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Orginal Article

The Affinity of Teachers and Students in Today's World with Reference to Respect in the Classroom Confinement

Kirti S Bidnur[1], Vishnu H Fulzele[2]

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Abstract

Teachers play a very important role in the student's life. It is said that the quality and extent of learner's achievement is primarily determined by teachers competence and motivation. But today teachers are losing their respect due to various reasons like poor subject knowledge, incapable of handling the classroom environment, being too friendly with the students and other reasons. Teachers and students both are a very important elements of a classroom. A teachers attitude, body language, personality, motivating nature, command over subject and control over class gains respect from the students. Leaners attitude affects their learning to great extent. If students are close minded then they will develop arrogance within themselves which will create a blockage to understand concepts that are being taught. There are educators of strong opinion who say that ancient teaching like Gurukul system was the best one that dates back to 5000 B.C. The real problem of dealing with the hostile crowd in the classroom can be solved by treating each student with love and respect. Teacher becomes a real facilitator only when he motivates his student to become a responsible person in the society.

Keywords: Student; Teacher; Respect; Classroom; Development; Motivaton; School; Gurukul; Education; Affinity; Confine; Teacher-student relations.

Introduction

India's ancient education system has been a strong pillar for many teachers. The ancient system of 'Gurukul' in India has always been the foundation for educational setups and teaching process which dates back to5000 B.C. In the system of 'Gurukul', 'Guru' means the teacher used to act as an influential personality to influence 'Shishya', means a student in the teaching learning process. Teachers during that time were highly respected by every student because of the qualities a teacher would possess.

Students used to stay with the teachers as a family member till they finished their education. The dignity and high respect earned by the teacher was due to his strict control, subject knowledge, polite attitude and understanding nature. All pupils were treated equally and no fee was taken. The student would offer 'Gurudakshina' at the time of leaving the Gurukul after completion of his vidya,which was considered as a form of 'respect' paid to the teacher. It was in the form of money or something in kind or a task that student would perform for the teacher.

Statement of the problem-

The Education scenario in today's world has changed in last two decades. There has been a good influence of different media's on the participants of education. The relationship of teachers and students was considered as sacred few decades ago but has undergone changes now. In the Gurukul system of education teachers were highly respected

by the pupils, this is somewhere fading in todays time. The researcher would like to understand why there is a change in the relationship between teachers and students by investigating students pursuing their UG degree in different colleges.

The biggest concern that any teacher has is about her dignity and respect that he/she would like to earn in any organisation where he/she is working. The main participant in the educational process and classroom is a student. There have been news,articles,cases been highlighting about students insulting teachers,students disrespecting the teachers,students misbehaving with the teachers,students verbally abusing the teachers. Media is also somewhere responsible in depicting teacher-student relationship in a negative taste. The globalization, educational sector reforms and blast in technology has largely affected the education scenario.

The analyst would conduct a small test on both the participants viz. 'teachers' and 'students' to understand the recent concerns about such bad experiences in the classroom. The researcher would like to give suggestions at the end of study. The analyst would like to put the light on causes and effects of 'No respect' and 'Lost respect' on the part of the college teachers. The researcher is keen to study the changes happening in teaching-learning process.

Objectives of study

1. To study the cause and effect relationship between students respecting their teachers and students learning
2. To determine the cause and effect relationship between teachers behaviour with their students and teachers respect in the classroom
3. To investigate the reasons for teachers loosing respect among students
4. To understand the teachers ideology and thought process about the ancient teaching and modern teaching scenario

Hypothesis

1. H0 – There is no significant relationship between students respecting teachers and teachers dignity

   H1- There is a significant relationship between students respecting teachers and teachers dignity

2. H0- There is no significant relationship between student's overall development and teachers effort to help them learn

   H2-There is a significant relationship between student's overalldevelopment and teachers effort to help them learn

3. H0-There is no significant relationship between ancient teaching and modern teaching techniques

   H3-There is a significant relationship between ancient teaching and modern teaching techniques

Review of literature

Baron (1982) in his study states that majority of the psychologists believe that emotion and personality influences the quality of a person's thinking to an extent.

B. Garmston (1997) Concludes in his study saying that there as signals in the classroom that every teacher shall look for ,for example -As the voices of the students goes down after asking a question in the class, a teacher should raise his hand and motivate them to answer,this in turn will give them the signal to raise their hands and answer instead of whole of the crowd answering.According to Garmston, it is a respectful way to ask for attention.

Ministry of Education, Guyana in its Education sector report (2014-18) focuses on mutual respect in the classroom rather than interaction in the classroom. It creates an atmosphere of mutual respect in the class where everyone is treated with respect. This indirectly results in safe and motivated sense for the students and they behave well. It helps them to achieve their goals optimally. To set up such kind of environment requires a huge effort. Once established, however, students will usually work to maintain the positive classroom environment

Michael Linsin (2019) in Smart Classroom Management states that when teacher is disrespected in the class,it is inevitable for a passionate teacher to loose temper but it is important to resist themselves from shouting at the student or punishing the student. The author believes that it will have a colossal effect on the student-teacher relationship.

Sheldon L. Eakins (2019) believes that Classroom management can be a struggle for teachers. Not just a few teachers but veteran teachers may also face challenge when it comes to managing its classroom. He further adds that students respect those

teachers who respect them.He states that if good relationships aren't built between teachers and students, teachers may find it difficult to manage their classes.

Chandwani Nikhil (2019) in his article states that the current education system suffers from flaws. He further states the education system was changed in India in 1835 by Lord McCauley which focused more on mental activity and ignored physical activity, it only resulted in rat race. The current educational system has become more of a commercial one unlike the oldest valuebased system. He believes that there is absence of one's physical quality aspect such as personality development, moral value creation and ethical induction.

Farlazzo Larry (2019) in her work states that students respect those teachers who respects them. She believes in forming circles in the classroom, building rapport through focusing on one to one approach, find out what is unique about every student, making students realize that a teacher cares for them by looking into their personal lives, etc; these factors can help a teacher to have cordial relationships and solve the classroom problems.

Grinder (2019) states about understanding the change in the density in students metabolism. He states that when we as a teacher raise our voice while talking to a student, he will do the same. Grinder believes that we are responsible in raising their metabolism. Whereas if we lower our voice and speak politely the students will reduce the metabolism of the student.He identified two types of voicesi.e the approachable voice and the credible voice. When we use the credible voice, the movement in our chin is up and down and is also largely affected by our palm movements. We often nod our head. It is a friendly voice. Teachers teaching the younger classes will use more approachable voices rather than using the same for older students.

Tominey, Shauna, McClelland, Megan (2013) in their research state that for every child , self-regulation practice plays as important role in his development. This helps in effective management of a child's emotion and behaviour. Children who have strong self-control tend to achieve better than the others who struggle with these skills. Teachers who exercise the tasks like creating and maintaining a continuous schedule and pattern, uses cues to help students learn , motivates them by keeping a complete track of students achievement, helps students to manage their emotions and understand them, offering feedback to their students , etc are more successful in helping their students in overall development.A sound model of self-regulation within themselves leads to relates positive outcomes of good academics, completion of college and job opportunities & steady employment.

Methodology

The sources of data collection were majorly primary and secondary. The researchers collected the data mainly from primary sources. The analysts depended on secondary sources like research articles,journals and other published sources.The data was collected from students and teachers by interviewing a few and sending google forms to others . The data was 102 students and 30 teachers from different schools and colleges.

Result and Discussion

Testing of Hypothesis

Table 1: One-Sample Statistics.

	N	Mean	Std. Deviation	Std. Error Mean
Q.5	102	1.13	.501	.050

Table 2: One-Sample Test.

	Test Value = 1.13					
	t	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Q.5	-.051	101	.959	-.003	-.10	.10

Table 3: One-Sample Statistics.

	N	Mean	Std. Deviation	Std. Error Mean
Q.8	102	1.53	.829	.082

Table 4: One-Sample Test

	Test Value = 1.70					
	t	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Q.8	-2.078	101	.040	-.171	-.33	-.01

Table 5: One-Sample Statistics.

	N	Mean	Std. Deviation	Std. Error Mean
Gurukul system	26	1.5769	.85665	.16800

Table 6: One-Sample Test.

	Test Value = 1.58					
	t	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Gurukul system	-.018	25	.986	-.00308	-.3491	.3429

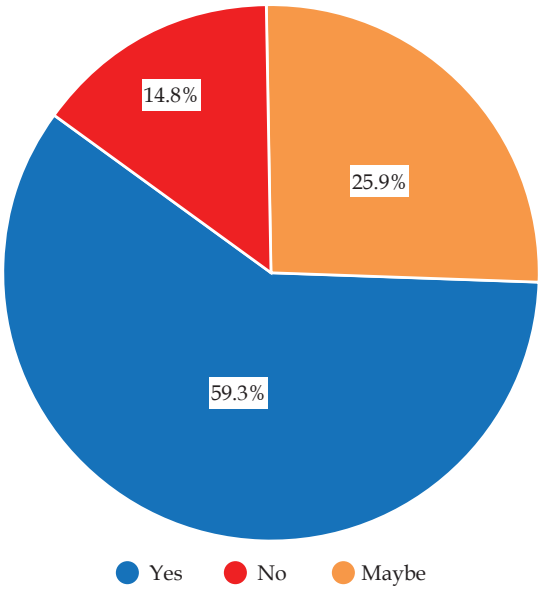

Fig. 1: Do you think that ancient Indian educational system of Gurukul was good? 27 responses

Analysis and interpretation

The researchers collected data from 135 respondents (Students and teachers) and the above results have been obtained by them. For testing the null hypothesis, One sample t-test was applied. Following are the interpretations:-

- While testing the Null hypothesis [1.H0] the t – statistic and mean difference value is negative because the sample mean is less than the hypothesized mean, i.e -0.51 and -0.003 with relation to the test value 1.13
- While testing the Null hypothesis [2.H0] the t – statistic and mean difference value is negative because the sample mean is less than the hypothesized mean, i.e - -2.078and – 0.171 with relation to the test value 1.53
- While testing the Null hypothesis [3.H0] the t – statistic and mean difference value is negative because the sample mean is less than the hypothesized mean, i.e – 0.018and – 0.003with relation to the test value 1.58
- In the above Fig.1 59.3% teachers have shown majority by agreeing to the fact that Ancient teaching system of Gurukul was the best one.This helps the researchers to accept the alternative hypothesis.

The above results are strong evidences against rejecting the null hypothesis and accepting the alternative hypothesis. A negative t-test indicates that there is no significance of the difference between groups.Hence all the null hypotheses are rejected and all the above alternative hypotheses have been accepted.

Suggestions

There were suggestions given to the researcher based on their personal encounters in the classroom engagement. On of the teacher was of very strong opinion that students get a lot of stuff from internet hence we as teachers need to focus more on our teaching and try to attract them by being a strong knowledgeable personality.Where others said that students are like 'creeper' plants, we have to give them support to grow. A teacher strongly pointed at role of teacher is not of only a teacher but more of a facilitator.Some of the other teachers said we should coordinate with the students which will help to develop a bond between us and the students. Few of them were concerned with the change in students-teacher relationship.Personal classroom training puts a positive impact on the students. Teacher Student relationship should be friendly as it can help the teacher to act as a mentor.

Conclusions

Respect comes from heart,soit is the teachers responsibility to create such kind of environment which is positive from students points of view and beneficial to our society, because students are the youth of the nation. Today there is no role of a teacher but facilitator because. Learners have more access to knowledge, so the Teachers need not think that they are the sources of knowledge.There should be mutual understanding between teachers and students in the classroom environment. It is the duty of an every teacher to treat every student with respect and try to understand their psychology. A successful teacher is one who is always ready to address problems of the students, help them learn and prepare them to face the society. If a teacher is too strict or too lenient it can cause problem.We are here to facilitate the process of learning through the abundant resources available guiding, mentoring and coaching them. We need to provide them the necessary psychological strength by respecting

their emotions and in turn getting it back, we need to replace the word student with learner and teacher with Facilitator. There is a need to reform the education policies. The researchers conclude from the above study that a teacher is the mother to students in the educational institute. The ancient Indian teaching system like Gurukul was still the best system as it attracted people from Europe and Portugal to learn in such system and practice it in their countries.There are students who still obey their teachers and treat them with respect,there are students who feel very happy when a teacher motivates them. There can be no classroom without a teacher and a student. It is important to build cordial relationships with the students to effectively manage the class, by this way every teacher can get to know each student.

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Review Article

The Exigency for Diversity and Inclusion in Affirmative Action Polices in Higher Education

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Abstract

Globally higher education is regarded as instrumental in shaping individual and societal aspirations. For an individual education beyond secondary education is key to higher social esteem, intellectual stimulation and thus expanding horizons of life options. For the society higher education is instrumental in advancement of technology, productivity, and other elements of economic growth in an international competitive market. It is believed to play a major role towards achievement of social justice, equal opportunity and democracy.[1]

In India, higher education is considered to be more equitable in terms access and is also subsidized by the government in comparison to primary and secondary education.[2] But the reality is quite opposite; there has been a persistent educational inequity due to the shrinking opportunities.[3] A stronger and more legitimate higher education system can be formed by enabling persons from all backgrounds to find representation in universities.[4]

The Constitution of India also mandates the restoration of educational opportunities to all its citizens. Educational opportunities are the opportunities that enable the individuals to acquire knowledge and skills thus leading to the cultivation of certain capacities. The goals of the educational opportunities are closely linked to access to educational institutions such as higher educational universities.[5] This article will reflect on the need of diversity in higher education system in light of affirmative action policies in India

Keywords: Higher education; Affirmative actions; Diversity; Social discrimination; Equality of opportunity; Reservation.

Introduction

Studies have mapped overall pattern of deep discrimination.[6] There are several studies which reveal the existing disparities around caste discrimination.[7] There has been evidence of 63% dropout rate by class X in 2002.[8] In sharp contrast, the percentage is between 12 per cent and 15 per cent in US. This illustrates the relative inequality in terms of opportunities for the attainment of education in our country. Over the last 60 years the commitment towards increasing opportunities to the under privileged group have not be fulfilled.

Affirmative actions are brought in usually to win the support of the marginalized or under-represented sections of society. The public policies supporting affirmative action are justified as they aim achieve equity, justice or democracy. The

essential goal served by affirmative action policies in higher education are compensation to the victims for the past discrimination. Affirmative action's ensure redistribution of resources and opportunities to the unprivileged sections of society. Such actions help in motivating students from lower socio-economic and disadvantaged classes to aspire for better positions in society. Thus, it enhances potentiality and productivity of such students and they get higher quality education and learning due to incorporation of diversity on campuses. They end up getting better access to career opportunities. Ultimately a more legitimate democratic order is maintained.[9]

Affirmative action is usually resultant of socio-cultural, geographical, historical, political, demographical circumstances rather than of common psychological predispositions.[10] Caste based discriminations are quite deeply rooted in our socio-cultural upbringing. Despite of having Article 17 of the Indian constitution prohibiting untouchability, lower castes are looked down upon in rural India. Thus, the whole concept of reservations, quotas or affirmative action can be seen as a social contract between "the winners" and "the losers".[11]

There are multiple different kinds of criteria, based on which diversity is maintained in higher educational institutions. But the ultimate deciding factors are limited through the construction of specific meanings. And such factors vary globally, for e.g., in India, diversity is focused on caste, class, religion and language differences. Differences in race, ethnicity, and culture are being focussed upon for determining diversity in Canada. In the US context, racial differences and cultural differences remain the determining criterion for diversity in higher educational institutions.

Objectives

This article will reflect on the need of diversity in higher education system in light of affirmative action policies in India. This article will aim to disprove the argument that excellence in higher educational institutions will be affected adversely by bringing diversity through affirmative action policies. The article aims to establish that bringing in diversity in higher educational institutions will be an "educational good" itself. The article will discuss that excellence in education can be achieved by diversity and equal opportunity. Reflecting on these issues this article will help us to understand the complexities involved in the 21st century world of globalization and the expanded diversity associated with the expansion in higher education around the world.

The Cause for Diversity and inclusion in Higher Education

Selection in higher education institutions is an opportunity to be strategically provided to a certain class an institution looks for in the candidates.[12]

Ronald Dworkin describes this as:[13]

"Places in selective universities are not merit badges or prizes for some innate talent or for past performance or industry: they are opportunities that are properly offered to those who show the most promise of future contribution to goals the university rightfully seeks to advance."[14]

A diverse student body will encourage mix of values and experiences providing an effective and fertile platform for learning and scholarship.[15] By bringing diversity in universities will not only reconcile differences in ethnicity and socio-economic background but also diversify the environment of learning and achievement of goals.[16] It provides a valuable platform for human interaction.

According to Patricia Gurin a diversified student body can think deeper and interpret complex situations. They are better nurtured to become responsible participants in a pluralistic, democratic society.[17] In a residential university the effects of having a diversified student body are more pronounced where the students engage in constant and intense interactions.[18] The validity of the diversity argument is dependent on the type of discipline or profession in question.[19] In the field of legal education, researchers have highlighted the role of having a diversified student body.[20] In a law school a diversified student body helps to achieve twin objectives: firstly, it refines the student's capacity for intellectual, moral and aesthetic engagement as a lawyer. Secondly it prepares the candidates for a responsible participation in the public life of his community as well as the society at large.[21] The first objective is personal and inward looking while the second objective is more outward looking and communitarian. A law school "cannot be effective in isolation from the individuals and institutions with which the law interacts."[22] By a diversified student body the realities of discrimination faced by different class of persons can be strictly scrutinized.[23] Students coming from the background of social discrimination will not feel alienated from the society and will perform better to make positive sense of their professional life.[24]

There is a great need for having the equality of opportunity in education due to the following reasons:

a) It is needed for the establishment of an egalitarian society.

b) It is needed because it is only through the education to all citizens the success of democratic institution is ensured.

c) The equality of educational opportunities will essentially lead to a steady advancement of the country.

d) Search of talent and selection in entrance examinations will happen among all the citizens and not be necessarily limited to privileged class.

The conception of Fair Equality of Opportunity is developed by John Rawls. According to the conception of Fair Equality of Opportunity the social offices and positions should be open to all individuals who are equally talented. This enables all individuals getting equal chance to attain important positions, irrespective of their social background.[25] By the conception of Fair Equality of Opportunity all members of the society are counted as the relevant agents. Irrespective of the social class background there should be no obstacles to achieve the desired goal in offices and other positions. The only obstacles that people may legitimately face include having fewer cultivated abilities or lack of willingness to use them. This principle closes the achievement gap between the rich and the poor who are similarly situated in terms of same talent potentials.[26] The Rawlsian principle of Fair Equality of Opportunityaims to eliminate the effects of discrimination on grounds of social background on educational achievement. Thus, Fair equality of opportunity offers a radical and equitable interpretation of equality of educational opportunity.[27]

In USA, Preferential treatment was justified on the basis of "diversity" for the first time in 1978. Justice Lewis Powell in the case of University of California Regents v. Bakke,[28] supported affirmation action[29] based on "race discrimination" as it would enrich the quality of learning experience in higher education for all the students.[30] A diverse student body will enrich the learning environment for both the minority and dominant group of students. An emerging body of scholarship[31] has linked "diversity" to individual and institutional benefits in higher education institutions. In addition to structural diversity, engagement in meaningful and periodic interactions with all diverse group of students in the universities were found effective [32]

In Canada to decide issues of Diversity reliance is given to legislation on equality and the Canadian Multiculturalism Act of 1988.[33] Both U.S. and Canada have decentralized their higher education systems which is not the case in India. In India higher education falls in the concurrent subject list. Thus, Indian higher education falls under the domain of the state governments, the union territories, and the central government.[34]

The future of positive discrimination for every country would be different depending upon various social factors prevailing in that particular country. The conflict between equal treatment and the politics of reservation cannot be ignored while formulating reservation policies in India.

Conclusion

Our current educational system directly affects our youth population. The youth we have is not a homogenous lot; we have heterogeneous youth population and thus come the idea of differential treatment. However, what is important also is to consider the various dynamic factors while forming policies of differentiation, and to come out of the positivistic approach. The Government needs to recognize various stakeholders, of the consequences of its policies and their arguments and counter arguments.

A positive approach towards this problem lies in increasing the intake of students in educational institutions. Since the rates of literacy of SC's and ST's are found to be lower than aggregate rates of literacy, better educational facilities and environment both at primary and secondary education should be provided to these groups to make them at par with the rest. There should be improving and widening of our system of public education so that all castes can be on an equal footing.

If we are to shift away from the politics of identity and patronage, then reservation policy is surely a better way of minimizing disadvantages and nurturing the democratic ethos. Although reservations are the most practical method of achieving substantive equality, they must be used cautiously and not misused.

Though there is need to fulfil "legal" requirements for filling certain quotas, but no penalties are provided for the violation of the same. That is the reason why many quotas remain in educational institutions unfulfilled. There is serious need to

ensure that quotas get filled strictly according to the legal norms

Thus, it can be concluded that positive discrimination in higher education institutions can and does strengthen social mobility of disadvantaged groups. But positive discrimination cannot be completely adequate to remove group inequalities. For positive discrimination to be more effective it must be complemented by basic improvements in access to and quality of schooling.[35] The quality of education imparted at lower levels need to be improved to benefit the disadvantaged group. The environment of these institutions must not culturally isolate these groups rather must treat them as the part of the same society.[36]

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Review Article

Reasonableness and CAA, 2019: A Critical Analysis

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Abstract

Citizenship denotes the link between an individual and a state or an association of states. The status of the Citizen is not simply a formality; citizenship carries with it a range of rights and obligations to participate in the life of the state that is denied to those who are not citizens. The CAA, 2019 has been an issue of great controversy in recent times. This paper aims to reflect test the Act of 2019 on the ground of the grounds of reasonableness.

Keywords: Citizenship, Illegal immigrants; International border; Reasonableness; Proportionality; Equality; Secularism; Basic structure.

Introduction

Citizenship is a contested and sensitive issue. The roots of the concept are in the Greek "polis"and the Roman "res publica". The idea of citizenship implies the identity of a person with a country. Citizenship is the relationship between a private individual and a state with a condition that the individual owes allegiance and successively is entitled to its protection.[1] Citizenship is a political idea – the relationship that holds between co-citizens must be a political relationship, whether or not it involves institutions of government in their familiar form.[2] Citizenship denotes the link between an individual and a state or an association of states. The status of the Citizen is not simply a formality; citizenship carries with it a range of rights and obligations to participate in the life of the state that are denied to those who are not citizens. According to Linda Bosniak, there are four different ways to define citizenship which are as- the first is 'citizenship as legal status', the second is 'citizenshipas rights', the third is 'citizenship as political activity', and finally 'citizenship as identity'.[3]

Citizenship: A Historical Perspective

Citizenship meant being protected by the law rather than participating in its formulation or execution. It now "denotes membership in a community of shared or common law, which may or may not be identical with a territorial community".[4] It became an "important but occasional identity, a legal status rather than a fact of everyday life".[5] Citizenship is primarily understood as a legal status rather than as a political office and his concept is that the most privileged type of status. The Roman experience shows that the legal dimension of citizenship is potentially inclusive and indefinitely extensible.

- Citizenship in Greek City-State: The thought of citizenship initially arose in towns and city-states of ancient Greece, where it typically applied to property owners but not to ladies, slaves, or the poorer members of the community. A citizen in a Greek city-state was entitled to vote and was liable to taxation and military service.[6]
- Citizenship in the Roman Empire: The Romans used citizenship as a tool to differentiate the residents of the town of Rome from

those peoples whose territories Rome had conquered and incorporated. As their empire continued to grow, the Romans granted citizenship to their allies throughout Italy proper and then to peoples in other Roman provinces, until in AD 212 citizenship was extended to all free inhabitants of the empire. The Roman citizenship had been reduced to a judicial safeguard and the expression of rule and law. The Roman citizenship presented necessary legal privileges within the empire.

- Citizenship in England: In England, the term citizenship originally indicated membership of a borough or native municipal corporation, whereas the word subject was used to emphasize the individual's subordinate position relative to the monarch or state.
- Citizenship in Australia: Citizenship in Australia, follows a exclusionary mechanism. Access to formal citizenship determines whether a person can remain present and participate in the Australian community.[7] The Australian Citizenship Act, 2007 (Cth) (the Citizenship Act) currently determines who is entitled to Australian citizenship, including provisions for citizenship by descent and by naturalisation.
- Citizenship in the USA: In the USA, acquisition of the citizenship runs following solus soli, as basic principle along with the principle of descent however subject it to strict limitations. Other countries typically adopt the jus sanguinis principle as their principle, supplementing it by provisions for acquisition of citizenship just in case of a mix of birth and domicile within the country of parents born there, and so on. In the USA, the followings are the successive events in reference to Citizenship –
    - ❖ 1776: Declaration of Independence protests England's limiting naturalization of foreigners in the colonies.
    - ❖ 1789: U.S. Constitution, under Article I, Congress is "to establish a uniform Rule of Naturalization," eventually giving the federal government the sole authority over immigration.
    - ❖ 1790: Naturalization Act of 1790 provides the first rules to be followed by the United States in granting national citizenship to "free white people."
    - ❖ 1865: Thirteenth Amendment abolishes slavery, although it did not grant formerly enslaved persons the full rights of citizenship.
    - ❖ 1868: Fourteenth Amendment grants that all persons born or naturalized in the United States are citizens and are guaranteed "equal protection of the laws."
    - ❖ 1898: U.S. Supreme Court rules in United States v. Wong Kim Ark[9] that any child born in the United States, regardless of race or parents' citizenship status, is an American citizen.
    - ❖ 1996: The Illegal Immigration Reform and Immigrant Responsibility Act, 1996
    - ❖ 1997: The Nicaraguan Adjustment and Central American Relief Act, 1997
    - ❖ 2001: USA Patriot Act amends the Immigration and Nationality Act to broaden the scope of aliens, ineligible for admission or deportation to include terrorist activities.

Citizenship and India

Part II of the Constitution of India (Articles 5-11) deals with the Citizenship of India. Article 5 speaks about citizenship of India at the commencement of the Constitution (Nov 26, 1949). The President of India is termed the first Citizen of India. The conferment of Citizenship of India, to a person is governed by Articles 5 to 11 (Part II) of Indian Constitution. The legislation related to this matter is the Citizenship Act 1955, which has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, and the Citizenship (Amendment) Act, 2005. Article 9 of Indian Constitution says that a person who voluntarily acquires citizenship of any other country is no longer an Indian citizen. Also, according to The Passports Act, a person has to surrender his Indian passport if he acquire citizenship of another country, it is a punishable offense under the act if he fails to surrender the passport. Indian nationality law largely follows the jus sanguinis (citizenship by right of blood) as opposed to the jus soli (citizenship by right of birth within the territory). Further, Article 11 the Parliament of India to regulate the right of citizenship by law.[10] Thus Citizenship Act 1955 as enacted by the Parliament, is an act that provides for the acquisition and termination of Indian citizenship, and the same acts speaks about citizenship of India after the commencement of the Constitution. The Citizenship Act, 1955 is the most

important legislation concerning to offer citizenship to people. Acquisition of Indian Citizenship as per the Citizenship Act 1955: Indian Citizenship can be acquired under the following ways: (1) Citizenship at the commencement of the constitution of India[11] (2) Citizenship by birth;[12] (3) Citizenship by descent[13] (4) Citizenship by registration[14] (5) Citizenship by naturalization[15] and Incorporation of the territory. However, the nationality may be obtained by Birth and Inheritance. The following incidents also seem to be relevant for discussion-

- In September 2015, the government, through an executive order, exempted non-Muslim illegal migrants from the three countries from the operation of the Foreigners Act, 1946.[16] This provided immunity to this class of migrants from any adverse action by the state due to illegal entry and stay.
- In 2016, the Ministry of Home Affairs vide a series of notifications[17] exempted persons belonging to aforementioned communities from Afghanistan, Bangladesh, and Pakistan who have taken shelter in India on or before 31 December 2014 due to the fear of religious persecution, from Passports (Entry into India) Act, as well the Foreigners Act 1946.
- On 23 October 2018, the Ministry of Home Affairs issued a directive that provided a separate and accelerated process for non-Muslim legal migrants from the three countries to get citizenship. The directive extended this policy that was already in place since 2016.[18]

Controversy Over Citizenship Law

Judicial review of legislative and executive action has been one of the most important developments in the field of public law in the last century. The concept of judicial review was developed way back in 1803 in the famous case of Marbury v. Madison.[19] To achieve this limiting function of judicial review, common law systems and civil law systems reacted differently and developed different processes. In common law jurisdictions the concept of secondary review was developed to achieve this limiting function of judicial review. Under the concept of secondary review the courts would strike down administrative orders only if it suffers the vice of wednesbury unreasonableness[20] which means that the order must be so absurd that no sensible person could ever dream that it lay within the powers of the administrative authority. Lord Diplock beautifully sums up "Wednesbury unreasonableness" as a principle that applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it.[21] The broad contours of the external structure of judicial review have been laid down by Lord Diplock in the case of Council of Civil Service Unions. v. Minister for the Civil Services as: illegality, irrationality and procedural impropriety.[22]

India, a former colonial state of British Empire, inherited from British India, chose to retain the common law system without much change. The civil law jurisdictions on the other hand developed the concept of proportionality based review (primary review) which is a much more intensive form of judicial review. The principle of proportionality ordains that the administrative measure must not be more drastic than is necessary for attaining the desired result.[23] The very concept of proportionality originated in nineteenth century Prussia.[24] This nineteenth century Prussian concept prescribed various tests. In the words of jurist Günther Heinrich von Berg, "the police law may abridge the natural freedom of the subject, but only insofar as its lawful goal requires."[25] The doctrine of proportionality has been explained into two directions, viz. British Model and European Model. Under the British Model, as expounded by Lord Stynn in R v. Secretary of State for the Home Department exparte Daly[26] finds its origin in the judgment of the Privy Council in de Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing.[27] In that case, Lord Clyde while deciding an appeal from Antigua and Barbuda, used South African and Canadian jurisprudence to formulate a three stage test for proportionality review. According to the court a decision is proportionate if:

1. The legislative (or executive) objective is sufficiently important to justify limiting a fundamental right.
2. The measures designed to meet the legislative (or executive) objective are rationally connected to it.
3. The means used to impair the right or freedoms are no more than necessary to accomplish theobjective.

In the case of Union of India v. G. Ganayutham, the Supreme Court after extensively reviewing the law relating to wednesbury unreasonableness and proportionality[28] prevailing in England held that the wednesbury" unreasonableness will be the guiding principle in India, so long as fundamental

rights are not involved.[29] The standard model of proportionality review consists of three or four steps, depending on who is doing the counting. Courts inquire successively into the (1) legitimacy, (2) suitability, (3) necessity, and (4) proportionality strict sensu—in the strict sense—of a challenged measure. Those were accepted by the European Court of Justice in R v. Minister of Agriculture, Fisheries and Food, ex parte Federation Europeenne de la SanteAnimale (FEDESA).[30] Based on this case Julian Rivers outlines a four stage test as:[31]

1. Legitimacy: Does the act (decision, rule policy etc) under review pursue a legitimate general aim in the context of the right in question?
2. Suitability: Is the act capable of achieving that aim?
3. Necessity: Is the act the least intrusive means of achieving the desired level of realisation of the aim?
4. Fair balance or proportionality in narrow sense: Does that act represent a net gain, when the reduction in enjoyment of rights is weighted against the level of realisation of the aim?

The Supreme Court India, in the case of Omkumar v Union of India accepted the doctrine of proportionality as a part of Indian law.

Citizenship Amendment Act, 2019

The Union Cabinet cleared the Citizenship (Amendment) Bill, 2019, on 4th December 2019 for introduction in the Parliament. The Citizenship (Amendment) Bill 2016 was introduced in the Lok Sabha on 19 July 2016 and was referred to a joint committee of both Houses of Parliament, which presented its report on 4 January 2019, recommending the bill. The Bill was introduced in 17th Lok Sabha by the Minister of Home Affairs Amit Shah on 9th December 2019 and was passed on 10th December 2019, with 311 MPs voting in favour and 80 against the Bill. The Bill was subsequently passed by the Rajya Sabha on 11th December 2019 with 125 votes in favour and 105 votes against it. Additionally, the Rules framed in 2003 provided for the creation of a national register of Indian citizens, have been in place for the last 16 years but are yet to be operationalised.

Now let's have a look over the basic issues covered by the CAA, 2019 are as under-

- The CAA has now added a proviso to Section 2(b) which defines 'illegal migrants.' The proviso creates an exception to the category of 'illegal migrants' by providing that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community from Afghanistan, Bangladesh, or Pakistan, who has entered India before 31st December 2014 shall not be treated as an illegal immigrant.
- The Central Government of India may issue a certificate of registration as citizenship to the persons covered under provision to section 2(b), on an application made by them and provided that they fulfill the conditions under Section 5 of the Citizenship Act 1955.

The Citizenship Amendment Act, 2019 has awarded the persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any order made thereunder, shall not be treated as illegal migrants for the purposes of that Act and shall be eligible to apply for naturalisation under section 6." Migrants from these communities were earlier given protection against legal action in the years 2015 & 2016 and long term visa provision was made for them.[33] The CAA, 2019 paves way for a legal and constitutional basis for leaving out Muslim immigrants who entered the Indian territory and stayed in this country longer than they were permitted to remain in the country, without having proper documentation.[34]

Test of Proportionality and CAA, 2019

If we analyse the CAA from the context of proportionality, it is pertinent to analyse the following issues-

- Legitimacy or Constitutionality of the Act
- Necessity of the introduction of the Act;
- Rationality behind the introduction of the Act,
- Does that act represent a net gain, when the reduction in enjoyment of rights is weighted against the level of realisation of the aim?

Constitutinality of the CAA, 2019

The recently enacted Citizenship Amendment Act, 2019 received huge uproar from different parts of the world. Alongwith the huge opposition from the Muslim Countries in the World, the Amnesty International has commented that stands in

"clear violation" of the Constitution of India and international human rights law and "legitimises discrimination" on the basis of religion.[35] Prof. Amartya Sen commented "My reading of the (amended) law is that it violates the provision of the Constitution. He highlighted that citizenship on the basis of religion had been a matter of discussion in the constituent assembly and it was finally decided that "using religion for this kind of discrimination" would not be acceptable."[36] The main issues of opposition of the CAA basically revolves round the issues which may be summed up as under-

- Principle of Equality
- Ideals of Secularism
- Basic structure

S. No.	Contentions	Responses	
1.	Principle of Equality	Citizen- non citizen Differentiation	
	(Principle of Intelligible differentia[37])	Selective in choosing neighbouring countries- rise in the number of incidents of religious persecution on minorities.	
		Preference to protect rights of minority groups- International obligation (The UN Declaration on Minority Rights, 1993), Nehru- Liaquat Pact, 1950	
		Non inclusion of some minority groups- the Nehru- Liaquat Pact, 1950 these communities had not been mentioned as the minority communities and they may be easily migrated in any of the neighbouring Muslim Countries peacefully.	
		To restrict migration due to huge pressure of population	
		The people from all communities could be allowed eliminating the border or making the same opened also but we do not follow such policy since independence or any time thereafter with the countries mentioned in the Act.	
2.	Ideals of Secularism[38]	The Act never intends to interfere into regulating the practice- profess and propagating any religion like the neighbouring countries e.g. Pakistan, Bangladesh, and Afghanistan.	
		The concept of secularism is one facet of the right to equality woven as a central golden thread in the fabric depicting the pattern of the scheme in our Constitution.[39]	
		Under the Act no religion has been declared as State Religion. Nor the Act puts special attention to a single religious community while it speaks about different religious communities which are not recognised as state religion in the neighbouring countries.	
		The amendment, when viewed in the context of the Nehru-Liaquat Pact, concerns itself with the minorities as existed back then, and Ahmadis were declared a minority group only as late as in 1974 vide the Second Amendment to the Pakistan Constitution. Shias, in essence, continue to not be considered as a minority group by the Pakistani government.	
3.	Basic Structure[40]	Government of laws and not of men or rule of law	The Citizenship Amendment Bill (CAA Bill) was first introduced in 2016 by the Lok Sabha by amending the Citizenship Act of 1955. This bill was referred to a Joint Parliamentary Committee, whose report was later submitted on January 7, 2019. The Citizenship Amendment Bill was passed on January 8, 2019, by the Lok Sabha which lapsed with the dissolution of the 16th Lok Sabha. This Bill was introduced again on 9 December 2019 by the Minister of Home Affairs Amit Shah in the 17th Lok Sabha and was later passed on 10 December 2019. The Bill was introduced in 17th Lok Sabha by the Minister of Home Affairs Amit Shah on 9th December 2019 and was passed on 10th December 2019, with 311 MPs voting in favour and 80 against the Bill. The Bill was subsequently passed by the Rajya Sabha on 11th December 2019 with 125 votes in favour and 105 votes against it.
		Sovereign democratic republic status	
		Equality of status and opportunity of an individual	Already discussed
		Secularism and freedom of conscience and religion	
		Essential features of the individual freedoms secured to the citizens	Right to freedoms guaranteed by the Constitution is not taken away through the legislation.
		Judicial review	The CAA, 2019 is not out of the ambit of Judicial Review.
		Unity and integrity of the nation	The CAA, 2019 is not against the unity and integrity of the nation.

Necessity of the Introduction of the Act

Though the right of a sovereign nation to determine who to allow settling and working has never been seriously contested, the Government of India, in terms of citizenship, always has taken a soft stand.[41] Illegal migration is caused by several factors, together with economic condition, overpopulation, trade liberalisation, and wars in countries of origin. It will have serious impacts on the economy of the destination country similarly as on the lives of the illegal migrants themselves. From the above discussions, it may be perceived that the introduction of the CAA was necessary on the grounds as under-

- Determination of the status of illegal migrants: The Act conclusively determines the fate of the millions of illegal migrants residing in India.
- Addressing NRC Issue in Assam: The NRC in Assam rendered 1.9 million citizens, mostly Hindus, stateless. In this routinely flood ravaged state, where, like most of India, hospitals and schools are still a dream in remote areas, it is impossible to get documents to prove birth or ancestry. This unrealistic requirement cost the unlettered and the poor, across religious lines, their citizenship. The fate of spending the rest of their lives in detention camps awaits them. Many in Assam committed suicides only in anticipation of being excluded from the NRC and being torn apart from their loved ones and family. Many have died in the inhumane conditions that describe the detention centres. At this, the CAA is a tool devised to grant citizenship to the Hindus excluded from the NRC in Assam.

Rationality behind the Introduction of the Act

The points of rationality behind the introduction of the Act are as under-

- Environmental Plunder: Offering of citizenship even to the illegal migrants has the potential to create a 'disguised violence' to environment of a nation as a whole as it slowly but surely poisons the lives and livelihood indirectly. In a majority of times, it has been noticed that the massive areas of forest land were encroached upon by the immigrants for settlement and cultivation which may ultimately cause to environmental degradation.
- Difficulty to spot the illegitimate migrants: Many a time, due to the similar language is spoken by illegitimate migrants' e.g. illegal migrants living in Assam, Tripura and West Bengal, it becomes difficult to identify and deport the illegal migrants in the region.
- Disruption in the economy: Illegal immigration if it happens in amass causes havoc toll to the economy of a state. If an undocumented immigrant has a child born in the country, where they have immigrated, that child is a citizen of that country, and therefore, has the rights to these government services.[42]
- Loss of Tax Revenue: Most undocumented workers receive their payments in cash, and therefore, in most of the times that is out f the purview of tax deductions or their contributions are insignificant. The loss of tax income undermines government programs while the government needs to increase the expenditure on education and health facilities to the immigrants.
- A strain on Public Utility Services: Many people argue that these immigrants are costing our government a substantial amount of money by receiving benefits such as education, health care, food assistance programs, and welfare. The illegitimate immigrants usually use public services like health facilities, public colleges, transportation, parks and each alternative service one considers while, they don't pay taxes for the building and maintenance of those utilities.
- Problems in the domestic labour market: Illegitimate immigrants in per annum are adding a decent range of individuals. it's one in all the most reasons for the population explosion. Illegal immigrants are usually desperate for a supply of financial gain and don't mind operating for fewer pay which might wouldn't preferably be taken by native folks. Hence, employers within the destination country don't have to be compelled to rent staff whom they have to pay the quality rates/ minimum wages. In those industries, immigration lowers wages and drives out native-born workers. That pushes native-born workers into jobs like sales and personal services that require superior communication skills.[43]
- Political integration and assimilation: The capacity of the polity to integrate newcomers

in the political culture is considered when setting admissions policies. Under the situation of radical inequality, however, restrictive policies of immigration allow richer countries to "hoard an unfair share of resources" with the idea that "we care equally about the well-being of all individuals, wherever they are born, and however little we interact with them" (Kymlicka 2001, 271)[44] Hobbesian nation-state is threatened by migration to a degree that its survival is uncertain, it has a legitimate reason to restrict migration.[45] The CAA, 2020 clearly intends to say that the current political system doesn't have the willingness to integrate newcomers particularly belonging to a particular religion in the political culture of the country. There may be different reasons. One of the important reasons is that the nature of treatment of religious minorities in the neighbouring countries. Another reason may be pressure of existing population in the country.

- Rise in Law and Order and Terrorist Activities: While a significant number of the illegitimate immigrants are solely searching for employment opportunities, a decent range among them are found involved into criminal activities e.g. The MS-13 The MS-13 gang, which comprised of Central American immigrants, is a good example of illegal immigrant turned criminals. In India, the huge influx of illegal migrants over the decades from Bangladesh has created danger for law-abiding residents. Moreover, it is not easy to track and prosecute illegal criminals.[46] The very first sentence of the Statement of Objects and Reasons of the IMDT Act, 1983 says "the influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North- Eastern regions of the country and remained in the country poses a threat to the integrity and security of the said region." The Preamble of the Act says that "the continuance of such foreigners in India is detrimental to the interests of the public of India." The Supreme Court of India, in 2005 made the following ruling on illegal immigration: "The apex court held the Illegal Migrants (Determination by Tribunal) Act (IMDT) as unconstitutional while, with reference to the Sinha Report, maintained that the impact of the "aggression" represented by large-scale illegal migration from Bangladesh had made the life of the people of Assam specially one of seven sister which is Tripura the land of tiprasa "wholly insecure and the panic generated thereby had created fear psychosis" in other north-eastern States.[47]

Does the Act Represent a net Gain

The Act represents a net gain the way as under-

- The newly enacted legislation as giving a backdoor entry to illegal immigrants, a large part of which are Bangladeshi Hindus who were excluded from the NRC in Assam. The same fate is waiting for such illegal immigrants residing in other states.
- The CAA, 2019 allows Hindus, Christians and other religious minorities who are in India illegally to become citizens if they can show they were persecuted because of their religion in Muslim-majority Bangladesh, Pakistan and Afghanistan (All these country's state religion is Islam). The nature of protest against the law marks the strongest show of dissent against the government which claimed nearly 70 lives (Assam- 5[48], UP- 23[49], Delhi- 42[50], Mangalore- 2).[51]
- The NPR is a register of usual residents of the country. It is being prepared at the local (village/sub-town), sub-district, district, state and national level under provisions of the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003. A usual resident is defined for the purposes of NPR as a person who has resided in a local area for the past 6 months or more or a person who intends to reside in that area for the next 6 months or more.[52]
- Even if the state governments have no powers to reject the implementation of the Citizenship (Amendment) Act as the legislation was enacted under the Union List of the 7th Schedule of the Constitution, and the National Population Register the chief ministers of West Bengal, Punjab, Kerala, Madhya Pradesh and Chhattisgarh announced that the CAA was "unconstitutional" and has no place in their respective states.[53]

Hence, it may be submitted that the extent of reduction in enjoyment of rights if is weighted against the level of realisation of the aim, it has mixed response rather at a negative indices currently. But if we closely notice, the Citizenship Act, 2019 doesn't intend to takeaway citizenship status from anyone or a legislation to expel anyone

from India or to curb any privileges which the immigrants are enjoying and those whose right of citizenship is established by the Act. But in view of the pressure of current population, scarcity of resources, reduced per capita income etc. the legislation may prove to be successful in future if implemented properly.

Conclusion and Suggestions

To sum up, the state is constitutionally bound to pay due importance to the protection of its citizens, the foreign nationals need permission from the destination country before they come and stay. Violation of the country's immigration laws renders them illegal migrants. There is no obligation to give equal weight to the interests of non- members. The obligations towards migrants and asylum-seekers go well beyond this and call for a policy of open borders and/or deny the state's right to decide alone who exactly, and how many people, may enter its territory. However, the government should clarify its' stand on the following matters e.g.-

- The modalities for assessing the people migrated due to reasons of religious persecution and those who migrated due to other forms of persecution like racial or ethnic persecution.
- The illegal immigrants as to who had come in for the lure of better economic prospects and a brighter future.

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on an implicit bargain between subjects and sovereign, whereby the former submit to the rule of the latter so that the sovereign can advance their common welfare. But if this bargain is the source of the state's authority to act, it also sets the outer bounds of the state's authority: the state is justified in acting only to the extent that its action promotes the public welfare.

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38. In Kesavananda Bharati vs State of Kerala, (1973) 4 SCC 225 it has been held by the Supreme Court that secularism is a basic structure of the constitution and it cannot be altered by a constitutional amendment. The Court stated- A secular State, that is, a State in which there is no State religion. in the SR Bommai vs Union of India, [1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1. the Supreme Court held secularism undeniably sought to separate the religions from the politics. Basically, the conception of a secular state involves three distinct but interrelated sets of relationships concerning the state, religion, and the individual. The three sets of relations are: (a) Religion and the individual (freedom of religion), (b) The state and the individual (citizenship), (c) The state and religion (separation of state and religion). In Ziauddin Burhammudin Bukari Vrs. Brijmohan Ramdas Mehra and Bros. AIR 1975 SC 1788, the Supreme Court held that: "The secular state rising above all differences of religion, attempts to secure the good at all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds."
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Review Article

Relation and Implementation of Provisions of International Law in Municipal Law of India: Role of Indian Parliament and Judiciary

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Abstract

Different countries follow different Schools for Application of International Law, while some follow the Monistic approach by which judiciary can apply the International Treaties itself, which make them self-executing treaties. India follows the Dualistic School under which the International Treaties doesn't automatically become part of the legal system even after being ratified by the executive head of the country. Rather they need to be incorporated in the legal system by enactment of an act in the legislation by the Parliament wherever it is necessary only then it can be applied by the Indian courts.

Although Indian Judiciary is not empowered by the constitution to make legislations still it has huge hands to interpret Indian obligations under the International Law into Municipal Law of the Land by pronouncing it in its decisions whenever issues concerning the International Law arise in any case. A pro-active role is played by India Judiciary in implementation of International Law in India and especially when the matters are related to environment or about the Human Rights of the people. This paper with the help of constitutional provisions followed in India examines its practices in relation of International Law and Customary law with the role of judiciary.

Keywords: Monistic approach; Dualistic School; Ratified; Pro-active role; Municipal Law; Customary Law.

Introduction

Entering into international treaties and agreements is one of the attributes of State sovereignty.[1] Treaties are contracts between nations. As the provisions of international law, they put obligations which international law requires that the parties to comply at municipal level as well as international level.[2]

While International law is applied in the relations of the States and to other subjects of International law or Municipal law is applied within a State to the individuals and corporate entities. Prima facie there is hardly any relationship between the two systems as each is designed to operate in its own sphere and they are applied differently to their subjects by different courts. When there is a conflict between the two systems, a court is faced with the difficulty of arriving at a decision. Therefore the process of enforcement of International law at Municipal level is diverse in different countries. Moreover a very large part of modern International law is directly concerned with the activities of individuals who come under the jurisdiction of Municipal law.

India follows the dualist theory for the implementation of international law at domestic level.[3] International treaties do not automatically become part of national law in India.[4] It, therefore, requires the legislation to be made by the Parliament for the implementation of international law in India. It's been a matter of debate for the implementation of international laws in our country after it has gain influence in our day to day life. While some

of the judicial decisions given by Indian supreme court in cases like Jolly Jeorge v. Bank of Cochin;[5] Gramophone Company of India Ltd. v. Birendra Bahadur Pandey;[6] Visakha v. State of Rajasthan,[7] Ali Akbar v. United Arab Republic,[8] and many others explains and also includes different parts of the international law while making decisions on the matter of municipal law or of Indian legislation.

From this we arrive to a question that, whether domestic courts should apply international law directly and if so than to what extent by looking into the paradigm shift in the outlook of courts towards international conventional law. For the answer of this question we have to understand the Pillars of Indian democracy that includes Legislature, Judiciary and Executive. In this respect, Indian judiciary, though not empowered to make legislations, has interpreted India's obligations under international law into the constitutional provisions relating to implementation of international law in pronouncing its decision in a case concerning issues of international law. Through "judicial activism" the Indian judiciary has played a proactive role in implementing India's international obligations under International treaties, especially in the field of human rights and environmental law.[9]

Primary Approaches for Building Relationship in International law with Municipal law:

International law has a very complex and uneasy relationship with the domestic laws of a country. The two systems are usually understood as distinct legal system of rules and principles.[10] It is pertinent to note that international treaties are the result of the negotiations between the States and are governed by international law.[11] They must be said to be the most important sources of international law.

A. Contrastive Incorporation Practices of States

While International Law is applied in the relations of the States and to other subjects of international law, national or State law which is called Municipal Law.[12] It requires a State to carry out its international obligations; domestic legal systems of different countries vary in respect of implementation of international law at national level. As a result, the process used by a State to carry out its international obligations varies from legislative, executive and judicial measures. States also follow different practices in incorporating treaties within its internal legal structure, so that the provisions can be implemented by State authorities.

International law automatically becomes a part of national law or municipal law in some countries i.e. as soon as a State ratifies or accedes to an international agreement, than international law becomes national law.[13] It also be noted that International Law gives an Individual certain rights or obligations which can be enforced directly in national courts as was alleged in Pinochet case.[14]

It is actual practice, illustrated by customs and by treaty that formulates the role of international law, and not formalistic structures, theoretical deductions or moral stipulations.[15]

Accordingly, when positivists such as Triepel[16] and Strupp[17] consider the relationship of international law to municipal law, they do so upon the basis of the supremacy of the state, and the existence of wide differences between the two functioning orders.[18] This theory in prescribed word is kwon as dualism theory, which we can say it means that the municipal law and international law exists separately and cannot surpass each other neither can overrule. And if one examines the constitutional texts, especially those of the developing countries, which are usually keen on emphasizing their sovereignty, the finding is that most of the States do not gives primacy to international law over their municipal law.[19]

B. Theories of the Relationship: Monistic and Dualistic

To explain the relationship between the International and Municipal, these theories are the most appropriate so as to understand their relation with each other. These two theories are coined to be named as Monism and Dualism.

According to monistic theory, municipal law as well as international law is a part of one universal legal system serving the need of the human community in one way or the other. Law is unified branch of knowledge, no matter whether it applies to persons or other entities. As per the chief exponents of this theory like Kelson, Wright and Westlake, the Monism is a very sound theory. It exercised a great influence upon international law, because it has close association with natural law. It is very difficult to disprove the view that man lies at the root of all laws but in actual practice States do not follow this theory.

According to dualistic theory, international law and municipal laws of the several States are two distinct, separate and self-contained legal systems. The chief exponents of this theory are Tripel and Anzilloti. Starks is also of the view that international laws have an intrinsically different character from

that of State law. The reasons may be as follows:

- Subjects
- Origin
- Substance

Dualistic theory is subjected to many criticisms. Firstly, it is incorrect to say that international law regulates the relations of States only. In the modern period, individuals and other non-state entities are also the subjects of the international law. Secondly, it is incorrect to say that origin or source of international law is common will of the State. There are certain principles of international law which are binding upon the States, even against their free will. Thirdly, no doubt, pacta sunt servanda is an important principle of international law but it cannot be said that it is the only principle on which international law rests.

Preference of Municipal or International law

Monist attaches primacy to international law and treats it as superior legal system. Dualist attaches primacy to municipal law and considers it as superior. The basis of their view is that State is independent and sovereign. Further, municipal law strengthens international law and makes it operative by incorporating it into national law by legislation. The practice of States indicates that sometimes there is the primacy of international law; sometimes there is the primacy of municipal law and sometimes mixture of different legal system.

Harmonization theory

According to this theory, neither municipal nor international law has supremacy to each other; international law as well as municipal law have been made for human beings, and so, pri0marily there should not be any contradiction in them, and if contradiction in them then they should be harmonized.

In India, it is pertinent to say that we follow the dualistic approach, when there is any conflict between municipal law and international law then the municipal law will prevail and secondly if there will be a lacuna in the national or municipal law then the provisions of the international law will be taken in view and may be used if relevant and accordingly the provisions can be added in the legislation by making amendment in the legislation. This is also because of India being a common law heritage.

Implementation of International Treaties in India

There are different constitutional provisions which are embodied in different articles of the Indian constitution which give power to the union government to enter into the international agreements or treaties, also give legislative powers to implement International Agreements as well as for the implementation of international obligations.

A. Executive Powers to enter into International Agreements

The union government has executive power to enter into and implement international treaties under Articles 246 and 253 read with Entry 14 of List I of the Seventh Schedule of the Constitution.[20] The executive powers of union government are derived from the legislative power of the Union of India. In this regard, it is to be noted that the executive powers of the Union and State governments are co-extensive with their respective legislative powers.[21]

Under Article 53 of the Indian Constitution, executive powers are vested in the President of the Union of India. Apart from vesting the executive power, this provision also provide for the exercise of such executive power either by him directly or through the officers subordinate to him in accordance with the Constitution. It is pertinent to note that Article 73[22] of the Indian Constitution confers upon the government of India executive powers over all subjects in which parliament has legislative competence.[23]

As read above article 73(1) (b) of the Indian Constitution provides the scope of the executive powers, which according to this article means, the executive power of the Government of India extends to matters with regard to which Parliament can make laws. The Indian Constitution follows the "dualistic" doctrine with respect to international law.[24] Therefore, an international treaty does not automatically form part of national law. They must, where appropriate, be incorporated into the legal system by a legislation made by the Parliament.[25]

B. Legislative Powers by Constitution for implementing Treaties

Signing and ratifying international treaty is in the domain of the executive, implementation of such treaty comes under the domain of parliament as explicitly provided under Article 253.[26] In Magnabhai Ishwarbhai Patel v. Union of India[27] the observation[28] of the constitutional bench is very important to understand this relationship.

Yet again in another case in State of West Bengal v. Kesoram Industries Ltd,[29] the observation[30] of the Supreme Court of India is very significant. Therefore the conferred power on the Parliament is evidently in line with the power conferred upon it by Entries 13 and 14 of List I under the Seventh Schedule.

C. Implementation of International Obligations

For understanding the implementation of international obligations carried upon our country, thre is needed to understand the Article 51(c) of the Indian Constitution.[31] Source of Article 51 of the Constitution of India is from the Havana Declaration of 30th November 1939. The first draft (draft Article 40)[32] is the basis of Article 51 of the Indian Constitution. Article 40 was adopted by the Constituent Assembly with the amendments moved by Dr. Ambedkar, H.V. Kamath, Ananthasayanam Ayyangar and P. Subbarayan in its existing form as Article 51 of Constitution of India. During the debate, all the speakers emphasized commitment of India to promoting International Peace and Security and adherence to principles of International Law and Treaty obligations.[33] It is important to note that Article 51 in clause (c) specifically mentions "International Law" and "Treaty Obligations". The important point to observe is that Art. 51 (c) treats both International Customary Law and Treaty Obligations on the same footings.

Now if we try to see the Judicial Interpretation of Article 51(c) done by the court is that Article 51 has been relied upon by Courts to hold that various International Covenants, Treaties etc., particularly those to which India is a party or signatory, become part of Domestic Law in so far as there is no conflict between the two.[34] In Keshavanand Bharati v. State of Kerala,[35] Chief Justice Sikri's observation[36] is very pertinent on this point.

It is significant to note here that Article 51 finds place in Chapter IV of the Constitution which provides for Directive Principles of State Policy (DPSP) and are non justifiable by virtue of Article 37. But it is equally important to understand that even being non enforceability, these DPSP are fundamental in the formulation of the law and policies and the State cannot ignore it.

Indian Judiciary and International Law

In India, though the polity is dual, the judiciary is integrated. Therefore, India has an integrated judicial system.[37]

As the custodian of the Constitution of India the Supreme Court and High Courts have immense responsibility on them. Articles 129 and 215 recognize the existence of such power in the Supreme Court and the High Courts as they exercise inter alia the sovereign judicial power. The Supreme Court and the High Courts also have writ jurisdictions under Article 32 and 226 of the Indian Constitution, respectively.[38] Thus, they are empowered to provide remedy in the form of writs in case of violation of fundamental rights guaranteed under chapter III of the Constitution of India.[39]

A. Construction of law by International Law

Wherever necessary, Indian courts can look into International Conventions as an external aid for construction of a national legislation.[40] The Supreme Court in Visakha v. State of Rajasthan[41] took recourse to International Convention for the purpose of construction of domestic law.[42]

Likewise in the Case of Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.; The Constitution Bench of the Supreme Court gave its decision on the question raise by the bunch of petitions filed "That whether Right to Privacy is a fundamental right or not, and if it is than what's the source of such right.?" For this the nine judge bench unanimously gave the decision that the right to Privacy is the core of the fundamental rights guaranteed by the Indian Constitution and is also embodied in the Article 21 key words i.e. "Life" and "Personal Liberty." For which the judges took the external aid from Article 12 of the Universal Declaration of Human Rights. Even due to the decision in this case many of the previous judgments of the Supreme Court were overruled.

B. General Principles

- Interpreting Existing laws to implement treaty Obligations
- Fostering Respect for International Law

Judicial Activism

Judiciary has further broadened the ambit of its role. Higher Judiciary has fashioned a broad strategies that have transformed it from a positivist dispute-resolution body into a catalyst for socio-economic change and protector of human rights and environment. This strategy is related to the evolution of Public Interest Litigation (PIL).[43]

Relying upon the Article 51, Sikri, C.J. in Kesavananda Bharathi v. State of Kerala,[44] observed as under:

"It seems to me that, in view of Article 51 of the directive principles, this Court must interpret language of the Constitution, if not intractable, which is after all an intractable law, in the light of the United Nations Charter and the solemn declaration subscribed to by India."

The Supreme Court in Visakha v. State of Rajasthan took recourse to International Convention for the purpose of construction of domestic law.[45] In this case the observation of the Supreme Court is worth for understanding.

In Additional District Magistrate, Jabalpur v. Shivakant Shukla,[46] (popularly known as Habeas Corpus Case) the majority (speaking through J. Beg) held that international customary rules were merely ethical principles and were not applicable ipso facto. This judgment has been criticized as Article 372 of the Constitution enacts that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue to be in force until altered, repealed or amended by a competent legislature. The word "law in force" includes British Common law; hence Common law doctrine is applicable to India. In this case Justice H. R. Khanna giving his dissenting opinion held that if there was a conflict between the provisions of a treaty and Municipal law, it is the Municipal law that will prevail. But if two constructions of Municipal law were possible, the court should give the construction as might bring about harmony between Municipal and International Law or treaty. The Constitutional provision should be construed in such a way as to avoid conflict with the Universal Declaration of Human Rights.

In Jolly George Varghese and Another v. The Bank of Cochin,[47] Justice Iyer reaffirmed the above view of Justice H.R. Khanna. J. Iyer construed Sec. 51 of Civil Procedure Code of India in such a way as to avoid conflict with Art. 11 of ICCPR, 1966. It was held that Sec. 51 of the C.P.C. shall prevail if the treaty in question has neither been specifically adopted in the Municipal field nor has gone under transformation. Likewise in Gramophone Co. of India v. B.B. Pandey,[48] the Indian Copyright Act was construed harmoniously with International treaties and conventions.

The Court in Vellore Citizens Welfare Forum v. Union of India and Others[49] referred the "precautionary principle" and the "polluter pays principle" as part of the environmental law of the country.[50] In Civil Rights Vigilance Committee SLSRC College of Law v. Union of India and others, the Karnataka High Court's observation[51] is very important. In People's Union for Civil Liberties v. Union of India,[52] the Supreme Court observed that; those rules of International law which are in consonance with the Municipal law can be incorporated in domestic law. In A.P. Pollution Control Board v. Prof. M.V. Nayadu,[53] the Supreme Court recognized and applied the International Customary Rule of "precautionary principle". The Indian Supreme Court's view about customary nature of "precautionary principle" was appreciated in a Canadian case.[54] In Justice K. S. Puttaswamy (Retd.) and Anr. v. Union Of India and Ors., the Supreme Court recognized the "Right to Privacy" embodied in the Indian Constitution and as well as because of it being a guaranteed right under Article 12 of the "Universal Declaration of Human Right". Similarly in a Petition filed by Rohingya Muslim Refugees in the Supreme Court recently, which the Apex Court took up for hearing even after non-existence of any Domestic Law regarding this also deals with the matters of International Law which protect the habitation of refugees in any country with the UN Convention, 1951 under which Article 33 of the Convention provide the Principle of Non-Refoulement as India not being a party of this convention, so have no obligation to follow it but India is under the International Obligation as being a part of the International Community by "Customary International Law", which is a set of legal principles binding on all countries regardless of whether they have signed any treaties or conventions relating to the International Refugee Law. But the case is still pending in the Apex Court and the decision is awaited by around thousands of Rohingya muslims residing in India at present without any legal registration to reside in the country.

Now days it can be clearly said that an active role is played by the Higher Judiciary of country in implementing the International Law and making it the Law of the Land wherever required to serve the justice to all the peoples.

Conclusion

For the implementation of International Treaties and Agreements Obligations the Constitution of India embodies the basic framework existing in it under different articles to make it a part of the Domestic Legal System. By which the Government of India vest the power to implement International treaties and agreements in the local law of the country. Accordingly the executive power is vested with the President of India for entering into as well as for ratifying International Treaties.

It does not lead to that International Laws 'ipso facto' become the part of the Indian Legislations by Ratification only. This is because in India dualistic theory of incorporation of International Law into Municipal law is followed by Indian Constitution. This means that in India the International Laws does not automatically become part of the Legal System of the country by only being a party to any International Treaty or Agreement. For being the national law, International Laws must need to be incorporated in an act and should be assented by the parliament, which holds the legislative power by the constitution.

Notwithstanding anything if the India's obligation under International Treaties are not made part of the legislation by the parliament then they doesn't hold any relevance in Indian Courts. Whereas even after so, a pro-active role is played by the Higher Courts of India in implementation of International Law in India and specially when the matters are related to environment or about the Human Rights of the people. Through 'Judicial Activism' the Indian Judiciary marks itself to play a key role in filling the gaps between the International Law and Municipal Laws in India. Thus Indian Judicial System is an important aspect in implementation of the International Laws in our country.

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32. Article 73 and 162 of the Indian Constitution
33. Extent of executive power of the Union:
    (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend
        (a) to the matters with respect to which Parliament has power to make laws; and
        (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws
    (2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.
34. Subject-matter of the legislative competence of the Parliament has been enumerated in Article 256 read with List I and List III of the Seventh Schedule. See D.D. Basu, Introduction to the Constitution of India, 20th Edn. (Nagpur: Wadhwa Sales Corporation 2008)
35. Jolly Jeorge Vs. Bank of Cochin AIR 1980 SC 470
36. Jolly Jeorge Vs. Bank of Cochin AIR 1980 SC 470; Gramophone Company of India Ltd. v. Birendra Bahadur Pandey AIR 1984 SC 667
37. Article 253 states that "Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the Territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any International Conference, Association or Other body."
38. AIR 1969 SC 783 at para 25
39. "The effect of Art 253 is that if a treaty, agreement or convention with a foreign state deals with a subject with in the competence of state legislation, the parliament alone has notwithstanding Article 246 (3) the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body."
40. AIR 2005 SC 1644 at para 4
41. "A treaty entered in to by India cannot become law of the land and it cannot be implemented unless parliament passes a law as required under Article 253. The executive in India can enter into any treaty be it bilateral or multilateral with any other country or countries".
42. The state shall Endeavour to- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another;
43. "The state shall promote international peace and security by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of International Law as the actual rule of conduct among governments and by the maintenance of justice and scrupulous respect for treaty obligations in the dealings of organized people with one another".
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46. AIR 1973 SC 1461
47. "In view of Article 51 of the constitution this court

must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of United Nations Charter and the solemn declaration subscribed to by India"

48. Provisions in regard to the judiciary in India are contained in Part V ("The Union") under Chapter IV titled "The Union Judiciary" and Part VI ("The States") under Chapter VI titled "Subordinate Courts" respectively. See D.D. Basu, Introduction to the Constitution of India, 20th Edn (Nagpur: Wadhwa Sales Corporation 2008).
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50. See D.D. Basu, Introduction to the Constitution of India, 20th Edn (Nagpur: Wadhwa Sales Corporation 2008), n 14
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61. "Even otherwise, once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law."
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63. AIR 1997 SC 568
64. 1999 SCC 712
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Review Article

Critical Study on Merger and Cross Border Merger and Their Regulations in India

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Abstract

The Paper aims to establish an outline regarding the merger regulation abiding the competition law regime in India, and also deals with cross border merger. It also highlight's Foreign Exchange Management (Cross Border Merger) Regulations, 2018. Firstly, the paper provides a brief overview of Mergers and their regulation in India. and its Various Phases of Historical Development Over the Years. Many Legislations were made About the Merger Indirectly, Secondly, the paper provides the extent and nature of regulation of Mergers under the Competition Act, 2002. The object and extent of regulation of horizontal mergers under Competition law in will also be addressed. conclusion and suggestions shall be made on the source of the research undertaken.

Keywords: Overview; Combination; Mergers; Regulations; Cross border merger.

Introduction

In a merger the legal effect of which is that the merging company will lose its corporate status as a company and will be owned by the company with which it has merged , the merging company will lose its corporate status as a company and will be owned by the company with which it has merged,[1] the merging company's autonomy is lost entirely to the merged company. the term amalgamation is used in the company's act but the word merger and amalgamation are interchangeable. Primarily mergers can be classified into horizontal and vertical mergers. In addition, merger between companies working in various fields are called conglomerate mergers. The consumers by permitting organizations to run more efficiently. However, some reduced the competition, which can lead to higher prices, non-availability of goods or services, and lower quality of products, and less innovation. 'Cross border merger' means any merger, amalgamation or arrangement between an Indian company and foreign company in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013.

The common Practice is to keep the goal. In rare cases, where an enterprise in a dominant position makes a vertical merger with another firm in a (vertically) adjacent market to further embed its position of dominance, the merger may provide a cause for concern. In this paper, analyses the provisions of the Competition Act, 2002 (Hereinafter "Act") and the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Hereinafter "Combination regulations") with respect to mergers, amalgamation and acquisitions.

Historical Development of Meger Regulation Under the MRTP Act

In Section 23 of MRTP Act 1969, under Chapter III dealing with "Concentration of Economic Power" provided for regulating merger by undertaking

falling under this act what was necessary to be examined under that section was, where the merger would lead to concentration of economic power. That section also provided for the regulating takeover of an undertaking by an undertaking to which Chapter[2] III applied Chapter IIIA contained section 30A to 30G, regarding the acquisition of and transfer of shares above the prescribed threshold the acquisition or transfer of shares by the entities covered by this chapter. The entire Chapter III and all the parts thereof were omitted in 1991, with the result that mergers and acquisition of shares became subject only to applicable provision of the companies act 1956.

Acquisition of shares under the Companies Act 1956

In the same year by an change in the companies act 1956, section 108A to 108H dealing with the restriction on acquisition, transfer of shares, as set out in section 108A to 108C, were introduced. The central Government's approval was necessary for the acquisition of shares that would lead to an increase in the shareholding beyond the prescribed percentage and for the transfer of shares by the body's corporate holding a specified percentage of shares. By virtue, section 108G, the relevant section would apply when either of the parties to the acquisition or transfer of shares was a dominant undertaking, In MRTP Act. It is needless to add that none of these provisions deals with the effect on competition of acquisition or transfer of shares.

The Securities and Exchange Board of India (SEBI)

The SEBI regulation 1997, as amended up to January 2005, do not require any examination of a proposal for the acquisition or takeover covered by those regulation of the proposal for acquisition or takeover covered by those regulations for the effect of proposal on competition in the business of the enterprises involved in the transaction.[3] The objective is only to ensure that the acquisition of shares or voting rights in or control of target company is done in an open manner, equitable to the shareholders and the public investors. Regulation 10.,11,12 the key provisions', impose an obligation on those who may acquire shares, voting rights, control of target company, in the manner and to the extent set out therein, to make a public announcement to acquire shares, in accordance with the Regulation.

Mergers – The Companies Act 1956

The Legislative provision governing mergers of companies are contained in section 390 to 390A of the companies Act 1956, section 23 and section 24 of the MRTP Act 1969 dealing with merger and takeovers of companies governed by that act were omitted by an amendment of that Act in 1991. The companies Act 2002, has replaced[4] the MRTP Act in its entry Section 2(5) of the competition act describe the mode in which a combination they may be brought about through a merger or an amalgamation, the implications of which shall be considered later section 5 while defining the three modes in which a combination may result, refers to enterprise a wider term that would include entities such as companies and other entities also. Under three Companies act 1956 a scheme of merger or amalgamations as it refers to in the act, is an arrangement between a company and its creditors by which the assets and liabilities of one company are transferred ton other company and if the scheme is approved by the prescribed majority of the merger. Then the transferor company the assets and liabilities of which are transferred by virtue of the order of the court, to the transferee company, will be dissolved, without being would up thereby losing its corporate status and becoming a unit of the transferee company.

Regulation of Mergers under the Competition Act, 2002

In India, Mergers are regulated by the Companies Act, 2013, Income Tax Act, 1961, SEBI Act, 1992, SEBI Takeover Code, 1994, Foreign Exchange Management Act, 1999 and the Competition Act, 2002.The regulation of mergers was required to be enacted, primarily, with the objective of taking measures to avoid anti-competitive agreements and abuse of dominance as well as to regulate mergers and takeovers which result in misrepresentation of the market. The regulatory framework with respect to mergers under the Competition Act, 2002 has been provided in Sections 5, 6, 20, 29, 30 and 31 read along with Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.and Draft Competition (Amendment) Bill, 2020.

As per the financial threshold requirement stated in the Act, an acquisition of either control, shares, voting rights or assets of another entity shall be a combination within the meaning of the Act if the value of the combined assets or turnover of the acquiring entity as well as the entity being acquired is more than the amounts specified in the act.

Recently,[5] the Central Government has provided an exemption to enterprises on the basis of their

value of assets and Turnover. The exemption provides that an enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than rupees three hundred and fifty crores in India or turnover of not more than rupees one thousand crores in India. Such enterprise is exempted from the above stated requirement for a period of five years.

Cross border merger Regulations:

In the cross border merger classified into inbound merger and outbound merger, first one inbound merger means the company issue the shares and transfer of some securities and security to a person resident outside India in accordance with the pricing guidance entry routes, sectoral caps, attendant conditions and reporting requirements for foreign investment as laid down in Foreign Exchange Management[6] (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 tis regulation also apply to the joint venture and wholly subsidiary company also .The resultant company may acquire and hold the assets outside India ,and the company also open a bank account in foreign country in the oversea of jurisdiction for the purpose of putting through transactions incidental to the cross border merger for a maximum period of two years from the date of sanction of the Scheme by NCLT.

Outbound merger means a person resident in India may acquire or hold securities of the resultant company in accordance with the Foreign Exchange Management (Transfer or issue of any Foreign Security) Regulations, 2004. a resident individual may acquire securities outside India provided that the fair market value of such securities is within the limits prescribed under the Liberalized Remittance Scheme, The guarantees or outstanding borrowings of the Indian company which become the liabilities of the resultant company shall be repaid as per the Scheme sanctioned by[7] the NCLT in terms of the Companies, The resultant company may acquire and hold any asset in India which a foreign company is permitted to acquire , Where the asset or security in India cannot be acquired or held by the resultant company under the Act, rules or regulations, the resultant company shall sell such asset or security within a period of two years from the date of sanction of the Scheme by NCLT and the sale proceeds shall be repatriated outside India immediately through banking channels. Repayment of Indian liabilities the resultant company may open a Special Non-Resident Rupee Account (SNRR Account) in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016 from sale proceeds of such assets or securities within the period of two years shall be permissible.

Valuation and Approval

The valuation under the Rule 25A of the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016. A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules , The transferee company shall ensure that valuation is conducted by valuers who are members of a recognized professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. A declaration to this effect shall be attached with the application made to Reserve Bank of India. Any transaction on account of a cross border merger undertaken in accordance with these Regulations shall be deemed to have prior approval of the Reserve Bank as required under Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016.

Conclusion

In India merger regulation was developed step by step, form the companies act and MRTP act also discussed about the merger regulation indirectly, after the globalization and the economic advancement in the world, we need a stronger legislation to regulate merger (amalgamation and acquisition), also with cross border merger also be regulated. Because to safeguard the public interest, it means it secure[8,9] the consumer and the competitor in the marker if the merger was not regulated then all the dominate companies will merge wit the another company and it will become a dominant position in the market ,it will affect the consumer and the new entrant in the market to avoid dominance and safeguard the public interest is the goal for the merger regulation in India ,then CCI only regulating the mergers if any companies not binding with competition act provision then any one can file a petition before the CCI regarding the irregularity in the merger, The CCI has published prefiling consultation guidance note where by the parties are encouraged to show draft form filing to the relevant case. The officer at the CCI and the parties can avail the assistance of the case teams at the CCI to fill-up relevant form before filling,

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Review Article

Manual Scavenging: Poverty and Caste Interfaces in India

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Abstract

The exercise of manual foraging in India dates to ancient times. This paper attempts to draw attention to the distress reaction of human faces who works to scavenge human faeces, still in this 21st Century. The paper explores the willful breach of fundamental and human rights met out to manual scavenging humans in India while various central and state legislations for the abolition and protection of manual scavengers also exists in parallel. The ineffable plights of Manual foraging in their daily life is deliberated by the author so as to conclude with the suggestive legal reforms more truly to be implemented by authorities in the government to end the Manual Scavenging trade from the society.

Keywords: Manual Scavenging; Caste Interfaces in India.

Introduction

Simply imagining on manually handling human excreta which has not fully decomposed and without protective gear, should make one to realize how horrible it is to do the job of manual scavenging. The inhumane manual scavenging practice enslaves an estimated 12 lakhs people in India, who belong to the scheduled castes.[1]

Dalits who work as manual scavengers are usually from the Hindu Valmiki sub-caste, which is further subdivided into regionally named groups such as, Bhangi, Balmiki, Chuhra, Mehtar, Mazhabi, Lal Begi, Halalkhor Chuhada, Rokhi, Mehatar, Malkana, and Mela. The Muslim Hela sub-caste and Christian and Muslim Dalits are also involved in manual foraging in many areas and their situation is also critical.

Some areas in India still have dry-toilets. Manual foraging still endures in parts of India without proper drainage systems. It is most prevalent in many states of India like Maharashtra, Uttar Pradesh has the greatest number of manual scavengers registered while Maharashtra follows up in second place.

Their position includes constant contact to gases like methane, leptospirosis, hepatitis, respiratory problems, and other critical health exposures. Manual scavengers face serious health concerns - manual contact with excreta exposes them to various diseases, skin infections, rotting of fingers and limbs, tuberculosis and nausea. Most women from the manual scavenging communities tend to be addicted to tobacco (Gutka) and men to liquor, in an attempt to diminish the nauseating nature of their work and beat back their state of despair.

Constitutional Safeguards & Legislations

Every law is ought to be endowed with reason and conscience and should act well intertwined with one another in a spirit of Liberty, Equality, and Fraternity assured by the Indian Constitution.

- Article 14, provides for equality and equal opportunity for all people. It is also enshrined equality on par the nature of work one does.

- Article 15, ensures no discrimination and prohibition of discrimination on the ground of religion, race, caste, sex, or place of birth. It also provides access to hotel, public places, temples without discrimination.
- Article 15(2) and Article 16 (4) of the Indian Constitution wherein the States have been given the power to make any special provision regarding the upliftment of these vulnerable minority.
- Article 17, abolished untouchability
- Article 19, provides right to practice any profession, or to carry on any occupation, trade or business.
- Article 21, right to life also includes dignified life and personal liberty.
- Article 23, Prohibition of traffic in human beings and forced labor etc.
- Article 41, Right to work, to education and public assistance in certain circumstances.
- Article 42, Just and humane conditions of work
- Article 46, Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections.
- Article 47, Duty of the State to raise the level of nutrition and the standard of living and to improve public health.
- Article 51, directive principles and state policy states that State need to respect international laws and treaties.

India has also enacted some of the protective laws enacted by the centre, The Protection of Civil Rights Act, 1955, National commission for schedule caste (NCSC), and Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, as to safeguard the fundamental, constitutional and other legal rights as seen applicable to the manual scavengers also.

Human Rights Violations on Manual Scavengers

There exists an abhorrent situation of human rights violations meted out by the manual scavengers in India. The International Labor Organization (ILO) distinguishes three forms of manual scavenging:

The biggest violator of this law in India is the Indian Railways where many train carriages have toilets dropping the excreta from trains on the tracks and who employ scavengers to clean the tracks manually. These tasks are subdivided by gender. Women are involved in manual scavenging, especially in village.[2] Those that practice manual scavenging are routinely denied access to communal water sources and public places of worship, prevented from purchasing goods and services, excluded from community religious and cultural events, and subjected to private discrimination from upper-caste community members.[3]

International View on Indian Situation on Manual Scavenging

India has ratified both UN declaration and human rights and International Covenant on Civil and Political Rights, 1966. Various provisions of the Universal Declaration of Human Rights, to which India is a signatory, hold all human beings to be equal and the practice of manual scavenging of human faeces violates several of its provisions;

Article 1, of the Universal Declaration of Human Rights (UDHR) inter alia, provides, "All human beings are born free and equal in dignity and rights."

Article 6, of the Declaration read along with Article 16 of the International Covenant on Civil and Political Rights confer on every individual, a right of recognition as a person before the law.

UN High Commissioner for Human Rights: "India already has strong legal prohibitions on caste discrimination, so the key to the new law will be effective accountability and enforcement. It is also crucial that adequate resources are provided to enable the comprehensive rehabilitation of liberated manual scavengers.

One of the major developments in evolving norms and standards regarding discernment based on work and ancestry or caste. Discrimination (Employment and Occupation) Convention, 1958 which deals with issue of work-related discernment and promotes the equality in service and work and also this convention states that government needs to adopt the laws for contesting discernment through creation of educational agendas for equal opportunity, adoption of national policy.

Indian Laws versus Reality

While Constitution upholds the provisions of Right of Equality, Equal Protection of Laws, Indiscrimination, Abolished Untouchability, and dignified life and personal liberty, on the other side the reality on field is so painful digest.

India has been delimited by the status arrangement, which is a system of social layer. and confined to occupations. Their caste description

also renders them socially "unclean" or "unrivaled" and is used to justify discriminatory practices. The manual scavengers are placed in the lowest rung of Hindu society as "untouchables among the untouchables.

As section 2 (g) of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (hereinafter the PEMSR Act, 2013) defines manual scavenger as "a person engaged or employed. By an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises." So, manual scavenging still formally holds its place as an accepted practice in the society and yet to be legally abolished.

India reacts to Manual Scavenging

India has understood that the root cause of manual scavenging is the insanitary waste disposal practices (dry latrines, open defecation etc.).[3]

Total Sanitation Campaign (TSC) was conceived in 1999 which was retitled as Nirmal Bharat Abhiyan in 2012 to ensure 100% sanitation in rural and urban areas by 2017. Various other schems and projects like (SRMS),Nirmal Bharat Abhiyan (2009) and recently the Swacch Bharat Abhiyaan (2014), National scheme of liberation and rehabilitation of scavengers and their dependents (NSLRSD), Nirmal Bharat Abhiyaan (NBA) (2009-14) and Swach Bharat Abhiyaan (SBA) (2014- 19) were all brought by the Government to contain and control the manual scavenging practices and for the exhilarate of the people involved in the practice.

Most importantly, Indian Courts have reacted strongly on manual scavengers' pains through its various landmark judgments. This is a welcome happening and many judgments are coming out through its judicial reviews. However, a lot more needs to be done to completely integrate the judgment and actions in reality.

In the A Narayana v Chief Secretary (Madras 2008) Case, the court got a bit further, with a slightly more cooperative attitude from the State Chennai Metro Water provided a report of what mechanization equipment is available, and arrangements to prevent blocking of sewers to minimize need for human intervention Set of limited conditions in which manual entry is necessary Obligations of state vis-à-vis employees and contract workers Focus on skewered areas, but some directions on banning human entry into septic tanks and obligation of municipalities to ensure mechanized cleaning. But deaths have continued in Chennai and in Tamil Nadu.

In the Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage& Allied Workers 2011 (8) SCC 568, the Supreme Court observed that raising the bogey of judicial activism or judicial outsmart and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely promote the cause of the weak and poor. In this case, the Supreme Court not only directed to pay higher compensation to the families of the deceased, but also directed the civic bodies to ensure immediate compliance of the directions and orders passed by the Delhi High Court for ensuring safety and security of the sewage workers.

In 2013, the Hon'ble Supreme Court in the Safai Karamchari Andolan v. Union of India 2014 (4) SCALE 165, held that the PEMSR Act, 2013 expressly acknowledges article 17 and 21 of the constitution as the rights of persons engaged in sewage cleaning and cleaning tanks as well persons cleaning human excretion on railway tracks.

In Court on its own motion v. UOI (Punjab & Haryana 2019) emphasis on state legal obligations for eradication & rehabilitation Compensation for deaths to include Monthly pension of Rs. 35,000 for families of persons who have died, who were engaged in a private capacity Class IV jobs for families of persons who have died, who were employees of govt.

Conclusion

India has a long road ahead to total eradication of manual scavenging with the present disposal method of solid waste of human and such work conditions must improve towards complete abolishment of manual scavenging. We have moved 70 years since Independence but these things are still happening in a very conventional manner.

There is still a unanimous screaming that every present manual scavenging laws stays superficial when it comes to answering real time difficulties and challenges involved with solid waste disposal of humans. The Government should take adequate steps to prohibit and strictly punish any government organization or private organizations or private

persons from unlawfully involving or employing or engaging manual scavengers even without adequate precautionary measures and protective gears, to handle present unpleasant contemporary manual scavenging practices.[9]

Finally, given above the bundle of pains faced by manual scavengers, the author believes that the absence of technology innovations involving the authorities, researchers, and inventors to put in their concerted efforts to bring out technology leverage to accurately and effectively handle scavenging of solid wastes of human and animals so that manual scavengers presently working in this area are let free and empowered in their public and private lives as any other citizen of India.

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Review Article

Racial Disparities and Reforms Under Juvenile Justice System

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Abstract

As Mr. A.P.J Abdul Kalam rightly said that Children are the future of our country and it is the responsibility of every citizen to ensure that they have a safe environment to live in the world. In Country like India Where Manpower Is the Main Human Resource for the development of the country, But the last decade has seen a huge leap in the rate of Juvenile crime in a developing country like India. Today, Juvenile crime is like a disease in our society. This paper starts with describing the evolution of Juvenile Justice Legislation, from pre-independence era to Post-independence India; and specially looks at the guidelines of Juvenile Justice Act, 2000 act was replaced by Juvenile Justice care and Protection of Children Act 2015, Delhi gang rape triggered major changes in the criminal law system in India, the act mandates setting up juvenile justice board and child welfare committees in each district and to include at least one women member. In India in spite of the presence of that welfare law for such children, there is a rise in the number of Juvenile offenders across the country. So, a pertinent question peeped in our mind whether Juvenile offenders who commit heinous crimes should be treated as adults. The paper also tries to find out the causes and types of Juvenile Crimes in our society. In the concluding part, some suggestions have been made for preventive measures of Juvenile Crimes.

Keywords: Juvenile; Crime; Offenders; Juvenile Justice Act; Heinous crime; Serious crimes; Petty crimes; International convents relating to juveniles.

Introduction

The word "Juvenile" originates in a Latin word Juvenile that means young. A Juvenile or child means a person who has not completed eighteen years of age. In the Latin maxim that suits best is "Nil Novi Spectrum" Which implies that nothing is new on this earth.

[1]India is a party to the UN convention on the rights of the child (CRC) ratified in the year 1992 Beijing rule guards' juveniles deprived of their Liberty. The national and international instruments there by clearly defining children as a person under the age of 18. section 2 (K) of the act define Child as a person who has not completed the age of 18. The act is built on the requirements of Indian Constitution and the four broad rights Defined by the United Nations. convention on rights of child. Right to Survival, Right to protection, Right to development and Right to participation. The proposed law also aims to judging and positioning cases dealing with juveniles. Also deals with adoption of children and Lays down the eligibility criteria for adoptive parents. The central government agency will adopt various rules for effective implementation at all levels.

Historical development of juvenile justice Laws in India

Juvenile Justice system dates back from year 1960, the enactment of successive national child laws namely the children act 1960,Which was subsequently repealed by juvenile justice act 1986 which indicated that greater attention was needed for children who were found in the situation of social maladjustment, delinquency or parental neglect, the justice system which was applied for adult had negative effect when applied for children or juveniles, It was necessary that separate laws for juveniles had to be introduced throughout India. which is taken into account and all the aspects of social economic and cultural changes in the country there was a need of organization for care and protection, treatment, development and rehabilitation of children and juveniles.

[2]The juvenile Justice child care and protection act 2000 was passed by repealing the act of 1986, the object of the law is to give effect to the guidelines provided under the rule for administration of the juvenile justice by the United Nation Organization by November 1985, Juvenile Justice act 2000 was further repealed and replaced by Juvenile Justice care and Protection act 2015. Latest development Juvenile Justice amendment bill was announced in lock Sabha in relation to adoption.

Juvenile Justice act 2000

According to the act of 2000 the term Child/ Juvenile means person who has not completed the age of 18 yeas such a child should not be lodged in jail or police lockup. the rehabilitation of juvenile justice offender includes the procedure for the investigation, prosecution ,adjudication and disposition of juvenile issues that also contemplates some special offences along with requisite punishment therefor in aspect of certain juvenile under juvenile justice act 2000, juvenile who commit on offence is called As Juvenile in conflict with law, but not as juvenile delinquent the trail of juvenile cases held by juvenile justice board taking into consideration the aspects like the age of the juvenile and such age of the juvenile must be reckoned on the date of commition the offence not with the date on which juvenile brought before the board for enquiry.

Classification of offences of juvenile offenders

The Act has also made a distinction of the kind of offences, categorizing them as petty offence, serious offence and heinous offence. It stated that in case of heinous offences alleged to have been committed by a child who has completed above the age of sixteen years, a preliminary assessment will be conducted with regards to his psychological and corporeal capability to commit such offence. Based on it the child may be tried as an adult, the special provision proposed to confrontation heinous offences committed by individuals in the age group sixteen to eighteen years.

Special provisions relating to juveniles

Constitutional provision: Fundamental rights

- Article 15(3) - of the Constitution of India provides special powers to the State to make any special laws for the upliftment and he betterment of children and women.
- Article 21A - Right to free and compulsory elementary education for all the children under the age of 6 to 14 years.
- Article 24 - Right to be protected from any hazardous employment under the age of fourteen.
- [3]Article 24 - Right to be protected from being abused in any form by an adult.

Directive principles and state polices

- Article 39(e) - Right to be protected from human trafficking and forced bonded labour system.
- Article 47 - Right to be provided with good nutrition and proper standard of living.

Indian penal code

Section 82 and 83 of the Indian penal code contain elaborate provisions regarding the extent of the Indian Penal code contain elaborate provisions regarding the extent of criminal liability of children belonging to different age group. A child below the age of seven is doli incapax, that is, incapable of committing crime. Likewise, a child between seven and twelve years of age has only a limited criminal liability.

Code of criminal procedure code

[4]Section 27 of crpc suggest that lineal treatment to juvenile has already received statutory recognition in Indian laws the section provide that if a person below sixteen years of age commits an offence other than one punishable with death or imprisonment for life he should be awarded lenient punishment depending in his previous history, character and circumstances let him to commit crime his sentence can be further commuted for good behavior during

the term of his imprisonment section 360 of the code of criminal procedure 1973 provides that when any person who is below twenty - one years of age or any woman. is convicted of an offence not being punishable with death or imprisonment for life, and no previous conviction is provide against such person, the court may having regard to the age , character and antecedents of the offender ,and to the circumstances in which the offence was committed ,order release of the offender on probation of good conduct for the period not exceeding three years on entering in to a bond with or without sureties instead of sentencing them any punishment

International convention relating to juvenile justice system

- International covenant on civil and political rights 1966, sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.
- The United Nations Standard But also minimum rules for administration of Juvenile justice 1985 also known as Beijing rules was adopted on 29th November 1985 for protecting the well-being of children
- The United Nation rules for the protection of juveniles deprived of their Liberty e 1990 also known as the Havana rules list down the standards for management of the Juvenile justice system
- The United Nation convention on the rights of the child 1989 provide for the protection of children by ensuring the right available to them.
- The United Nations guidelines for the prevention of Juvenile delinquency 1990 also known as the Riyadh guidelines provides for the prevention of Juvenile delinquency
- International Juvenile justice observatory was formed in Brussels in the year 2002 to encourage Global Juvenile justice and to tackle and to tackle the issues relating to Juvenile delicacy and Justice issues.

Juvenile Justice Amendment Bill 2018

Justice Amendment Bill 2018 was announced in Lok Sabha by women and child development minister Menaka Gandhi there are various cases pending in in various courts relating to to adoption the bill seeks to amend Juvenile justice act to empower district magistrate.[5] To issue orders for the purpose of adoption the bill further provides transferring of all proceedings pending before any Court relating to adoption order under certain provisions of Juvenile justice act to district magistrate having jurisdiction over the concerned area due to the delay in issuing and adoption orders by the court the child continues to deteriorate in the child care institution even after getting the family the adoption proceedings should be disposed by the courts within 2 months from the date of filing and application before the court

Juvenile Justice System abetting crimes by minors

In spite of the presence of careful child acts, the last decade has seen a huge leap in the rate of juvenile offenders in India. According to the latest National Crime Records Bureau, the [6]NCRB said there were 33,606 cases registered and 40,420 juveniles apprehended altogether during the year, up from 35,849 in 2016 and 33,433 in 2015,Totally 1614 rape and1456 other sexual assault committed by juvenile in the country in the year 2017,Delhi stood third on the list with an[8] per cent share in overall juvenile crimes in the country.

[7]The law was amended following intense protests in the wake of the 2016 Nirbhaya gangrape in Delhi in which one of the accused was a few months short of turning 18 But the alarming facts that the delinquent activities have also been plummeting. Worse still, youngsters, are not just committing petty crimes, but rather heinous crimes like rape and murder. It gets tough for the police to deal with juvenile offenders because the law possesses a lot of restrictions. Some glimpses of delinquent activities in different corners of our country are mentioned hereunder:

Preventing Juvenile Delinquency

[8]It is widely proved that early-phase intervention represents the best approach to preventing juvenile delinquency. Government should put more emphasis on attractive beneficial long-term schemes for juveniles so that they regain their self-confidence and feel motivated to join main stream of the society.

Recommendation

It is noticed despite special treatment and privileges; the number of youth offenders is in an increasing trend for various reasons. Although special trial arrangement for the juvenile offenders through juvenile Boards and institutionalization of them in Reformatories or Borstal schools, the positive results are not marking up to the expectations. Some of the suggestion and measures for the prevention of juvenile delinquency. special care

and attention to be given by parents , especially by the working parents, disciplined and creative education[9] at school and college levels to avoid harassment, sharing of the problem of the youth by the parents relatives and teachers, keeping the children away from intoxicants and drugs, control over juvenile participating in the activities of political parties, keeping away children from uncensored programmes of media, film etc, besides pornography material, violent online games, and teaching about the value of morals and ethics as compulsory subjects at school and colleges.

Conclusion

Juveniles involved in crimes are not criminals, in fact, they are victims of society. Juvenile delinquency can be stopped at an early stage, provided special care is taken both at home, in school, and society. Parents and teachers play a significant role in nurturing the mind of a child. Instead of labeling them as criminals or delinquents - steps need to be taken to give them a scope of reforming.[10] Them socially and psychologically to lead a better life. The authorities involved in Indian Juvenile justice system has to build effective partnership with civil societies,[11] the Non-governmental organisations have the capacity to provide community - based life skill programs and group counselling, community work opportunities and open custody group homes for children in conflict with law. the voluntary sector organisation can help the governmental agencies to engineer a substantial shift towards non - custodial alternatives for corrective measures and Reforms involving juveniles.

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Review Article

Transgenders: Third Gender Legal Rights in India

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Abstract

The Indian constitution guarantees to secure all its citizens; the Liberty of belief, Equality of status, and Fraternity assuring the dignity of the individual. It bestows; social, economic and political Justice. The International Bill of Human Rights consisting of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights guarantees all human beings are born free and equal in dignity and rights. This article explores the actuality of fundamental and human rights of Transgenders, made available through various central and state legislations from the eyes and minds, while discussing alongside the ineffable plights of their daily life. The article concludes with its suggestive legal reforms more truly to be implemented to enable Transgenders in India live their life as wished by the framers of our Constitution.

Keywords: Third gender legal rights.

Introduction

Transgender in India, are widely known as Hijras, Aravanis, Kinner, Jogta, etc.[1], and the word relates to a person whose self-identity does not conform unambiguously to conventional notions of male or female gender. In other words, transgender persons are biologically male but identify as women or "neither man nor woman" or "not man."

There exists an obnoxious situation of human rights violations meted out by the vulnerable groups, such as lesbians, gays, bisexual and transgender (LGBT) persons in India.[2] Among them, the Transgenders are majority and as per the 2011 census, there are 4 lakh 90 thousand transgender people in India and about 21 thousand are in Tamil Nadu. From the 2010s, LGBT people in India increasingly gained tolerance and acceptance, especially in large cities. Nonetheless, most LGBT people in India remain closeted, fearing discrimination from their families, who might see homosexuality as shameful. Transgenders are still lacking a wholesome recognition as the "third gender" in the society which is persisting to be the primary issue. It is widely reported to understand that most of the Transgenders are forced to leave their families due to social stigmatization. There are secluded places in the cities of every state in India that has numerous Transgender households and the problems faced by them are common irrespective of their place. They are not yet accepted as any other humans to find their rental houses anywhere like any others, may be the reason that they are living together in communities.

Transgender people in India have limited rights and face social difficulties not experienced by non-LGBT persons. Transgender persons mainly face various forms of gendered violence, harassment and discrimination in public places. Throughout the country, numerous testimonies are heard about

Transgenders, and their families, who have been killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, falsely charged, placed under surveillance, forcibly displaced or had their households raided and thrown out their fundamental freedoms. Their extended list of daily plights are reported to be destitution, social stigma, forced flesh trade or prostitution and forced labor, lack of even a separate bathroom facility, and prejudice shown from many sectors of government in providing them with lack of education, equal opportunity in employment, public health care, and even in issuing them documents like Ration Card, Voter ID, Driving License, Etc. The problem related to their marriage and adoption, and many more are yet to be envisioned for enabling a usual lifestyle on par with other non-LGBT persons.

While a few Transgender specific laws spouts then and there over the past decade and based on that certain institutional frameworks are put in place both at Central and State Levels, widespread deficiencies are immensely felt in their full implementation which have adversely affected the public life and private safety of Transgenders.

International Bill of Rights

India has ratified both UN declaration and human rights and International Covenant on Civil and Political Rights, 1966.[3] Both of those treaties provide equal treatment to all- including Transgenders;

- Article 1, of the Universal Declaration of Human Rights (UDHR) inter alia, provides, "All human beings are born free and equal in dignity and rights."
- Article 6, of the Declaration read along with Article 16 of the International Covenant on Civil and Political Rights confer on every individual, a right of recognition as a person before the law.
- Article 17, of the Covenant, inter alia, provides, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his integrity and reputation."

Constitutional Safeguards & Legislations:

Every Transgender law is ought to be endowed with reason and conscience and should act well intertwined with one another in a spirit of Liberty, Equality, and Fraternity assured by the Constitution.

- Article 5, states as to who are entitled to be citizens of India. But it does not specify anything on sex or gender identity, hence to be assumed .
- Article 14, provides for equality and equal opportunity for all people. It is also enshrined equality on par the gender.
- Article 15, ensures no discrimination and prohibition of discrimination on the ground of religion, race, caste, sex, or place of birth. It also provides access to hotel, public places, temples without discrimination.
- Article 15(2) and Article 16 (4) of the Indian Constitution wherein the States have been given the power to make any special provision regarding the upliftment of these vulnerable minority.
- Article 19, provides freedom of speech and expression, right to residence and profession
- Article 21, right to life also includes dignified life and personal liberty.

The case of K. S. Putt swamy v. Union of India The High Court reiterated that the expression "bride" in the Hindu Marriage Act, 1955 cannot have a static meaning and that a statute must be interpreted according to present-day conditions. The Court also referred to state that the right to marry a person of one's choice is an integral part of Article 21 of our Constitution.

- Article 51, directive principles and state policy states that State need to respect international laws and treaties.

India Changing its View on Transgenders

India has started to understand that binary concept of and general opinion on transgender sex is just a deformity. It started showing by its action that the biological status of a person being of either a male or female sex. Gender, on the other hand, is simply a socially constructed feature. For the first time in India, a transgender library has been opened as part of the transgender resource center in Viswanathapuram, Madurai, to increase awareness about ambisexual people in the country. Most importantly, Indian Courts have started to consider Transgender pains alongside other oppressed communities with its various landmark judgments. This is a good beginning and voices are coming out through its judicial reviews. However, a lot more needs to be done to completely integrate the judgment and actions in reality.

In 2013, the Hon'ble Supreme Court in the Suresh Kumar Koushal Vs NAZ Foundation case,

held that the term 'sex' must be given a broader perspective than the binary norm of biological sex. That "a miniscule fraction of the country's population constitutes lesbians, gays, bisexuals or transgenders" is not a sustainable basis to deny the right to privacy. The purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities, whether legislative or popular. The guarantee of constitutional rights does not depend upon their exercise being favorably regarded by majoritarian opinion.

On April 15, 2014, The Supreme Court gave its historic judgement in National Legal Service Authority v. Union of India,[4] AIR 2014 SC 1863, declaring transgender people to be the "third gender" in India. Even after 6 years of the above case, the country is lacking with being at a stage of trying to define about the term "Transgender". According to the Judgment in the case, transgender people had the right to be treated equally under the Constitution of India, they had the right to self-identification (identifying one's gender as male, female, or third gender), and, most importantly, they were to be recognized as socially and economically backward classes, thereby making them eligible for reservations in jobs and educational institutions. At page 1890 and in para 54, The Hon'ble Supreme Court has observed that the self-identified gender can be either male or female or a third gender. Hijras are identified as persons of third gender and are not identified either as male or female. Gender identity, as already indicated, refers to a person 's internal sense of being male, female or a transgender, for example hijras do not identify as female because of their lack of female genitalia or lack of reproductive capability. This distinction makes them separate from both male and female genders and they consider themselves neither man nor woman, but a - third gender. The discrimination on the ground of sex "under Articles 15 and 16 of the Indian Constitution includes discrimination on the ground of gender identity. The Expression sex" is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male nor female.

Same-sex sexual activity legalization in India commenced in 2018. In Nave Singh Johar v. Union of India,[5] The Hon'ble Supreme Court of India overturned its previous ruling made by in Suresh Kumar Koushal Vs NAZ Foundation case,[6] by decriminalising all consensual sex among adults, including homosexual sex.

Transgender people in India are allowed to change their legal gender post-sex reassignment surgery under legislation passed in 2019, and have a constitutional right to register themselves under a third gender. The Transgender Act,[7] 2019 as it is popularly called the Transgender Persons (Protection of Rights) Act, 2019, received the assent of the President given on December 5, 2019. The Act, under Section 2(k)[8] defines transgender person as "a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender queer and person having such socio-cultural identities as kinner, hijra, aravani and jogta." The Act prohibits discrimination under Section 3; confers right on Transgenders to self-perceived gender identity (Section 4); casts an obligation on appropriate government to formulate welfare measures Section 8), program for welfare and self-employment (Section 14) and health care facilities for Transgenders (Section 15); prohibits discrimination in employment (Section 9); etc., besides establishment of National Council for Transgender.

The Transgender Persons (Protection of Rights) Rules, 2020, has been notified. The Ministry of Social Justice and Empowerment stated that the object. The rules deals with the procedure for issuing certificate of identity as given under section 6 and section 7, provisions and procedure for change of gender, welfare measure, education and social security, medical facilities for the transgender persons by both central and state governments. The rules mandates government to make comprehensive policy for the protection and promotion of transgender persons and ensure human rights for all the people living in the country.

Shortcomings in the Law and Implementation Frameworks

As per the legislation, If one has not undergone sex reassignment surgery, one can only be identified as transgender, not as male or female. Transgender people believe this is coercing them into surgery whereas the demand for free or low-cost sex reassignment surgery has also not been met. Transgender people say certain provisions in the law are unconstitutional, including the formation of district - level, five - member screening committees to certify the gender of a transgender person - a provision that apparently runs against the Supreme Court's 2014 judgement that granted the right to self-

recognition of gender to transgender individuals. Severe criticism abounds because it does not give transgender people the right to self-identify their gender without having had sex reassignment surgery. In addition to that, the provision for punishment for serious crimes committed against transgender people is substantially less severe than for the same crimes committed against cisgendered people. The new bill also denies reservation to transgender, intersex and gender non-conforming people, and requires them to be living with their birth families which are the site of physical and psychological violence in most cases.

The present state of plights of Transgender persons would indicate to all that the cause of the challenges faced by Transgenders is mainly due to the under-implementation of a number of the aforementioned legal reforms, at both central and State levels. Though the major reasons frequently cited include lack of capacity, owing to the sheer size of the country, as well as heavy bureaucracy and political interference. Problems of overlap and coordination within and among the authorities may also explain such deficiencies. Also, Police reform does not seem to be a reality in the whole country, as any reforms implementation at all levels Police institution itself is reportedly quite weak.

Law enforcement authorities

Most of the human rights violations met out on Transgenders, are reportedly attributed to law enforcement authorities, in particular, the Police. Failure to register and/or investigate violations against Transgenders was widely unreported. Transgender's have often seen their complaints not taken up and instead have been charged in false cases. They are often labelled as "History Sheeters" and they have also had their privacy invaded, including by being placed under surveillance. It appears to be deliberate and indicative on such instances, that there is clear lack of proper police training. This is of great concern and and their rights to freedom of expression, peaceful assembly, association and movement is on many occasions unlawfully restricted.

Defenders working for the rights of Transgenders:

The organizations working for the rights of Transgender people, face particular oppression and ostracism from the Police and authorities in undertaking legitimate activities. Activists strive for the promotion and realization of Transgender's civil, political, economic, social and cultural rights. The range of human rights violations they suffer is appalling. Transgender's and activists reportedly face, inter alia, beatings and insults in public places, direct and indirect destruction of their property/ belongings; and filing of false cases against them. They are deeply disturbed being victimized by Police and authorities when selflessly striving to achieve the rights of those people.

Recommendations for the consideration of the central and state Governments, and the legislature:

- Repeal or amend any legislation that may hinder the legitimate living of and criminalizing transgender lifestyle. The highest authorities at the central and state levels should publicly acknowledge the fair and equal rights of the Transgenders in the society. Specific attention must be given by all authorities to this category of humans – Transgender's, towards providing their economic, social and cultural rights.
- "Programs for alternate-sex children should be announced in the National Children's Policy and transgender subjects should be included in the school education system," A comprehensive, adequately resourced protection and education programme for human rights of Transgenders to be established at the central and state levels and in conjunction with the National and State Human Rights Commissions should be devised. The process for applying for protective measures provided under such a programme should be cost-free, simple and fast, and immediate protection should be granted while the risk situation of the person is being assessed.
- Strengthen independent national and state level human rights NGOs and provide them with the necessary financial support to carry out effective support to the protection of human rights and the promotion of fundamental and Constitutional rights to the Transgenders.
- Police should be clearly instructed to respect Transgenders and their rights of fundamental freedoms of being a human. Prompt, thorough and impartial investigations on violations committed against Transgender's should be conducted, and perpetrators should be prosecuted, on a systematic basis. Fair and effective remedies should be available to victims, including those for obtaining compensation.

- Ensure that the law enforcement agencies are adequately trained on Transgender rights and monitor them from bringing false criminal charges and rejecting the administrative actions required by them. Sensitization training to Police and State authorities should be significantly strengthened as a matter of equal importance along with other programmes, taking technical advice and assistance from relevant NGOs and other partners.

Recommendations for the consideration of the judiciary

- The judiciary should take proactive measures to ensure the protection of Transgenders. It has to quickly sensitize its justice dispensation system at all levels especially at the sub-ordinate judiciary level, to understand the day-to-day issues of Transgenders being as a citizen, a wife, a mother and as a social victim in all other contexts, to show voluntary inclination in securing their fundamental rights and liberty when curtailed by the Police and other governmental authorities.
- • The judiciary should be vigilant and cognizant of the violation of Transgender rights. The judiciary should ensure better utilization of "suo motu" whenever cases of violation against Transgenders arise. It has to be doubly sure in ensuring the full and immediate implementation of the judgements of the international and regional courts as well as other internationally recognised judicial and quasi - judicial bodies on violations of fundamental rights and freedom of Transgenders.

Conclusion

India has a long road ahead to gender justice, and the transgender community wants concerted efforts made to bring about legal reform so that transgender people are as free and empowered in their public and private lives as any other citizen of India. Gender - sensitization should work in parallel with legal reform. The various political and public interest organizations that talk about marginalized people must urgently include transgender persons, as well. The Government should take adequate steps to prohibit discrimination in any government organization or private sectors. Transgenders are to be effectively enabled through dedicated education, proper employment opportunity in government jobs, housing programmes, and to offer welfare benefits, pension schemes, free operations in government hospitals, as well as other programmes designed to assist them.[9]

There is still a unanimous screaming from Transgenders that every transgender law stays superficial when it comes to answering real questions about the rights and dignity of transgender people. Though India has repealed its colonial-era laws that directly discriminated against gay sex and transgender identification and also explicitly interpreted Article 15 of the constitution to prohibit discrimination on the basis of sexual orientation and gender identity, but many legal protections have not been provided for in the Act.[10]

Transgender persons who have undergone a transition from male to female and identifies themselves as a "Transgender", also faces the failures of the law.[11] The Act remains silent on how would one be decided on the gender identity when he or she by birth have not undergone a sex reassignment surgery but still transitioned into a Transgender, when many of the transgender persons are reported to get a sex-reassignment surgery after years and decades of living in an alien body. There is no provision in law as to choosing of gender identity of a Transgender without having undergone the said sex reassignment surgery. For someone who has not had a sex reassignment surgery, why is the law different? Are they lesser humans? When in our society, anybody feminine is still misunderstood as a sex-object, there is no clarity in law as to the punishment for committing rape on a Transgender person. Adoption of such an incomplete law, coupled with its muddled implementation, would only contribute to the detrition of their present situation.[12]

Finally, given above the bundle of plights faced by Transgenders,[13] the author believes that the absence of inclusive laws on the protection and enabling the Transgenders to live a decent and peaceful life including an explicit anti-discrimination law and same w- sex marriage, is a significant lacuna.

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