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Original Article

Disability of Prisoners and Reform in Prison: A Critical Analysis

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Abstract

Today, more than one billion people, or approximately 15 per cent of the world's population, live with some form of disability and 80 per cent live in developing countries [1]. The disability of a person requires special attention whatever is his status. Unfortunately, the people with disability is not adequately addressed in our correctional home system as they are the minority. This paper aims to explore how far our correctional homes are friendly with differently abled prisoners.

Keywords: Disability; Rehabilitation; Impairment; Handicap; environment; ICT; Equality of opportunity.

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Introduction

The obstacles a disabled person face, takes a wide range of forms in his life, together with those about the physical atmosphere, for the most part. Due to the shortage of services offered to them like information and communication technology (ICT), justice or transportation or those born out through legislation or policy, or from social attitudes or discrimination. The demand for any facility to their specific wants and treatment is sensitive to the rights of persons with disabilities to the dignity and physical integrity which are vitalelements of their right to life. Any departure from meeting their need could be a gross invasion to their right to human dignity and elementary freedoms. This paper aims to explore how far our correctional homes are friendly with the prisoners with disabilities.

Meaning of Disability

Persons with disabilities, have *typically* poorer health, lower education achievements, fewer economic opportunities *and better* rates of adverse *economic condition* than *individuals with no* disabilities. The term disability has been explained as under-

- ***Un Expression:*** A disability is a condition or function judged to be significantly impaired relative to the usual standard of an individual of their group. The term is often used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment, mental illness, and various types of chronic disease. This usage has been described by some disabled people as being associated with a medical model of disability [2].
- ***WHO:*** The following distinction is made by the World Health Organization, in the context of health experience, between impairment, disability and handicap:
  - *Impairment:* Any loss or abnormality of psychological, physiological, or anatomical structure or function.

- *Disability:* Any restriction or lack {resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.
- *Handicap:* A disadvantage for a given individual, resulting from an impairment or disability, that, limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual [3].

Generally, individuals with disabilities are at a higher risk of violence. A study has exposed that a babywith disabilities experiences nearly four-times more violence than non-disabled youngsters, whereas an adult with some kind of disabilities face nearly 1.5 times more violence than who doesn't have the same. Further, an adult with an improper psychological state of health are exposed to nearly at fourfold the danger of experiencing violence [4].

Disability & Justice: A Theoretical Backdrop

Sociological Jurisprudence: The sociological jurisprudence speaks about the thought of maximum satisfaction of human desires or expectations. The task of law, is to reconcile and regulate these desires- wants or expectations, interests etc. as much as possible, to secure the maximum amount of the totality of them. The legal rule as a general guide to the judge, leading him towards the just but insist that within wide limits he ought to be unengaged to deal with the individual case to meet the standard of justice between parties and accord with the final reason of normal men. One of the the vital jurist of this faculty of thought, Professor Roscoe Pound once commented, the problem that juridical science faces in the evolution and balancing ofconflicting interests. For facilitating that process, in 1919, he developed *juralpostulates* of civilized society that inter alia includes-

i. others will not commit any internal aggression upon him;
ii. others will act with due care and will not cast upon him an unreasonable risk or injury;
iii. the society as a whole will bear the risk of unforeseen misfortunes such as disablement.

John Rawls

Concept of Justice: According to Professor. John Rawls, the principles of Justice is settled by prudence, are those that hypothetical rational persons would opt for in a hypothetical "original position" of equality whereas, fairness results from reasoned prudence. In his *Basic Principles of Justice*, he stated: "social and economic inequalities are to be organized in order that they're both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."[5] Hence, the disabled individuals need special attention of the society as a whole.

Nature of Disabilities among Prisoners

Prisoners with incapacity is also broadly speaking are categorized into 2 segments viz.-

- ***Pre- prison Disability:*** Pre- jail disability suggests that the person before placed to jail was stricken bydisability.
- ***Disability occurred in prison:*** In Prison disability might occur for various reasons that are asunder-
  - *Disability Due to Mental Illness:* The infrastructure of the correctional homes is pretty much dismal as the government is much interested to the safety system overlooking the needs to modernise the prisons respecting the rights of the prisoners. Overcrowding is another drawback to the system. In the given scenario, stress and alternative psycho-social issues adds to that. Many a time, we may notice that the inmates with the passage of time are attacked by mental disabilities of different forms.
  - *Disability Caused Due To Age:* As a captive gets older, s/he naturally become vulnerable. People become pray to various age-related diseases ranging from dental issues, arthritis, strokes, cardiopathy and deterioration in hearing and vision etc. calling for various forms of services.
  - *Disability Caused by the Inmates:* Many a time the scuffle breaks out among the inmates causing injuries to impairments to the victim. Sometimes, the inmates are subjected to different types of tortures by the co- inmates.
  - *Disability Caused by the Men in Uniform:* The men in Khaki is another reasonat the background of suffering from disability by inmates. Unfortunately, till today, the number of inmates became disabled

is majorly unreported except few ones like Bhagalpur Blinding Case etc. In this context, the Supreme Court in DK Basu Case [6], the Supreme Court felt to exhibit additional sensitivityand adopt a realistic, sensible instead of a slender technical approach, while dealing with such cases in order to ensure, that the guilty mustn't escape misusing the power and position and the victim of the crime may enjoy the satisfaction and ultimately the loftiness of Law prevails.

International Instruments Involving Disability Issues

The folks in custody today suffer from various types of infringement of rightsincluding the right to dignity and elementary freedoms as addressed under various international instruments likethe UNCRPD, the Constitution and different statutory Laws. Now, let's have a glance over the leading principles and practices globally and a few countries one by one.

UN Resolutions: The relevant UN Resolutions are as under-

- *The UN Resolution 31/123 of 16th Dec. 1976:* The foremost vital issue that was resolved was the proclamation of the year 1981 because the International Year of Disabled Persons.
- *The UN Resolution 32/133 of 16th Dec. 1977:* The resolutions inter alia established the Advisory Committee for the International Year of Disabled Persons.
- *The UN Resolution 33/170 of 20th Dec 1978 & the UN Resolution 34/154 of 17th Dec 1979:* These 2 resolutions inter alia, are determined to expand the theme of the International Year of Disabled Persons to "Full participation and equality".
- *The UN Resolution 35/133 of 11th Dec 1980 & the UN Resolution 36/077 of 08 Dec 1981:* These 2 resolutions perceived the continued needto promote the belief that the disabled persons should fullyenjoy the right to participate in the social life and development of their societies and to enjoy living conditions equal to those of other citizens, in addition they are to share equally in the enhancements of living conditions succeeding from social and economic development.

The International Year of Disabled Persons, 1981

The International Year of Disabled Persons was celebrated in the year 1981 (UN General Assembly Resolutions 31/123). It felt the importance to have a plan of action at the national, regional and international levels, with a stress put on levelling of opportunities, rehabilitation and hindrance faced by the people with disabilities.The theme of IYDP was "full participation and equality".

However, the other objectives of the Year included: increasing public awareness; understanding and acceptance of persons with disabilities; and inspiring persons with disabilities to create organizations through that they are allowed to express their views and promote action to better their status [7].

The Leeds Castle Declaration on the Prevention of Disablement, 1981

In the Leeds Castle Declaration on the hindrance of impairment of 12thNov 1981, a world cluster of scientists, doctors, health directors and politicians called attention to the issues as under [8]-

- Impairment arising from nutritional deficiency, infection and neglect which may well be prevented by cheapimprovements in primary health.
- Sustained education of the overall public and of professionals.
- Avoidable disability which is a major cause of economic waste and human deprivation in countries, industrialised anddeveloping.
- The priority of existing national and international health programmes shifted to make sure the dissemination of information and technology.
- Both basic and applied research inbiomedical sector over the approaching years.

The World Programme of Action Concerning Disabled Persons, 1982

The World Programme of Action (WPA), a serious outcome of the International Year of Disabled Persons, adopted by the General Assembly on 3 Dec 1982, by its resolution 37/52. It's a world strategy to boost prevention of disability, rehabilitation and equalisation of opportunities, that pertains to full participation of persons with disabilities in social

life and national development. The issues outlined under the resolution 37/52 are as under [9] -

Equalization of opportunities: "Equalization of opportunities" was a central theme of the WPA and its guiding philosophy for the accomplishment of full participation of persons with disabilities in all aspects of social and economic life. A vital principle underlying this theme was the issues relating to persons with disabilities mustn't be treated in isolation, however within the context of traditional community services.

Principle of equality: The principle of equal rights for the disabled and non-disabled implies that the needs of each and everyindividual are of equal importance, that these wants should be based on the premise for the planning of societies, and that all resources should be used in a way to guarantee, for eachindividual, civil rights for participation. The policies for the Disabiledneed to check that the access of the disabled to all or any community services.

- Services for disabled persons need to be provided, whenever possible, within the present social, health, education and labour structures of society. These embrace all levels of health care; primary, secondary and higher- education, general programmes of education and placement in employment; and measures of Social Security and social services.
- Rehabilitation services should aim at facilitating the participation of disabled persons in regular community services and activities. Rehabilitation need to surface out in the natural environment, supported by community-based services and specialised institutions/ establishments.
- Specialized institutions, where they are necessary, need to be organized so as to guarantee the early and lasting integration of disabled persons into society.

The Vienna Affirmative Action Plan

The Vienna social action set up and adopted by the World Symposium of Experts on Technical Co-operation among Developing Countries and Technical Assistance in Disability Prevention and Rehabilitation is the continuation of the WPA, 1982.

The Convention on the Rights of Persons with Disabilities (CRPD), 2006

The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/ RES/61/106) was adopted on 13th Dec, 2006 at the UN Headquarters in New York. The Convention set a goal for countries to identify and eliminate obstacles and barriers so that they may access of their environment,transportation, public facilities and services, info and communications technologies [10]. It adopts a broad categorization of rights for persons with disabilities and reaffirms that anyone with disabilities of any type may enjoy all human rights and elementary freedoms. The rights got recognised under the Convention square measure as under-

- ✓ Rights against discrimination: Parties to the Convention are engaged to develop and carry out the policies, laws and administrative measures for securing the rights recognized in the Convention and abolish laws, regulations, customs and practices that represent discrimination (Article 4).
- ✓ Right to equality: Member Countries are to ensure that persons with disabilities enjoy their inherent right to life on equal basis with others (Article 10).
- ✓ Right to life, liberty and security: Countries should guarantee persons with disabilities to enjoy the rightto liberty and security and aren't deprived of their liberty unlawfully or randomly (Article 14). Countries shouldshield the physical and mental integrity of persons with disabilities, like everybody else (Article 17). There should be a guarantee to enjoy freedom from torture and from cruel, inhuman or degrading treatment or penalisation, and vetomedical or scientific experiments wihout the consent of the person involved (Article 15). Persons with disabilities aren't to be subjected to arbitrary or misappropriated interference with their privacy, family, home, correspondence or communication. The privacy of their personal, health and rehabilitation data is to be protected like that of others (Article 22).
- ✓ Right to freedom: Laws administrative measures should guarantee freedom from exploitation, violence and abuse. In the case of abuse, the states shall promote the recovery, rehabilitation and reintegration of the victim and investigate the abuse (Article 16).
- ✓ Countries acknowledge the correct to associate degree adequate normal of living and social protection; this includes housing development, services and help for disability-related desires, still as help with disability-related expenses

just in case of financial condition (Article 28).

- ✓ Countries should promote access to data by providing data meant for the general public in accessible formats and technologies, by facilitating the utilization of Braille, sign language and other alternativekinds of communication through encouraging the media and net suppliers to create on-line data offered in accessible formats (Article 21).
- ✓ Persons with disabilities have the right to the highest attainable standard of health without discrimination on the basis of disability. They should be within the provision of insurance (Article 25).
- ✓ To empower the persons with disabilities torealize utmost independence countries must provide a comprehensive habitation and rehabilitation services within the areas of health, employment and education (Article 26).

United States of America

In the USA, the legal mechanism regarding the protection of the rights of the disabled are as under-

The Rehabilitation Act, 1973: Section 504 of the Rehabilitation Act, 1973 was the first Disability civil rights law enacted in the USA. It prohibits discrimination against individuals with disabilities in programs which are funded by the Federal Government. An aggrieved individual with disability can ask for one or a lot of different remedies that stem from the Civil Rights Act of 1964 which incorporates, inter alia [11]:

- Temporary or preliminary relief unfinished final disposition
- Injunctions
- Appropriate social action
- Equitable relief
- Accrual of back pay
- Reduction of back pay

In Preiser v. Rodriguez, the American Court made it clear that the state prisons fall squarely among the statutory definition of "public entity," which incorporates "any department, agency, special purpose district, or alternative instrumentality of a State or States or local government." § 12131 (1) (B).

In Preiser v. Rodriguez [12], the American Court made it clear that the state prisons fall squarely among the statutory definition of "public entity," which incorporates "any department, agency, special purpose district, or alternative instrumentality of a State or States or local government." § 12131 (1)(B).

The Americans with Disabilities Act (ADA), 1990

The Americans with Disabilities Act (ADA) became law in 1990. The ADA guarantees civil rights for people with disabilities particularly in public accommodations, employment, transportation, state and native government services, and telecommunications. It is the most significant papers in reference to the protection of the disabled. The Act provides inter alia as under-

Title II of the Act establishes elaborate standards for the operation of public transportation systems, together withcommuter and intercity rail.

Title III of the Act needs the intervention of the U.S. Department of Justice in connection with setting the minimum standards for accessibility for alterations and new construction of facilities. This part of the Act additionally deals with the followings-

- Removal of barriers in existing public buildings where it's easy to do so without much of issues of expenses.
- reasonable customisation to their usual ways of doing things when serving individuals with disabilities.
- taking of necessary steps to interact effectively with people with vision, hearing, and speech disabilities.

Title IV of the Act provides provisions for regulating telephone and internet firms by the Federal Communication Commission. This Part inter alia speaks about the followings-

- to offer a nationwide system of interstate and intrastate telecommunications relay services.
- such services ought to enable people with hearing and speech disabilities to speak over the telephone.

In Gregory v. Ashcroft [13], it had been declared "One of the first functions of the government is the preservation of social order through *the enforcement of the criminal law, and the maintenance of penal institutions is an essential part of that task.*" Again, in Pennsylvania Dept. of Corrections v. Yeskey [14], Ronald Yeskey was a jail inmate sentenced to eighteen to thirty-six months during a Pennsylvania Correctional facility. He sued,

alleging that his exclusion desecrated the Americans with Disabilities Act ("ADA"). The Supreme Court held that the ADA applies to prisons and jails, people with disabilities in correctional facilities still face tremendous obstacles in their efforts to achieve fair and equal treatment. In United States v. Georgia [15], the sentencing court recommended his placement in Pennsylvania's Motivational Boot Camp for first-time offenders and as he had a medical history of hypertension, admission to the program was denied.

'Justice Project', 2004

In the USA, the 'Justice Project,' aimed at to resolve complaints about the treatment of the prisoners with disability/s. Inmates with disabilities placed allegation about the violations of their rights at detention facilities. Many of the prisoner's folk with disabilities in America identified an absence of understanding about the nature of activities in which he/ she has been involved with. In addition to this, the common forms of complaintsinvolve the followings:[16]

- Denial of access to disability-related devices and medical services.
- Denial of access/unequal access to the facility's activities and programs.
- Lack of effective communication for inmates WHO square measure deaf, laborious of hearing, blind, or have low vision.

Actions Taken after the Justice Project [17]

Funding through the Office of Justice Programs alongside providing relief to a great number of inmates with disabilities in jails, modifications have been taken place regarding the supply physical access to cells, showers, toilets, feeding areas, or adoption of ADA-compliant effective communications policies e.g.-

- TTY's [18] for inmates, workers members, and guests,
- Access to work release programmes and jobs for inmates with psychiatric disabilities,
- A treatment program in an accessible place for an inmate with a mobility disability,
- Talking books, magnifiers, tape recorders, and Braille writers for inmates with vision disabilities,
- A prosthetic leg for an inmate that allowed him to live with the general population rather than with the infirm.
- Aides to help an inmate without arms in eating and other associated activities of daily living and to help an inmate who uses a wheelchair to move around the jail.
- Changes in policy permitting an inmate with disability to be thought-about for a trustee job, allowing a mother who uses an Oxygen tank to visit her inmate son, and permitting a blind inmate to the touch his children's faces during visits.
- Sign language interpreters to help a deaf inmate to participate in academic programs, another deaf inmate to participate in a treatment program needed for unleash, and another deaf inmate to participate in needed conferences with probation officers.

Indian Legal Framework and Issue on Disanility

An individual with disabilities needsconstant help and support to enable him to enjoy his right to dignity and fundamental freedom.An individual, into custody is further protected against the cruel, degrading and inhuman treatment. In India, the Constitution, the Cr. PC, the UNCRPD, and even the Rights of Persons with Disabilities Act, 2016 they don't specifically discuss the prisoners with disabled prisoners in specofc, we may analyse the same in the context of such legal instruments as under-

Constitution of India

- ***Art. 14:*** The norm of substantive equality, well established through constitutional jurisprudence in India, speaks of the principle of equality that necessarily includes special treatment for persons who are vulnerable. The denial of special provisions, appropriate assistance and specialised health care access to a person with disabilities in custody, who uses a wheelchair and has special health care needs arising from chronic illness, comes firmly within the meaning of degrading, inhuman and cruel treatment.
- ***Art. 21:*** Article 21 of the Indian Constitution guarantees the right to life. Under Art. 22, No person shall be subjected to degrading, inhuman or cruel punishment that is violative of human dignity; the duty of care to be exercised in this matter during pre-trial custody is of a

much higher order. A prisoner with disability requires support and assistance for daily living, placing such a prisoner in solitary confinement and denying the right to accessible facilities for personal care and hygiene is violative of the right to dignity and bodily integrity — both guaranteed under Article 21 of the Constitution, but also under Article 17 of the UNCRPD [19].

Veena Sethi Case [20]: The Veena Sethi case within the early 1980's broughtto lightthe treatment of prisoners with mental diseases and their prolonged confinement for periods starting fromsixteen to thirty years in custody. The Apex Court felt that the case of those prisoners to disclose a surprisingstate of affairs involving total disregard of basic human rights. Therefore, the Court determined that it's the solemn duty of this Court to shield and uphold the essential human rights of the weaker sections of the society, and it's this duty we have a tendency to discharge in entertaining this public interest litigation. The Supreme Court issued the order as under-

- the District Judge for releasing the prisoner from the jail and the State Government will provide him with the necessary funds for meeting the expenses of his journey to his native place as also for his maintenance for a period of one week to the prisoners concerned who became sane or has regained his soundness of mind.
- the State Government to drop the cases which are pending against these prisoners an accused is ordinarily required to undergo even in case of-sentence of life imprisonment is not more than 14 years as provided by Section 428 of the Code of Criminal Procedure, 1973, the Prisoners have already been in jail for, a period of over 25 years.

Khatri (II) et al vs State of Bihar & Ors [21], is another vital example in association with which "The cops had referred to as a doctor from the block hospital who asked one amongthe inmates 'can you see anything' as I cried and crooked in pain anytime the policemen dropped acid into my eyes," who was blinded at the Rajaun police headquarters on the orders of the Deputy SP. The same DSP supervised different `operation' at Ishakchak police headquarters,". They perforated a `takwa' (a long needle used for sewing bagging bags), a barber's nail cutter or a bicycle wheel spoke into the youths' eyes and so poured acid into the mutilated sockets with a pipet or a syringe or directly from a bottle. Here, in these cases, two issues were taken into consideration, *viz. the price of the treatment to be borne by the victimsand second, the payment of compensation to the unsighted prisoners for violation of their basic Right underneath Article 21 of the Constitution.* The bench headed by the then CJI, Y V Chandrachud, determined "there is nothing the court will do to revive the physical injury, that appears irreparable. However, the offenders should be dropped at book, a minimum of within the hope that such brutal atrocities won't be committed once more." Hence, every blind victim was given a payment of Rs 30,000/- and, then, a monthly pension of Rs 500/- that was later increased to Rs 750.

Dr. G.N. Saibaba Case [22]: In this case, the suspect was a University Professor and was place into custody with the allegation of getting Maoist "links" and a Maoist "sympathiser". He was placed into Anda jail, which implies elliptical jail wherever he wasn't allowed to use the rest room for future seventy-two hours. The harassment took a significant toll on his health. He suffered a 14-month imprisonment at the Central Jail in Nagpur, a wheelchair-bound captive. Saibaba was further arrested in 2014 for his alleged reference to Maoists extremists. Later he was sentenced to life imprisonment in March 2017. Recently, the Special Rapporteurs of the international organisation urged the govt. to right away guarantee health care to Saibaba, who is reportedly in solitary confinement in Nagpur jail [23].

The Rights of Persons wth Disabilities (Equal Opportunities, Protection of Rights, and Full Participations) ACT, 1995: The Rights of Persons with Disabilities Act doesn't give any specific provision regarding the plight of the disabled prisoners. The Act listed seven conditions of disabilities, which includes-*blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation [24], and mental illness [25].* The Act adopted an approach of welfare in respect of PWD and the main focus was on prevention and earlydetection of disabilities, education and employment of the PWD. The Act also provided 3% reservation in Government jobs and academic establishments. It stressed on creating the barrier-free things as a live of non- discrimination.

The Rights of Persons with Disabilities Act, 2016

India signed the UNCRPD in 2007, the Rights of PWD Act, 2016 (RPWD Act, 2016) got notified on 28th December, 2016 when receiving the presidential assent. The followings are the salient features of the

Act-

- The RPWD Act, 2016, has enlisted twenty-one conditions of disability.
- Section 7 (2) of the Act, states that any individual or registered organization, who or thathas reason to believe that an act of abuse, violence, or exploitation has been, is being or seemingly to be committed against any PWD, may give such information to the Local Executive Magistrate who shall take immediate steps to prevent its incidence and pass necessary order to protect the PWD.
- The Police Officer shall conjointly inform necessary particulars to the PWD of nearest organization operating for the rehabilitation of the PWD, right to free legal aid, and right to file criticism underneath the provisions of this Act or the other law addressing such offence.
- Equal protection and safety in situations of risk, armed conflict, humanitarian emergencies, and natural disasters area unit to be provided to PWD.

Conclusion & Recommendations

Protection of Rights of subject could be a state responsibility. The State mayhave its monetary constraints and its priorities in expenditure, but however, as discerned by the court in Rhem v. Malcolm [26], the court unconditionally expressed, "The law doesn't allow any Government to deprive its citizens of constitutional rights on a plea of economic condition." To quote the words of Justice Blackmum in Jackson vs. Bishop [27], "humane concerns and constitutional needs aren't in this day to be measured by dollar concerns." In India, the prevailing services, facilities and social actions for the prevention of impairment, the rehabilitation of disabled persons and their integration into society are closely associated to the Governments' and society's willingliness and ability to distribute resources, income and services to under privileged population.However, since human actors are there in implementing such rights, faulty implementation and non- recognition of rights of individuals many times create issues within the state affairs. At this, the task of the state machinery is to correct such errors. Thus, during this context, the followings may be recommended-

- Prisons ought to be disabled friendly. wherever jail and custodial facilities don't seem to be equipped in the slightest degree to trot out the precise desires of persons with disabilities, arrest and detention in custody ought to be a measure of last resort.
- The training of personnel ought to be prime agenda generally fields like supplementary benefit, public health, medicine, education and business rehabilitation;
- Enhancement of capacities for the native production of the appliances and instrumentality required by disabled persons ought to be taken care of;
- The institution of social services, social insurance systems, cooperatives and programmes for mutual helpat the national and community levels is also prioritised;
- Appropriate vocational training and work preparation services, as well as increased employment opportunities for disabled persons ought to be in top priorities.

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Original Article

Issues Relating to Antidumping and Competition: Consumer's Perspective

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Abstract

Liberalization of trade or integration of world economy is nothing but removal of trade barriers that may be tariff or non tariff. It ensures to free flow of capital, goods and services across the world. WTO strives to eliminate all trade barriers; it recognizes that nations required be flexible to adjust economic as multilateral agreements. Thus, as result of liberalizations, any person can invest in any market, anybody can sell their goods, provide service in corner of world. The developed countries have started dumping of their goods into the foreign market in order to grab competition. Subsequently it leads to monopoly, which is the worst situation of the market. That ultimately affects the consumer at the large. The importing country may adopt protective measures to temporarily protect their domestic industry and economy, like Anti-dumping. This paper focuses on the aspects like Antidumping and competition. Researcher desires to highlight the issues and challenges between these two legislations. Most prominently researcher will through light on pros and cons of Antidumping and competition upon consumer rights.

Keywords: Anti-dumping, Competition, Consumer, Trade, Liberalisation

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Introduction

The World Trade Organization propagated to L.P.G, it means Liberalization Privatization and Globalization. This has lead to removal of trade barriers across world, in simple word that has consequently resulted to unrestricted International trade, and we are witnessing the free flow of goods, services and capital. With the emergence of L.P.G statics of export and import has been increased. Due to the wake of globalization any person can manufacture goods & sale anywhere in the world. Free trade has benefited to the economy of country and world also. But there are many issues of free trade which are not ignorable. One of such issue is 'Dumping of goods' on foreign market. It is one of unfair trade practice targeted by the GATT [1].

Opening up of the economies has both challenges and opportunities before producers, traders, importers and exporters. While integration of world markets has widened the horizon of trading at the same time it has also led to tough competition. Everyone desires to capture market share by any means fair or foul [2].

Before birth of WTO this free trade was propounded by the father of classical economics& philosopher called Adam Smith. He said in the wealth of the nations (1776) that Britain's goal should have been the promotion of the welfare of individuals, rather than centering on national power and prestige [3]. That was called as laissez faire, which supported to the idea that market should essentially be free

and there should be no interference in trade by the government [4]. Further, economist has contend that a decentralized market system that allows producers and consumers freedom to choose according to market prices will provide the most efficient allocation of the scare resources, and this will result in gain in real national income. Under free trade concept, comparative advantage dictates that a country should exchange what it can produce most efficiently [5] for what others can produce more efficiently. Even if a country could produce every commodity, it would still gain by specializing in its better products. An economist does not admit of many exceptions to free trade, they rise only when domestic markets fail to allocate resources efficiently or non-economic objective receive priority. Equal application of market economic principles to all firms considered the backbone of free trade; However, Free trade is contrasted with unfair trade like Subsidy and Dumping of imports which distort the competition in market [6]. One of the practices adopted by traders to capture foreign markets is to dump their goods, in simple words means to sell goods in the foreign markets at prices lower than that in the home or domestic market main [7]. The GATT does not condemn all acts of dumping. It also recognized that antidumping measures can be used by an importing country as an anti-competitive protectionist device [8]. The main aim of this agreement is to allow member countries for imposition of antidumping duty, if they have been materially injured by dumping from any particular country [9].

It is necessary to discuss about Dumping before elaborating to Anti-Dumping. Dumping is a pricing practice, where a product is exported from one country to another country at a price which is less than the comparable price, in the ordinary course of trade for like product when destined for consumption in the home market [10]. It is said to be most common form of price discrimination in International trade. Dumping is defined as the introduction of product into the commerce of another country at less than its normal value. Thus Dumping implies low priced imports only in the relative sense and not in absolute sense. According to Article VI, GATT 1994, a product is said to be dumped when its export price is less than its normal value, which is less than the sale of a like product in the domestic market. Viner identified three types of dumping situations [11];

- Sporadic dumping
- Strategic dumping
- Predatory dumping

In the case of sporadic dumping the motivation is to dispose of goods for a short- run to get rid of surplus stocks. Short-run or intermittent dumping is not continuous and is motivated by entering into a new market, retaining the market share or driving away the competitors from the market. Long term dumping is motivated by the intent to reach or maintain full production in large scale economies. Sporadic dumping is likely to result only in damage to the exporting or the importing country. Thus, there are two fundamental parameters used for determination of dumping, namely, the normal value and the export price. Both these elements have to be compared at the same level of trade, generally at ex-factory level.

Strategic dumping: Firms can deliberately dump their products in order to gain or increase market share in the market of the importing country. In some cases firms deliberately produce at artificially high capacity in order to dump the excess product in a foreign country. This can be distinguished from sporadic dumping by the fact that in the first case the dumper deliberately operates at excess capacity in order to dump excess products [12]. This is possible only if the domestic demand for that commodity is less elastic and the foreign demand is highly elastic [13].

Predatory dumping: The term predatory dumping refers to price discrimination aimed at driving competitors out of the market or bringing them to terms in other words, forcing competitors to share the market concerned with the predator on specified terms [14]. A closed home market or government subsides can be used to finance the low priced exports. When competition in the home market is destroyed, the predator then controls the market of importing country and reaps monopoly profits [15].

Antidumping Law

At the end of the nineteenth century, global industrialization raised concerns about effects of international trade. General and Permanent tariff walls were ill-equipped to handle the special and temporary cases of dumping. Thus a new instrument was needed that could be applied to specific products at specific times. It was Canada who first developed this instrument-antidumping regulation [16]. Antidumping laws represents as the "Trade remedy laws" that have the effect of restricting imports, if imports of low price cause or threaten injury to importing market. These trade remedies are allowed by the WTO Agreements provided

certain condition are observed [17]. Anti dumping duty is a duty imposed on imported goods which are sold by another country's industry. Antidumping can be defined as tariffs in addition to ordinary customs duties that are imposed to counteract certain "unfair" pricing practices by private firms that injure or threaten to cause "material injury" to a competing industry in importing nation [18].

Object for Imposition Antidumping

The Government is to designate the anti dumping authority in each country. Affected local producer is expected to file for AD action against foreign imports in specific forms with the proper statistics proving dumping [19]. The foreign exporters are given a chance to state their position in the anti dumping investigation and the dumping authority determines the dumping margin if the export price is less than the normal value. WTO provides three methods to calculate a product's "normal value". They are based on

- Price in the exporter's domestic market
- The price charged by the exporter in another country
- A calculation based on the combination of the exporter's production costs, other expenses and normal profit margins [20].

The Antidumping Dumping duty usually imposed on products, but to protect the industry from unfair competition. One in turn protects those employed. However, any benefits need to be measured against those which both domestic consumers and secondary producers would gain as result of access to cheaper goods. But if it can be assumed that anti dumping measures are used in order to prevent international predation. In short run, domestic consumer and secondary industries would enjoy economic benefits as a result of lower prices; in the long run however, dumping will lead to the failure of domestic producers resulting in higher overall price as price as consumers become victims of monopolistic price setting. It is important to note that the Antidumping Agreement under the WTO doesn't qualify dumping as an unfair trade practice per se. The Antidumping duty can be imposed only when it causes injury or threatens to cause injury to the domestic industry.

The Competition Act, 2002

The new economic policies 1991 (LPG) progressively widened the space for market forces and reduced the role for government in business. It was recognized that a new competition law was also called for because the existing Monopolies & Restrictive Trade Practices Act, 1969 (MRTP Act) had become obsolete in certain respects and there was a need to shift the focus from curbing monopolies to promoting competition [21]. A high level committee was appointed in 1999 to suggest a modern competition law in line with international developments to suit Indian conditions. The committee recommended enactment of a new competition law, called the Competition Act, and the establishment of a competition authority, the Competition Commission of India, along with the repealing of the MRTP Act and the winding up of the MRTP Commission. It also recommended further reforms in government policies as the foundation over which the edifice of the competition policy and law would be built [22]. The Competition Act, 2002 came into existence in January 2003 and the Competition Commission of India was established in October 2003. The Act states that "it shall be the duty of the Commission to eliminate practices having adverse effect on competition, to promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India." Thus, it gives the Commission a heavy mandate [23].

Interfaces between Antidumping and Competition

Competition law and antidumping law are considered as law for the protection of domestic market and consumer interest from unfair trade practice like price discriminations, anti competitive agreement restrictive trade practice etc. The ideal goal of the competition and trade law is to improve the consumer welfare. However, problems between these policies arise from the deviation from their original purpose in actual practice. There are divergent opinions regarding the relationship of these two terms, some economic scholars opined that both are co-relative to each other, because both policies are working for the common objects like protection of consumer and market. These policies include the liberalization of trade through the removal of trade barriers, the liberalization of financial markets, the privatization of state-owned assets, the removal of price controls, the reduction of subsidies, and the liberalization of exchange controls to encourage investments.

The underlying assumption of these reforms is that economic development and living standards

will be enhanced when decisions are largely left to individual businesses and consumers in as much as they respond to market forces that are shaped by competition [24]. Competition should then be seen as a process of rivalry between firms as they strive over time to win business from their competitors through producing higher quality products, selling at lower prices or developing improved or new products. For the benefit of market-oriented policies to be realized, a competition law is required to ensure that private restrictions on competition do not occur when state control regulatory constraints on the competitive process are reduced. The aim is to create new and sustainable job and business opportunities that would bring benefit to all. The critical problem is balancing the needs of business and those of consumers.

Contradictions between Antidumping and Competition

The anti-dumping versus competition policy debate has flourished all over the world for a long time. The main question that stands out in this debate is whether the competition policy criteria are substituted for anti dumping rules [25]. Further whether imposition of anti-dumping duties promotes fair competition or restricts competition in a relevant market and as this debate progresses, the analogy that since favoring either side is not possible at present, there can be no doubt that excessive use of antidumping duty is bound to be harmful to fair competition in the long run [26]. Dumping has risen to the debate on relationship of Antidumping and competition policy and whether antidumping policy should be replaced by competition policy. Antidumping and competition policy are considered as instrument of protection of domestic market and consumers interest from unfair trade practices like price discrimination, anti-competitive agreements, cartels etc, even though object of both competition and Antidumping is to promote competition is to promote competition policy attaches sanctions only such price discrimination which adversely affect competition in the market on other hand, antidumping policy does not take competition concerns but only protection of domestic industry. The same question was considered by Supreme Court of India .in appeals were filed by Haridas Exports against the order passed by the monopoly and Restrictive trade Practices commission (MRTP Commission), and listed out differences between these two concepts [27].

	Competition Law	Anti-dumping Action
1.	**Objectives**	
	The basic object of the Competition Act is to prevent practices having an appreciable adverse effect on competition, to protect the interest of consumers and to ensure freedom of trade carried on by participants [28].	The basic aim of the Antidumping Laws is to protect the domestic industry from any material injury resulting from the dumping of goods [29].
2.	**Scope**	
	Competition law deals with domestic trade.	Antidumping Laws deals with international trade
3.	Competition law is concerned with the regulation of Competition in a particular market within the territory of a country. Thus, it takes within its sweep host of anti Competitive practices, includes 1) monopolistic trade practices, as defined in section 2 (i) of MRTP Act 2) restrictive trade practices, as defined in section 2 (o) 3) unfair trade practices as defined in section 36A	This Law is concerned with addressing just one type of unfair, International trade practice, which causes injury to domestic industry. This is the Dumping of goods by an exporting country.
4.	**Predatory pricing and normal value** [30]	
	Competition Law encourages free and healthy competition and supports the growth of dynamic and open market for competitors.	Antidumping law seems more like a shield protecting the domestic producers from challenges which they might face from foreign competitors [32].
5.	**Price discrimination**	
	Under the competition Act price discrimination which adversely affects competition in the market is prohibited	price discrimination under Antidumping is an examined with the narrow parameters of injury only to the domestic industry
6.	**Who can file complaint?**	
	A complaint under the Competition Act can be filed by a trade association or any consumers association, or a reference can be made by the central government or the state government, or even by the Director General, upon its own Knowledge or information [31].	An Antidumping petition can be filed by the domestic Industry as defined under the Anti-dumping Rules or suo moto by designated authority [33].

7.	Competition Law procedures allow and require consideration of interest groups such as manufactures importers exporters, consumer and general public. Commercial actors can have their interest assessed through the determination of the market, causation or injury. Interests of consumers are taken into consideration when assessing the impact of a business practices on Competition	No interest group other than domestic industry has full legal standing in anti- dumping cases. The predominant interest group is domestic producers. Industrial users and consumers do not have legal standing to maintain a complaint.
8.	In predatory pricing on enquiries, the complainant has to establish that the predator acted with the intent to eliminate competition and competitors. Actual injury is not required.	In antidumping complaints, intent is irrelevant, but actual injury has to be shown. Further, a causal link has to be established between the dumping and the injury suffered.
9.	In most countries, competition cases are dealt with by a court of law, where parties are entitled to full discovery rights and due process.	Anti-dumping enquiries are always conducted by Government agencies through administrative process and law

Consumer welfare argument

Trading globally gives consumers and countries the opportunity to be exposed to goods and services not available in their own countries. Almost every kind of product can be found on the international market: food, clothes, spare parts, oil, jewellery, wine, stocks, currencies and water. Services are also traded: tourism, banking, consulting and transportation. A product that is sold to the global market is an export, and a product that is bought from the global market is an import. Imports and exports are accounted for in a country's current account in the balance of payment [34]. The market liberalizations and the supposed existing competition have had the effects of enlarging the consumer's choice and lowering prices of goods and services [35]. Economic integration is considered as a process by which inter-dependence is established between national economies through the increase in the exchanges of goods and services, capital, labor; an inter-dependence also established in the form of harmonized economic policies, of projects commonly conducted, and finally in the form of standardized laws within the common space [36].

The consumer welfare argument suggests that the economic rationale of antidumping laws is to prevent predatory pricing. The concept of predatory pricing is borrowed from the domestic competition policy since competition policies are designed to prevent anti-competitive practices primarily by domestic firms, such policies define predatory pricing as the situation where a domestic firm prices below cost so as to drive competitors out of the market and acquire or maintain a position of dominance [37].

Predation involves efforts to achieve or exploit monopoly power, restricts competition in domestic markets and injures consumers through monopoly pricing in the long run. Competition policies deter predatory pricing by domestic firms to preserve the process of competition and protect the interests of the consumer. An open trade policy also aims at achieving these goals. In that context, antidumping policy is suggested to be a trade policy instrument that, if used appropriately, curbs anti-competitive practices by foreign firms by deterring predatory pricing. In international trade, predatory pricing is a strategy by which an exporter attempts to drive competitors from export markets and obtain monopoly power by cutting its export price below its home market price. Predation involves short-term gains to the consumers but leads ultimately to the failure of domestic producers and exposes the consumers to monopolistic prices. This argument therefore, suggests that antitrust and antidumping both seek to prevent similar harms and are based on the same premise i.e. monopoly power is inimical to the proper operation of a market economy, and companies tend to restrict competition and create monopolies through predatory pricing. By looking into the origins of antitrust and antidumping rules, finds that the justification for both sets of laws was to protect the competitive process and the consumer from monopoly power [38].

The Consumer's Perspective

From the consumer's perspective, market liberalizations and the supposed existing competition have had the effects of enlarging the consumer's choice and lowering prices of goods and services. However, these apparent gains have given way to new concerns such as the inability of Indian standard bodies to control and monitor the quality of the goods and services circulating in the markets at regional and at sub-regional levels. In other words, where regional economic integration and markets liberalization have increased consumer choices, they have probably also created opportunities for dubious businessmen to swamp Indian markets with substandard and dumped products to maximize their profits.

It is recognized fact that consumers as buyers have poor bargaining power. In early years when welfare legislations like the Consumer Protection Act, 1986 did now exist, it is the maxim caveat emptor (let the buyer beware) which governed the market and relations between consumers and traders. Now with the opening of global markets, economies and progressive removal of restrictions on international trade, there is increasing completion among manufacturers which has, though benefited the consumers in the form of improvement in quality of goods and services but as well as given the way to many unfair methods or practices of trade to promote sale of the commodities and it has widely affected the interests of the consumers. Therefore, we may say that it's an era when it can be propounded that the maxim caveat emptor is to be replaced by 'let the seller beware' [39]. Opponents of Antidumping opined that dumping benefits an importing country because it gives consumers and user industries access to low- priced products. Therefore the economy as a whole the low-priced imported products [40]. Because dumping serves the consumers interest in obtaining cheaper goods, it should be allowed. Some even argue that an importing country should welcome the cheaper goods because they enhance overall welfare and release resources for more productive uses in the global economy.

Suggestions

1. There should be strict *'predatory standard'* in investigating of antidumping cases. Its needs the revision of the definition of the dumping and limiting the concept of antidumping to predatory pricing.

2. To introduce the *'public interest'* test the appropriate authority should consider whether the imposition of antidumping duty serves the public interest. Public interest here includes many factors such as the interests of domestic producers that are affected by dumped imports, importers of the products, domestic consumers.

3. *Provision to impose fine* The critics of anti dumping law have also pointed out the enormous legal costs involved in the proceedings which deter the exporters in many cases when the producers are small enterprises and have small markets. The domestic producers virtually do not face any penalty even if the case is rejected or it turned out to be frivolous. This encourages them to take multiple courses of actions [41].

Conclusion

Finger (1993) is of the view "anti dumping is a threat to the liberal trading system that post world war western leadership struggled courageously and effectively to create. It offers a legal means to destroy GATT system [42]. However, Holme supported the view that anti dumping measures should be used wherever necessary. He looked at it not only from the point of view of efficiency but also fairness [43]. According to this view point a domestic producer has a right to be protected against a foreign seller who may not be restricted by the competition rules in his home market which restricts the domestic producers. Homes (1997) justified the use of anti dumping measures under certain conditions, in the absence of other tools. He classified dumping into 5 categories [44]:

1. Monopolistic predatory pricing
2. Strategic behaviour falling short of monopolistic predatory pricing
3. Price discrimination aimed at market entry
4. Cyclical price cutting
5. Behaviour of state trading enterprises not based on commercial consideration[45]

Bhagwati justifies countervailing duties and AD actions as a remedy against price distortions, and attributes the growth of protectionist measures including AD actions to changes in the general economic conditions and the pressures on political economy [46].

Both concepts, antidumping and competition have been enacted to maintain healthy environment in trade. Both have task of protecting consumers' interest. But they should work hand in hand. There need to maintain sustainable balance between these two concepts, Otherwise there will be two consequences. One may over lap another or may act contrary to each other. If more stress given to Antidumping, it will lead to constraint of free trade, if more emphasis is given to competition that may lead to production of substandard goods and dumping also. Another important issue is antidumping may not directly affect consumer's rights which recognized under consumer rights but it will affect indirectly when more prominence is given to this than competition. The court opined that 'the era of protection is now coming to an end. The Indian industries are making profit, and then it will be the interest of the general body of the consumers in India to prevent the import of such goods'. The remedy is to take recourse to the provisions under

the CT Act and levy of anti-dumping duties [47]. It seems that the Court followed the well known maxim *of ut res magis valeat quam pareat [48]*."

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Corporate Social Responsibility (CSR): A Brand Building Initiative

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Abstract

Corporate social responsibility today is performance driver of a successful communication campaign of the corporate world. Organizations are using CSR activities to enhance their corporate image which in turn directly affects the customer perception of the organization. Organization are adopting measures that are internally fair and of benefit to the larger community. To signify responsible corporate behavior, codes of corporate ethics, corporate social & environmental reporting is established. Organizations with better reputations enjoy competitive edge over those with lower reputation. Now a day's concerns arise regarding the role of appropriate actors in disbursing the corporate social responsibility. A vital question today is "who should assume responsibility for workers and do nations shape the practice of CSR in a global economy? (Townsley and sthol, 2003)". Role of CSR as strategic partner to gain competitive edge is greatly emphasized. Recent research have identified non-market forces, social issues and CSR as key areas of business strategy; CSR is emerging as tool to increase corporate reputation. The diversity of issues included in CSR range from the environmental aspects of air, water and habitat pollution to employee & human right abuse in unfair labour practices and dangerous products sold to consumers. CSR activities can be divided into four categories namely legal, ethical, economic & discretionary. Corporate social responsibility is an attempt at "Conducting a responsible business, in achieving commercial success in ways that honour ethical values and respect people, communities and conserve the natural environment". The corporate social responsibility operate on the principle of social responsibility, responsiveness and outcomes.

Keywords: Corporate, Social, Responsibility, Brand, Legal, Management

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Introduction

Objectives of Study

To study the corporate social activities and their impact on society.

- To study the expectation of different stake holders.
- To study the relationship between the use of CSR activities as promotional measures.
- To identify CSR based promotional activities targeted to influence consumer psyche and perception regarding the organization.

- To decipher the reason behind corporate preference for some areas of CSR while neglecting the other areas.
- To analyze the CSR based Advertisements.
- To study the legal reforms relating to CSR & its impact on corporate activities.

CSR Defined

CSR does not have a single universal definition. It is linked to sustainability, stakeholders and ethics. CSR is regarded as "the commitment of business to contribute to sustainable economic development, working with employee, their families, the local community & society at large to improve their quality of life (World Business Council for Sustainable Development, 2000)" The European Commission (EC) defines CSR as "the responsibility of enterprises for their impact on society". They "should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operation and core strategy in close collaboration with their stake holder. " Keith Davis defined Social Responsibility as "businessman's decisions and actions taken for reasons at least partially beyond the firms direct economical or technical interests". The meaning of corporate social responsibility has been changing from the days of industrial revolution. Business can succeed only if t organizations maintain good relationship with all their stake holders employees management, share holders, consumer suppliers, creditors, competitors' and community. Employees and management are known as internal stake holders. According to Freeman and Reed stake holders may be:

- Any group of people who have a stake in the business.
- Those who are vital to the success & survival of the organization.
- Any group that is effected by the activities of the organization.

In the past Corporate responsibility has taken the form of codes of conduct written by public relation department, without serious involvement of employee or other stake holders and without any process for monitoring and verification of implementation. Too often it has been measured in term of charitable contributions, consultation with stake holders chosen by the corporation and corporations own definitions of "best practices" with regard to worker safety or environmental impact. Today corporations are considered to be social institution. They need to win social acceptance for their survival. They need to be socially responsible as they influence the society's life styles. They need to be socially conscious and consider the social and ethical implication of their decisions. The issue of corporate responsibility has come into focus through industrial revolution. As the world business environment is changing the requirement for success and competitiveness are also changing. As a result large corporations are emphasizing the maintenance of strategic relationship with different section of society. In the process the corporate social responsibility is gaining importance.

The CSR Initiatives

The CSR initiatives vary from company to company. Some of the initiatives are as follows:-

1. Rural Development
2. Health Care
3. Education
4. Vocational training
5. Community development
6. Environment
7. Woman empowerment
8. Road safety
9. Traffic related activities
10. Safety or training related.

Legal Aspect of Corporate Social Responsibility

Indian Companies Act 2013 has introduced several new provisions like CSR which will change the face of Indian corporate business. Ministry of corporate affairs has already notified section 135 and schedule VII of the companies Act as well as the provisions of the companies (Corporate Social Responsibility Policy) Rule 2014 (CSR Rules) which has came into effect from 1st April 2014. The CSR provisions within the Act is applicable to companies with an annual turn over of 1000 crore INR & more or a net worth of 500 crores INR & more or a net profit of five crore INR and more. The Act encourage companies to spend at least 2% of their average net profit of organization in the previous three years on CSR activities. They can also make the annual report of CSR activities in which they mention the average net profit for the three financial year & also prescribed CSR expenditure but if the company is unable to spend the minimum required expenditure the company has to give the reason

in the Board Report for non-compliance to avoid penal provisions. The qualifying company will be required to set up a CSR committee of the Board of Director consisting of three or more directors. It shall recommend to the Board, a policy which shall indicate the activities to be undertaken, expenditure to be incurred & monitor the CSR policy. The indicative activities which can be undertaken by a company under CSR have been specified under schedule VII of the Act. Under the companies Act preference should be given to local areas where the company operates. Company may also choose to associate with two or more companies for fulfilling the CSR activities provided that they are able to report individually. Further as per CSR Rules, the provisions of CSR are applicable to Indian as well as to branch and project offices of a foreign company in India.

Corporate Social Responsibility & Employees Expectation

A legal contract of employment governs the relationship between the organization & the employees. This relationship is considered to be important by society, because employees contribute their efforts towards the development of the organization, which in turn improves society .It is the responsibility of the organization to meet workers expectation of wage, benefits and security. Most Japanese Corporation provides security to their employee by offering life time employment. Some specific responsibilities of organizations towards their employees are:

- To provide adequate Compensation
- To provide working conditions that respect each employees health and dignity.
- To be honest in Communication with employees and open in sharing information.
- To listen to and where possible act on employees suggestions ideas, requests and complaints.
- To engage in negotiation when conflict arises.
- To avoid discriminatory practices and guarantee equal treatment and opportunity regardless of gender, age, race and religion.
- To protect employees from avoidable injury and illness in the workplace.
- To encourage and assist employees in developing skills and knowledge that are required to accomplishing the task.

Skills and knowledge of employee really count so treating employees badly will inevitably hurt the companies in long run.

Management's Role

The role of the management involves in balancing the multiple claims of different stake holders. According to stake holder theory an organization should not be given preferential treatment to any stake holder group over other. Therefore the task of management is to keep the relationship among the stake holders in balance. When these relationships become imbalance, the survival of the firm is in jeopardy. The World Business Council for Sustainable Development has rightly observed CSR as "the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce & their families as well as the community and society at large".

CSR Promotional Programs of Indian Corporate

This concept is popular among FMCG firms like Hidustan Uniliver Ltd, ITC Ltd, & the Procter and Gamble Co. (P & G). They advertised their products by declaring that a certain percentage of sales on select items will be used towards a social cause. ITC's Aashirwad brand of Wheat, Sunfeast biscuits and Classmate stationary have supported rainwater harvesting afforestration and rural education through cause marketing while HUL'S SurfExcel & Pond's cream promoted education through scholarship and fought for woman's empowerment through a collaboration with the United Nations Development Fund for woman (UNIFEM). The "happiness campaign" of Coca Cola has a positive message to convey of healthy relation and better living. Honda Siel Cars India Ltd's brand message "Nature rides with Honda" which is supported by a T.V. commercial that speaks of its safety features and fuel conservation.

Even fuel Companies like HP are advertising to save fuel by cutting the engine at traffic signals Hawells India Ltd uses the back of auto-rickshaws to spread its message "Save Energy, Save Earth". Tata Tea Ltd, believes that one of the best ways to connect with consumer is to address issues that matter to them. The company tied up with the Jaago India foundation for an online initiative targeting youth on social and environmental issues. The tie up with Jaago India Foundation is considered as a "Long term CSR initiative" by the Tata Tea. Tata

has also launched a campaign called "Jaago Re" which includes a 40 seconds television commercial and six smaller ones, along with in initiatives on print, radio and out door media.

Mc Donalds's campaign highlights the company's community involvement, environmental initiatives and its track record in "people development "Life buoy's "Swasthya Chetna" was a five year health and hygiene education program initiated by Hindustan Liver Limited (HLL). Aircel went for a high decibel multimedia Campaign–"Save our tigers" attempting to raise awareness about the low count of tigers in India.

Table 1: CSR Investments & Initiatives

S.No	Area	Product name	Activities
1	Health care	Life Bouy	Svastha ache hai Campaign
2	Education	Tata Tea	Jago India foundation to sensitize community
3	Community Development	Surf Excel, HLL,ITC,P&G	Daag ache hai Campaign % of sales to Social Cause
4	Environment	ITC, HUL, Aircel Pepsi Co, Mc Donalds	In collaboration with UNIFEM. Save our Tigers Campaign Drop of joy waste management. Environment initiative.
5	Woman Empowerment	ITC, Amul	E Choupal Economic inclusion
6	Traffic Related Activity	Honda CL Car Ltd, HP	Nature rights with Honda Fuel Conservation.

Finding

Organization have used CSR investments in branding themselves as responsible & responsive organization Corporate sector have focused on thematic areas like community development, environment and woman empowerment. The organizations are investing in initiatives that reflect their primary activity which can be used to promote their products. In fact companies like Coca Cola and Pepsi are seen investing in projects like Water Conservation and afforestration to replenish the water reserves for the depletion of which they are being criticized. CSR initiatives are used by Corporates to show their level of social sensitization. As the stake holders become vocal of their expectation good CSR practices can only bring in greater benefits. Community is an important stake holder. Companies have started realizing that the "license to operate is no longer given by government alone, but also communities, who allow to maintain the license". There are certain innovative CSR initiatives emerging where in companies have invested in enhancing community livelihood by incorporating them into their supply chain. CSR is also playing a vital role in enhancing corporate reputation. Several human resource management studies have linked a companies' ability to attract retain and motivate employee's with their CSR commitments. Intervention that encourage employees to participate are shown to increase employee moral & a sense of belonging to the company.

Conclusion

The roots of CSR lies in philanthropic activities (such as donation, relief work etc.) of corporations, globally the concept of CSR now encompasses all related concepts such as triple bottom line, corporate citizenship, strategic philanthropy shared value , corporate sustainability and business responsibility.

The concept of CSR rest on the ideology of give and take. Companies take resources, in the form of raw material, human resource etc from the society. By performing the task of CSR activities they are giving something back to the society. CSR needs to address the wellbeing of all stakeholders including share holders. The CSR approach is holistic & integrated with the core, business strategy for addressing social & environmental impact of business. The practice of CSR in India still remains within the philanthropic space but has moved from institutional building to community development with communities becoming more demanding, CSR is getting more strategic in nature than philanthropic. Companies are reporting the activities they are undertaking in their websites, annual reports, sustainability reports &even publishing CSR activities. The reporting requirement mandated by the government of India, including CSR is by the SEBI which issued a circular in 13 August 2012 mandating the top 100 listed companies to report their ESG initiatives. The Business Responsibility Report requires companies to report their performance on the nine National Voluntary Guidelines (NVG) principles. Other listed Companies have also been encouraged by Securities & Exchange Board of India (SEBI) to voluntarily disclose information on their Environmental social governance (ESG) performance in the Business Responsibility Report (BRR) format. The companies Act 2013 through it's

disclosed or explains mandate is promoting greater transparency. Community engagement should be incorporated into corporate decision making and management activities. However, it will be amusing to observe when CSR will go beyond communities & philanthropy in future.

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Original Article

Challenges of Cartels: A Business Perspective

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Abstract

Competitors are expected to compete with each others; competition creates efficiency, encourages innovation, improves quality, reduces costs and prices, gives choice to consumers at lower prices and so on and so forth. If competitors collude, it becomes cartel. Cartels are considered as the most harmful violation of competition law globally. Cartels may earn profits at monopoly levels; however, their losses to consumer, society, economy and business are enormous. This article discusses cartel, its harm on consumers, economy and business. It also highlights the quantum of penalties imposed in some of the major cartel cases in India. This article also suggests steps business should take to avoid being a party to cartels.

Keywords: Business; Cartel; Competition.

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People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.

– Adam Smith [1]

Introduction

Profit maximization versus wealth maximization is a common and crucial dilemma in the management discipline [2]. According to conventional economists, profit maximization is the only objective of organizations, whereas, the modern approach focuses on maximization of wealth rather than profit.

Whatever may be the objective, business uses various methods to attain its objective. In their pursuit to eliminate competitors, business either adopt fair means (producing high quality products, being cost efficient, developing efficient systems, adopting advanced technologies, etc.) or indulge in unfair mean (carrying out restrictive business practices–such as predatory pricing, exclusive dealing, tied selling, abuse of dominant position, etc.). In addition, business generally detest competition, as it drives away profits and takes away their freedom over market activities, like, output and pricing from their control. In any market therefore, competing businesses have an incentive to coordinate their output and pricing activities, to mimic like a monopoly, in order to increase their collective and individual profits [3]. Such practices artificially decrease or even eliminate the natural level of competition in the market [4].

Researchable Questions

1. Are collusion happens amongst competitors?
2. What are the benefits and harms of collusion amongst competitors to business?
3. What measures business should take to avoid being a party to cartel?

Review of Existing Literature

The researcher examined a number of books, journals, reports, cases, newspapers and website dealing with subject of competition law from various angles. By surveying the existing literature, it is clear that cartels are widely prevalent in India. However, limited research has been done in India. Some of the books or articles relate to the similar work, but these have covered different aspects than the topic of current study.

Objectives of the study

The current study helps to understand and learn the cartels, their benefits and harms, measures a business should take to avoid being a party to cartel.

Research Methodology

The study is multi-dimensional in approach, doctrinal method adopted, depending mainly on the primary sources like Statutes, Committee Reports, important cases decided on subject matter; and also on the secondary sources like books, journals and websites, etc.

What is Cartel?

Cartel is collusion amongst businesses at horizontal level aiming to maximise profits by mimicking like a monopoly. Cartel conduct includes practices pertaining to price fixing, limiting output, market sharing and bid rigging [5].

Cartel is one of the most complex business phenomena. Cartels conceive and work in secrecy. Cartels conduct may be through any arrangement, understanding or action in concert, irrespective whether the same is formal/written or not [6]. Even a nod or a wink is enough to create cartels. Cartels use different mechanism to survive, like regular monitoring, use of sanctions against cheaters, etc.

What Do Not Constitute Cartel?

There are exceptions to the rule, agreements by way of joint ventures, if increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services not covered under the contours of cartel [7]. Further, use of intellectual property rights and any collusion meant exclusively for exports also has exemption from the provisions relating to cartel under the Act [8].

However, acts taking place outside India, but having an effect on competition in India are under the purview of Cartel [9].

Types of Cartel

Cartels exist at both domestic or at international levels. An international cartel consists of a group of producers of a certain commodity located in various countries. The agreement can be at the level of Governments [10] or between private producers/service providers. A domestic cartel on the other hand involves an agreement among competing firms in a particular sector in the same country. Cartels are ubiquitous, i.e. Industry specific, Procurement (Private or Government), Sectors specific–like cement, auto, insurance, films & television, pharmaceutical, transport, banking and finance, etc.

Conditions Conducive to Formation of Cartels

High concentrated markets with few competitors, high entry barriers, homogeneous and fungible products, similar production costs, excess capacity, constant conditions of supply and demand, the existence of collusion is easy to conceal, the players compete with each other repeatedly, high dependence of the consumers on the product, history of collusion, active trade association, low levels of penalties have an effectively low deterrent effect and lax enforcement of competition laws are some of the conditions which are conducive to formation of cartels [11].

Requirement of Competition Law

Where competitors restrain competing, the question arises whether the situation is likely to correct itself. Does the invisible hand of competition will work? If not, then there is a reason to have additional tools to encourage effective competition or to prevent socially acceptable outcomes. There comes the need for competition law, which provides a set of tools to prevent market failure and preserve a market environment in which competition can flourish [12]. The objective of competition law is to protect the process of competition and maximization of consumer welfare [13] by forcing sellers/

producers to, offer consumers a great choice of high-quality products and services at low prices.

Benefits of Cartels

Cartels help business to reach monopoly level, earn supra-normal profits, and its income shoots upwards.

Harms of Cartels

Cartels are anti-thesis to the objectives pursued by competition authorities' world over. For the consumers, they results in higher prices, poor quality and reduce choices to the disadvantage of consumers as well as to curtail the incentive for innovation and quality. They create an unfavourable effect on the market and are against the ethos of free and fair competition [14]. For a business, cartels create x-inefficiency, penalties are hefty and painful, and goodwill loss is difficult to measure. Cartels create loss to public exchequer. Cartels create deadweight loss, thus, detrimental to the growth of economy. Further, the impact of cartels is not limited to the boundaries of a country; sometimes impact is on many countries [15]. According to Organisation for Economic Co-operation and Development "OECD" [16], the average overcharge in cartels is somewhere in the 20 to 30 percent range, with higher overcharges for international cartels than for domestic cartels.

Seriousness Against Cartels

"The competitor is our friend and the customer is our enemy" was the motto of world famous lysine cartel [17].

Cartels are regarded as the most pernicious violation of competition law [18]. Mario Monti [19] described the cartels as cancer on the open market economy [20]. The US Supreme Court in a case [21] stated that cartels are 'the supreme evil of antitrust'. As per OECD [22], cartels are the most egregious of all competition law violations and it places them high on its agenda. In other words, cartels are nothing short of thefts.

For these reasons, the competition authorities world over impose higher penalties on cartels than other competition law violation, even in some countries, the cartels are considered as criminal offence.

Cartels and Indian Competition Regime

In India, cartels are not a criminal offence; however, they are presumed to have appreciable adverse effect on competition and are *per se* illegal [23]. Competition Law and Market Watchdog-Competition Commission of India (hereinafter referred as "the Commission") considered cartels as one of the major contemporary challenges.[24] Cartels are the most egregious form of competition law violation and their deleterious effect on markets, competition and consumer interest are well established [25].

Cartel Cases and Penalty Thereon

According to Competition Act, 2002, the Commission may impose on each member of the cartel a penalty of up to 3 times of its profit for each year of the continuance of such cartel or 10% of its turnover for each year of continuance of such cartel, whichever is higher [26]. In case an enterprise is a 'company', its directors/officials who are guilty are also liable to be proceeded against [27].

As on date, the Commission has issued final orders/decisions in more than 900 cases; it has passed around 150 orders that have contained substantive discussions on cartelisation under Section 3 (3) of the Act [28]. If we just see the quantum of penalties in some of the cases relating to cartels in India, we would be able to understand the gravity of problem [29]. The Commission have imposed more than Rs.17000 crores monetary penalties in cartel cases, however, a very meager amount has been realised [30]. It may be due to the reason that most of the orders of the Commission were/are under appeal before the National Company Law Appellate Tribunal "NCLAT" (it is worth noting that earlier the Competition Appellate Tribunal "COMPAT" was dealing with appeals in competition cases), or under challenge before various High Courts or at the Supreme Court.

Cartel Detection

There has always been a problem with regard to detection and prosecution of cartels. The beliefs that as few as one in six or seven cartels are detected and prosecuted (in advanced jurisdictions) gives a rough indication of their high incidence. In comparison, detection has been much lower in the developing world. This, arguably, was not due to the fact, that cartels are less common in the

developing economies like India, but because the law enforcement agencies (competition authorities) have not been well equipped to tackle them, there is limited capacity of competition authorities to investigate and unearth evidence, difficulties in securing cooperation from the corresponding authorities in the advanced jurisdictions. The Commission uses various methods while detecting and prosecuting cartel conduct, i.e. leniency mechanism, dawn raids, screens [31], etc.

Leniency Mechanism

The Commission is empowered to grant leniency by levying lesser penalty on a member of the cartel who provides full, true and vital information regarding the cartel. The leniency scheme would be helpful in detecting and prosecuting cartels, if effectively and dynamically implemented. In advanced jurisdictions, leniency mechanism are very successful, however, India is exception. As of now, completing about 9 years of leniency mechanism in existence, Indian competition authority struggling to get whistle blowers, and has decided only 2 cases through leniency mechanism, the best method to detect cartels.

Suggestions to Business

Business should avoid any conduct, which may result into cartels. Some suggestions to business community are as under:

1. The business should not discuss, enter into any agreement or indulge in any joint activity with a competitor on any matter concerning the price or quantity of goods offered/supplied or the conditions on which they are offered.[32] The business should avoid arrangements in respect of:
   a. prices or quantities
   b. production/development
   c. marketing/distribution/supply
   d. sharing of market or customers,

   of goods or provision of services.
2. The business should also restrict itself to share the similar information with industry associations.
3. Before entering into any major business transaction with competitor(s), business should conduct due diligence exercise.
4. The business may develop a competition compliance programme to prevent violation of law.
5. It may also conduct training programmes on competition compliance for its officers.
6. The business may designate specially trained officers to keep an eye on competition law infringements.

Conclusion

The awareness of competition law and especially of cartel is very limited [33] despite having specific provisions on advocacy in the Act. However, ignorance of law is no excuse, and expected that the business should be well aware of the laws of the land.

The resultant losses of cartels are enormous than the benefits. Business must deter to enter into cartels, and work in line with ethos and comply with laws, to flourish itself, the economy, and the Nation.

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which –

a. directly or indirectly determines purchase or sale prices;

b. limits or controls production, supply, markets, technical development, investment or provision of services;

c. shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; or

d. directly or indirectly results in bid rigging or collusive bidding,

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Year	Section 26 (2)	Section 26 (6)	Section 27	Total
2009	0	0	0	0
2010	2	1	0	3
2011	13	10	4	27
2012	6	4	13	23
2013	5	3	8	16
2014	10	2	8	20
2015	10	4	13	27
2016	7	2	3	12
2017	4	1	9	14
2018*	1	1	3	5
Total	58	28	61	147

* Upto 30 April 2018.

29. Details of penalty (higher amount) in cartel cases imposed by the Commission are as under :

Sl. No.	Date of order	Case No.	Parties to the Case	Amount of Penalty (Rs. Lakh)
1.	19 April 2018	Suo-Moto 02/2016	Cartelisation in respect of zinc carbon dry cell batteries market in India Vs. Eveready Industries India Ltd & Ors.	21,381.00
2.	7 March 2018	30/2013	Express Industry Council of India Vs. Jet Airways (India) Ltd. & Others	5,436.00

3.	19 January 2017	Ref. Case No. 05/2013	Director, Supplies & Disposals, Haryana vs Shree Cement Limited & Ors	20,573.00
4.	18 January 2017	Suo moto 03/2014	In Re: Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items.	247.86
5.	31 August 2016	29/2010	Builders Association of India vs Cement Manufacturers' Association & Ors.	6,31,732.00
6.	31 August 2016	RTPE 52/2006	In Re: Alleged cartelisation by Cement Manufacturers vs Shree Cement Limited & Ors.	39,751.00
7.	17 November 2015	30/2013	Express Industry Council of India And Jet Airways (India) Ltd. & Others	25,791.00
8.	10 July 2015	Suo Moto 02/2014	In Re: Cartelization by public sector insurance companies in rigging the bids submitted in response to the tenders floated by the Government of Kerala for selecting insurance service provider for Rashtriya Swasthya Bima Yojana And. National Insurance Co. Ltd. and Others	67,105.00
9.	5 February 2014	Suo Moto 03/2012	In Re: Alleged cartelization in the matter of supply of spares to Diesel Loco Modernization Works, Indian Railways, Patiala, Punjab	6,231.00
10.	6 August 2013	01/2012	Director General (Supplies & Disposals) v. Puja Enterprises and others	625.43
11.	24 February 2012	Suo Moto 03/2011	In Re: LPG Cylinder manufacturers	1,658.60
12.	16 April 2012	06/2011	Information filed by Coal India Ltd. regarding Cartelization by Suppliers of Explosives	5,882.65
13.	23 April 2012	Suo Moto 2/2011	In Re: Aluminium Phosphide Tablets Manufacturers	31,791.00
14.	25 May 2011	01/2009	FICCI – Multiplex Association of India vs. United Producers/ Distributors Forum & Ors.	26.00

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Original Article

A Critical Insight into Corporate Social Responsibility in Companies Act, 2013

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Abstract

This paper provides a brief background of Corporate Social Responsibility (CSR), the concept and its evolution in India and in the world. The paper seeks to analyse in detail the CSR provisions new companies' bill and provide critical comments, identify key issues and provide solutions to it. The paper talks about the shift from Corporate Social Responsibility to Corporate Social Obligation. It talks about properly channelizing the huge funds expected to be generated by 2% mandatory CSR norm. It talks about taking an integrated approach by companies to pursue CSR by collaborating with other companies and NGOs and sharing their core-competencies. It has been suggested in the paper that companies can serve well researching and developing innovative solutions for our socio-economic problems by using their core-competencies. The paper also underlines that CSR also must involve environment friendly solutions and integrate social and ecological aspects in their CSR work. The paper also urges that CSR is as much about how companies earn their money as about how they spend it. There is no meaning of spending on CSR if, first of all, a company earns profit by illegal and dubious means. The paper has also analysed a long term possibility of rise of a flourishing CSR industry on lines of outsourcing industries like BPO, IT outsourcing etc. The paper has also analysed problems such as apparent rigidness of Section 135 according to which CSR policies should be framed only in accordance with Schedule VII. The Author has advocated a mix of flexibility and rigidness in this. Problem of enforceability has been discussed and solutions like penalty taxes been suggested. Other problems like continuing support to NGOs, taking voluntary part out of CSR, mitigation of impact of a business, stress on local areas etc. have been analysed.

Keywords: Corporate, Social, Responsibility, Companies, Problems, Opportunities

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Introduction

The Concept of Corporate Social Responsibility (hereinafter 'CSR') can be defined as a concept in which the businesses voluntarily incorporate the social, environmental values in their operation and interactions and are considered responsible not only for profit maximisation, but also for welfare of other stakeholders like consumers [1], employees and the regions where they operate. It is a method of giving something back to society that a business receives

from it. According to the World Bank, "Corporate social responsibility is the commitment of business to contribute to sustainable economic development by working with employees, their families, the local community and society at large to improve their lives in ways that are good for business and for development" [2].

There are mainly three approaches to view CSR. Firstly, some view the CSR policies as evidence of the philanthropy of businesses and entrepreneurs. Secondly, others see CSR as a holistic strategy to secure greater goodwill, market itself as a people-friendly business and thereby secure better competitive advantage over the long run. So by integrating business with certain social goals, the business legitimises itself as one which is selflessly contributing to society in a meaningful way and by this businesses can balance their profit-seeking behaviour with the concerns of other agents or stakeholders including workers, consumers, non-governmental organizations etc. Thirdly, some others scathingly attack the concept of CSR and accuse that it serves only as a 'smokescreen' for MNCs which have exploited the people and it deflects attention away from an unsavoury practices of such firms [3].

Some view CSR as "more a public relations gimmick, or representative of some cynical 'enlightened self-interest,' than a serious corporate concern with the ethical and political implications of capitalism." They point out that companies which had dubious records of running sweatshops or exploiting local inhabitants like Shell, Vedanta, Nike etc. have the glossiest CSR campaigns to create a false impression of how ethical they are [4]. On a similar vein, some have argued that CSR is a "predatory soft power form of extending corporate influence in late capitalism and it is a key element of the neo-corporate search for both legitimacy and new markets." There are also three views about the drivers behind the CSR policies. First view is that the societal value is changing and the consumers are not going to tolerate crass and ruthless profiteering anymore. The consumers also have the choice due to competition to do so. Furthermore as the awareness of issues like environmental degradation etc. is growing, the consumers are becoming increasingly unwilling to consume products which involve practices like child labour which are perceived unethical.

There have been examples like boycott of nestle when the powdered baby milk scandal broke out and it led to major changes in the firm's practices. Similar was the case with Nike and Gap when it was found out that they were using sweatshops. Second view is the changing values among employees are forcing the employers to consider change in CSR policies [5]. Presently, firms consider the problem of recruiting and motivating the emergent generation of employees who might otherwise find the world of business antithetical to their own values and hence leave jobs. The third driver is that CSR is driven by a concern with corporate reputation and legitimacy and serves as pre-emptive or reactionary public relations exercise.

The author argues that CSR is both a strategy of an enterprise to project itself as ethical and hence create greater goodwill and also in some cases a smokescreen over their wrongs. Author will adopt this approach while analysing it in context of the new Companies bill.

Emergence and Evolution of the Concept of CSR

The phrase Corporate Social Responsibility was coined in 1953 with the publication of Bowen's "Social Responsibility of Businessmen" which explored the question of how much responsibilities for betterment of societies be assumed by the business men. The idea was slowly explored further in 1960s and 1970s when it was suggested that companies go beyond the mandates of law in fulfilling its societal responsibilities. Management experts increasingly started viewing social problem as potential opportunities for firms and viewed CSR as path to long term sustainability and success. However as the anti-corporate activism, North-South divide, dependency theories, environment concerns started growing, emphasis on CSR as a source and tool of corporate legitimacy, reputation management, risk management, employee satisfaction, better investor relations, competitiveness, operational efficiency by reducing waste, reducing mistrust, long term profits and sustainability etc. also started growing [6].

The first company to actually publish a CSR report was Ben and Jerry's in 1989. Also the protest against crass profit making of companies showing itself in earth summits, WTO rounds etc. CSR began to be considered more seriously. This was exemplified in the controversies about Bhopal Gas Tragedy, Shell's alleged complicity in executions of human rights activists like Ken Saro Wiwa, Nike sweatshop scandal, several major oil spills. Now companies could indulge in ruthless profiteering only at their peril. In 1998 Shell became one of the first major firms to publish CSR reports and spent

millions on CSR and publicity to shake off scandals [7]. So it can be seen that CSR was considered more as a direct response to increasing anti-corporate voices like Greenpeace, Human Rights and other such activism to resurrect their public image and reputation. During this period consultancy firms such as Sustainability, Business for Social Responsibility came up. They promised a positive image of companies by CSR activities and broader engagement with NGOs etc. Practices of CSR also evolved to include more comprehensive dialogues and engagement with stakeholders. Dedicated CSR research centres also came up [8]. UN also came up with Global Compact- a framework for businesses to work while adhering to its ten principles which include human rights, environment, labour rights, and anti-corruption etc. Although they have been criticised for lack of enforcement mechanism, they have shown a global commitment. In 2002, calls of corporate accountability were made in the World Summit on Sustainable Development (WSSD) instead of self-regulatory CSR. Although this did not bear fruit, it showed at some level dissatisfaction with CSR model which is seen as largely subservient to corporate interest. However, despite this CSR is going strong and most of world is increasingly accepting CSR which is evident from the fact that in 1977 less than half of the Fortune 500 firms even mentioned CSR in their annual reports, by the end of 1990, it rose to 90% [9].

CSR in India: Pre New Company Bill

The philanthropic activities of businessmen in India date back to colonial rule. In late 19th century the entrepreneurs like Tata, G.D. Birla etc. had strong social leanings and later in 20th century, under the influence of nationalist movement, started spending on social activities like public education, public health, labour welfare etc. In this time it was not called CSR but a kind of philanthropic gesture by industrialists. During this time Gandhiji's talked about the concept of trusteeship and the business being a trust working for benefit of society. Post-independence a great amount of importance was given on the public sector which was seen the driver of growth. Although the public sector enterprises addressed the labour concerns etc. still the concept of CSR never really took off [10]. CSR really started in India in globalisation era in 1990s. The concerns about social and environmental impact of the new MNCs started being felt and the discourse on CSR developed. Now both public and private sector companies have started spending on CSR in a bid to project themselves as responsible corporate firms. Some of the highest CSR spending companies are Public sector enterprises like ONGC, GAIL, HPCL, Coal India and private stalwarts like Tata, Reliance, Airtel, L & T, and TCS etc. However it is to be noticed that very few companies currently spend the 2% of net profit which is being envisaged in the new Companies' Bill.

CSR in the New Companies Bill: Possibilities and Problems

The new Companies bill 2013 seeks to make CSR compulsory for a certain set of companies. According to Section 135 of the Bill which has been passed by Lok Sabha every company

i. Having net worth of rupees five hundred core or more, or turnover of rupees one thousand core; or.
ii. More or a net profit of rupees five core or more during any financial year; Is required to constitute a CSR committee from its Board which must consist of three directors including one independent director [11].

The committee is supposed to frame the CSR policy of the company and monitor and disclose its CSR activities mandated in Schedule VII. Under Section 135 (5) the company is mandated to spend at least two percent of its average net profits over last three years, failing which it has to give an explanation in its report. The section also asks the company to give primacy to local areas where it operates [12]. In light of this mandatory instruction to spend CSR for the companies, the term "Corporate Social Responsibility" seems a misnomer. The term 'responsibility' evokes an image of a moral norm self-enforced, which is desirable but not binding. In view of this binding legal mandate it would be better to call it Corporate Social Obligation (enforced by law). It is now essentially like a 2% tax, which the companies have to spend according to its own policy for CSR instead of paying to the government. With this law, India is all set to become the first country in the world to oblige companies to spend on CSR.

Opportunities

This 2% CSR norm is expected to bring in huge funds from the companies for spending in CSR. At least 1, 20,000 core is expected to flow in from India's top 1000 corporations, MNCs, SMEs etc. This translates into 18 core for each of India's 660

districts. This huge amount of funds, if properly channelized, can go a long way in poverty alleviation and social welfare. The Act itself in Schedule VII lays down nine activities according to which companies will formulate their CSR policy [13]. These include combating extreme hunger and poverty, diseases, promotion of education, gender equality, child and maternal health, environmental sustainability, employment skill training etc. and any other matters as may be prescribed. This however raises a question that, are the companies totally barred from other CSR activities? What about the corporate support for issues not covered in Schedule VII? If a company spends on issues not covered like supporting other NGOs, old age homes, investment in CSR infrastructure etc. will it not count in CSR? A plain reading of Section 135 (3) (a) suggests that CSR spending is bound to be within limits of schedule VII.

If that is the case then, there is little left to the discretion of the companies how to frame their CSR policies. Also if in future some other social issue emerges and the issues enumerated in Schedule VII like education cease to be major concerns, then the entire CSR exercise will become meaningless [14]. However it is also true that if complete discretion is given to companies to frame their CSR policies then some companies will come up with cleverly engineered accounts and will define their CSR policy in such a way that it will benefit their company and the societal element will be missing. For example- a sports company may decide to promote its sport as its 'CSR' activity may defeat the purpose of CSR altogether. So although, complete discretion is undesirable, certain flexibility should be given. A solution could be that a company may be required to take permission from local authorities stating their case before spending on CSR on an issue which is not enumerated in Schedule VII.

There are some other measures needed to ensure that 2% spending on CSR actually translates to real impact [15]. One of them is promotion of innovative solutions, related to their core competency as part of CSR. The private companies are usually exceedingly good in innovation. Their strength in innovation can be used for social solutions. As a part CSR companies can be encouraged to research and develop innovative solutions for our socio-economic problems. For example- Indian Pharmaceutical Companies have core competency in producing cost-effective medicines. As a part of CSR they may be asked to fund the free medicines distribution schemes in hospitals or help insuring poor rural people or fund research institutes for cancer, AIDS and other terminal diseases. As part of innovation, they can do R&D on new solutions which are not otherwise commercially viable to produce.

Similarly other companies which have good profile in research and innovation can research to create socially useful inventions and supply them at subsidised prices as a part of CSR. They can do research to develop environment friendly products and contribute to sustainability and reducing carbon footprint of India [16]. It companies can help in skill building and providing IT infrastructure remote parts of the country. Real Estate Companies can partner with government to build low-cost houses for economically backward people either under schemes like Indira Awas or otherwise. So CSR will be particularly successful if companies use their core competency to innovate and produce solutions in a long term plan rather than doing random and aimless acts of philanthropy. Therefore apart for what they spend, how they spend CSR is also important. The companies can frame their CSR policies according to the Corporate Social Responsibility Voluntary Guidelines 2009 according to which CSR policy should cover elements like care for all stakeholders, ethical functioning, respect for workers' rights, human rights and environment.

Another Issue is CSR also must involve eco-friendly solutions. Most people tend to view CSR as only social and some corporate version of welfarism. However it must be realised that CSR is as much about environmental sustainability as it is about social welfare. The problems like malnutrition, healthcare, poverty, water scarcity etc. [17] are also closely interrelated with ecological problems as has been recognised by World Summit on Sustainable Development. Therefore the companies need to integrate social and ecological aspects in their CSR work. Also rather than working individually on their respective CSR budgets, certain like-minded corporations can collaborate on CSR front. This certainly makes sense if we are interested to make a large scale impact in a certain area. Such collaborations and partnerships will mean higher funds, greater expertise, and benefits of scale. Currently the Schedule VII of the bill does not include assistance given to NGOs for their activities. There is ambiguity about whether assistance given to them will amount to CSR which needs to be removed and support to NGOs should be allowed.

Otherwise all the NGOs which are now being supported by corporates for their charitable

activities may suddenly find themselves short of corporate sponsors and become cash strapped. Also there will be better impact of a CSR project when done in such integrated and holistic way rather than bits and pieces assistance to poor [18]. Also the government needs to ensure that CSR is as much about how companies earn their money as about how they spend it. There is no meaning of spending on CSR if, first of all, a company earns profit by illegal and dubious means. In the Bill there is currently no definition of CSR but it appears that CSR is being linked to spending only. This should be remedied and it should be made clear that unless the profit is made legally, the spending on CSR will not be taken into account or accepted as CSR. India does not need an Enron Scandal to remind that companies that are built on dubious base and earn profit illegally, try to whitewash over their wrongs by spending large on CSR. There is also a prospect, even though it may seem far-fetched, that at some point of time there may be a flourishing CSR industry.

CSR process outsourcing industries may come up on the lines of BPO industry. Just as companies are outsourcing their legal, IT needs etc. they may outsource the CSR work to some other companies which have made CSR activities their core-competency [19]. These companies may make their business to do CSR activities (like NGOs) along the lines of respective companies' policy and the companies will be left alone to focus on their core-competency. They might employ their skill to economise cost and earn some profit from this work.

Problems

"CSR must not be defined by tax planning strategies alone. Rather, it should be defined within the framework of a corporate philosophy which factors the needs of the community in which it functions."-said Prime Minister Manmohan Singh in 2007. However it is difficult to see that kind of corporate benevolence in India [20]. Till now most of the CSR has been driven with considerations of long-term gain, creating goodwill, or creating smokescreen over their excesses. There have been few illustrious exceptions of course, it they do not really create the universal corporate philosophy of factoring community needs which Dr. Singh was hinting at. Although he stated that CSR defined by tax planning will achieve little good, his government has done almost that.

By making CSR mandatory it has taken the voluntary element out of it and has turned into a corporate social obligation. This has effectively nipped the creation of a CSR friendly 'corporate philosophy' in the bud by forcing the philosophy down companies' throat. However by mandating 2% government has been able to create uniformity. No longer can a particular company boast about spending on CSR as all will be mandated to do so. Earlier companies sometimes used CSR as smokescreen for their wrong. They were showing how ethical they were by spending (even if little) on CSR. But now if companies want extra praise they will have to spent more than 2% or create a larger impact within the limited spending. But now they can no longer show moral high ground by puny CSR spending.

Again there is the quintessential problem of enforcement [21]. The only measure of enforcement the act has provided is that a company has to give an explanation if it fails to spend 2%. But now he question is to who the company will give explanation? And who will decide if the explanation is adequate- Union Government, State Governments, Parliament or Shareholders? What can the government do to enforce CSR norms of the explanation is considered inadequate? The Bill does not provide answers to this. However answers to these questions are essential as if, the law however well-meaning and attractive it may be, is not effectively enforced has no meaning. Government has to come up with some strong enforcement measure if it is serious about CSR. Some of them may be penalty taxes, or some other similar measures.

Another problem is firms may employ 'creative accounting' and accounting reclassification methods to show that they have spent entire 2% without actually doing so. Such loopholes which may arise in future will have to be closed. Mr. Pawan Sukhdev has come out with an important difference between what he calls the old CSR (Corporate Social Responsibility) and the new CSR (Corporate Sustainability Response) paradigms. He argues quite correctly that the companies have different impacts in society. A mining company have huge environmental impact in a region. However instead of trying to minimise its environmental impacts it may try to gloss over by spending on high publicity programs. For example- If coal corporations instead of trying to reduce pollution and serious environmental damage caused due to their activities and instead spend CSR money on building schools, question arises is it desirable? Surely building school is good but it would serve society better if it reduced its own carbon footprint.

These issues need to be tackled by the government before the bill is enacted into law. Also the stress in the act on areas in vicinity of business for CSR might mean the areas which have higher concentration of companies will benefit more, creating inequity.

Conclusion

From the above discussion on evolution of CSR and its status under the new company bill, it can be concluded that the mandatory CSR opens a new vista of possibilities. If the funds raised by 2% CSR are harnessed properly and equate to impact on ground, it can lead to a lot of development and sustainable growth. However the above challenges and ambiguities need to be overcome.

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Original Article

International Commercial Arbitration: Judicial Perspective

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Abstract

The law put into force of the Arbitration and Conciliation Act, 1996 was put forward to mark a moving away from the old and wise close overseeing of the courts and to make stronger the sense of right of a group of person's self-rule. however, the Judiciary plays an important part in support of the Arbitration process, where there is an opening, nothing in between or an unsuccessful person in the Arbitration apparatus, where there is a need to make for a time only arrangements waiting a Award, to put into operation the Award. in addition, it is necessary to (be conscious) have seen before the most important part that courts play in supporting the true, good nature of trading, business like Arbitration process.

By and greatly sized, parties to between nations bits of business select to make decisions as authority in the end disputes not because Arbitration is simpler than Litigation, not because it is cheaper, not because persons making decisions as authority may have greater on the point expert knowledge than person Judges, although any one of those factors may be of interest; they make decisions as authority simply because neither will have pain of its rights and obligations to be strong of purpose by the courts of the other party's one's nation. Increasing between nation's trade and an outer covering is acted together with by growth in cross-limits trading, business like Disputes. Given the need for a good at producing an effect of Dispute error apparatus, between nations Arbitration has came out of as the supported thing for which selection is made for getting an answer to cross-limits trading, business like disputes and keeping safe business relations.

With a things coming in of over-seas trading, business like bits of business and open ended of money and goods policies act as a catalyst, between nations trading, business like disputes getting mixed in trouble India are with a level head going higher. This has led to very great chief place from the between nations town in Indias between nations Arbitration system of things. being in debt to certain open to argument decisions by the Indian Judiciary in the near in time past, especially if getting mixed in trouble an out-of-country group of persons, the between nations group has kept a close watch on the development of Arbitration laws in India and has often made an opinion the Indian Judiciary for its (thing) in the way in between nations Arbitration and in addition territorial application of kept by man laws to awards got outside India. But this point of view of the Indian Judiciary in the direction of Arbitration is now rapidly changing since the past grouped in 2 of years.

Not ever before has one see, N so many pro-arbitration ruling by Indian Courts. From 2012 to 2014 the Supreme Court of India declared the Indian Arbitration law to be seat centric, taken away Indian Judiciarys power to come between with Arbitrations seated outside India, and said is untrue solid limit of (thing) in the way in India seated Arbitrations,

declared false behaviour to be arbitrable in India, said something about non-parties to a Arbitration agreement to come to live disputes through Arbitration, formed the range of observation of public agreement in out-of-country seated Arbitration, gave respect to the importance and self direction and not taking sides of even government having all necessary things persons making decisions as authority, and has thus made clear the much needed.

Keywords: Arbitration and Conciliation; Between Nations; Judiciary.

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Introduction

History of the Arbitration in India

Until the act, the law ruling Arbitration in India formed mainly of three Statutes:

i. The Arbitration (approved design and Convention) Act, 1937
ii. The Indian Arbitration Act, 1940 and
iii. The Foreign Awards (being seen and Enforcement) Act, 1961

The 1940 Act was the general law ruling Arbitration in India and it was like the English Arbitration Act of 1934. The Arbitration Act, 1940, dealt with only kept by man Arbitration and during its tenure coming between groups of the Court was needed in all the three stages of Arbitrations in India, i.e. before to the statement, direction of the [1] Dispute to the arbitral Tribunal, in the time of the proceedings before the arbitral Tribunal, and after the Award was passed by the arbitral Tribunal. Before an arbitral Tribunal took word that one is going of a Dispute, Court coming between groups was needed to group the Arbitration proceedings in motion.

The existence of an agreement and of a Dispute was needed to be got knowledge of. During the direction of the business done at meeting, the coming between groups of the Court was necessary for the addition made of time for making an Award. At last, before the Award could be put into force (operation), it was needed to be made the rule of the Court. While the 1940 Act was sensed to be a good part of (making) laws, however, in its true, in fact operation and putting into effect by all had a part in including the groups of persons, persons making decisions as authority [2], lawyers and the Courts, it proved to be having little effect and was widely felt to have become old. This Act was largely based on have little belief in of the arbitral process and given number times another chances to person fighting through the law to way in the Court for coming between groups. Grouped in 2 with a slow judicial system, this led to loss (waste) of time making Arbitrations inefficient and unpleasing.

Arbitration and Conciliation Act, 1996

To house these has a part in and with a first purpose to support Arbitration as a good-price and time-efficient apparatus for The Settlement of trading, business like disputes in the person and between nations range, India in 1996, took up a new (making) laws designed to be copied on the good example Law in the form of the Act. The Act was also brought in to give a quick and effective Dispute error apparatus to the currently in existence Judicial system, damage the looks, got in the way of with larger than needed loss (waste) of time and great wood at back of fire of examples.

International Commercial Arbitration

Section 2(1) (F) of the Act makes certain, clear a International trading, business like Arbitration (ICA) to middle, half way between one getting up from a lawful relation which must be taken into account trading, business like where either of the parties is an out-of-country person or political representative in a country or is an out-of-country body united, as a body or is a company, organization or body of individuals whose in the middle of business managers or control is in

out-of-country hands. in this way [3], under the indian Law, a Arbitration with a seat in India but getting mixed in trouble an out-of-country group of persons, will also be looked upon as a ICA and for this reason person to Part I of the Act. Where a ICA is said nothing outside India, Part I of the Act would have no use to the parties but the parties would be thing talked of to Part Ii of the Act. The range of observation of this part was strong of purpose by the Supreme Court in the Case of TDM roads and systems Pvt. Ltd. Vs. UE Development India Pvt. Ltd.

Where despite TDM roads and systems Pvt. Ltd. had an out-of-country control, the Sc concluded that, a company made into one in India can only have Indian ones's nation for the purpose of the Act. Thus though the act takes consciously companies controlled by out-of-country hands as an out-of-country body united, as a body the Supreme [4] Court has kept out (away from) its application to companies recorded, listed in India and which thus have Indian ones's nation. For this reason if a business company has 2-way ones's nation, one based on out-of-country control and other based on the number on a list in India, for the purpose of the Act such business company would not be looked upon as an out-of-country business company.

Public Agreement in India

The narrow building of the public agreement one point in a statement with in connection with to out-of-country Award was the first control given to another of the Supreme Court in renusagar The Supreme Court had clearly, with detail stated that the words public agreement with in connection with to an out-of-country Award does not cover the field covered by the words laws of India. in this way, though there was a wide sense given of the word public agreement vis-a-vis kept by man Awards [5], there was still a very narrow building of the word public agreement when it had a part in out-of-country awards in India.

But as explained over, the Supreme Court opened the possible state of question to an out-of-country Award in India as if it was a kept by man Award, through Bhatia International and take a chance complete, under Section 34 of the Act, making it hard to keep from made longer Litigation while putting into force (operation) out-of-country awards in India. coming after, to make matters more bad, the Supreme Court in its Judgment old October 12, 2011 in the material or substance of Phulchand [6] sends to other countries Ltd. Vs. OOO lover of his country took place that patent being against the law under the word public agreement of India, as put down in saw pipes, needed to be looked at while putting questions to the Enforcement of an out-of-country Award under Section 48 (2) (b) of Act. By putting questions to the having good (reason, argument) of an out-of-country Award under the laws of India, the Supreme Court has struck a weighty blow on the narrow building that renusagar had looked for to give birth.

However in September 2012 through its decision in BALCO and coming after through its decision in Lal Mahal the Supreme Court has been able to get the sanctity of an out-of-country Award and take away obstacles to its Enforcement in India. In Lal Mahal, the Supreme Court while trading with Objections [7] to enforceability of certain out-of-country awards on the grounds that such awards are opposite to the public agreement of India and while over-ruling Phulchand, has importantly curtailed the range of observation of the words 'public agreement' as discovered under Section 48 (2) (b) of the Act, thereby limiting the range of observation of questioning to Enforcement of awards passed in strange seated Arbitrations. However, in Western Geco, by widely making [8] clear the stretch of time deep general road-map of India which is took as having authority as a part of public agreement both under renusagar and saw pipes, the Supreme Court seems to have taken a regressive step. Though Western Geco was gave birth to under Section 34 of the Act, its discoverings may in the future force of meeting blow the sense given of the word public agreement even with in connection with to Arbitrations seated outside India.

The 246th Commission Report

Law Commission frees, lets go offered Amendments to the Arbitration& Conciliation Act, 1996; great-scale Amendments are designed [9] to make connection Major openings, nothing in between taken to be over time and if instrumented, will work to give (knowledge) self-belief in Indian Arbitration and being seen and push up to organization Arbitration in India.

International Advertisement Arbitration-Judicial View

Earth physical act for amusement group (Mauritius) Ltd. VV MSM one dependent on

(Singapore) Pvt. Ltd.

The Supreme Court held that only bar to have relation parties to strange seated Arbitrations are those which are given details of in [10] Section 45 of the Act i.e if where the Arbitration agreement is either (i) nothing and nothing or (ii) inoperative or (iii) unable of being done and specially taken away Allegations of agent seeming to be what it is not as a bar to have relation parties to strange seated Arbitrations.

Reliance Industries Ltd & Ors. v. Union of India

The Supreme Court in this Case, took place that it is important to make certain that doubts are not actors on balance, with an open mind and self direction of the Arbitral Tribunal. It re-affirmed that under Section 11 (9) of the Act it is not ordered for the Court to fix a person making decisions as authority not being[11] the property of to the ones's nation of either of the parties to the Dispute. After getting support from on noted learners it kept that training and so on making able to do something, experience and true, good nature should be the criteria for position given of a person making decisions as authority.

From Switzerland timing limited V. joining in a cause Committee, nation with representative government Games 2010, Delhi.

The Supreme Court has kept that Allegations of agent seeming to be what it is not and other wrongly-operatings are arbitrable in India N. radhakrishnan does not untrained down the right law. view put forward in competition of name [12] of thing get being nothing/able to be turned into nothing is not a bar to Arbitration and the Court must move after the agreement of least (thing) in the way. The Court further kept that Arbitration and Criminal proceedings may go on at the same time.

Union of India v. U.P. State Bridge Corp Ltd.

The Supreme Court gave credit to that it is a common view that government officers are having all necessary things as persons making decisions as authority, because of their position and position; discharge of their other duties takes on more importance and their part as persons making decisions as authority take a back seat - this kind of behavior viewing a by chance way in Arbitration is anathema to the very genesis of Arbitration [13]. The Court given direction that where the government takes to be true the authority and power to fix the arbitral Tribunal, it should be careful and responsible in selecting persons making decisions as authority who are in a position to guide arbitral proceedings in a good at producing an effect of way. The Court further kept that the sense of right of Default will send in name for and courts are not power-less to way of putting things right situations getting up from doing nothing of arbitral Tribunals to keep safe (out of danger) the interest of all groups of persons.

Get Together Builders v. Delhi Development Authority

In this Case the Supreme Court makes clear the narrow range of observation of 'public general road-map' for question of indian Award. Supreme Court on condition that help on the stretch of time public agreement under Section 34 of the Act and makes clear the amount of Judicial coming between groups in a India seated Arbitration [14]. The Court had a discussion about the stretch of time belief in right behavior in a question under Section 34 of the Act and pulls up an of note between error of law and error of fact and the size, range, degree of (thing) in the way let by authority to that effect. The Court further kept that when a Court is sending in name for the public agreement test to a Arbitration Award, it does not act as a Court of appeal and consequently errors of fact can not be put right unless the persons making decisions as authority way in is not based on rules or uncertain.

The Board of Trustees of the Port of Kolkata v. Louis Dreyfus Armatures SAS& Ors.

In this Case the Calcutta High Court refused to injunct an outer covering Arbitration against India. The Calcutta High Court held that if there is a having force in law Arbitration agreement between the groups of persons; there is no Escape from Arbitration. if not the facts and circumstances put examples on view of that out-of-country Arbitration would cause an able to be put in view unjust events, Civil courts in India would not make use of its Jurisdiction to keep in place out-of-country Arbitration. An anti-arbitration Injunction can be given only if (a) the Court is of the view that no agreement has existence between the groups of persons; or (b) the Arbitration agreement is nothing and nothing, inoperative or unable of being done; or (C) the another part of out-of-country Arbitration going on might be cruel or vexatious or unconscionable. The Court held that whether a put forward as a fact falls within the parameters of a with 2 sides Investment Treaty would only be

decided by an arbitral Tribunal, rightly made up.

Bharat Aluminium Co. v. Kaiser Aluminium Special to some Science or Trade arm, Inc.

The Supreme Court in this Case, taken away (thing) in the way of indian Courts in strange seated Arbitrations. The of general laws of government judges of the Supreme Court after good point to be taken into account of the expert use of law put down by different indian & out-of-country Judgments and writings of noted Authors, ruled that its discoverings in Bhatia International and take a chance complete were wrong. It concluded that Part I of the Act has no application to Arbitrations seated outside India, not taking into account of the fact that whether parties chose to send in name for the Act or not, thereby getting indian law in line with the well (made) certain, fixed sense of right had seen before through relations between nations that "the seat of Arbitration is put forward to be its inside middle of weight". Although the Court has over-ruled many of its earlier decisions, it provides no comfort to parties who have did, gave effect to their Arbitration agreements before to the day of the present Judgment, as the Court given direction that the over-ruling was merely forward look and the laws put down there in applied only to Arbitration agreements made after September 6, 2012.

Chloro Controls (I) P. Ltd. v. Severn Trent Water Clean-Making Inc.& Ors.

In yet another landmark ruling, the Supreme Court has kept that the words person putting forward as a fact through or under' as on condition that under Section 45 of the Act would middle, half way between and take within its ambit number times another and multi-party agreements and for this reason even non-signatory parties to some of the agreements can make religion-like request for and be said something about to Arbitration. This ruling has stretched wide follow-ups for strange investors and parties as in certain not covered by general rule cases getting mixed in trouble made of different part or materials bits of business and made a cross-connection Agreements, even non-parties such as the parent company, subsidiary, group companies or directors can be said something about to and made parties to ICA.

Shri Lal Mahal Ltd. v. Progetto Grano Spa

The Supreme Court made Enforcement of strange awards more comfortable by taking away 'patent being against the law' from the range of observation of public agreement. The evergrowing Judicial support to ICA and the seminal change in Judicial mind structure is now more than made certain from a landmark ruling of the Supreme Court, wherein the Court has in fact over-ruled its own decision passed in Phulchand. The Supreme Court while trading with Objections to enforceability of certain out-of-country awards on the grounds that such awards are opposite to the public agreement of India, has importantly curtailed the range of observation of the words 'public agreement' as discovered under Section 48 (2) (b) of the Act and thereby limiting the range of observation of questioning to Enforcement of awards passed in strange seated Arbitrations. as an outcome of that, Enforcement of strange awards would not be refused so readily. in this way, an useful take away from the above would be to give being given a higher position to an out-of-country seated Arbitration as apparatus for Dispute error as this would have enough a quick way of putting things right without important Court (thing) in the way.

Mulheim Pipe Coatings Gmbh v. Welspun Fintrade Ltd and Anr.

In this Case the Bombay High Court reaffirmed and explained separability of a Arbitration one point in a statement. The Bombay High Court put clearly the principles of the body of teaching of severability and took place that a Arbitration one point in a statement in a statement of part-owner get to own agreement could live on Annulment of the statement of part-owner get to own agreement by the groups of persons. The Court held that for the Arbitration agreement to be nothing and nothing, inoperative or unable of doing a play, the body of teaching of separability has need of a straight to questioning, charging of the Arbitration agreement and not a simple parasitical questioning, charging based on a question to the being well based or enforceability of the main agreement. By sending in name for this sense of right, it upheld the having good (reason, argument) of Arbitration agreement within a statement of part-owner get to own agreement which was declared nothing and nothing by a Settlement agreement entered into by the groups of persons.

Konkola Copper Mines (Plc) v. Stewarts And Lloyds of India Ltd.

The Bombay High Court on condition that help to a certain degree and indicated that the take on wording to different statements in law of the

Statute as on condition that in BALCO would not be limited to a forward look application. As per the Judgment, the question looking upon whether Part I would send in name for to a Arbitration where the Arbitration agreement was entered into before to September 6, 2012 would be decided in agreement with the sense of right put down in the Bhatia International Case. However having once decided that Part I puts to use, the question in connection with which Court would have Jurisdiction to give amusement to applications under Section 9 or Section 34 of the Act and so on. Would be decided in agreement with the principles on condition that in the BALCO Judgment. The Court explained that while the relation of the BALCO Judgment i.e Part I of the Act would send in name for only to Arbitrations seated in India, would do medical operation with a forward look effect, the sense given of Section 2 (1) (e) of the Act as on condition that by the Supreme Court would not be limited to a forward look application.

Tata money get money for Services limited v. M/s Deccan History Properties Limited.

The near in time Judgment of the Bombay High Court in Tata money get money for Services limited V. m/s deccan history properties limited gains important importance in light of the near in time push on in giving for a time Disputes. The Bombay High Court while trading with a Petition looking for time between rests in help of Arbitration under Section 9 of the Act has kept that even though certain Debts may be got by a Mortgage, the one giving for a time may select to take only a put forward as a fact for get loss back in law of the amounts because of, in relation and not go to law for Enforcement of Mortgage. as in agreement, as money claims getting up under contracts are arbitrable Disputes, Courts are given power to Grant time between rests under Section 9 of the Act.

Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd.

This specimen is yet flipside example of the pro-arbitration tideway unexplored by the Supreme Court, where the Courts, to the extent possible, deter from interfering in the mediation process or with the Arbitrators' judgment. The Supreme Court has relied upon a fairly simple proposition that once an mediation try-on has been invoked on a particular dispute and an Arbitrator has been appointed, the other party to the dispute cannot then independently invoke the provisions of the mediation agreement. The issue revolved virtually a petition filed under Section 11 of the Act, wherein the Supreme Court relying on the whilom proposition held that once the power to sublease an Arbitrator has been exercised, no powers are left to refer the same dispute then to mediation under Section 11 of the Act.

Bharat Oman Refineries Ltd. v. M/s. Mantech Consultants

The Bombay High Court held Mediation ribbon delivered without efflux of prescribed time to be bad in law thereby ensuring timely verdict of mediation proceedings. The Division Bench of the Bombay High Court held that the ribbon passed by the Arbitrator without an efflux of period prescribed in the try-on is bad in law and upheld the principle laid lanugo in NBCC Limited V. J.G. Engineering Private Limited that the contract of mediation is an self-sustaining contract and parties to such contract including the Arbitrator, are unseat by the terms of such contract. The present case, proceeds on the principle that if the mediation try-on prescribes a period within which the ribbon is to be passed, any ribbon passed vastitude such period would be bad in law unless the parties have mutually well-set to proffer this period.

Denel Proprietary Ltd. v. Govt. of India, Ministry of Defence

This specimen lays lanugo two well-spoken principles with regard to visit of Arbitrator under Section 11 (6) of the Act. First, failure to sublease an Arbitrator within 30 days as prescribed under Sections 11 (4) and (5) of the Act does not value to forfeiture of rights unless the opposite party has filed its petition under Section 11 (6) prior to the said appointment. Secondly, though it is a well-established principle that visit is required to be washed-up as per the terms and conditions of the contract, however if circumstances exist, an self-sustaining Arbitrator may be scheduled as an exception to the unstipulated rule, if there is reasonable winds of bias and impartiality.

Enercon India Ltd. & Ors. v. Enercon GmBH & Anr

The Supreme Court in this specimen has rendered a landmark visualization affirming the pro-arbitration outlook the Indian courts have ripened in the past few years. This judgment is a step in the right direction to bring Indian mediation law in line with international jurisprudence and will aid India in stuff perceived as an arbitrationfriendly

jurisdiction.The international outlook and the pragmatic tideway followed by the Supreme Court is well-spoken vestige that the mediation law in India has finally evolved to meet the demands of ever-dynamic mediation jurisprudence. The Supreme Court though addressing issues involving an International Arbitration, took aid of provisions under Part I of the Act, making a point that the legislative mandate plane in Part I of the Act is for courts to aid, support and facilitate arbitration. This indeed is welcome news for Indian and foreign parties alike. Parties would now be encouraged to segregate India as the seat of arbitration. Lastly, this judgment re-establishes the importance of specifically mentioning in the mediation try-on the law governing it and the seat of mediation in order to stave litigation.

Conclusion

Thus, the Indian mediation jurisprudence has been evolving since its inception to suit the needs and complexities of international trade and investment. Though a series of judicial decisions in the first decade of the new millennium showed lack of pro-arbitration tideway by the Indian judiciary while interpreting mediation laws, the trend has now reverted and Indian courts are increasingly raising a proarbitration approach. Further, the Government too is single-minded to make India into an mediation friendly country which could serve as an International Mediation hub for the world. This is aimed to be achieved by amending the existing Act and bringing it to international standards. In totality, the road superiority looks very promising for International Mediation in India and versus Indian parties.

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Original Article

Concept of Prior Art in Patent Regime

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Abstract

Patent law is considered to be the most old and important aspect of the intellectual property regime and the concept of novelty is the most cardinal aspect while granting the patent with respect to any invention. Novelty seeks to ensure that patent should not be issued if the same invention already exists. Although gauging the novelty of simple inventions are easy but it can be difficult in case of those complex fields like biotechnology, chemistry, and pharmaceutical. For example, if a drug company seeks to patent a promising molecule that was disclosed but never physically made in the prior art, the key possession question is whether a person having ordinary skill in the art could have made it at the time of the prior disclosure. This research is an attempt to understand the basic meaning of the prior art and further look in into legal system to understand how it have been understood by the statue itself.In particular to understand how statue have defined the role person skilled in art, what is prior art and what are the aspects embodied in it.

Keywords: Prior Art; Person Skilled in Art; Prior Publication, Anticipation.

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Introduction

While talking about the concept of patent we realize that roots of this concept are in existence from the very inception of the human itself. As soon as human started developing, he felt zeal to protect things owned or invented by him. Considering the protection of the new inventions time to time different legal statues or system came into place or modified according to the requirement of the changing need and capacity of the society. A substantial history can be traced back from the ancient days where monopoly existed in the Byzantine Empire. Initially ancient Greece granted monopoly to the cooks for one year to exploit new recipes. But later, Roman emperor, Zeno rejected the concept of monopoly. By the time 1432, the senate of Venice enacted a statue to providing exclusive privilege to those inventing any machine or process to speed up silk making. This protection was soon extended to other devices. Simultaneously new ides started getting protection. In 1474, the very first ordinance in patent was voted by the Venetian senate. Thus, it is correct to say that present patent system is an evolution of over 500 years.

The basic requirements for being patented are:

1. Novelty 2. Non-obviousness 3. industrial application.

Novelty which is a statutory requirement, that an invention should be new. Determining novelty requires a comparison of the invention

with the "prior art," which refers to knowledge and technology already available to the public. Documents like issued patents and printed publications are common sources of prior art. A document asserted against the invention that the applicant seeks to be patented is called a prior art reference.

According to the patent Act 1970 invention includes new product and new procedure which is having an industrial application [1]. Patent system denies granting patent to the inventions that are disclosed prior the application for the patent.

According to Indian patent (amendment) Act 2005 "new invention" is any invention or technology which has not been published in any document or elsewhere in the world before the filing of the application. In other words it can be stated, for a prior publication to defeat the patent it must exhibit substantial representation of the invention in such a clean and exact extant that one who is skilled in art may make or construct and practice the invention without need to depend on either the patent or his own inventive skills [2].

Patent law does not recognize it as the prior art if it is not accessible to the public. In other words a publication will be considered as the prior art only if available in the public domain rather than hidden in the private pocket. Thus the concepts considered as the common good in the society are not patentable. Otherwise, it will create monopoly in the society with respect every tiny aspect. A man may make experiments in his own closet and does not communicate to anyone in the world and similarly another person can carry the same experiment and the person will make the first application will be entitled to get patent and other one cannot claim ground of prior art because it requires publication or public communication at the first place. Thus, there can be many rival experiments on the same concept at the same time.

Talking about the person skilled in art is the legal fiction to foresee the qualification required to consider something adequate with respect to the particular patent. This fictional person is considered to have the normal skills and knowledge in a particular technical field, without being a genius. He mainly serves as a reference for determining whether an invention is non-obvious or not, or involves an inventive step or not. If it would have been obvious for this fictional person to come up with the invention while starting from the prior art, then the particular invention is considered not patentable. In some patent laws, the person skilled in the art is also used as a reference in the context of other criteria, for instance in order to determine whether an invention is sufficiently disclosed in the description of the patent or patent application (sufficiency of disclosure is a fundamental requirement in most patent laws).

Meaning and Concept of Prior Art

'Prior art' is generally used to refer to "the entire body of knowledge which is available to the public before the filing date of the application for the patent or if priority is claimed, then before the priority date of an application". Although the definition of 'prior art' seems quite unambiguous, patent offices across countries have adopted widely differing approaches for determining what it constitutes while examining patent claims [3].

According to the EPC, "state of the art ('prior art') shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the filing of the European patent application" [4]. From this definition it is clear that there is no restriction about geographical location or the language or manner in which the relevant information available and no age limit is depicted for the document and the source of information.

Though, the Indian Patent Act do not define the concept of the state of art but Indian Patent (Amendment) Act 2005 does define the meaning of "new invention" which include any invention or technology which has not been anticipated by publication in any document or anywhere in the world prior to the date of application for the patent. Thusconcept of 'state of art' in UK and prior art in India is corresponding [5].

The TRIPS agreement is silent on the definition and explanation of how 'prior art' is to be determined while examining a patent application. Therefore, there is space for national patent offices to use their own standards to determine 'prior art'. On the other hand if we look at the SPLT (Substantive patent law Treaty) 'prior art' have been defined as the information which has been made available to public anywhere in the world in any form. The draft SPLT includes a provision that states that information made available to the public in any form, such as in written form, in electronic form, by oral communication, by display or through use, shall qualify as prior art.

Harmonization of prior art standards is a contentious issue, since this would eliminate the flexibilities that patent office been exercising. For

instance, in the US, an isolated and purified form of a natural product (such as a pre-existing biological resource that was unknown to the public at large) is patentable. The rationale for this is that the concept of 'new' under the novelty criterion for patentability does not mean 'pre-existing', but that there was no 'prior art'. Such a conclusion could well be arrived under the SPLT on a reading of Article 8 on 'prior art' with Article 12 definition of 'novelty' [6] . Under Indian Patent Act 1970 after 2002 amendment, the discovery of any living ting or non-living things or substance occurring in the nature is debarred from the ambit of patentability. So, here basically India is clearly exercising flexibility available because any treaty does not provide for the same, even SPLT does not put emphasis on the Act of 'Discovery', but on whether there is already an existing 'prior art' with respect to the subject matter. We could, however, argue that emphasis in the draft of SPLT is on information made public by whatever means, includes the oral communication also, and it could be proved beneficial for the counties like India, where traditional knowledge associate with our biological resources is very old and available in oral form. If such oral knowledge is considered by every patent office in every country as prior art, it could phenomenally reduce frivolous patent application like given by US on the wound healing properties of the turmeric which India Challenged and won [7].

Talking about the meaning of the invention was well define in case of *Raj Parkash V. Mangat Ram Chaudhary* [8] it was held that invention is to find or discover something not found or discovered by anyone before and it is not necessary that invention should be something complicated. Essential requirement is that the inventor is the first one to adopt it. The principle is that, every simple invention that is claimed, so long as it is something which is novel or new, it would be an invention.

It was laid down by their Lordships of the Privy Council in *pope Appliancecorpn V. Spanish River pulp and papers mills Ltd* [9] that invention is finding out something which has not been found out by other people. There are many instances in branch of science of independent investigator making the same discovery. That does not prevent the one who first applies and gets the patent from having a good patent, for a patent represents quid pro quo. The quid to the patentee is the monopoly; the quo is what he giving to the public that is knowledge. That knowledge which other inventors have kept sealed in his own , and he therefore, cannot complaint that his rival has got the patent.

In other words, to sustain with claim of lack of novelty, it had to be shown that the, prior art contains the clear description of something that would necessarily infringe the claim of the patentee if carried out after the grant of the patent.

Novartis claimed that J&J's Acuvue Oasys products infringed its European patent for extended-wear silicon hydrogel contact lenses that could left in the eye overnight or even several days. J&J counterclaimed for the revocation on the ground of insufficiency, lack of novelty and absence of the inventive step. The decision was appealed in the court of Appeals which found that patent was invalid on the ground of lack of insufficiency [10].

What Are the Subjecct-Matter of Prior Art?

Anticipatoin

Anticipation basically is to compare claims with the prior art. A claim will be considered as anticipated if prior art explains the important elements of the invention and apt enough to enable an ordinary person skilled in the art to create the invention without putting any experimental efforts from his end.

For anticipation it is necessary invention should be found in single prior art source. There would not be anticipation where elements of invention scattered among different prior arts [11].

The claim will be anticipated if someone by following the instructions given by the prior art would inevitably infringe the patent. The principle fully explained by Lord Hoffmann in *Syntham V. Smithkline* could be summarized as follows-

1. The prior art must disclose the subject matter which, if permitted, would definitely result into infringement of the patent;
2. The patent infringement does not require that on should be aware that one is infringing;
3. Whether or not it would be apparent to anyone at the time, whenever the subject matter described in the prior art, such disclosure is capable of being performed and is such that if performed, it must result in the infringement of the patent.
4. The infringement must not mere be consequential to performing of the invention disclosed by the prior publication. It must necessarily entail it.

5. The prior disclosure must be construed as it would have been understood by the skilled person in art at the date of disclosure and not in the light of the subsequent patent.

Smith V. Snow [12] in this case the patented process of smith related to staged incubation with the current of air to transfer heat among the eggs during the different stages of incubation. Event before smith, there had been effort to set eggs in staged incubation, but it was not successful due to difficulty in maintaining the heat in the incubator. The prior description was that in the process of incubation the eggs are paced in a closed room and heated by the hot water through pipes, but no description of producing current in the air was there. The court concluded that prior art does not disclose the invention in its entirety. Therefore, smith's invention has not been anticipated. Court further said; by using the material in a particular manner, he secured the performance of the function which had never occurred in the nature, and it has not been anticipated by the prior art.

Bristol-Myers Squibb Co. v. Benn Venue Labs Inc [13]. Bristol-myers involved in two patents relating to administrating the ani-tumour drugs, paclitaxel over a three hour period. Bristol-Myers brought an infringement action. And defendant moved for the summary judgement, it was argued that the patents were invalid because it was anticipated by the prior art , specially by an article by the Mark Kris, a researcher who have treated a cancer patient with three hour infusion of paclitaxel within the claimed dosage range. While Kris had employed the infusion method the study was largely unsuccessful. The court found that the patent with respect to premedication was anticipated in the article by Kris, even though Kris himself never followed the teaching.Thus anticipation does not require that the work should have been performed in the past time, the only cardinal requirement is the prior art should be apt enough to enable the person skilled in the art to perform the invention.

A publication which is a prior art cannot be modified by knowledge of those who are skilled in the art for the purpose of the anticipation. The knowledge emanates from the prior art is in the crystalized form which cannot be further altered. In other words, it can be sated that prior art become crystalized on date it is made public and cannot be further correct and modified by the knowledge of the person skilled in the art [14].

Accidental Anticipation

Any sort of accidental product or process does not constitute the anticipation, because in case of accidental product it is not sure whether same result will be achieved if later performed by other person skilled in the art. On the other hand anticipation cannot be avoided if the priori art achieved through a deliberate or necessary consequence of what was intended, even though the achiever did not fully appreciate the uses, properties and industrial application of the product.

Tilgham v. proctor [15] this is one of the famous US case in which patent claimed with respect to treating fat and oil by separation into fatty acid and glycerin by applying water at high temperature and pressure. Same separation took place in number of the prior cases accidently. Supreme Court did not consider accidental formation of the fatty acid in Perkin's steam cylinder as anticipation of Tilgham's discovery. The reason cited by the court was "accidental and unwanted production of a certain process does not constitute anticipation". It was held that incidental production of fat and oil in the prior process for the purpose of purification of fat and oil does not anticipate the process of preparing the fatty acid, even though claimed process was used in the prior purification process.

Another good example is the decision of the US Supreme Court, where it was held that prior device capable of being adjusted in the same manner as the patented one does not constitute anticipation. In this cases Clough's patent claimed a gasoline burner. The defendant's product was the prior burner which can be adjusted so as to be used in the same manner as of the Clough's patent. The reason given by court was that such adjustment in the prior product is accidental and not part of the structure itself. The product was not designed for the same purpose of the Clough's burner, no person looking at it or using it would understand it is to be used in a way Clough's is used and it is not shown that prior product is really used in that way [16].

Requirement of Cited Publication

Indian Act basically covers two classes of publication one which are the Indian patent specification, second is any other document which may include foreign specifications also. The publication relied upon by the opponent for this ground must satisfy the following requirements:

1. It must be effected before the priority date of the claim which is the subject of attack by the opponent, and

2. Such publication may include any specification filled in pursuance of an application for a patent made in India on or after 1stJanuary 1912, or any other document published anywhere, and
3. The claim attacked must be contained in any of the said publications [17].

Exception to Anticipation

The Indian Patents Act provides certain exceptions to anticipation in Sections 29 to 34. These exclusions are as under:

1. Anticipation by Previous Publication

If the invention has been published prior to filing of the patent application, if the applicant or the patentee proves that the matter published was obtained from him or any person from whom he derives title without his consent or the consent of any such person, then a complete specification filed shall not be deemed to have been anticipated [18].

2. Anticipation by Previous Communication to Government

Communication to the government or to any person authorized by the government to investigate the invention does not constitute anticipation [19].

3. Anticipation by Public Display

Display of the invention in an exhibition with the consent of the true and first inventor or a person deriving title from him; or the publication of the description of the invention in consequence of display of the invention in such exhibition; or the invention has been used by any person without the consent of the true and first inventor or a person deriving title from him after it has been displayed in such an exhibition; or description of the invention in a paper by the true and first inventor before a learned society and publication in the transactions of such society will not amount to anticipation, provided the application for patent is filed within 12 months from the public display [20].

4. Anticipation by Public Work

There will be no anticipation in case were the working is effected for the purpose of reasonable trial or if it is necessary with respect to the nature of the invention to scrutinize its impact on the public [21].

5. Anticipation by Use and Publication after Provisional Specification

If the invention has been used and published after filing a provisional application, then a complete specification filed shall not be deemed to have been anticipated [22].

Meaning of "Publication"

The term publication has not been defined under the Act, term has been defined for the first time in the U.K. patent Act 1949 in section 101 as follow: "publication' except in relation to the complete specification, means made available to the public; and without prejudice to the generality of forgoing provision a document shall be deemed for the purpose of this Act to be published if it can be inspected as of right of any place in the united kingdom by members of the public, whether upon payment of fee or otherwise." It has been held that inspection "by member of the public" implies in their character as member of the public and if the right of inspection is restricted to person who must meet a particular qualification before enjoysit; there is scope of argument that the document was not made available to the public.

The expression "the public" does not require the inclusion of the entire world. When the matter in question was distributed with the object of spreading the knowledge among the interesting parties, it would constitute the publication.

Where a document relied upon for prior publication was sent by one partner to other in a design project which they have agreed to undertake as a joint project, such correspondence would not amount to make the document available to the public [23].

Accesibility of Prior Publication

Availability of the invention to the public need not to be of wide scale. It was held that limited distribution does not disqualify a publication from contributing to the prior art [24].

Massachusetts Institute of Technology v. AB Fortia [25] A technical paper, the Birmingham paper, was orally presented by Dr. Levive to the first international cell culture congress in Birmingham, Alabama. Conference was attended by in-between 50 to 500 cell culturists. Prior to the conference Dr. Levive gave one copy of the paper to the head of the conference. Afterward, copies were distributed as per the request without any restriction, to almost six persons. It happened more than one year before

to the filing of the patent. It was argued by the MIT that paper could not be treated as the prior art because it is not a printed publication within the meaning of 35 USC section 102 (b). it was held that paper is prior art, 50 and 500 people interested and of ordinary skill in the subject matter were actually told of the existence of the paper and informed of its content by oral presentation, and the document itself was distributed without restriction to at least six persons. The International Trade Commission concluded that it was a printed publication.

Enablling Disclosure

To understand the enabling disclosure, we can recourse to an illustration; underthe 16th century, Galilio Galilei, by theory and practice, indicated that contrary to the Aristotelian theory, two objects of unequal weight would fall from the space almost at the same rate. Though, he admitted that they would not fall at the same moment due to differing air resistance. But he contended that they would fall at the same precise rate if they were dropped in vacuum. Creating vacuum was not practical at that point of time.

That day and time came for the astronaut Neil Armstrong. On 20th July 1969, standing on the surface of the moon, he dropped a hammer and a father. Both hit the surface precisely at the same moment, and Aemsrong said: "You See, Galileo was right".

If what Armstrong did was capable of being patented, he would have been denied the patent because what he did was from an enabling disclosure from the prior art indicated by what was publicly known since the days of the great Galileo.

Dewery & Almy Chemical Co. v. Mimex Co. Inc [26]. If the earlier disclosure only introduces the starting point for the further experiment, if it does not inform completely how to practice new invention, it has not aptly enriched the store of common knowledge and it would not amount to anticipation.

A mere improvement in the nature of incorporating minor change, combination or collection of the components or things what is already known is not an invention. It would be mere workshop improvement and would amount to obvious to the person skilled in art. The inventive should be more than mere a workshop improvement, it has to be new with industrial application.

When making of the product is already known, mere changing of the material does not constitute the new product. A Kalta is a traditional product which has been used since the time immemorial for carrying the products in the hilly area. Traditionally it is made up of bamboo. The only difference between the traditional one and the one produced by the plaintiff was that the material used by the plaintiff was some sort of polymers. That does not mean it is a new invention [27].

Person Skilled in Art

The rules for determining novelty and inventive step in relation to an invention are different. But for determining the novelty and inventive step court must look through the spectacles of the person skilled in art. Determining appropriate level of skill is often difficult. The person skilled in art is basically required to ascertain the meaning of the language used in the patent as well as test the allegation of the novelty, obviousness and insufficiency. He is the person with practical knowledge in the field in which invention is to be applied.

In case where patent calls for range of skills than more than one skilled person may be taken into consideration.

Environment Designs Ltd v. Union oil Co. [28]. court laid down following factors in order to determine the level of ordinary skill in art:

1. The education level of the inventor;
2. Type of problem encountered in the art;
3. Prior art solutions to those problems;
4. Rapidity with which inventions are made;
5. Sophistication of the technology;
6. Education level of the active workers in the field.

Dyson Appliances Ltd v. Hoover Ltd [29]. in this case court looked at obviousness in detail. And concluded that the level of skill of a skilled person in art depend upon the proper scope of the subject-matter of patent in question. While considering the common general knowledge, it is customary to consider "positive" aspects of the knowledge with which skilled man would be familiar, but in certain cases it is also necessary to consider the "negative" aspects; that is, what the skilled man would be prejudiced against doing.

Person Skilled in Art is A Real Person or Notinal One?

Schlumberger v. Electromagnatic [30] the patent was concerned with the technology-controlled source

electromagnetic employed in oil exploration. Two articles written by experts in the field were pleaded as prior art in the case. The court first sated that the theoretical skilled person did not mean the oil companies. The skilled person has to be a practical man, who in the real world could constitute the usual team. In order to utilize the invention a CESM specialist has been engaged. The whole technology involved the use of CESM. The documents which explain the patent were addressed to a person who would carry out such activity. He is addressee of the document not any person who is working in the company. In this case court referred Lord DIPLOCK'S guiding rules. In Catnib's case the person with the practical knowledge and experience of the kind of work in which the invention was intended was the relevant person. The claim in the patent in the present case related to the realm of CSEM. Accordingly, a CSEM specialist was needed to work the patent. Therefore, the average person skilled in the CSEM was the person whose view of the prior art should be considered [31].

A person skilled in art is not a person of exceptional skills and knowledge; he is not expected to exercise any sort of invention nor any prolonged search, inquiry or experiment. He is just required to display reasonable degree of skill and common knowledge of the particular art in making trial and correcting obvious error in the specification which can be readily be found [32].

What are the permissible functions to a skilled man for considering whether a claimed invention is obvious to him from the prior art:

1. He must bring the task common knowledge on the subject.
2. Bear his focus on the enabling and disclosing aspect of the prior art.
3. He is not expected to take any inventive step while considering, whether prior art can produce the invention.
4. Though he may undertake trial and error process to see whether from the prior art he could produce the claimed invention, he must deal with that within reasonable time.

Obviousness

Postulates for the test of obviousness were described in *Windurfing* [33]:

1. Identify the inventive concept embodied in the patent in suit;
2. The court then assume the mental of ordinary skilled but unimaginative addressee in the art at the priority date, imputing to him what was, at that date, common general knowledge in the art in question;
3. Identify what, if any, difference exist between the matter cites as being "known and used" and the alleged invention; and
4. The court than ask itself the question whether, viewed without any knowledge of the alleged invention, those differences constitute steps which would have been obvious to all skilled man or whether they require any degree of invention.

Shortcomings in Prior Art

As we have already observed, prior art is one of the most frequently used aspect to invalidate a patent. In the light of this, it can be concluded that in many cases not all relevant prior art being considered during the examination of the patent application. Therefore, it is important to consider potential shortcomings in prior art searching during patent examination process and its effect on patent quality.

Overburdened Patent Examiners

In 2015 Indian patent office received between 30,000-35,000 but during the period of 2017 this figure was in between 40,000-50,000. This is a drastic increase in the patent applications which has resulted in overburdened examiners who have little time to devote to each patent application. The amount of time that an examiner devotes to the entire process of patent examination is uncertain, but estimates range from 8−30 hours [34] and there is widespread agreement that this amount of time is insufficient for adequate examination [35]. As a result of these pressures, examiners do not have time for an adequate search of the prior art [36].

Compartmentalization of Specialized Knowledge

specialized knowledge is often not widely disseminated and thus is likely to be known only to experts in the field. This means that the relevant prior art often may only be known to the patentee (or applicant), her competitors, and perhaps a few others. Thus, it may be difficult, or even impossible, for examiners to access and identify relevant prior art that may be known in a particular area.Similarly, it is widely perceived that in the

software and business method areas, where there is a short history of patenting and there is not a strong tradition of non-patent literature publishing, most of that is known will not be found in prior art searches [37].

Disclosure of Prior Art by the Applicant

There is a moral duty on the part of patent applicant to disclose the prior art which is known by him and relevant with respect to the invention in question. However, applicants may have disincentives to perform a thorough prior art search during prosecution of an application. One reason is the strategic one; it might possible that the applicant may get the broader patent because examiner may not aware of that particular prior art which is relevant to the claim.

Conclusion

Novelty is one of the indispensable requirementfor getting your invention patented. And prior art is most frequently assigned argument against claim of novelty under any invention. prior art is the concept which protects the knowledge which is common to all. If we imagine patent regime without the concept of prior art, there will be monopoly with respect to every tiny matter of knowledge in the society.Even though different countries have taken different approach towards granting patent and their legal system differs in many aspects, but concept of the person skilled in art seems universally admitted, even if certain differences remain between the reference to the person skilled in art.

This research has led me to create a formula which may include the entire significance of anticipation through prior art.

Formula

Person skilled in art + Prior art – No further experimental effort or step = Invention in question = Anticipation

In this formula person skilled in art is a person with average knowledge in that field and prior art basically is already existing knowledge before the date of filing application for patent, non-experimental effort contemplates that the person skilled is not required to put any experimental efforts. If this combination results into Invention in question it would amount to anticipation. In other words, if person skilled in art can make by use of prior art same invention for which application for patent is made, it will amount to anticipation of such invention.

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Original Article

Addressing Data Privacy Issues in the Indian Telecom Sector: The Way to A Healthy Competitive Environment

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Abstract

The Indian telecom sector is growing at a very fast pace and will continue to be on this expansion path exploring new opportunities. This rapid development of telecommunications services in India has accelerated the socio-economic development of the country largely. With the expansion of telecom sector in India the use of information and communication technology (ICT) services have increased and at the same time have also facilitated sound network connectivity throughout the country. We have likewise seen an enormous growth in the quantity and quality of data that is being created by employing advanced ICT services. With the enhanced level of ICT services, the Indian telecom sector is exposed to numerous kinds of data security and information protection dangers. Taking into consideration changing dynamics of the sector and efficiency potential of data analytics the paper has discussed whether there is adequate protection of data privacy and ownership rights of users and the challenges associated with it. Another important issue that has been be addressed in the paper is to what extent individuals can dominate the manner in which data concerning them is retrieved and utilized by various entities. This paper has also discussed the recommendations given by Telecom Regulatory Authority of India (TRAI) in its consultation paper published in July 2017 concerning 'Privacy, Security and Ownership of Data in the Telecom Sector'. The paper is ended with a meaningful concluding remark.

Keywords: Data Privacy; Data Security; Telecom Regulatory Authority of India; Telecommunication; Telecom Service Providers.

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Introduction

The issue of protection of data in India has stemmed from the substantial development of cellular market respectively in mobile cellular and mobile broadband subscriptions. Use of cell phones and online services through net access are growing at a very fast pace and therefore the cost for transfer of data between telecom users is also witnessing a considerable downfall. Telecom Service Providers (TSPs) have launched low cost data packs resulting in significant rise in cellular data consumption. India has grabbed this opportunity of taking benefit from this vast data resource which is generated through employing of modern technology. Consumer data has always been of prime importance and several studies have revealed that companies that smartly make use of this consumer data always have an

edge over their competitors in gaining considerable market strength.

Technologies like the Internet of Things (IOT) and Artificial Intelligence (AI) are in a developing phase in India [1]. Consumers' now-days prefer digital platform for making payments over other modes of making payments. Online shopping, numerous applications for travel and banking, e-wallet firms like paytm, mobikwik etc. complete the digital environment [2]. This trend is emerging because of rise in cell phones use and decline in cost of data usage. This trend is further backed by Demonetization and Aadhaar exercises throughout the nation.

Large scale capturing of data and extracting valuable information out of it by plethora of entities is increasing. These entities make use of this enormous data resource to enter into or to gain dominant position in the relevant market. In most of these entities, the complete business plan is founded on data monetization. In the light of these developments telecom users suffer the most from the threat of their right to data privacy being infringed as various firms and start- ups driven by profit motive may intrude upon the consumer privacy by using their personal data without their consent. The violation of right to security and privacy of data may be internal coming from within the organization by those who may easily obtain client data and may use it to fulfill their corrupt motives as well as from third parties who are not a part of the organization engaging in data theft and stealing products by using corporate networks.

These underlined issues are a cause of concern for the sector specific regulatory bodies in the nation and therefore they are making persistent efforts to ensure data privacy and frame laws for data protection in the nation.

Data Privacy and its Legal Regulation in India

In the Indian legal framework data privacy, security and ownership in telecom sector and related laws finds place under the following statutes and regulations:

- Information Technology Act, 2000: Section 43A (provision for compensation for inability to execute reasonable safety efforts), Section 72A (imposing criminal obligation on the individual who reveals personal data without permission or in violation of a contract)[3].
- The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (IT Rules) established in accordance with Section 43A of the IT Act, 2000 [4].
- Unified License Agreements provisions: Clause 37 (licensee to guarantee the safety of privacy of communication and to guarantee that unlawful interference of messages does not happen), Clause 39.12 (Requirement towards maintaining appropriate monitoring tools according to the prerequisites of the licensor or assigned security organizations; prerequisites towards adopting important hardware and software for doing the legal interception and checking from a centralized location) [5].

Apart from the laws discussed above, we do not have any exhaustive law on data ownership and security issues in telecom sector. The current laws, rules and regulations framed by the government are only limited to the sector. Therefore it is the need of the hour that a data protection law be enacted at the earliest.

Current Issues Surrounding Data Privacy in Telecom Sector

Protecting and maintaining the privacy of data is the very basis for guaranteeing the security of telecom framework. Poor telecommunication framework could prompt interruption of essential services with a serious effect on people, organizations and the delivery of public services. It is thus important to make sure that each strata of telecom framework and the digital environment all together are secured through sufficient safety measures to protect the framework from any anticipated risk.

Few of the significant data security areas in the telecom industry that need to be addressed immediately are:

- Extensive data security risk evaluation encompassing the whole establishment
- Understanding and resolving the key legitimate concerns that affects the telecom sector
- Focusing on data security in a comprehensive form comprising of telecom system, equipments and IT frameworks, developing strong internal organization security foreseeing the potential risks and functioning prerequisites of business
- Third party security being an important component of the data security structure, elucidating an activities monitoring system for preserving the confidentiality of sensitive data
- Evaluation of threats at regular intervals which

emerge as a result of latest technologies being used and outlining controls to alleviate them.

Therefore, the following are the main parts of data security mentioned below;

a. Network Security

TSPs have a complicated networking system, which consist of networking components owned and controlled by various vendors. These networking components are mainly the functional configurations and procedural standards, proprietary applications, about which these TSPs have least knowledge. The situation is increasingly complex for TSPs that have networking components belonging to various Original Equipment Manufacturers (OEMs). Outsourcing of network management, agreements with different network merchants causes further complications in the system.

Difficulties in meeting the requirements of the telecom security are;

i. Huge spread of telecom network

- Telecom network containing of equipments from different merchants and these network spreading throughout the nation (operating circles)
- Consistently increasing network
- Absence of clear visibility on equipment's used and in this way there security
- Advanced business operations and innovative services
- Complications in the network architecture

ii. Administration of telecom network by third party

- Several TSPs in different operating circles
- Network equipment used by sellers which are owned by them
- Ignorant of all risks associated with the use of these equipments because of their distinctiveness
- Expenses incurred in inspection of security of all the network equipment's
- Heavy expenses incurred in installation of these equipments
- Expenses incurred in preserving records of all incoming and outgoing calls and data usage for a year

iii. Functional provisions for building an efficient security environment in the establishments

- Required expertise and knowledge for performing crucial operations
- Recruitment of Indian citizens only for key positions/jobs in the establishments
- From 1st April 2013 the TSPs shall get their accreditation done only from approved and certified laboratories in India.

iv. Guaranteeing Proper Implementation of Network Security Check

- Strong and centered network security checks could be accomplished by completing an exhaustive and all-inclusive data security threat evaluation to ascertain high threat zones that need attention.
- Setting up a well developed network security work with the operator association
- Team up with specialized, talented and experienced experts to guarantee strong security check
- Devising means for constant two way communication amid the operator network security work and the TSP
- Constant expansion of safety operations and employing technology resolutions in order to comply with network security provisions
- Constant supervision of the security regulatory framework to ascertain the numerous risks and measures to be taken for reducing these risks

b. Consumer Privacy

In the era of technological advancement consumers have become more vigilant about their right to privacy of data. Consumer privacy of data has acquired significant importance for the TSPs. On the other hand, the steps taken for ensuring the privacy of consumer's data are in emerging stage. In the Indian digital ecosystem various socio-economic and technological factor play a significant part in establishing a requirement for consumer privacy.

Determining Consumer Privacy

Consumer privacy should be guaranteed all through the lifecycle of consumer data which could be carried out by having a comprehensive setup which incorporates recognizing the correct set of data to be taken and the reason for the same;

having a comprehensive and thorough inventory of the customer personal data; recognizing the correct level of approach to the data based on the classification; privacy standards identified with (collection, notice, revelation of data) being vital part of the business procedures; expanding the consumer security in interaction with the third party; increasing awareness about the consumer security prerequisites for business operations[6].

c. Internal Organization Security

Due to the rapid development of latest technology and their increased use by TSPs, data security has become a key concern at the internal organization level. Absence of staff sincerity in maintaining data security, immense geological spread and absence of consistency of controls are the main difficulties in guaranteeing successful internal organization security. Furthermore, there exists a requirement for building up an Information Security Organization Structure that incorporates both Information Security (IT) as well as network function.

As the establishments commence new business operations, they have a tendency to concentrate more on legal prerequisites and external threat factors. Huge spread of operations and telecom services, huge employee strength, participation of third parties and complicated infrastructure makes guaranteeing internal organization security a tough task. Though, as the organizations develop, their security operation likewise develops to the level that internal information security turns into an essential hygiene for doing business activities.

Some of the difficulties faced in the Internal Organization Security are explained hereunder:

growing business actions; inorganic business development; dissemination of information over vast geographical areas; increasing clients of information resources; poor worker awareness; poor administration commitment.

Determining Internal Organization Security

Internal information security could be accomplished through incorporating security as a component of work life and executing controls to implement data security [7]. The implementation of the said steps could encourage in achieving this change by setting up a strong system, (for example, ISO 27001) alongside Information Security Management Office for driving security across establishment; setting up a consolidated system driving concerted effort from different data security activities inside the establishment; building up a structured program of making workers/merchants mindful of their data security duties across geographical areas and business capacities; making the workers responsible for data security through having security as a feature of their employment contract or set of working responsibilities; implementing security arrangements, for example, Digital Rights Management (DRM), Information Leakage Prevention (ILP) for ensuring security at the end client level; and constant supervision and learning to be incorporated as a part of the establishment system [8].

d. Third Party Security

TSPs regard outsourcing as a vital choice for the business to flourish, to reduce expenses and to give bandwidth to concentrate on core abilities. This multiparty inclusion towards delivering services to end users includes sharing of data between the third party service provider as well as the telecom administrators, which opens them to various data security threats. Difficulties in bringing about a safe and secured third party environment, overseeing data security at third party level, for example, infrastructure supplier, framework integrator, software merchant, retailers and distributors and so on is a challenging job because of constrained supervision over the third party environment. Due to the expanding number of third parties and the threats related with outsourcing, incorporating security features as a component of the agreement has become a mandate now days. Though, securing compliance with the rules and regulations and fixing the accountability for the same may end up being a tough task in the current scenario.

The main difficulties towards building up and enhancing security at third party level are; setting up proper security administration; categorization of third parties for pertinent security controls to be applicable; recognizing of Key Performance Indicators (KPIs) for data security; coordinating the security approach of the third parties with the operators security prerequisites; implementation of security necessities through contracts/ Service Legal Agreements (SLAs) Cost for occasional evaluations of third parties; extending the business continuousness beyond organizational limits towards third parties.

Determining Third Party Security

Information Security at Third Party level could be improved by outlining thorough security procedure for selection of third party to guarantee benchmark information security efforts; designing contracts with third parties containing data security prerequisites and KPIs/SLA; implementing an organized periodic threat assessment procedure with third parties; identifying an Information Security SPOC (ideally committed) from third party service supplier and formalizing controls bearing in mind that third parties are expanded limits of organization [9].

TRAI's Role in Securing Privacy and Ownership of Data

Though Telecom Regulatory Authority of India (TRAI) is only a sector regulatory body and its opinions are not binding on the government yet the government gives significant weightage to its opinions before taking any important decision on any issue concerning the telecom sector. TRAI has made some remarkable contributions in securing the privacy of consumers' data through its persistent efforts. One of these efforts include its recent recommendations concerning 'Privacy, Security and Ownership of Data in the Telecom Sector' in its consultation paper published in July 2017.

TRAI observed that as most of the consumers these days are availing e-services for various purposes, it becomes essential to protect them from any likelihood of threat emerging as result of entities in the digital environment making use of their data for gaining maximum profit [10]. The inability to secure the privacy of consumer's data may lead to hampering the development of telecom sector and Indian economy as a whole.

In the above context it becomes important to study the proposed recommendations in an in-depth manner [11]. These recommendations are explained hereunder:

a. Each client owns their personal data/ information that entities gather/preserve in the digital environment. These entities are just the repositories of the information they control and handle. They do not have essential rights over this information.

b. A research must be conducted to lay down the principles for de-identifying the individual information created/gathered in the digital environment.

c. Every entity in the digital environment, which monitors or processes the information, must be refrained from utilizing Meta-data to know about the individual clients.

d. The existing structure for safeguarding the individual data of users availing telecom services is inadequate. All entities in the digital environment, which controls or processes the confidential and sensitive data of the telecom users must be brought within the purview of information security system so that the telecom users are safeguarded against any inappropriate use of their confidential information by these entities namely the data controllers and processors in the digital environment,

e. The current permit conditions/rules applicable over TSPs for security of clients' privacy should also be applicable in relation to every unit in the high-tech environment till the legislature makes a law for data protection. For the same the Government should issue notification to inform all the entities about the policy regime for control of Devices, Operating Systems, Browsers, and Applications.

f. The government must adopt data minimization and privacy by design principle to regulate each and every body in the high-tech environment.

g. TSPs must build an effective consent framework to guarantee ample options to the users of the digital services.

h. Government must notify a framework similar to one developed by Ministry of Electronics and Information Technology (Meity) i.e. the electronic consent framework and the Reserve Bank of India's (RBI) directives for data fiduciary (account aggregator). The framework should also incorporate terms for withdrawing the assent given by the telecom user at any time. This is essential to protect the interest of the users.

i. The right to be forgotten and the right to data portability are limited rights. These rights must be subject to reasonable restrictions under the law applicable.

j. Each and every unit forming a part of digital ecosystem should comply with all multilingual, easily understandable, impartial, comprehensive and reasonable provisions in the agreement to serve users.

k. Awareness programs to be initiated for the consumers in order to impart knowledge with regard to data privacy and security concerns.

l. Entities controlling and handling data must be barred from employing 'pre-ticked boxes' to take users assent. Provisions for gathering of information and limitations attached with it must be included in the contract.

m. The stipulations about usage of devices should be notified before hand, before sale of the devices.

n. It must be made compulsory for the devices to include clauses with the goal that telecom users can erase pre-installed applications in case they choose so. Downloading of the certified applications must also be made easy for the users and the devices must in no way limit such activities by the clients.

o. Department of Telecommunication must evaluate the encryption norms again, incorporated in the licensing terms for the entities providing telecom services, to strike balance with the necessities of other sector regulatory authorities.

p. To protect the privacy of information of telecommunication users, the government must inform the users about the National Policy for encryption of user's data, produced and gathered in the digital environment.

q. In order to protect the confidential information of telecom users, personal information of users must be encrypted during the storage in the digital environment. Decryption must be allowed on a need basis by approved entities in agreement to consent of the user or according to necessity of the law.

r. Every entity in the digital ecosystem must be urged to share the data regarding vulnerabilities, risks, and so forth, in the digital environment to minimize the damage caused and avert the happening of such events.

s. Every entity in the digital ecosystem must share the data regarding the privacy violations on their e-platform and the measures taken for alleviation, and prevention of such violations in future.

t. There should be a common platform for sharing of data with respect to information security violations occurrences by all entities in the digital environment, comprising also TSPs. All entities in the digital environment must be compelled to be a part of this platform.

u. Data security violations might happen regardless of implementation of best practices/ essential actions taken by those entities who control and process data. Therefore all entities in the digital environment must be urged to share data relating to information security violations. They must also be incentivized to prevent such events in future.

The issues raised by TRAI in its Consultation Paper are relevant, yet many of these do not lie within its jurisdictional limits. Although TRAI's endeavors to start policy discussions are praiseworthy, it is similarly critical to hold up under jurisdictional confinements as an important concern. The telecom watchdog has the authority to recommend data protection principles applicable over TSPs, but its intent to control the whole digital environment might cause more perplexity than precision. The rights based method to ensure security of data is the correct approach to be followed. The legislation must contain effective provisions for ensuring that each and every individual enjoys the fundamental right to security of their sensitive and confidential data, and identify the threats associated with it. Service providers gathering data (Data Controllers) in order to provide their services shall be held liable for violation of individual's right to data privacy in case there is sufficient evidence to prove that their activities have caused injury to the common public [12]. The law must also provide that data procedures be reviewed at regular intervals to correct any errors in processing.

Conclusion

In India telecom sector is at a nascent stage regulated by strong market forces and fierce competition, progressively strict regulatory prerequisites and emerging latest technologies. Therefore, to remain competitive inside the business, telecom administrators are developing their service delivery model and service offerings to give new and groundbreaking services to consumers in a cost effective manner. This has led to a complicated security framework for the TSPs. TSPs are therefore endeavoring to build an efficient security network for the organizations which is flexible, sustainable and self developing for complying with the latest security requisites.

Our lawmaking body has likewise stepped forward in this regard and framed the Personal Data Protection Bill, 2018 which was published in the official gazette on July 27th July, 2018 [13]. This bill has been framed on the basis of the report of the Committee of Experts headed by Justice B. N. Srikrishna as its chairman. The Report gives an insight into the Committee discussions and explains

the clauses of the Bill. The Bill was framed with an objective to fill in the void that was present in the current data security system, as well as expand user's rights by giving them absolute command over their sensitive and private information. It also guarantees a high degree of information security. The bill has given a broad definition of 'Sensitive Personal Data'. The bill has also discussed the issue of data localization and the duties of data fiduciary [14]. The Bill will supersede Section 43A of the Information Technology Act, 2000 (IT Act, 2000) and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 which was framed under Section 43A of the IT Act, 2000 [15]. This is the bedrock on which data protection law has evolved in India.

As India advances towards becoming one of the world's biggest digital economy, a stringent and effective data security legislation is the need of the hour. Thus the bill should be adopted as law as soon as possible.

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Original Article

Problems Faced in Implementing Environmental Protection Laws Due to Migration in Assam, India

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Abstract

Migration involves physical movement from one place to another which causes population distribution to bring out socio-economic, cultural, political and legal changes. In modern time, migration has been considered as an essential phenomenon to human societies, cultures, and civilizations throughout the years irrespective of the countries and continents of the world. It is evident that migration has played a crucial role throughout the years in shaping the world as we know it today. It is not a recent phenomenon; on the contrary, it has been part of the human history since its very beginning made for various reasons in search of better opportunity of living. Now a days, migration and settlement in new areas create problems in environment protection in terms of implementation of various laws related to Environment Protection.

The present communication deals with some recent cases of problems faced by Government machineries to implement judicial orders for protection of forest land which are due to migration citing cases of Guwahati in Assam, India.

Keywords: Migration, Environment protection Laws, Problem of implementation, Assam.

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Introduction

Migration has become necessary for human survival, adaptation, and for economic strength over a long period of time worldwide. Though historically migration in India has not been very prominent due to various socioeconomic and political constraints [1], but the picture has changed in recent times. The increasing trend of migration has raised some serious concerns about its affect on demography, social and economic security along with different ethnic and environmental problems. The purpose of the present study is to throw a light on problem of increasing migration in the state of Assam and its recent consequences in legal problem like implementation of Environment protection laws by the judiciary and executives resulting into more liabilities.

In the last few decades, the number of international migration as well as internal displacements increased rapidly than ever recorded previously in Assam. The demand for migrant worker is also rising in the developed areas for various reasons like deficiency in workforce, environmental changes etc. Host areas could get benefited in the form of economic growth with efficient migration management mechanism while it could improve economies of the origin country as well. However,

the growing tendency to migrate for economic growth brings both legal problems to address irregular migration and opportunities to develop legal framework by regularizing the system for revenue earning for the host region as well as for overall development including environment protection. Efficient administration with strict legal policy is needed to bridge the supply and demand gap in labour market without hampering social framework and the environment. Increase in the number of migrants of various backgrounds in a particular area may grow the diversity and complexity in socio-cultural front but protection of immediate environment will be a challenge. In fact, a dedicated and faithful interest is needed in managing the socio-economic and environmental changes resulted due to mass migration since long. The problem of migration along with rise of undocumented migrants in the light of its recent legal developments is the subject of this study.

After the annexation of Assam into British rule dating back to 1826 [2] before hundred twenty years of independence of India and the gradual introduction of new colonial economic policies towards the agricultural as well as non-agricultural sector, the material progress and economic status of the state in the long run has greatly affected. After gaining the political power, new policies related to the changes in the waste land management as well as in the plantation and non-plantation sector were applied in a very prompt way. Due to the long period of devastation brought by the frequent Burmese raids on Assam as well as the long extended period of civil wars and invasions, vast tracts of lands were left in the form of waste lands throughout the province of Assam. Neither any sort of agricultural production take place on such lands nor revenues could have been collected. That was in the year 1827, for the very first time David Scott initiated a plan of granting waste land to the people for starting cultivation on these plots. Apart from these steps the colonial authorities had moved ahead with their future plans to fully exploit the forest resources of the state, describing the state of Assam as a "forested country" in the administrative reports of 1921-22 [3], long before hundred years. The rich products of the forest, mainly the timber and other products including fruit trees, berry bushes etc. with proving commercially useful in the long run. Therefore, to properly exploit the forest resources proper forest policy was to be initiated for the utilization of forest resources along with revenue collection. The imperial forest department was established in 1864 and the Indian Forest Act was passed in 1865 that further intensified government monopoly on the forest resources. This was the beginning of total exploitation of the forest resources of the state initiated by the migrants and even today we are facing such exploitation by the migrants of both internal and international nature. Rise of population due to migration is one of the main cause of environmental and forest degradation. Settlements in and around forest areas threaten the livelihood of wildlife and affect the conservation moves of the forests.

The basic economic position of any type of immigrants in comparison to natives is useful in understanding the character of migrants in an area. Basically migrants are self-selective and economy is the main factor to decide a migrant whether to immigrate or emigrate; and the same factor is responsible for those who do not migrate[4]. Perhaps there is no single pattern of such selection for migration; rather, it varies according to some other socio-political and religious conditions in the communities of migrants and non-migrants. However, the basic economic differences between natives and migrants directly determine the pressure on natural resources, basic infrastructures, employments, occupations and labour market dynamics and it also determines accessibilities to services like health, education and food for better livelihood. While migrants migrate with one economic position, which sets their initial difference with natives, their economic position changes as they stay longer at the destination as they aimed for migration, and this is determined by the types and amounts of occupational opportunities open to them as compared to those open to the natives [5].

This concept is taken to be relevant to the immigration problem in Assam, as the duration of stay of migrants has been very long, as evident from the long history of migration in Assam [6]. It can be assumed that when people migrate, they do develop themselves from education and skill, so in the hope of improving their livelihood; and they mostly tried to do, by making full use of the resources available at the destination. They have always tried to attain a status equivalent to that of natives and indigenous and sometimes aimed for even better. It has been internationally recognized that if migrants are better educated than non-migrants, it would tend to follow that they would also occupy higher positions in the occupational hierarchy [7]. This idea also has relevance in Assam; as access to education and basic needs are guaranteed to immigrant children as a moral responsibility, which could pave the way for a

stronger generation of immigrants and tougher labour market competition for natives in near future. This could become even more severe if the immigrant community will have a higher share of the young population than natives who, in turn, are therefore more likely to grow with time.

Environmental degradation has become a burning issue of the present era. The protection of environment which is being threatened by growing pollution as well as population, lack of maintenance of ecology and exhaustion of non-renewable resources creates a debate over implementation of various Environmental laws meant for the purpose of protection and development. Apart from the constitutional framework, there are the numbers of legislations related to environment protection enacted after the independence of India which are being used to combat environment degradation throughout the country. But the laws alone are not enough to combat any kind of irregularities arises due to human interference fueled by rise of population due to migration.

The Legislature formulates the laws, Judiciary interprets and the same laws are to be implemented by the Executives designated for the concerned purpose. Judgments of Judiciary are independent of any influence and for overall benefit of human kind taken in conformity with legislations and the Executives are the helping hands in implementing the rule. Without administrative action, implementation of laws is near to impossible. Taking action in coherence is much more needed for proper implementation of any law in force. But in Assam, there are many instances where direct implementation of Environmental laws, even after pronouncement of judgments faces difficulties in implementation due to mass migration and internal displacement of population and their growth in forest lands and reserved area demarcated for conservation.

Methods

The research involves the collection of information from recent legal cases related to implementation of Environment protection laws where the problem arises due to migration and for discussion, cases most highlighted in the Guwahati city are taken as these cases have wide impact on other parts of the state. Cases are selected by reviewing many other similar cases, on the basis of the objective of the present study where pronouncement of judgments by judiciary cannot be implemented directly by the administration or the Government and thus burden of liabilities increases on the part of the administrative mechanism which is ultimately the product of large scale migration took place in reserve forest and protected areas of the state. Important comments of the Cases are discussed in a comprehensive way to sum up with some recommendations.

Results and Discussion

The judgment pronounced by the Gauhati High Court situated in Assam on 8th September, 2015 [8] regarding the 60 bighas of land (1 bigha is approximately equal to 14,400 sq. feet) which were allotted to some landless and displaced people by the Government faces difficulties in implementation. In this case earlier, after two years of peaceful possession, the Ranger of Rani Forest range under Kamrup Forest Division of Assam objected and obstructed to the possession of the land in May 2008. However, the possession was protected through an interim order of the court. Refereeing to the restrictions, imposed by Section 2(ii) of the Forest (Conservation) Act, 1980, the government advocate argued that the notified forest land cannot be used for any non-forest purpose and here since the land was allotted for cultivation; such use is contended to be prohibited by the said Act. The confusion arose whether the particular land falls under the reserve forest area or not. So the court ordered to carry out a joint survey by Forest authorities, the Revenue and the Land Survey Department to make a clear decision regarding the matter. It was also stated in the judgment that if the allotted land is found to be a part of the reserve forest, steps should be taken for cancellation of allotment and refund the premium and, if the allotted land is not found to be reserve forest land, the right of the people concerned should be protected. Here, due to migration of people and settlement in new areas create difficulties in implementing environment protection legislation.

Again, in T Mochahari and 14 others vs. State of Assam and others [9], the grievance of all the petitioners arose out of the threatened eviction of the petitioners from the occupied government land which is considered to be a part of Hengerabari Reserve Forest within Guwahati city. The people concerned are migratory people in different point of time and settled in the area as forest dwellers. The petitioners claim the forest dwellers' right in respect of the occupied area, under the Scheduled

Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. On the other hand, the settlement officer of Guwahati stated that the land concerned is described as government record as general government land the area is not recorded as forest land. In this case, two government departments have contradictory perceptions on the character of the land occupied by the petitioners. The Gauhati High Court on March 5, 2016 directed the State's Chief Secretary to resolve the controversy after considering all aspects of the matter originally caused due to migration of people from different area and settlement in new area for livelihood. Then, on a later date, the Chief Secretary directed a demarcation of the Reserve Forest area by the Deputy Commissioner, Kamrup district and the Forest Department of Assam.

Growing encroachment and illegal logging in various Wildlife Sanctuaries have jeopardized long term survival prospects of wild lives and nature. This is a reference of Amchang Wildlife Sanctuary, located east to Guwahati city which shelters high diversity of wildlife, besides providing some much needed green cover for the city. A comparison of satellite imagery taken in 2004 when Amchang was declared a Wildlife Sanctuary and that of eight years later lays bare how growing encroachment has eroded a substantial portion of the 78.64 sq km sanctuary since it was upgraded to a protected area [10]. This whole becomes due to recent migration of people from different corners of Assam to this forest area where they get a chance to settle nearby to a city in cheap cost to continue their economic upliftment and struggle for life in a more convenient way.

The recent eviction drive in the said sanctuary was triggered by a complaint from Early Birds, an NGO who wrote to the Gauhati High Court in 2013 about the ongoing migration and illegal encroachment in the forest land apparently hampering the sanctuary. On receiving a detail report of this, the court registered a suo moto Public Interest Litigation (No. 27/2013) [11]. After much legal debates coupled with counter debates; in August 2017, the court disposed of the case, saying that the administration should evict the unlawful resident within a month. Accordingly on August 25, 2017, a drive to remove encroachment from Amchang was carried out and 283 encroachments were removed, followed by another such drive on November 25, 2017 where 408 dwellings had been demolished and approximately 151 hectare of area were recovered. Three days after on November 28, 2017 again 324 more houses were demolished and 80 hectare of area were recovered. In this drive, two industrial establishments, situated inside the sanctuary, were also demolished. Even after the demolition of 1015 households, the eviction drive has not been completed as there are more than 1000 households remaining within the sanctuary.

There was a huge hue and cry in Assam after the eviction drive in Amchang which led to a prayer for temporary suspension of eviction drive. This is because a large number of people including school going students were affected by the drive. The State Government on humanitarian ground took steps towards rehabilitation for the erosion and flood affected landless migratory people or compensation package or both for the genuinely affected people. Thus, the implementing agencies though follow the rules but have to compensate otherwise the people which in turn increase the liabilities of the Government.

Recommendation

In the light of the above facts related to legal problems arises due to large scale migration, it would be recommended for the administration to wrap up all the migration related legislation considering the need for environment protection as well as for conservation in a sustainable way and develop a effective way to protect our reserve forests and protected areas from unwanted migratory population. For this newly up graded National Register of Citizens in Assam should be given priority for determining the status of population and at the same time Government should work on fresh land settlement covering all types of lands throughout the state which was pending since last fifty years. Once we could finalize status of people and their holdings, we may opt for proper distribution and even ratify new settlements for developmental strategy which could help to minimize the liability in the part of the government.

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Original Article

Predatory Pricing under Competition Law

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Abstract

Going-after to attack pricing puts forward a question for which decision is hard that has troubled and made secret designs the antitrust group for many years. On the one hand, history and of money and goods theory do teaching to that going-after to attack pricing can be an instrument of bad language, but on the other side, price copies of smaller size are the mark of competition, and the clear-cut help that users perhaps most desire from the of money and goods system. As the name suggests, going-after to attack pricing is the experience pricing of goods or services at such a low level that other firms cannot make an attempt to be placed over others and are forced to let go of the market. Thought this experience was mostly used by the government agencies to put a check on the unlawful activities and control monopolies of the offices, it act as a redressal apparatus rather than a sign of danger to the Equality 1 and state of being free as promised under the law. The Competition Act, 2002 outlaws going-after to attack pricing, giving attention to it as a wrongly use of chief position, stopped under Section 4. going-after to attack pricing under the Act means the exchange of goods for money of goods or statement in law of arms, at a price which is below the price, as may be worked out by rules, of producing of the goods or statement in law of arms, with a view to get changed to other form competition or put out waste (from body) the competitors. going-after to attack pricing is pricing one's goods below the producing price, so that the other players in the market, who are not chief, cannot take part in competition with the price of the chief player and will have to let go of the market. The CCI in Re: Johnson And Johnson Ltd. said that "the liquid with special merits of predatory pricing is below one's price with a view to taking away one being in competition against."

Keywords: Competition; attacks; Indian Telecom.

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Introduction

Part of Competitors in Going-After to Attack Pricing

When a single thing in the market gets up almost suddenly, at a blow, it is mostly because of the attacks on of chief position and going-after to attack pricing which comes after. These 2 principles are seen to twist together to form a bridge between lawful and of money and goods division lines, and partly cover over the currently in existence players in the market. Such activities are basically found

to be against the law, however it is just one of the many most frequently used ways in which that undertaking or group may attacks on its position of control. Going-after to attack pricing is mostly dependent upon the use misuse of chief position. As per the Section 42) of the Competition Act, 2002 chief position has been described as: "CHIEF POSITION" means a position of strength, got pleasure out of by an undertaking, in the on the point market, in Bohemia, which enables it to-

i. Do medical operation not dependently of in competition forces ruling in the on the point market; or

ii. Act on its users or competitors or the on the point market in its way;

For a thing to get to a chief, it is important that the thing has control and has the power over to act on the on the point part of market to the make right harmony of 50 per cent or more, on condition that the other one being in competition against players keep a much less part in the active market. Thought the of money and goods strength of the thing does play a full of force part, however conditions like the existence of other players in the on the point section of the industry market plays an important part in making certain whether the thing is able of putting to use a chief position.

Michael E. Porter of the Harvard Business School got greater, stronger, more complete an observations of the name Porter's 5 forces, which shows that the five conditions said-about below are necessary condition to let see attacks on of control:

- The making argument over price power of customers (ones getting things for money)
- The sign of danger of the Entry of new competitors
- The making argument over price power of suppliers
- The sign of danger of use for another products or services
- The in number of in competition competition feelings

In Hoffmann La Roche & Co. Ag v Commission of the European groups of persons the idea of 'attacks on of chief position' has been formed as:

"The idea of attacks on is an end idea having a relation with to the behaviour of an undertaking in a chief position which is such as to power over the structure of a market where, as an outcome of the very existence of the undertaking in question, the degree of competition is made more feeble and which, through use of two methods different from those which condition normal competition in products or services on the base of the bits of business of advertisement operators, a, has the effect of slowing down the support of the degree of competition still currently in existence in the market or the growth of that competition."

Though it has been done over again done again and again, but being in a chief is not against the law short, to the point. further, "wrongly use" is an end word and it having among its parts every guide which might against act on the structure of a market in which competition is made more feeble. For this reason, the being on a thing in a business in a chief position is not against the law but the wrong use of such chief position is against the law. The position of the company has also been put down in Section 2 of the Sherman Act, 1860 and under Art 82 of the EC Competition Law. going-after to attack pricing by such an undertaking which goes across enough business to be put in order as a chief player, can be one such wrongly use.

Lawful Remedies Against Going-After to Attack Pricing:

To make certain a healthy competition in the market among the players the Competition Act, 2002, has been introduced in putting in place of the (being) the only ones in a field and keep inside limits Trade experiences Act, 1969, seeks to make certain the well-being of the users. upon getting money for the danger and questions put forward by going-after to attack pricing, which mostly a clear attacks on of the 'chief position' in the market, which short, to the point is against the law; the trading of going-after to attack pricing in India, as expressed under the Competition Act, 2002, have been got use of from the English Competition Act, 1998 and the Clayton Antitrust Act, 1914. The statement in law reads as under:

Section 4 (2) (a) of the Competition Act, 2002 states that:

There will be a (very mean, unfair treatment) of most in control/most common position under Sub-section (1), if a business/project,-

a. Directly or indirectly, (forces (on people)/ causes an inconvenient situation) unfair or (treating certain groups of people unfairly)-
    i. Condition in (instance of buying something for money) or sale of products (that are bought and sold) or service; or
    ii. Price in (instance of buying something

for money) or sale (including (related to hunting and killing others) price) of products (that are bought and sold) or service. Explanation. For the purposes of this clause, the unfair or (treating certain groups of people unfairly) condition in (instance of buying something for money) or sale of products (that are bought and sold) or service referred to in Sub-clause

- And unfair or (treating certain groups of people unfairly) price in (instance of buying something for money) or sale of products (that are bought and sold) (including (related to hunting and killing others) price) or service referred to in sub- clause
- Hall not include such (treating certain groups of people unfairly) condition or price which may be adopted to meet the competition;

As per explanation (b) at the end of Section 4 (related to hunting and killing others) pricing refers to a practice of driving rivals out of business by selling at a price below the cost of production. Denial of market access briefly referred to in this section, if read conjunctively, is specifically prohibited under Section 4 (2) (c) of the Competition Act, 2002.

The Section 4 of the Competition Act, 2002 goes along with/matches up to Clause 4 of the Notes in clauses of the Competition Bill, 2001 which reads as follows:

This clause prohibits (very mean, unfair treatment) of most in control/most common position by any business/project. Such (very mean, unfair treatment) of most in control/most common position, bury alia, includes (something forced on people/an inconvenient situation), either directly or indirectly, or unfair or (treating certain groups of people unfairly) (instance of buying something for money) or selling prices or conditions, including (related to hunting and killing others) prices of products (that are bought and sold) or services, doing/participating in practices resulting (refusing to deal with something) of market access, making the end of/final opinion of contracts subject to acceptance by other parties or added/more/ helping responsibilities/duties and using most in control/most common position in one market to enter into or protect other market.

However, in 2007, Section 4 of the Competition Act, 2002 was changed/added to the end by the Competition (Change) Act, 2007. The objects and reasons of such change were given in the Notes on clauses of the Competition (Change) Bill, 2007 which says that: This clause tries to update Section 4 of the Competition Act, 2002 relating to (very mean, unfair treatment) of most in control/ most common position. The existing (legal rules) of Section 4 apply only to a business/project and not to the group of businesses/projects. Clause (c) Sub-section (2) of Section 4 states that there will be a (very mean, unfair treatment) of most in control/ most common position if a business/project does practice or practices resulting (refusing to deal with something) of market access.

Case Study

The Indian Telecom in the past 6 months has seen a very upset confusion, which was caused by a new (a person who enters or begins something) in the telecom market by the name of "Jio", a product of the group of companies of Reliance Group of Businesses. The services under the offer which was first launched as an "employee-only" offer (i.e. Unlimited Calling for life and Unlimited Data Benefit) were made open to the general public which this resulted in the huge amount and sudden rush of the masses to get/help the proposed benefits. From what was already (described a possible future event) not only did the move trigger large amount of customers, but also carefully-taught the fightings with a sense of strong (and scary) competition. This further resulted in multifold reduction in the prices of the services of all other leading service providers which then painted this riot of competition as an act of (on purpose) (carefully planned destruction of, or harmful interference with, something important). Though the legal statements (that someone has done something bad) can't be thrown out as foul cry, but the person (who uses a product or service) centric market has welcomed the new (a person who enters or begins something) and the competition with open hands which further makes it hard for others to form a basis of competition. (related to hunting and killing others) pricing as the name suggests is the pricing of products (that are bought and sold) or services at such a low level that other firms cannot compete and are forced to leave the market. Thought this practice was mostly used by the government (services businesses/ government units) to put a check on the illegal activities and control (companies with too much power) of the (services businesses/government units), it acted as a (correct or make up for things that happened in the past that were mean or unfair) al (machine/method/way) rather than a threat to the (state where all things are equal) and freedom as promised under the law.

Whether Case Study Fits into the Definition of Predatory Pricing

Concentration of the power has time and again been proven to be the least effective fix (for a disease) to prevent it from falling into the hands of the undeserving. In a picture/situation where development and business (process of people making, selling, and buying things) form two different sides of the coin, money always changes the equation and the result goes for a toss. (even though there is the existence of) repeated denials by the Reliance Group of Businesses about the "(related to hunting and killing others) Pricing" & being a most in control/most common player in the market, the group of companies has surely affected the Indian telecom part/area and the major players, left right and centre; it would be worth waiting to understand the course of events which follow. However now given the respected and liked/ respected reputation and the sky rocketing user base, joined/connected with throw away prices breaking the market ((caused unfair, pre-decided bad opinions within) mental picture) of telecom part/area.

Legal Precedents

The most valuable (instance of watching, noticing, or making a statement) relating to (related to hunting and killing others) pricing and (very mean, unfair treatment) of control was made by Lord Denning, M.R. in Registrar of (serving to severely limit or control) Trading Agreements v. W.H Smith & Son Ltd., while construing the English Law in (serving to severely limit or control) Trade Practices Act, 1965 that there was a time when traders used to join hands, and combine, to keep the trade all for themselves, so that prices can be decided according to them, because of the (one company that controls too much). This also lead to the shutting down of all new (people to enter or begin something) who might cut prices or even produce and sell better quality products (that are bought and sold). Therefore, the Parliament had to step in, both for the benefit of the new (people to enter or begin something) and the people (who use a product or service), and had to hold these trade practices void unless they were done in the interest of public interests. Therefore, the law made any such agreement void and also asked the traders to get all their trade practices registered. However, Lord Denning watches/ states/ celebrates/ obeys that the traders who combined did not tell the law about it, and it was done in dark; without the law or the people (who use a product or service) knowing about it. Neither putting such agreement in writing, nor words were needed/demanded, "a wink or a nod was enough" for them to combine and turn the whole market into an (one company that controls too much) and control everything in it. Therefore, the Parliament came up with another law to get rid of these practices, and so, it included not only agreements but also arrangements to keep the (related to hunting and killing others) pricing in control. This (instance of watching, noticing, or making a statement) by Lord Denning was well discussed when Parliament of India changed/ added to the end Section 4 of the Competition Act, 2002 by the Competition (Change) Act, 2007 and is also reflected in the change.

In MCX Stock Exchange Ltd v. National Stock Exchange of India Ltd., DotEx International Ltd. and Omnesys Technologies Pvt. Ltd, the CCI while laying down the test for (related to hunting and killing others) pricing said that:

"before a (related to hunting and killing others) pricing violation is found, it must be (showed/ shown or proved) that there has been a clearly stated/particular (number of times something happens) of under-pricing and that the big plan/ layout/dishonest plan of (related to hunting and killing others) pricing makes money-based sense. The size of Person (who is being sued or who was sued)'s (out of all the people who buy a product (like a car), how many people buy it from a particular company) and the (popular thing/general way things are going) may be (clearly connected or related) in deciding/figuring out the ease with which he may drive out a competitor through accused (of a crime) (related to hunting and killing others) dishonest pricing plan-but it does not, standing alone, allow a thought (made beforehand) that this can happen. To (accomplish or gain with effort) the recovering (a money-based loss) needed thing of a (related to hunting and killing others) pricing claim, a claimant must meet a two-prong test: first, a claimant must (show or prove) that the big plan/layout/dishonest plan could actually drive the competitor out of the market; second, there must be (event (s) or object (s) that prove something) that the surviving monopolist could then raise prices to people long enough to recover his costs without drawing new (people to enter or begin something) to the market."

Conclusion

Market has always been a person (who uses a product or service) centric business model which

captures and controls the (possible power or ability within/possibility of) the players in a fair and healthy competitive (surrounding conditions). Among many other challenges present, the most important is to permanently end the system of concentration of power. As extremely important it is for the person (who uses a product or service) to get the value for money for the products (that are bought and sold) they want, it is equally important that the companies have a fair playing ground to establish themselves as a reliable and (deserving people's trust because of honesty, etc.) thing/ business. While all the competitors in the market have (many different kinds of people or things) backgrounds and money-based (mixes of stocks, bonds, etc./document collections), it should be understood that ways of thinking/basic truths/ rules of fairness apply to each of them individually. (related to hunting and killing others) Pricing may sometimes be put into use and thought about/ believed as a check by the Govt (services businesses/ government units) to rule out illegal market things/ businesses or business practices. Interestingly given the developing affairs of the Indian (process of people making, selling, and buying things) the market is often able to be hurt by new (people to enter or begin something) who struggle to establish themselves, however the same doesn't seem to the case with "Jio" a part of the group of companies of the Reliance Group of Businesses. Thought what may have been appearing as an act of (related to hunting and killing others) pricing, as has been (charged with a crime) by the other major players in the (clearly connected or related) market part/ area, it will be interesting to watch what the course of actions which further go on in the parts/areas of (related to sending and receiving phone calls, texts, etc.) in India.

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Original Article

The Rationality and Constitutionality of Reservation for Economically Weaker Sections of Society in India

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Abstract

Reservations are an essential element of any democratic society where some population does not get fair and proportionate representation in governance and administration. Such representation is further necessary in the societies where social prejudices and caste biases are practiced avoiding certain populations mingling and associating with mainstream society like India where caste prejudices practiced since ancient times towards SCs, STs and OBCs and gender bias towards women. The representation of these populations have been fully forbidden in conducting social and public life, access to education, access to public employment and entering into political arena in the name of caste and gender. The representation of populations can be ensured by law to maintain the peace and fairness in society and to provide good governance. Good governance requires representation of all kinds of interests in a welfare nation. This is because to protect such interests and to maintain balance and fairness in governance and to achieve "*Sarve Janah Sukhino Bhavantu*". The Constitution of India and other legislations have been enacted to give fair chance of representation of Dalits and women to some extent in governance by providing reservation in education and public employment. Though 70 years of India's independence have been passed, still the representation of Dalits and women in educational opportunities, public employment and political field is not reached the desired goals of reservation for these communities. The Bill providing 33% percent reservation for women in higher politics is still pending, the 18% reservation for SCs, 7.5% reservation for STs and 27% reservation for OBCs in educational opportunities and public employment is not implemented effectively still now and reservation in promotions belonging to SCs and STs is still hanging. The reservation for SCs, STs and OBCs still not been achieved to the level of desired goals of it. However, the Union Government stepped into another kind of reservation which may be irrational to provide 10% reservation to economically weaker sections of the society. This is irrational because still India have not been achieved the goals of equality especially the removal of caste and untouchability in society by not implementing the reservation policy as desired by the framers of Constitution of India. The 10% reservation for economically weaker section of the higher caste is going to deepen the caste system and untouchability. The reservation for economically weaker section is not a bad concept itself, but without removal of caste system and untouchability it is not sustainable and rational.

Keywords: Reservation; Rationality; Scheduled Castes; Scheduled Tribes; Other Backward Classes; Economically Weaker Sections.

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Introdcution

The history of Indian society is full of prejudices based on caste and gender. The social structure of the Indian society from ancient to present is in hierarchical order initially was known as Varna system later became caste system. Initially there were four Varna such as Brahmin, Kshatriya, Vaishya and Shudra assigned them specific jobs which were exclusive of 100% reservation for each Varnas. Brahmin was the top and priestly class endowed with pursuit of education and knowledge. The Kshatriya was next top and warrior class endowed with rulership of the country. The third top was the Vaishya class endowed with conducting the business and commerce. The fourth class was the Shudras who endowed with the ancillary work to support and serve all the above Varnas known as backward classes in present context. The separate group of the people called panchama Varna or avarna i.e., depressed class of the people who need to perform menial work such as lifting the dead animal carcasses, digging the grave pond, manual scavenging etc., who were treated as untouchables for centuries presently known as Dalits. The main feature of the caste system is that, there is no upward movement of the population means the Brahmins remains Brahmin and Dalit remains Dalit forever as there is no chance for conversion of the Dalit to the upper caste Brahmin or Vaishya a fixed and rigid stratified society. There was also the concept of purity and impurity, the upper caste were regarded as pure by birth and lower as impure. Because of purity and impurity, the impure known as untouchables were prohibited from entering into temples for worship, public water bodies, entering to main places meant for public and seeking education and knowledge. The caste system is based on birth not on deeds which makes society a stagnant not a dynamic one, where the people belonging to the upper crust were meant for all enjoyments of life whereas the lower crust the Dalits were deprived of all the enjoyments of life led to a life of miseries and sufferings lower than the animals.

India was invaded initially in ancient period by the Aryans, during medieval period the Arabs and lastly the Britishers. The Aryans were responsible for introduction many things like Gods including the caste system. Neither the Arabians i.e., Muslim rulers nor the Britishers had much done to raise the status of the untouchables i.e., the Dalits.

Many countries saw the movement for liberty and equality during the reformation and renaissance period in USA, French and other part of the world. India attained the Independence in 1947 from the Britishers and commenced the drafting of the Constitution for independent India and succeeded in getting the great Constitution due to the hard work of legal luminaries and social reformers including Jawaharlal Nehru and Dr. B.R. Ambedkar.

The prime goals of the Constitution have been enshrined the Preamble assured securing Justice Social, Economic and Political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation. The full-fledged concept of liberty and equality has been enshrined in III Part of the Fundamental Rights where the concept of equality inscribed in Articles 14, 15, 16 and 17. The concept of social justice is ensured in Articles 14, 15(4) and 16(4) which may regarded as protective or positive discrimination also known as reservation policy for uplifting the oppressed classes of the country who suffered lot from centuries.

Every society is in a constant attempt to ensure that the rights of equality and freedoms available to all its citizens. Multiple mechanisms have been devised to achieve these ends and one such is the means of protective discrimination as enshrined in the Constitution of India under Articles 14, 15(4) and 16(4). The Constitution as enacted perceived that in order to bring out an egalitarian society certain category of persons, who had been marginalised for centuries, needs to be offered certain privileges for some period of time. These categories were understood to be persons belonging to Schedule Caste, Schedule Tribes and other backward classes based on their social, political, economic and educational status in the society.

Still the concept of social justice has not been achieved its goals as felt and visualised by the framers of the Constitution the present ruling Union Government hurriedly and all of sudden introduced the Constitution (124th Amendment) Bill, 2019, [1] got approved by the Parliament and Assented by the President of India resulting in the Constitution (103rd Amendment) Act, 2019 [2] for providing 10 per cent reservation in jobs and educational institutions to economically weaker sections of the society. The Act introduced two amendments to the Articles 15 and 16 of the Constitution by inserting two additional sub-clauses. It was introduced for "advancement of any economically weaker sections of citizens other than the classes

mentioned in clauses (4) and (5)." It provides for reservation of jobs in central government jobs as well as government educational institutions. It is also applicable on admissions to private higher educational institutions. It applies to citizens belonging to the economically weaker sections from the upper castes. This reservation is "in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category". The Statement of Objects and Reasons of the Act states that people from economically weaker sections of the society have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged.

The Bill passed into the 103rd Constitutional Amendment Act on 13 January, 2019 when it got assent of the President. The State governments of Gujarat, Uttar Pradesh and Assam declared to extend the 10% reservation very immediately after passage of the Bill in Parliament. However, the Constitutional validity of the same was challenged before the Supreme Court by an organisation called Youth for Equality [3] and before the High Court of Madras by the Tamil Nadu Government [4].

Rationality and Constitutional Validity of The Act Providing 10% Reservation

The Union Government have passed the enactment providing 10% reservation for weaker sections of the society leads to doubt as to the Constitutional validity of the Act providing 10% reservation. There are certain issues can be raised as to whole idea of reservation and legislation amending the Constitution of India for providing 10% reservation for economically weaker sections of the society. The issues can be raised are:

1. What is the idea of Reservation?
2. What is Purpose of Reservation?
3. Is the purpose of reservation being achieved?
4. Can reservation accorded under the Constitution of India be exceeded beyond 50%?
5. Is the Constitution (103rd Amendment) Act, 2019 providing 10% reservation for economically weaker sections against the Basic Structure of the Constitution?
6. What was the yardstick for identifying the 10% reservation which is afforded under the Constitution (103rd Amendment) Act, 2019?
7. Is reservation needed at all?

These issue are the main factors reflecting the whole idea and purpose of reservation of reservation policy which needs critical analysis:

1. The Idea of Reservation and Removal of Untouchability

Since Independence the fundamental aims of the Constitution is to convert the India into a Sovereign, Socialist, Secular and Democratic Republic by which the framers of the Constitution felt to build the egalitarian India by allowing the representation and participation of all the communities in the governance and administration.

The prime goals of the Constitution to secure Social, Economic and Political Justice; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation. The full-fledged concept of liberty and equality has been enshrined in III Part of the Fundamental Rights where the concept of equality inscribed in Articles 14, 15, 16 and 17. The concept of social justice is ensured in Articles 14, 15(4) and 16(4) which may regarded as protective or positive discrimination also known as reservation policy for uplifting the oppressed classes of the country who suffered lot from centuries to make as an egalitarian society. Even though provisions were made but the word "egalitarian society" could not found its true meaning in India, and the Constitution framers felt to achieve the idea of equality by introducing the idea of reservation policy. The main purpose of the reservation is to eradicate caste based inequalities and untouchability by ensuring them 50% of seats in educational intuitions and employment. The issue of reservation based on caste raises many arguments as it affect the spirit of the Article 14 of the Constitution which provides for equality before law. However, the reservation benefits and opportunities is justified by placing exceptions to it under Articles 15(4) and 16(14) to uplift the socially and educationally disadvantaged and deprived population for centuries especially the SCs, STs and OBCs making them equal to other crust of the society.

In India, social inequality was seen as a bigger problem as caste barriers prevented people from SCs, STs and backward communities to access opportunities. The prevalence of caste system always remained an impediment for these communities to gain access to educational institutions and government jobs. Our Constitution makers were deeply concerned with the harm done by centuries of discrimination in the name of the caste system under

which a group of individuals were discriminated for no fault of their own. They were in fact oppressed by the higher castes in hierarchy. The constitution of India made reasonable accommodation to them through the institution of reservation considering that economic backwardness as not a disability and it is individuals' incapacity to rise above backwardness due to caste system that need to be addressed.

Accordingly, the rationale behind reservation in India, as enshrined in the preamble is to secure social justice for its citizens. Our Constitution not only abolishes discrimination and exploitation of the lower strata of the society but provides for protective discrimination in favour of deprived sections of society. The aim of reservation is to uplift the deprived sections of the society i.e., the SCs, STs and backward communities and make them at par with other sections. The justification for reservation is also sustained by the obligation of a welfare state. The true purpose of reservation is not unemployment but removal of imbalance in governance, administration and removal of inequality. Our Constitution provides for reservation of only three social classes viz., SC's, ST's and OBC's. It does not permit reservation for the spurious, Economically Backward class. No such class is recognised by our Constitution.

On the contrary, in post-independence India, a significant section of the politically active population voiced concerns that caste-based reservations would be divisive and compromise national unity. Numerous academics and lawyers insisted that since 'class' did not mean the same thing as 'caste', the 'other backward classes' must be identified on an economic or class basis. The judiciary came to share these views on national unity, equality and reservations. In Balaji v. Mysore, [5] the Supreme Court noted that ultimately, poverty, rather than community identity, was the real marker of social and educational backwardness. While the court did not categorically reject using caste identity to determine the beneficiaries of quota or reservation schemes, the damage had been done. Soon, the central government confidently declared in parliament that it stood for the economic criterion, and encouraged the state governments to do the same. However, while reserving the seats the state had to rely on the economic condition of the people to determine the social and educational backwardness of the people, which finally led to caste-based reservation.

In the later years, when there was a dispute regarding the existing reservation policy, in Indira Sawhney case [6], the Supreme Court held that exclusive "economic criteria" is unconstitutional since the category of "poor" did not reflect "social backwardness". For the court, 'social backwardness' meant extreme marginalisation in terms of social status, primarily in the form of caste.

The judicial interpretation social backwardness in Indra Sawney case brought the idiom of social justice and inclusion, based on the sharing of state power with historically and socially disadvantaged communities to the concept of constitutional equality. This formulation introduced a distinction between government welfare policies that aimed to address economic marginalisation and quotas that aimed to address the exclusion of socially and educationally backwards groups from state power. Welfare policies, as redistributive strategies, aimed to mitigate poverty.

2. Purpose of Reservation: Social Justice vis-à-vis Alleviation of Poverty

Reservation is a policy designed to redress past discrimination against lower caste people to improve their social status through measures of educational and employment opportunities. It is an attempt to promote equal opportunity. It is often instituted in government and educational settings to ensure that depressed groups within a society are included in all spears of life. The justification for reservation is to compensate for past discrimination or exploitation by the ruling class of the nation.

India's first President Rajendra Prasad, while addressing the assembly once said: "the assembly and the government's aim was to end poverty and dirtiness to abolish distinction and exploitation and to ensure decent conditions of living and to find an egalitarian society" [7]. Hence, the principle of affirmative action adopted under the Constitution of India to promote social equality. Social equality is a social state of affairs in which all people within a specific society or isolated group have the same status in a certain respect. At the very least, social equality includes equal rights under the law, such as security, voting rights, freedom of speech and assembly and the extent of property rights. However, it also includes access to education, health care and other social securities. Social equality refers to social, rather than economic or income equality. The basis of providing reservation is giving proportionate opportunities to the people of the Scheduled Castes, Scheduled Tribes and Other Backward Classes. The reservation as a manifestation of social justice is intended to overcome the historical injustice caused to several groups of the society i.e., SCs, STs and OBCs.

The directive principles of State policy contained in Article 46 of the Constitution enjoins that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. In that direction, The Constitution (Ninety-third Amendment) Act, 2005, clause (5) was inserted in Article 15 of the Constitution which enables the State to make special provision for the advancement of any socially and educationally backward classes of citizens, or for the Scheduled Castes or the Scheduled Tribes, in relation to their admission in higher educational institutions. Similarly, clause (4) of Article 16 of the Constitution enables the State to make special provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Even the judiciary has contributed a lot in securing the social justice to such oppressed class from the beginning.

However, over the period, while determining the social backwardness 'caste' became a sole determining factor to decide the eligibility of the individual to get the reservation. In India, there are thousands of people who belong to the upper classes, who are deprived of their right to education or other facilities because of their economic conditions. Such economically weaker sections of citizens have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The benefits of existing reservations under clauses (4) and (5) of article 15 and clause (4) of article 16 are generally unavailable to them.

The intent of Article 46 is to promote with special care the educational and economic interests of the weaker sections of the people. Economically weaker sections of citizens have to get a fair chance of receiving higher education and participation in employment in the services of the State, and they should not be deprived of their fundamental rights because of the caste or the class they belong to. While interpreting the word 'backwardness' one has to interpret it as social, educational and economic backwardness. Otherwise, the constitutional value of equality will lose its meaning. However, Article 46 is a Directive Principle of State Policy, the State can adopt such measures to uplift the weaker sections of the society not by means of increasing reservation from 50% to 60% which challenges the very idea of reservation.

However, the Union Government has endeavoured to provide 10% reservation to the economically weaker sections of society by introducing the Constitution (One Hundred and Third Amendment) Act, 2019 is rather a welcoming step. This amendment makes a provision for reservation to the economically weaker sections of society in higher educational institutions, including private institutions whether aided or unaided by the State other than the minority educational institutions referred to in Article 30 of the Constitution and also provides for reservation for them in posts in initial appointment in services under the State. This amendment states that, this reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category. Here the reservation is an addition to the existing reservation and criteria of reservation is economical backwardness.

Some of the advantages of the reservation to the economically weaker sections of the society are:

- 10% reservation to economically weaker sections of upper Community/castes will improve the status of the economically backward community and bringing economic prosperity in the country. Such kind of reservation provides equal opportunity to all the citizens of the country irrespective of their caste, creed, race or sex.
- Equality is the basic feature of our Constitution. Hence, this 10% reservation upholds the principle of equality and enables a large population to come out and contribute to the growth of the country.
- Because of the reservation provision and the benefits available to the downtrodden sectors, now many castes are making attempts to be classified as backward to avail the benefits. For ex: Patels or Patidars of Gujarat who are an economically and politically dominant community. But the latest amendment will prevent the economically weaker sections to make attempts to be recognized as backward caste, which indirectly helps SCs, STs and OBCs to get fair share in the education and job opportunities.

But, 10% reservation offends the basic idea of reservation as the reservation is meant for securing social justice not economic justice. In the broader sense, social justice may be designed to elimination of poverty but its main objective is to secure social

equality rather than the economic equality.

The reservation cannot be used as a measure of poverty alleviation programme. The Government has every right to adopt such measures to eliminate poverty like Mahatma Gandhi Rural Employment Guarantee Scheme, Skill enhancement Schemes, Scholarships, Free-ships etc. But, the Government should not endeavoured to introduce the 10% reservation as affects the interests of the oppressed and downtrodden communities as yet their social conditions are improved even after the 70 years of Independent India.

3. The Purpose of Reservation (Equality) not yet been achieved

The history of the reservation is very recent compared to the history of social injustice caused to the certain group of the populations in India. The Framers of the Constitution felt that within a short span of the period the conditions of the oppressed or depressed people i.e., SCs, STs and OBCs are improved and becomes equal to the others in the Hindu society. This would happened when the reservation policy is been truly been implemented. But, the successive ruling governments were not able to implement the reservation policy in its true sense as visualised by the framers of the Constitution. Still the life conditions of the populations belonging to SCs, STs and OBCs are not improved drastically even after the 70 Years of Independent India. Untouchability was abolished under Article 17 the Constitution remained in paper as still untouchability is prevalent in rural India and in urban places indirectly. Still desired goals of educational and employment opportunities and empowerment of these communities has not been adequately achieved. These are the reasons for not achieving social justice: 1) the successive governments has not been implemented the reservation policy in its true sense; 2) Liberalisation, Privatisation and Globalisation process has strongly hit the reservation policy; 3) Disinvestment and closure of Public Sector Undertakings; 4) introduction of Out sourcing and contract system of the lower positions of the Government sector; 5) Non-filling of backlog posts across the country; 6) Non attempt of employment creations since long time; 7) abolition of existing vacancies under guise of attaining economic stability etc. Moreover, Article 334 of the Constitution provides for political reservation initially for ten years was extended up to 70 years until now but no one political leaders from these communities are capable of electing contesting the seat reserved for other than these communities i.e., general constituencies. Even Dr. Mallikarjun Kharge, the opposition leader of the Lok Sabha in Parliament and Dr. G. Parameshwara, Deputy Chief Minister of Karnataka having standing of more than 40 years in active politics are not able to contests from general constituencies, they choses only SC constituencies. This indicates that the Dalits are not equal in parity with the others. Hence, the desired goals of reservation still not been achieved and the reservation needs to be continued to these communities till they attain the equality.

4. Reservation accorded under the Constitution of India cannot be exceeded beyond 50%

The Supreme Court of India have been clearly laid down that any reservation should go beyond 50%. If the reservation go beyond 50% which will harm the meritorious crust of the population and affect Article 14 of the Constitution. Actually reservation itself is harmful for any selections and appointment as it disturb the merit which should be basis any selection for admissions and appointments as it enhances the quality and standard of education and employment thereby efficiency and efficacy can be maintained in administration. However, 50% reservation in admission to educational opportunities and government employment is an exception to Article 14 for the purpose of giving due representation to certain communities in the educational institutions, employment and politics as they were been excluded from accessing the same for centuries in India in the name of caste not on the basis of economic criteria. To overcome the social injustice the concept of social justice evolved under Articles 15(4) and 16(4) and Article 334 of the Constitution of India.

The Sahwney v. Union of India in 1992, nine-judge bench verdict, also known as Mandal case, said and it was laid down that the overall reservation cannot exceed 50 percent. Hence, the Union Government Reservation is fixed as follows:

Sl.No.	Categories	Percentage
1	General Merit (GM)	50.50
2	Other Backward Classes (OBCs)	27.00
3	Scheduled Castes (SCs)	15.00
4	Scheduled Tribes (STs)	07.50
	Total	100.00

Before Amendment of Constitution in 2019 the total reservation was 49.5% within the stipulation of the Indira Sahwney Case. But, the Constitution Amendment provides for 10% extra reservation to the economically weaker sections of the society which can be shown in the table below.

Sl.No.	Categories	Percentage
1	General Merit GM)	40.50
2	Other Backward Classes (OBCs)	27.00
3	Scheduled Castes (SCs)	15.00
4	Scheduled Tribes (STs)	07.50
5	Economically Weaker Sections (EWS)	10.00
	Total	100.00

The 10% reservation definitely affect either the interest of general merit candidates or eat the reservation of the OBCs, SCs and STs if the Supreme Court of India struck down the 10% reservation based on the Indira Sahwney Case [8]. But, the recent Constitutional Amendment Act has violated by enhancing the quota limit to 59.5%. The same has been questioned before the Supreme Court of India seeking a stay in implementing newly inserted Articles 15(6) and 16(6) in the Constitution of India which empowered the government to grant quota to the poor of the general category candidates [9].

However, the Supreme Court of India has not been granted stay but admitted to speed up the hearing [10]. The matter was again came up for hearing on March 11, 2019 before the Supreme Court of India. The matter was taken up by three Judges Bench led by Chief Justice Ranjan Gogoi declined to pass any interim order to stay the implementation of the Constitution (103rd Amendment) Act, 2019, scheduled the matter for hearing on March 28, 2019 [11]. The Centre Government is geared up and notified by the Ministry of Human Resource Development and UGC to provide 10% quota for admissions to Central Educational Institutions and Universities [12]. However, 50% restriction is relaxed in respect of certain States in 2010 [13]. They can increase the reservation quota beyond 50%. But to do so, the States must ensure that there is an extraordinary situation and that State must be included in Schedule 9th of the Constitution [14]. Presently some States providing quotas beyond 50% are as follows:

5. Constitution (103rd Amendment) Act, 2019 providing 10% Reservation for Economically Weaker Sections is against the Basic Structure of the Constitution

The 103rd Amendment to the Constitution enable new clause 6 in Art.16, which enables the State to make such a provision. The Government move has been challenged by an NGO Youth for Equality on the ground that the present amendment violates the Basic Structure of the Constitution.

The word Basic Structure has been nowhere defined in the Constitution. Initially the leading freedom fighters were Members of Parliament; the Supreme Court reposed in the wisdom of then political leadership. In Shankari Prasad [15] (1951) and Sajjan Singh [16] (1965), it conceded absolute power to Parliament in amending the Constitution. After that the Parliament started amending the Constitution to suit the interests of the ruling party. Then the Supreme Court in Golkanath[17] in 1967 held that Parliament does not have the power to amend the Constitution, but it vests with Constituent Assembly. Again, in KesavanandaBharati[18] the Supreme Court by 7:6 majority held that Parliament can amend the Constitution but does not have the power to destroy it – no amendment can change its 'Basic Structure.'

After deciding all the above cases the court listed few principles of Basic Structure, i.e., federalism, secularism, democracy, Supremacy of the Constitution, Fundamental Rights and Directive Principles of State Policy etc.

What Context does Basic Structure have in Reservation?

From Poona Pact (1932) between M.K Gandhi and Dr. B.R. Ambedkar to the Constituent Assembly Debates, reservation was focussed about in the context of social backwardness of castes i.e., socially disadvantaged. The 103rd Amendment makes a departure by extending reservation to

Sl. No.	States	OBC	SC	ST	Others	Percentage
1	Haryana	OBC-A-16, OBC-B-11, Special Backward Class-10, Economically Backward General Class-10 and PWD-3	13	20		70
2	Tamil Nadu	50	18	1		69
3	Maharashtra	32	13	7	Maratha-16	68
4	Telangana	OBC-35, Muslims-12	15	10	--	62
5	Jharkhand	22	11	27		60
6	Rajasthan	26	16	12	--	54

Source: Vijaya Karnataka, Kannada Daily, January 8, 2019, P.10

the economically disadvantaged. In 1951, the 1st Amendment brought to the Constitution and Clause 4 to Art. 15 was inserted to enable the State to make special provision for socially and educationally backward classes. Art. 16 (4) permits reservation for any backward class if it is not adequately represented in services under the State. Art. 46 which is a non-justifiable Directive Principle, says that the State shall promote educational and economic interests of weaker section, in particular SCs and STs, and protect them from social injustices and from all forms of exploitation. The 103rd Amendment in its Statement of Objects and reasons uses Art. 46, seems the government overlooked the fact that upper caste neither face social injustice nor subjected to any form of exploitation.

According to P.S. Krishnan, who was behind a number of Constitutional and Legislative enactments told that, the Constitution did not provide similar provisions for those who were only poor. It did not take into account the economic reasons to provide reservations to those poor. But that does not prevent the government from giving them other help through subsidies, scholarship, loans, economic advancement etc.

Hence, it can be a ground for violation of Basic Structure of the Constitution which can be challenged. Another question remains unanswered. 49.5% already has been reserved on caste lines. If the government does not wish to touch the 49.5%, this 10% quota will come out of remaining 51%. In effect open competition will be restricted to 41%. Will this be justifiable?

The Finance Minister of India, whereas said that it does not violates the basic structure because poverty, however, is secular criteria and it cuts across communities and religions, and he further said that, poverty as a criteria for a carve out does not in any way contravene the basic structure of the Constitution.

The Youth for Equality said the new Bill also violates basic feature of the Constitution as reservation on economic grounds cannot be limited to the general category and goes against a Supreme Court ruling that 50 per cent ceiling on reservation cannot be breached. [19]

Senior most Advocate Sri. Rajeev Dhavan pointed out that the 50% quota limit was the part of the Basic Structure of the Constitution and the new Constitutional Amendment Act providing extra more 10% reservation for the EWS has tinkered the Basic Structure of the Constitution [20].

6. The Yardstick for Implementation of 10% Reservation which is afforded under the Constitution (103rd Amendment) Act, 2019

The Act does not provide any guidelines as to who are the how the 10% who would be eligible for reservation would be identified. The Amendment Act does not define the expressions "Economically Weaker Sections". The Amendment simply says in the explanation that "economically weaker section" shall be notified by the State from time to time based on family income and other indicators of economic disadvantage. According to news reports the criterion for availing the 10% reservation is fulfilling the following conditions [21]:

- their annual income must be below Rs. 8 lakhs,
- they mustn't own more than 5 hectare of agricultural land,
- their residential area must be below 1000 sqft and their residential plot should not exceed 109 yards in any notified municipalities. In the event that their residences are in non-notified municipality areas, the plot size must be below 209 yards.

On the face of this, seems to be totally within the discretion of the State. But what makes these conditions questionable is that even as per the 2017 and 2018 data, per person per day amount to be below poverty line is Rs. 44. [22] This amounts to Rs. 1320 per person per month and Rs.15,840 per person per year. The gap between a person line in poverty line and economically backward is 50 times. The number of persons who would come in this category would be in lakhs and there is no clarity on how some coming with an economic background of 15 thousand a year and 8 lakh a year be put in the same category for providing the same kind of privilege.

This Amendment Act further creates elite class with earnings of 8 Lakhs per year to capture the reservation benefits [23]. If the whole point of the reservation to actually to offer support to people who are actually economically deprived, particularly provide education the best means to provide the same is by government providing more facilities for education so that economic factors do not play a role in accessing the same.

7. Still Reservation is needed

The very purpose of Reservation for which it was introduced is still not achieved in its entirety. These are the reasons for not achieving social justice: 1) the successive governments has

not been implemented the reservation policy in its true sense; 2) Liberalisation, Privatisation and Globalisation process has strongly hit the reservation policy; 3) Disinvestment and closure of Public Sector Undertakings; 4) introduction of Out sourcing and contract system of the lower positions of the Government sector; 5) Non-filling of backlog posts across the country; 6) Non attempt of employment creations since long time; 7) abolition of existing vacancies under guise of attaining economic stability etc. Moreover, Article 334 of the Constitution provides for political reservation initially for ten years was extended up to 70 years until now but no one political leaders from these communities are capable of electing contesting the seat reserved for other than these communities i.e., general constituencies. Even Dr. Mallikarjun Kharge, the Congress Party leader in Lok Sabha and Dr. G. Parameshwara, Deputy Chief Minister of Karnataka having standing of more than 40 years in active politics are not able to contests from general constituencies, they choses only SC constituencies. This indicates that the Dalits are not equal in parity with the others. Hence, the desired goals of reservation still not been achieved and the reservation needs to be continued to these communities till they attain the equality. This is an example of politics, the other aspects of reservations are admission to the educational institutions and employment is still not been properly implemented so that communities belonging to the SCs, STs and OBCs can compete with the rest. Hence, reservation still needed to continue so long as the inequality prevails in the society based on the caste.

Conclusion

The reservation is like hot cake each and everybody wants to gain it but to what extent and to whom it is to be given matters great. The Constitution of India provides for caste-based reservation not economy based reservation. It is ridiculous to claim that dominant landowning castes like the Jats in Haryana, Patels in Gujarat or Marathas in Maharashtra are backward. Yet these castes demands for inclusion in the list of OBCs (Other Backward Classes) to qualify for OBC job and educational quotas. Instead of asking these historically privileged castes to stop this naked grab for privileges, all political parties have supported legislation to include these dominant castes in the OBC list, leaving it to the courts to strike down such absurdities. Backwardness is no longer a historical tragedy, not even a fact, but simply a path to sneak in special privileges for the already privileged [24].

There is no either rationality or Constitutionality to provide 10% reservation for the economically weaker sections of the society affects the very idea of reservation and violates the essential feature and basic structure of Constitution of India. There is a strong basis for challenging the 10% quota for economically weaker sections of the society in view of Indira Sawhney v Union of India [25] which is a landmark judgement in the history of reservation policy in India and it faces several legal and political challenges [26]. The move for the reservation to economically weaker sections of the society dilute the very idea of reservation and defeat the very purpose of reservation in eradicating caste system and deepen the casteism and untouchability.

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