the well-being of children."

Submited By- Lenish Sharma

CONSTITUTIONAL PROVISIONS REGARDING RIGHTS OF CHILDREN



ABSTRACT

The Constitution of India has been an outstanding document for protecting the rights and interest of its citizen. The children are no exception to it as various provisions, right from the Preamble, Fundamental Rights and the Directive Principles of State Policy to the present day judicial activism, our Constitution has been trying its best to protect the interest of the children. However, in spite of all the constitutional, legal and institutional provisions rights of children are being violated in India. Child labour is an issue where rights of children are widely violated. Constitutional provisions like justice, equality, liberty, and the fundamental

rights have failed to protect the interest and rights of children and specially the poor child labourer. It is in this context that the present paper is going to analyse the situation of child labourer vis-à-vis Indian constitution.

KEYWORDS: CHILD RIGHTS, CHILD LABOUR, DISCRIMINATION

INTRODUCTION

As minors, by law children do not have any power to make decisions on their own. Instead, these decisions are made by their parents, caretakers, social workers, teachers, youth workers and others are instilled with such authority. It is generally believed that the state gives insufficient control over their own lives and makes them vulnerable. Children rights are the human rights of children which draws special attention to the special protection and care afforded to the minors. Many government policies have held to hide the ways adult's abuse and exploit children which lead to a decline in the integrity of children, which leads to child poverty, lack or even denial of education. Through this view, children are considered to be the minority group towards whom the society needs to reconsider the way it behaves towards them.

Children were the recipient of welfare measures. It was in the twentieth century that the concept of children rights emerged. Technically it is a replacement of welfare with rights. Which was indeed a significant approach. Rights are entitlements which have goals and obligations. They primarily consist of much social justice, non-discrimination, protection, equity and empowerment. The rights perspective is embodied in the United Nations Conventions on the Rights of the Child 1989 which is a landmark in the international human rights legislation. A stirring view in most cultures is that younger the children the more they are vulnerable both psychologically and physically. Most of the activities of children are regulated by the age limit of the children- in which they leave to school, In which age they can marry, in which age they are considered as adults as per the criminal justice system, in which age they can work, in which age they can work, in which age they can join the armed forces, etc. But the age limit differs from activity to activity and country to country.

In the Constitution of India and Child Labour (Prohibition and Regulation) Act 1986, a 'child' is defined as a person below 14 years of age. The recently amended Juvenile Justice Act 2015

children (16-18 years) may be treated as adults if they commit heinous crimes like rape, acid attack, murder etc. The Constitution makers were aware of the fact that children are the promises of the nation, the future of India was in the hands of children. They were concerned about making provision for the protection of the children. By protection, they meant protection of mind, protection of the body, protection of dignity, protection of their rights… etc. The Constitution had laid down many provisions which dealt with the lives of the children. In order to strengthen the provisions in the constitution, there has been the introduction of many legislations, policies, schemes etc.

Constitutional provisions which protect the rights of children

Right to Education

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

There have been many backlashes in providing education to all the children in the state. There are many reasons for the same. The right to education is reflected in international law in Article 26 of the Universal Declaration of Human Rights and Article 13 and 14 International Covenant on Economic, Social and Cultural Rights.

Most importantly these articles ensure education to all the children irrespective of religion, caste, gender and financial condition. This article makes sure that no child is deprived of his/ her basic education. Everyone shall be provided with elementary education.

Article 14 – Right to Equality

According to this article, the State shall not deny to any person the equality before the law or the equal protection of laws within the territory of India.

Citizen of India including children must be treated equally before the law and must be given equal protection by law without any discrimination or arbitrariness. This right which is provided in the Indian Constitution protects the rights of children so that their dignity and integrity as a child is not exploited. Children being vulnerable have more chance to be treated unequally in the Indian society. Article 15 of the Indian Constitution prohibits discrimination. In Article 15(3), nothing in this Article shall prevent the State from making any special provision for women and children. It is very clear from Article 15(3) that “special provision” does not mean unequal treatment but it is established for the well being and development of the children in India.

ARTICLE 24 –PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES

According to this Article, No child below the age of fourteen shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Hazardous conditions may include construction work or railway. This article does not prohibit and harmless work. This Article provides the regulation and prohibition of child labour in India. Child Labour is defined as the work which deprives children of their childhood, potential and their dignity; it is something which causes a threat to their physical and mental development. UNICEF estimates India with such a high population has a high rate of child labourers. India, after its independence from the colonial rule, has passed many constitutional protections and laws on child labour.

DIRECTIVE PRINCIPLES OF STATE POLICES

There have been many provisions in the Directive Principles of state policies which specify how the state is responsible for the protection of rights of children.

ARTICLE-39 – Certain principles of the policy to be followed by the state.

Article 39(e) states that the health and strength of workers, men and women, and the tender age of children are not forced by economic necessity to enter avocation unsuited to their age or strength.

Child Labour is one of the social evil that is forced by economic necessity; it is the responsibility of the state to ensure that no child is subjected to any physical or mental abuse.

Article39 [1](f) states that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

This provision also protects childhood and provides opportunities and facilities to grow with the safe explosion.

ARTICLE 45 This provision is for early childhood care and education children below the age of six years.

According to this provision, the State shall Endeavour to provide early childhood care and education for all the children until they complete the age of six years. According to this Act of the Indian Constitution, the state shall protect the child and is responsible for the development within them. The state shall ensure the safe growing environment, where their childhood can be experienced by themselves without any external threat. After that, it is the responsibility of the state to provide them with free and compulsory education

No matter how the condition of the child is, even if they are not protected by their own parents or they are denied with their rights by their own parents. The State has to take strict measures for the well being of the child.

FUNDAMENTAL DUTIES

Fundamental duties refer to the basic obligations of a citizen in India. It contains about 11 duties which are to be followed by the citizen of India.

It is defined as the moral obligation of all citizens to help promote a spirit of patriotism and to uphold the unity of India.

ARTICLE-51A(k) It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities to provide education for his child or, as the case may be, ward between the age of six and fourteen years. Through this provision, the Constitution strictly mentions the providing of education as the duty of the parent as it is for the future and development of the country.

LAWS WHICH BIND THE PROTECTION OF CHILD IN INDIA

INDIAN PENAL CODE 1860

According to Section 82 of the Indian Penal Code, nothing is an offence which is an offence done by a child under the age of seven years and Section 83 states

that, nothing is an offence which is done by a child above seven years of age and under twelve.

As in this age, the children will not attain the maturity to distinguish between what is right and what is wrong. The child will not be aware of the consequences of his/her conduct.

He is incapable of understanding good and bad, which means he/she is totally Dole incapx.

Section 305 of the Indian Penal Code states the Abetment of Suicide if any person under the age of eighteen years of age commits suicide and whoever abets them to does such an act shall be punished under the punishments under the act.

Section 315 refers to Infanticide in the Indian Penal Code which comes in the category of crimes against children. This Section of the Indian Penal Code provides punishment for the act of killing an infant. Here, Section 316 of the Indian Penal Code states Foeticide, whoever does the act of causing death of quick unborn child by act amounting to culpable homicide

Section 317 states the exposure and Abandonment of a child under twelve years, by parent or person having care of it. The exposure and abandonment by a father or mother of a child under the age of 12 will be punished for the same.

Section 369 of the Indian penal code states the punishment of kidnapping a child under the age of ten with an intention to steal from its person.

Section 366A of the Indian Penal Code states the punishment for the Procreation of minor girls (for inducement to force or seduce, to illicit intercourse). This section provides the action against the said crime to ensure the protection of the girl child in India.

Section 372 and 373 states the punishment for buying, selling or attain the possession of a person under the age of eighteen at any age employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful purpose.

PROHIBITION OF CHILD MARRIAGE ACT 2006

The Government of India introduced the Prohibition of Child Marriage Act 2006 after the repeat of the Child Marriage Restraint Act. The main aim of this Act is to prevent child marriage. This Act ensures that child marriage is completely eradicated from society. A child according to this Act is female who has not attained the age of eighteen and a male who has not attained the age of twenty-one.

APPRENTICIES ACT 1961

The main purpose of this Act was to prohibit the apprenticeship or training of children under the age of 14 years and for other minors there require a contract between the employer and the guardian. A person is qualified to be engaged in apprentice if he is not less than fourteen years and satisfies such standard of education and physical fitness.

JUVENILE JUSTICE ACT 2015

This Law, brought in compliance of the Child Rights Convention repealed the earlier Juvenile Justice Act of 1986. This Act was further amended in 2006 and 2010. This Act was again repealed in 2015, This Act provides a special approach to the protection, treatment and development of children, this law mentions how a child should be protected in a home, without a home, begging etc…Under section 15 of this Act special provision had been made to tackle child offenders committing heinous offences under the age group of 16-18 years. The way in which a child should be protected from all the external threats.

COMISSION FOR PROTECTION OF CHILD RIGHTS (CPCR) ACT,2005

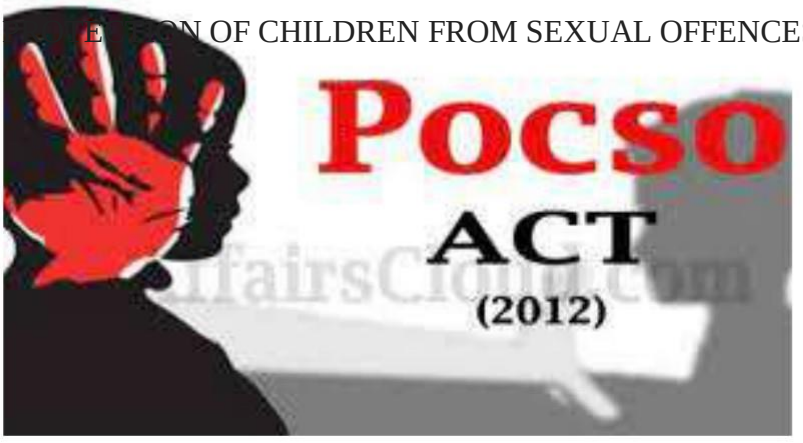
The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005. The NCPCR, which is under the Ministry of Women and Child Development, has the mandate to ensure that all "Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN

Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group." It also "enquires, investigates, and recommends action again against perpetrators of child abuse and neglect."

More specifically, the National Commission has the following functions and powers:
Examine and review the legal safeguards provided by or under any law for the protection of child rights and recommend measures for their effective implementation

Prepare and present annual and periodic reports upon the working of these safeguards
Inquire into violation of child rights and recommend initiation of proceedings in such cases
Undertake periodic review of policies, programmes and other activities related to child rights in reference to the treaties and other international instruments
Spread awareness about child rights among various sections of society
Examine and recommend appropriate remedial measures for all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence/riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution
Undertake and promote research in the field of child rights Inspect
institutions meant for juvenile/children
Inquire into complaints of deprivation and violation of child rights, non-implementation of laws and non-compliance policy decisions, guidelines or instructions
Undertake other necessary functions for the promotion of child rights. The Commission has the power of a civil court and all criminal cases brought to the same has to be forwarded to a concerned Magistrate who has jurisdiction to try the same.

E N OF CHILDREN FROM SEXUAL OFFENCES ACT (POCSO) 2012



The Protection of Children from Sexual Offences Act (POCSO), 2012, and the rules framed under the Act establish specific offenses to protect children from sexual assault, sexual harassment, and pornography, and provide for the establishment of special courts for the trial of such offenses. The Act seeks to safeguards the interest of the child "at every stage of the judicial process, by incorporating child friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences" through the special courts. The NCPCR is "mandated to monitor the implementation of the Act" by Section 44 of the POCSO and Rule 6 of POCSO Rules.

Section 19 of the POCSO Act makes it mandatory for any person, including the child him/ herself, to report that an offense is likely to be committed or has been committed. Section 21 of the Act makes the failure to report punishable, except that the child victim cannot be punished for such failure.

According to one article, under this act, various child friendly procedures are put in place at various stages of the judicial process. Also, the Special Court is to complete the trial within a period of one year, as far as possible. Disclosing the name of the child in the media is a punishable offence, punishable by up to one year. The law provides for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or to the local police. Immediate & adequate care and protection (such as admitting the child into a shelter home or to the nearest hospital within twenty-four hours of the report) are provided. The Child Welfare Committee (CWC) is also required to be notified within 24 hours of recording the complaint.

LANDMARK CASES ON THE RIGHTS OF CHILDREN

M.C Mehta v. State of Tamil Nadu

The judgment passed states the direction to prohibit child labour in hazardous conditions; the petitioner was concerned about the high rate of child labour in hazardous conditions in the Match factories of Savakis in Kamraj district of Tamil Nadu. The judgment gave out the visions of the constitution and also linked between child labours with poverty, the judgment also stated that there has been no proper eradication of child labour by the state,

Sanjay Suri v. Delhi administration

The court laid down orders to transfer some guilty officers and laid down the rules to protect children in jails. Juvenile undertrials were the subject of Sanjay Suri's petition. Many children were sent to jail despite the prohibition in the children's Act. The Juvenile were kept together with habitual and other adults where they were brutalized and made to do undesirable tasks,

Gaurav Jain v. Union of India

The Supreme Court held that segregating the children of prostitutes would not be in their interest. The Supreme Court held that the children of the prostitute have the right to equality of opportunity, dignity, care and protection and rehabilitated so as to be a part of the mainstream of social life without any pre-stigma attached on them.

Vishal Jeet v. Union of India

Several directions were issued to end the sexual exploitation of children. The court issued directions to the state government to set up rehabilitation homes for the children found begging in the streets and also minor girls pushed into 'flesh trade' to protective homes.

Sheela Barse v. the Secretary Children's Aid Society &Ors

The petition was filed in public interest with regard to improper functioning of childcare institution in Mumbai, The Supreme Court directed that in no case should a child kept in jail and a central law must be enacted to bring uniformity in the juvenile justice system.

KishanPattnayak v. State of Orissa

Poor people were forced to sell children to buy food. The Orissa government was compelled to take several welfare actions. The petitioner wrote a letter to the Supreme court of India bringing to the court's notice the extreme poverty of the Kalahandi in Orissa where hundreds of people were dying due to starvation as a result they were forced to sell their children. This case has taken the issue of the lack of food and poverty. In this judgment, the Supreme Court took significant steps in implementing irrigation projects in order to reduce drought and certain measures were taken in order to ensure fair selling prices.

CONCLUSION

As Justice Bhagwati has rightly quoted “the child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into the maturity, into fullness on physical and vital energy and most breadth, depth and height of its emotional, intellectual and spiritual being”.

Children signify eternal optimism in the human being and provide potential for the development. Every nation whether developed or developing links its future with the status of the child. A child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment, which is favourable to his social and physical health, is assured to him. Neglecting children means loss to the society as a whole. If the children are deprived of their childhood-socially, economically, physically and mentally the nation gets dispossessed of the potential human resources for social progress, economic empowerment, peace and order, social stability and good citizenry.

Before the enactment of the constitution, there were bits and pieces of various legislations which had dealt with the child and child labour. The implementations of those provisions were not only tardy but half-hearted. The constitution of India recognized the rights of the child for the first time and included several articles dealing with their liberty, livelihood, development of childhood, non-discrimination in educational spheres, compulsory and free education and prohibition of their employment in factories, mines and hazardous employment.

CRC & INDIA

Abstract: Children being the most vital human resource of the nation, require a more deliberate fostering in terms of education, health and safety. The basic framework of civilized society can't be strengthened in the presence of illiterate and unbridled childhood. With widening disparity in terms of social and economic factors present in the society, to impart free and compulsory education to children has been rightfully prioritized by India. However, to encompass the sizably huge under-privileged population of children under exhaustive educational schemes and to bring them in mainstream, educational conduit is a mammoth challenge before contemporary India. As far as under-privileged children are concerned, poverty, child-delinquency and ultimately deprivation of dignified life are the most devastating repercussions of lack of education. Thus, pertinent aspect of child education warrants more deliberate attention.
Keywords: Exploitation, Trafficking, Discrimination, Child Labour

Introduction: The United Nations Convention on the Rights of the Child (the "Convention"), adopted by the General Assembly of the United Nations on November 20, 1989, is the "most widely accepted human rights treaty ever."2 An unprecedented sixty-one states signed the Convention on January 26, 1990, the day it opened for signatures, and 191 countries have currently ratified it. The Convention addresses children's rights with respect to a vast array of issues from infant mortality and sexual exploitation to freedom of association and religion. The Convention was not meant to be merely a toothless statement of idealistic but unrealistic goals. It is legally binding on the nations that sign it and, like other human rights treaties, provides for monitoring of the signatories' compliance.

Articles 43 through 45 of the Convention require that each ratifying country must provide reports on their adherence to it (two years after ratification, and every five years after that) to a committee of children's rights experts, who may then make recommendations and suggestions to the state and to the UN General Assembly.

India is home to twenty percent of the world's children. The lives of almost 36 million of India's children are experienced within deeply variant contexts of gender, caste, class, and region, making problematic any attempts at generalizing the construct of "Indian childhood." Hopeful children neatly dressed in school uniforms making their way to school - on foot, on

bicycles, cramped in auto rickshaws, joyously crowded on cycle rickshaws, riding in mini or air-conditioned school buses, or luxury automobiles fill the morning landscape in India.

While some children carry their overloaded schoolbags to sophisticated facilities, others carry their meager supplies to buildings with broken-down walls and no sanitation, hoping their teacher will be in attendance that day, while still others carry guns to fight in adult wars. Just as common a sight is children begging for a scrap of existence. The sight of boys playing cricket or soccer in the evening is equally common as that of seeing young girls and boys engaged in long hours of menial or dangerous labor. These are the visible children of India, separate from the "disposable" children, who are killed before they are born because they are female, or those who die from lack of food or health care, or those who are trafficked or forced to work as sex workers – the invisible and unaccounted-for children of India.

India has been an active participant in much of the international discourse on child rights and was an active participant in the eleven-year deliberation process that shaped the CRC. India ratified the CRC on 1992, reaffirming its earlier acceptance of the Universal Declaration of the Rights of the Child. In keeping with the requirements of CRC, India submitted its initial report to the committee in 1997.The Committee also recognized the extensive contribution of non-governmental organizations (NGOs) in supporting human rights in India and commended India for her involvement and cooperation in multiple international instruments. It further acknowledged the impediment to efforts at implementing child rights stemming from India's high population growth rate, large child population, and frequent natural disasters.

India's first periodic report (2003) recognized it for meeting established guidelines and commended India for adopting the 86th Constitutional Amendment Act, 2002 providing for free and compulsory education to all children 6-14 years old; the extension of primary school access; the 2003 amendment to the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; and the establishment of free telephone "childlines" (CRC, 2004).

But the Committee expressed strong concerns about the lack of effort in implementing a majority of the recommendations made in its 2000 report–in particular, the necessity to reduce discrimination based on gender and caste.

In response to the Committee's concerns the Indian Government set up the National Commission for Protection of Child Rights (NCPCR) in March of 2007 with a mandate to "ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined by the Constitution of India and the UNCRC" (NCPCR, 2008).

The NCPCR brings a rights-based, child-centered perspective to policy development and implementation. It has played a pivotal role in engaging local communities, including children, in discourse that challenges traditional discriminatory thinking, practices, and structures.

Furthermore, it is encouraging states that have not yet done so to open State Commissions in an effort to decentralize efforts towards protecting and furthering children's rights. In agreement with the CRC Committee, NCPCR has focused particular attention on reducing discrimination against children, especially gender based discrimination which has a long, complicated and deep-rooted history in India.

THE INDIAN CONSTITUTION AND EDUCATIONAL RIGHTS OF CHILDREN

The Constitution is the fundamental law of the country, reflecting the underlying & unifying values of society. It spells out the basic rights of each person; it serves as a framework for all other laws and policies. The following provisions in the Indian Constitution clearly spell out the vision of the framers for making basic education available to the children of India.

Art. 21A. - The State shall provide free and compulsory education to all children between age of six to fourteen years in such manner as the State may, by law, determine.

Art. 41- Right to work, education and public assistance in certain cases. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Art. 45. - Provision for free and compulsory education for children.

(1) The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years.

(2) The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

Art. 46. - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote special care of the educational and economic interests of the weaker sections of the people, and, in particular, the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Art. 51 A (k). - Mandate to parent or guardian to provide opportunities for education to his child or ward, as the case may be, between the age of six and fourteen years.

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