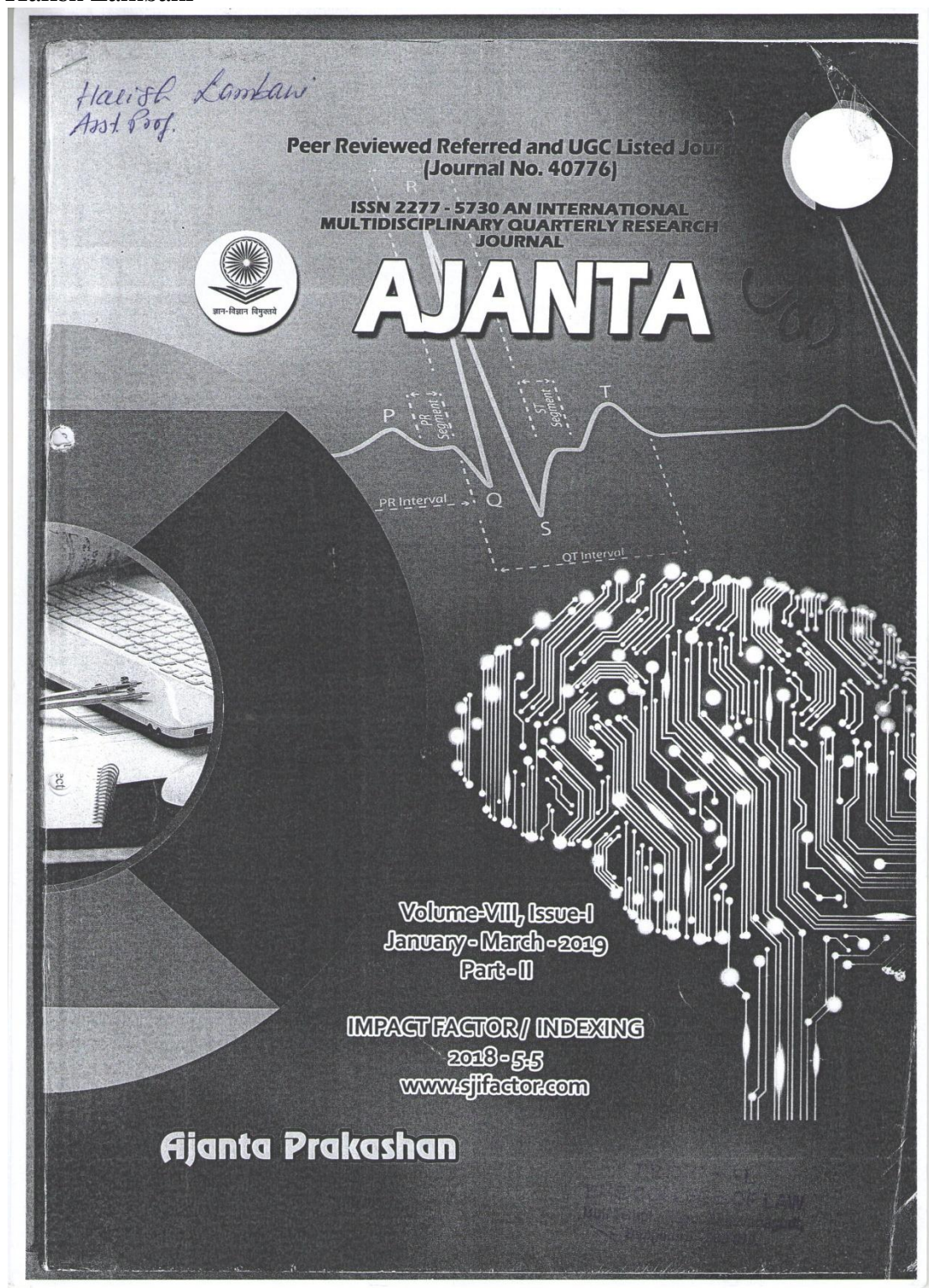


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The interest and mindfulness of various castes in politics may be studied in terms of four factors:

1. Interest of castes in politics,
2. Political knowledge and political awareness of castes,
3. Identification of castes with political parties, and
4. Influence of castes on political affairs.

Rajni Kothari (1970) scrutinized the relationship between caste and politics through evaluating the issue as to what happens to political system because of the vote of castes. The author found that three factors such as education, government patronage, and slowly expanding franchise have entered the caste system because of which caste system has come to affect democratic politics in the country. Economic opportunity, administrative patronage, and positions of power offered by the new institutions and the new leadership drew castes into politics. This involvement (of castes in politics) resulted in two things: the caste system made available to the leadership the structural and the ideological basis for political mobilization, and leadership was enforced to make concessions to local opinion and organise castes for economic and political purposes.

The caste system, which is based on the philosophies of purity and pollution, hierarchy and difference, has despite social mobility, been overbearing towards the Shudras and the outcastes who suffered the disgrace of ritual impurity and lived in abject poverty, illiteracy and denial of political power. The basis of confrontational identity politics based on caste may be said to have its origin on the issue of providing the oppressed caste groups with state support in the form of protective discrimination. This group identity based on caste that has been reinforced by the advent of political consciousness around caste identities is institutionalised by the caste-based political parties that acknowledge upholding and protecting the interests of specific identities including the castes. Subsequently, political parties have the upper caste dominated BJP, the lower caste dominated BSP (Bahujan Samaj Party) or the SP (Samajwadi Party), including the fact that left parties have implicitly followed the caste pattern to extract distance in electoral politics. The Aggregate result of the politicisation can be precised by arguing that caste-based identity politics has had a twin role in Indian society and polity. It comparatively democratised the caste-based Indian society but simultaneously destabilised the development of

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In contemporary Indian scenario, caste mobilisation has become an important factor in Indian politics. According to Risley, Caste is a collection of families bearing a common name, claiming a common descent from a mythical ancestor, divine or human and following the same hereditary calling and regarded by those who are competent to give an as forming a single homogenous community. It is described as caste as localized group or a traditional association based on one's birth in a caste, though at times associated with an occupation. Caste, through a joint effort of its members to assert themselves, has intervened in both politics and administration mainly through franchise and institutions such as the Raj. Whether it is the factionalism of Indian political parties or the nomination of candidates and the mode of election campaign, most things can be explained through caste and caste balance.

Ideally, caste and democratic political system signify opposite value systems. Caste is a hierarchical system of an individual in caste-oriented social system is determined by birth. It has been sanctioned by various holy texts, reinforced by priests and rituals. Conventionally, upper caste has been given certain privileges not only in religious area but also in economic, social and political spheres. Customary laws differentiate individual by birth and sex. That in rules are austere to women and Shudras and soft to males and Brahmins. Conversely, democratic political system backs freedom to an individual and equality of status. It stands for Law. No one regardless of status is above law. Indian democratic system under the constitution stands for liberty, equality and fraternity among all citizens. It struggles to build a social order. There are three consequences of such interaction between caste and political parties. One, caste members particularly poor and marginalized who previously remained untouched by the political processes got politicized and began to participate in electoral politics with an expectation that their interests would be served. Secondly, members get split among various political parties weakening hold of the caste. Lastly, caste large castes get representation in decision-making bodies and strength of the caste dominant castes get weaken. This explains the rise of middle and backward caste movements in most of the state assemblies.

The link between caste and politics has been analyzed at two levels: caste and caste politics.



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In political term, caste has a basic role in the decision making process that even the organization of states in India had to struggle with it so that no caste group dominates a particular territory. Although, untouchability has been forbidden under the Indian Constitution, Arijans and Advaisas have also been given legal safeguard as a positive measure. Government made an attempt to create economic and social impartiality but these reservations, have affected Indian politics in an unpleasant manner. Groups declared backward are now not prepared to relinquish the concessions that accumulate to them by the label of backwardness. Caste has thus become a major hurdle in the establishment of a casteless society and has paved communal divisions. Even the politicians are caught in the network. On the one hand, they would like the differences and preferences based on caste to be abolished and on the other, are well aware that caste are helpful in securing the vote.

The development role of caste association also play vital role to persuade voting pattern. Even political parties are considering caste as a vote bank. This empowered the lower castes to be politically influential on the basis of numerical preponderance. In selecting candidates for elections, political parties often give consideration to the caste composition of constituencies. Sometimes, several castes are using politics in their attempt to better their conditions or to accomplish their goal. Reservation policy is another feature in which caste system also influence Indian politics.

It is well recognized that role of caste in elections has two dimensions. One is of the parties and candidates and the second is of the voters. The previous notion seeks support of the voters projecting themselves as champions of particular social and economic interests, the latter while exercising their vote in favour of one party or candidate whether people vote on caste consideration. Different parties accommodate certain castes in distributing party tickets. While nominating candidates parties take into consideration caste of the aspirant candidate and numerical strength of different castes in a constituency. Caste leaders also mobilized their followers on caste lines, so that they could show their strength. In the fifties wherever caste associations were able to maintain their unity and did not formally align with ally one party they appealed to their members to vote for their caste fellows irrespective of their party affiliation. For very insignificant number of respondents, candidate's caste was the main consideration. Some respondents might have voted for persons who happened to belong to their caste. But it was not caste voting. They voted for the candidate not because person was of their caste but because of his party and ability. They, voted because person was the one who represented the party to which they felt closer for variety of reasons including the fact that the party would

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"protect his/her" interests or the party had done good work for the people like him/her. Their main consideration is their perception of their interests. In a given alternative parties candidates, they consider as to who would serve their interests better than others. If the candidate is own caste, which they identify as theirs, they vote for him/her.

In all, caste has become an important determinant in Indian society and politics, the new lesson of organised politics and consciousness of caste affiliations learnt by the previously despised caste groups have transformed the contours of Indian politics where shifting caste-class alliances are being encountered. Total effect of these mobilisations along caste-identities has resulted not only in the empowerment of recently emerging groups but has increased the intensity of confrontational politics and possibly leading to a growing crisis of governability.

Religion

Another type of identity politics is that produced through the development of a community on the shared link of religion. Religion is a collection of belief systems or cultural systems that relate humanity to spirituality and moral values. Many religions may have organized behaviours, clergy, adherence or membership, holy places, and scriptures. The practice of a religion may also include

1. Rituals
2. Sermons
3. Sacrifices
4. Festivals
5. Funerary services
6. Matrimonial service
7. Meditation
8. Prayer
9. Music
10. Art
11. Dance
12. Public service
13. Other aspects of human culture.

Religions may also contain mythology. It can be used to enhance oneself financially or spiritually. It can also be used to manipulate and control others for good or evil ends. It has been used as an effective political and commercial tool as evidenced by the many historic records of religious wars. Religion has great influence on political pattern in Indian society. Politicians use

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they could not muster enough support to contest elections only on the strength of the Kshatriyas. Yadavas encouraged the Bihar State Backward caste Association in 1947 to contest elections. During the 1950s, B. R. Ambedkar disparaged the use of caste as a political board. He expected the limitations of using caste as a political resource and instead emphasized eliminating the concept of caste from Indian society.

The Mandal Commission was formed in 1979 by the Janata Party government under Prime Minister Morarji Desai with a directive to "identify the socially or educationally backward". The Commission was set up to consider the question of seat reservations and quotas for people to redress caste discrimination, and used eleven social, economic, and educational indicators to determine "backwardness." In 1980, the commission's report confirmed the affirmative action practice under Indian law whereby members of lower castes (known as Other Backward Classes and Scheduled Castes and Tribes) were given exclusive access to a certain portion of government jobs and slots in public universities, and recommended changes to these quotas, increasing them by 27% to 49.5%. L R Naik, the only Dalit member in the Mandal Commission rejected to sign the Mandal recommendations, as he afraid that well-to-do OBCs would come all the benefits of reservation.

In 1990s, several parties like Bahujan Samaj Party (BSP), the Samajwadi Party and the Janata Dal started appealing that they represent the backward castes. Many such parties, relying primarily on Backward Classes' support, often in association with Dalits and Muslims, emerged as powerful in Indian states. At the same time, many Dalit leaders and intellectuals started realizing that the main Dalit oppressors were so-called Other Backward Classes, and formed their own parties, such as the Indian Justice Party. The Congress (I) in Maharashtra long relied on OBCs' backing for its political success. Bharatiya Janata Party has also showcased its Dalit and OBC leaders to prove that it is not an upper-caste party. Bangaru Laxman, the former BJP president (2001-2002) was a former Dalit. Uma Bharati, former CM of Madhya Pradesh, who belongs to OBC caste, is a BJP leader. In 2006, Arjun Singh cabinet minister for MHRD of the United Progressive Alliance (UPA) government was alleged to play caste politics when he introduced reservations for OBCs in educational institutions all around. In Tamil Nadu, Dravida Munnetra Kazhagam (DMK) party rose to power under the rumour of "Brahmin-oppression". Many upper-caste Brahmins have criticized of reverse discrimination against Dalits. In Karnataka, Brahmins (Iyers, Iyengars) have left the state, due to a "hostile atmosphere" prevailing against upper castes in the region.

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Singh decided to implement the recommendations of the Mandal Commission, a joint panel established in 1979 that called for a fixed quota (reservation) of jobs for the public sector.

Historical data indicated that Caste-based discrimination and domination have been a major aspect of Indian society and after independence, its implications with politics have not made it possible for previously oppressed caste-groups to be accorded political freedom and autonomy but has also raised consciousness about its potential as a political capital. In fact, Dr. B. R. Ambedkar has emotionally exposed this ambiguity when he elaborates the differences between the Mandal Commission's view of caste. While the former designed the reservations or protective discrimination to remove untouchability as an institution in Indian social life and polity, the latter considered caste as an important political resource. The Mandal commission can be regarded as the intellectual inspiration in transforming caste identity to an asset that may be used as a basis for safeguarding political and economic gains. Though it can also be said that the upper castes by virtue of their major position already occupying positions of strengths in the political and economic system, and when the Mandal Commission intensified the consciousness of the 'Dalits' by recognising their disadvantage of identity as an advantage the confrontation ensues.

The initiative of The National Front government was to reserve an additional 27 percent for the OBCs led to dangerous clash between pro and anti-reservation supporters, and the movement fell. For, there existed 15 percent of quota in the government jobs and the national institutions for the Scheduled Castes (Dalit) people, and an additional 7.5 percent for Scheduled Tribes or tribal (aborigine) people.

After two decades, in April 2006, the ruling UPA government announced the OBC quota, once again there was a strong opposition by sections of the non-reserved category people. The government's decision was challenged in the court of law. In May 2008, the Supreme Court agreed to the quota. However, there are far less protests as compared to 1990 which is that in the last 18 years, almost all parties have built their caste-based votebanks. This revealed in the fact that many OBC leaders have emerged as prominent politicians, such as Jayam Singh Yadav from the SP, Lalu Prasad Yadav from the RJD, and Nitish Kumar from the JD-U.

It is appraised that after Independence, some caste associations were established with the objectives to compete in elections. In Gujarat, some of the leaders of the Kshatriya caste participated in the early fifties to form the party of the Kshatriyas. They soon repeated that



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on as their loopholes. They hide their black money in the names of religion and trusts, can use religion to gain success in politics.

Researchers have argued since many years to elaborate the notion of religion. Some right the idea that religion is concerned primarily with conceptions of God, divinity and the ing and order of human existence. Others have asserted the way religion serves to draw actions between sacred (that is, transcendent or other-worldly) forms of space and belief and mundane, or profane, domains of 'worldly' human endeavour. Anthropologist Clifford tz (1973), focused on the symbolic power of religion and its ability to influence how people rstand their place in the world and also to communicate meaning to the actions they take. Some researchers have indicated that the idea of religion as a distinct category or re of human activity reflects a specifically Western worldview and historical tradition. Talal l (1993) stated that in other cultural traditions, it is not so easy to make a firm separation een religion and other spheres of life such as politics, culture, society and economics.

There are many explanations for the concept of religion. According to anthropologist ord Geertz, religion is "a system of symbols which acts to, establish powerful, pervasive, long-lasting moods and motivations in men by formulating conceptions of a general order of ence and clothing these conceptions with such an aura of factuality that the moods and vations seem uniquely realistic" (Geertz, 1973).

Theologian George Lindbeck asserted that religion is "a kind of cultural and/or linguistic ework or medium that makes possible the description of realities, the formulation of beliefs, the experiencing of inner attitudes, feelings, and sentiments" (Lindbeck 1984).

Marxist authors such as Louis Althusser highlighted in writing that religion functions as a 1 of 'false consciousness' which socializes us into accepting as normal certain historically and enally contingent relations of social power (Althusser 2001).

In India, Hinduism, Islam, Sikhism, Christianity, and Zoroastrianism are major religions ised by the people. Numerically, the Hindus have the majority, which stimulates many du loyalist groups like the RSS (Rashtriya Swayam Sevak Sangh) or the Siva Sena and tical parties like the BJP (Bharatiya Janata Party) or the Hindu Mahasabha to claim that India Hindu State. These assertions create homogenising myths about India and its history. These are contradicted by other religious groups who predict the likelihood of losing of practise of their religious and cultural life under such homogenising claims. This ions that have often resulted in communal uprisings.

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Religion in Indian politics can be linked to the country since pre-independence periods. It is supposed that the British, who ruled India for more than 100 years around the 19th century, pitched one community against the other to decline the freedom struggle. They especially thrived in pervading a feeling of anxiety among sections of the Muslim community concerning their wellbeing in a country that had a majority Hindu population and emerging Hindu nationalist voices. As a result, the Muslims demanded reserved seats in the legislature and a separate electorate. The British acceded to their demands through legislation, known as the Act of 1909.

In 1915, Hindu nationalists established the Akhil Bharatiya Hindu Mahasabha (All India Hindu Assembly) to counter the Indian Muslim League (a political party) and the secular Indian National Congress, a forum founded in 1885 that afterward became a political party. In 1923, Vinayak Damodar Savarkar (popularly known as Veer Savarkar), the Hindu Mahasabha founder, coined the word 'Hindutva' (Hindu-ness) to define who is a Hindu. In 1925, KB Hegdewar, the Hindu Mahasabha vice president, founded the RSS.

The tensions between groups of the Hindu and Muslim societies resulted in the Indian Muslim League demanding a separate nation for Muslims. When the British were to formally depart the country in 1947, the British India was divided into the 'Hindu-majority' India and the 'Muslim-majority' Pakistan. The Partition had dangerous consequences on both the nations. It resulted in a mass migration of 14.5 million people from India to Pakistan and vice versa, and the killing of around 1 million people related to religion of Hindu, Sikh and Muslim in the violent clashes that followed.

In 1951, the RSS began a political party, the Bharatiya Jana Sangh or BJS, under its leadership and control. In 1980, the BJS was succeeded by the BJP. The BJP, which struggled to become a national party and an alternative to India's one and only major party at the time, the Congress, espoused a resolution in June 1989 to build a temple of Rama in Ayodhya (Uttar Pradesh state), which the party claimed as the Ram Janmabhoomi (the birthplace of God Rama). The BJP and Hindu nationalists asserted that Muslim ruler Babur had demolished a temple of Rama to build the Babri Mosque in Ayodhya in the 16th century. In September 1990, BJP leader Lal Krishna Advani undertook a Rath Yatra (procession on a chariot) to promote the construction of a temple of Rama.

The Ayodhya issue intensified the political dividends. In July 1992, Advani, the leader of the BJP, led a large-scale rally from the temple of Ram in Ayodhya to the Parliament in Delhi. The opposition in the Lok Sabha (House of the People), reportedly led by the Congress party, must recognise the fact that from two seats in parliament in 1985, we have come to 117 seats in 1991. This has happened primarily because we took up this issue (Ayodhya)."



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In December 1992, supposed activists of the Vishwa Hindu Parishad (VHP), a sister organisation of the RSS and the BJP, demolished the Babri Mosque. This not only encouraged communal violence in several parts of the country, in which many people died, but also led to people along religious lines. Consequently, the BJP emerged as a major party.

Progressively, the BJP emerged as a dominant party at the national level for the first time in 1996, but the government lasted for only 15 days. It again gained power in March 1998 as the leader of the NDA and ruled the country till March 2004.

In 1998, the BJP began targeting Christians after Sonia Gandhi, an Italy-born Catholic wife of late former prime minister of India, Rajiv Gandhi, became the president of the country. Presently, BJP is ruling party in India.

The generally acknowledged myths that process the identity divide on religious grounds are on the 'appeasement theory', 'forcible religious conversions', general 'anti-Hindu' and thus 'India's approach of the minority religious groups, the 'hegemonic aspirations' of majority and 'denial of a socio-cultural space' to minority groups. Traditionally, the Hindu nationalist movement of the 19th century is considered to be the period that saw the separation of separate cultures on religious basis, the Hindus and the Muslims that developed further use of the partition. This division which has become institutionalised in the form of a national philosophy has become a major challenge for India's secular social fabric and democratic polity. Though communalism for a major part of the last century signified Hindu-Muslim conflict, recently, contestations between Hindus and Christians have often crystallised into communal battle.

The rise of Hindu national decisiveness, politics of representational government, stance of communal perceptions, and competition for the socio-economic resources are some of the reasons for the generation of communal beliefs and their change into riots. Identity schemes based on religion have become a major source of skirmish not only in international background but since the early 1990s it has also become a challenge for democracy and secularism. The growth of majoritarian assertiveness is considered to have been institutionalised after the BJP that along with its 'Hindu' constituents gave political siveness to a consolidating Hindu consciousness, formed a coalition ministry in March 2014. However, like all identity schemes the falsifying of a religious community polishes over national differences within a particular religion to generate the "we are all of the same kind" notion. Thus differences of caste groups within a homogenous Hindu identity, linguistic and regional differences within Islam are shelved to create a homogenous unified religious identity.

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In post-independence era, India the majoritarian assertion has generated its own antithesis in the form of minority religions assertiveness and a resulting confrontational politics that weakens the syncretistic dimensions of the civil society in India. The process through which this religious assertiveness is being increasingly institutionalised by a 'methodical rewriting of history' has the potential to reformulate India's national identity along communal trajectories.

It can be evaluated that In the Indian culture, religion has significant role. Political leaders realized that to retain unity in India, there is a need to remain secular. Therefore, Gandhiji had been preaching brotherhood among the different religious groups. Nehru was a strong supporter of secularism. Their efforts could not separate religion from politics rather in politics the vested interests started exploiting caste and religion to achieve political advantage. After independence, religious places are used for political publicity and the religious sentiments of the people are excited in order to gain political control of the State. This emergence of religion-political party has endangered the secularism in India. It is dreaded that if it succeeds, there is a possibility that many other political parties with caste and religion as the basis may come up.

Ethnicity

Ethnicity refers to physical characteristics as well as social traits that are shared by a human population. Some of the social traits often used for ethnic classification include.

1. Nationality
2. Tribe
3. Religious faith
4. Shared language
5. Shared culture
6. Shared traditions

Ethnicity denotes to selected cultural and physical characteristics used to categorize people into groups or categories considered to be significantly different from others. In some cases, ethnicity involves merely a loose group identity with little or no cultural traditions in common. In contrast, some ethnic groups are coherent subcultures with a shared language and body of tradition.

Ethnic groups may be either a minority or a majority in a populace. Whether a group is a minority or a majority also is not an absolute fact but depends on the perspective.

For many people, ethnicity categorization implies a connection between biological inheritance and culture. They believe that biological inheritance determines individual

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ity. In 1871, English anthropologist Edward Tylor wrote that cultural traits are entirely red. Subsequently, a baby can be placed into another culture shortly after birth and can be oughly enculturated to hear the preceding term pronounced to that culture, regardless of their colour, body shape, and other presumed racial features.

Several political scientists consider that political movement centered on ethnic identity. It major source of discordant conflict in the world today. Some researchers argue that the world the process of an ethnic revitalization that threatens to wrench apart established systems of r. The apparent increase in ethnicity-based solidarity and political activity is most often buted to the opportunity presented by recent shifts in the nature of political, economic, and al authority. There are two ways in which the idea of ethnic identity is used. One, it insiders creation of identity on the basis of single attribute - language, religion, caste, region. ondy, it considers the formation of identity on the basis of multiple attributes cumulatively. ough, it is the second way formation of identity on the basis of more than one characteristic h as culture, customs, region, religion or caste, which is considered as the most common way development of the ethnic identity. The one ethnic identity is shaped in relation to the other nic identity. The relations between more than one ethnic identities can be both harmonious l conflictual. Whenever, there is competition among the ethnic identities on the real or ighing basis, it uttered in the form of autonomy movements, demand for session or ethnic isings.

To summarize, caste, religion and ethnicity is entrenched into Indian politics. Many orists asserted that caste is a social phenomenon of Indian society. By partaking in the modern itical system, caste is now visible to divisive influences and a new form of integration ulting from a new system of universalist-particularistic relationships. Caste has gained a ertical position in Indian politics. Religion also has significant role in Indian Politics. Religion d Politics co-exists in India. Religion can guide a politician but a politician prejudiced in our of one religion, can never be good for all citizens. A politician is the representative of the neral people of India, and he/she use the spirit of religion to promote communal coordination. e spirit of religion is an inner revelation, but politics leads to rights of the people. Religion is t opposed to science. Religion binds people with duties to perform.

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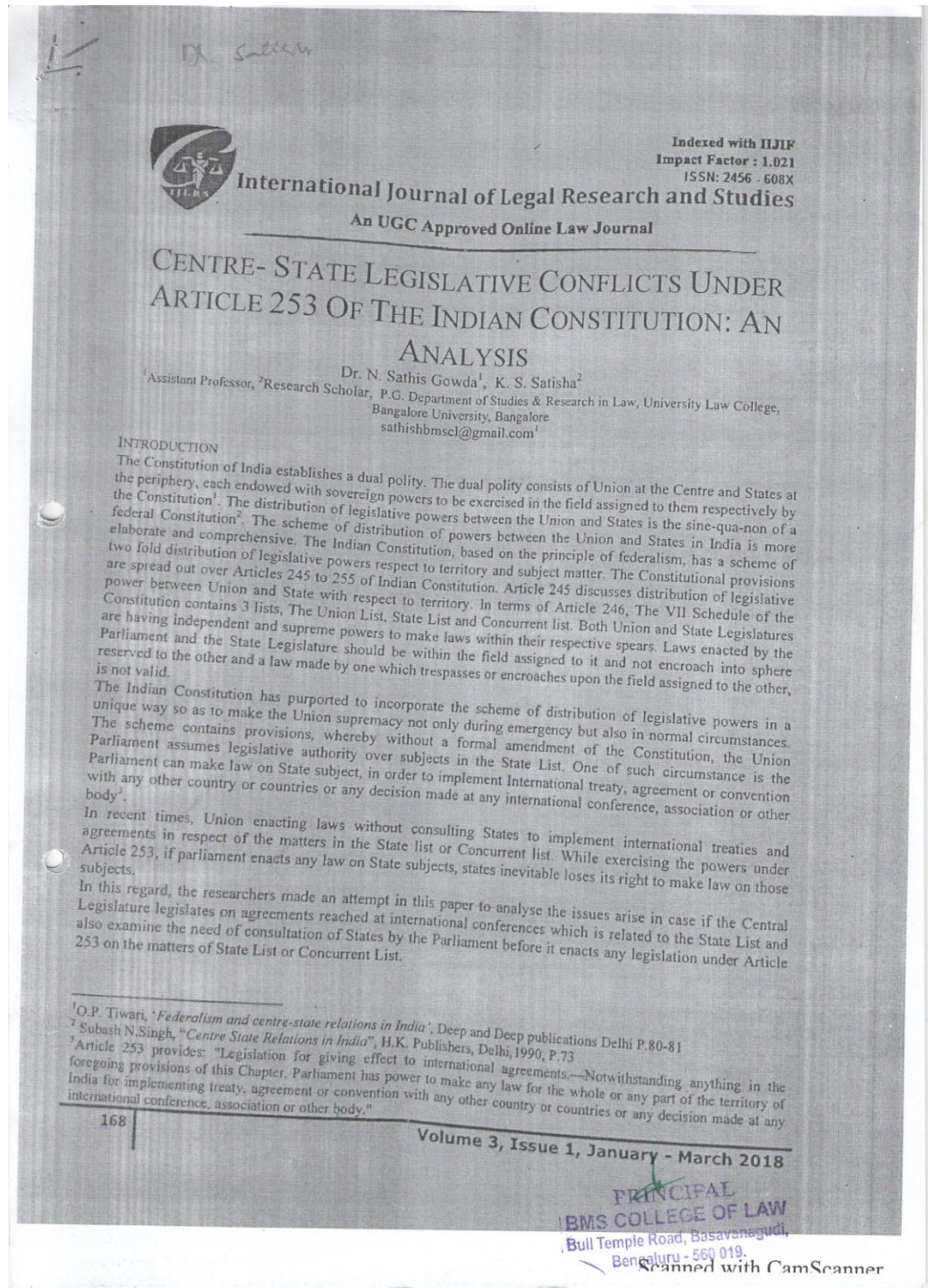
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HISTORY OF ARTICLE TREATY MAKING POWER

Prior to the commencement of the Constitution, India did not enjoy full external sovereignty. During British rule in India, they adopted executive model of treaty making⁴. The negotiation, signature and ratification of any treaties were prerogative powers of the executive and as far as entering into treaties the Parliament had no role to play. However, execution of any treaty by executive affecting the rights of citizen is subject to obtaining Parliamentary assent⁵.

The Government of India Act, 1935 did not provide any exclusive power on the executive authority of the federation to enter into treaties⁶. However, Section 8 of the Act provided that the executive authority of the federation extends to the matters with respect to which the federal legislature has power to make laws⁷. The Implementation of treaties and agreements with other countries was fall under Item 3 of List I of VII Schedule of the Government of India Act, 1935⁸. However, as far as execution of treaties is concerned the 1935 Act imposed stringent condition on the federal government that consent of the province is necessary in order to give effect to the treaty if the subject of the treaty falls within the domain of List II (Provincial List) in the Seventh Schedule⁹.

CONSTITUENT ASSEMBLY DEBATES

Before look into the constitutional provisions dealing the implementation of any agreement or convention with any other country or countries, it is desirable to study the constituent assembly debates as to the original intention of the framers of the Constitution on power to enter and implementation of treaties¹⁰. Item no. 14 and 16 of List I of VII Schedule of the draft constitutional Provisions deals with respect to entering into treaties and Articles 60 and 230 of draft Constitutional provisions provides for implementation of treaties. The Draft Item No.14¹¹ relates to the "Participation in international conferences and implementation of decisions taken thereat". Two Amendments were moved, one by Sir V.T. Krishnamachari and the other by Mr. Nazir Ahmed¹². Sir V.T. Krishnamachari said that, The power to implement the decisions taken at these Conferences, Associations and other bodies must depend on whether the subject matter of that decision is a provincial or a Federal subject. My proposal is that if these decisions relate to provincial subjects, the consent of the province concerned should be taken before the decisions are implemented. In the absence of such a restriction, the powers of provinces and of states will become almost nugatory. Mr. Nazir Ahmed said that there may be subjects which are entirely Central or it may come within List, No. III, in such case the Centre will also have jurisdiction. But, the subject may also come within List No. II, that is

⁴ Available at <http://shodhganga.inflibnet.ac.in/bitstream/10603/76456/13/chapter%207.pdf> last visited 20/03/2018

⁵ I.A. Shearer, "Starke's International Law", 11th ed., Oxford University Press, Oxford, 2009 (3rd impression), p. 71-72.

⁶ Dr. D.D. Basu, "Introduction to the Constitution of India", 20th ed., Lexis Nexis-Butterworths Wadhwa, Nagpur, 2012 (Reprint), P.9

⁷ Section 8-(1) Subject to the provisions of this Act, the executive authority of the Federation extends-

(a) to the matters with respect to which the Federal Legislature has power to make laws ;

Item No.3 External affairs ; the implementing of treaties and agreements with other countries ; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

⁸ Section 106 of the Government of India Act, 1935 provides Provisions as to legislation for giving effect to international agreements

(1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the

¹⁰ The Constituent Assembly Debates (CAD) on this aspect contained in Vol. V, VII and VIII that took place on 27th August 1947, 29th & 30th December 1948 and 13th June 1949 respectively. The text of the entire Constituent Assembly Debates is available at Parliament of India website at <http://parliamentofindia.nic.in/ls/debates/>.

¹¹ The Draft Item No.14 currently Item 13 in List I of VII Schedule

¹² Vol. VII CAD (13th June 1949)



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within the provincial jurisdiction. In that case, it would not be proper to give powers to the Centre, to do anything without the consent of the province¹³.

Opposing the Amendments Sir B.L. Mitter aptly pointed out that the matters taken for discussion in the international conferences would be relevant to all nations and any decision taken thereat would be in the interest of all, hence there should not be any apprehension in empowering the central legislature on implementing the decisions¹⁴.

Opposing the Amendment Mr. M. Gopalswami Ayyangar stressed the fact that "...we go to those Conferences not on behalf of the Federation as distinguished from the Units of the Federation"¹⁵. We go to those Conferences as representing India as a whole, i.e. the Federation and the Units combined, and, if we are empowered to subscribe to the decisions arrived at those Conferences, it is only right that we should be in a position to implement those decisions which we agree to at those Conferences.

Both Amendments on Item No.14 were not put to vote and were negatived. Then the Original Item No.14

"Participation in international conferences, associations and other bodies and implementing of decisions made thereat" was put to vote and was adopted. Draft Item No.16¹⁶ was on "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries." There were two proposals for Amendment on Item No.16, one moved by Sir V.T. Krishnamachari and the other by Mr. Naziruddin Ahmad. Before any debate commences on Item No.16, Sir V.T. Krishnamachari withdrew his proposal since his similar proposal on Item No.14 was negatived. The proposal of Mr. Naziruddin Ahmad is that consent of state is necessary on any matters which are within the legislative competency of province and in other matters affecting a Province or a State.

Shri M. Ananthasayanam Ayyangar speaking on the amendment suggested that only one legislature in the country must accept decisions and given them the sanction or force of law Mr. Alladi Krishnaswami Ayyar also opposed the proposal of Mr. Naziruddin Ahmad¹⁷. The amendment moved by Mr. Naziruddin Ahmed was put to vote and was negatived. Accordingly, the original Draft on Item No.16 (now Item No.14 in List I of VII Schedule) was adopted.

The Draft Article 230¹⁸ was added to clarify that, only Parliament has exclusive power to legislate to implement treaties, agreements or any decisions made at international conferences, etc. Dr. B.R. Ambedkar moved an Amendment on the Draft Article 230 which read as: "That in article 230, for the words for any State or part thereof, the words for the whole or any part of the territory of India be substituted". The Amendment was adopted without any debate¹⁹.

The Draft Article 60²⁰ provided for extension of the Union Executive Power to the matters on which the Parliament has power to make laws. This was strongly opposed saying this would take away the little power of the States over Concurrent List²¹. Accordingly, Mr. K. T. M. Ahmad Ibrahim Sahib Bahadur gave two notices of Amendments to Draft Article 60. The first one read as: "That the proviso to clause (1) of article 60 be deleted." Mr. K. Santhanam point out that the deletion of the proviso to clause (1) of Article 60 will vest the entire executive power and Concurrent subjects at the Centre²².

The other was: "in sub-clause (a) of clause (1) of Article 60, between the words 'Parliament has' and the word 'power', the word 'exclusive' be inserted." The Learned Member pointed out that the insertion of the word

¹³ Available at <http://parliamentofindia.nic.in/ls/debates/>.

¹⁴ Ibid

¹⁵ Supra note 13

¹⁶ The Draft Item No.16 currently Item No.14 in List I of VII Schedule

¹⁷ Vol. VIII CAD (13th June 1948)

¹⁸ The Draft Article 230 currently now Article 253

¹⁹ Rajeev Dhavan, "Treaties and People: Indian Reflections", 39 J.I.L.I. (1997) at 3

²⁰ The Draft Article 60 currently now Article 73

²¹ Vol. VIII CAD (13th June 1948)

²² Ibid



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"exclusive" in Clause (1) (a) of Article 60 as suggested by him will confine the Power of the Union Executive to Union List (List 1) only. In other words, the executive power of the Union shall not extend to matters with respect to which it has no exclusive power to make laws, i.e., matters included in the Concurrent List²³. Mr. Pandit Kunzru moved an Amendment to draft Article 60 stirred immense debate in the Constituent Assembly. The whole debate centered on whether the proposed Constitution is "Federal" or "Unitary". This is mainly because the purpose of the amendments moved on Draft Article 60 was to preserve autonomy of the State Executive on subjects mentioned in concurrent list.

Further, Dr. B.R. Ambedkar particularly emphasized that allowing the Central Government to execute the laws made by the Parliament on Concurrent list will reduce the financial burden of Provinces/States in as much as the Central Government will fund the implementation of any such law. The Amendments moved on Article 60 were put to vote and were negative and the Draft Article 60 was adopted which in its current form is Article 73.

TREATY MAKING AND IMPLEMENTATION POWER UNDER THE CONSTITUTION OF INDIA

Entry 14 of List-1 of VII Schedule empowers the Parliament to enact a suitable legislation on the subject of "entering into treaties and agreements with foreign countries and implementing of such treaties, agreements and conventions" even after 67 years of Constitution coming into force, Parliament has not thought it fit to legislate on the subject. In the absence of any specific law occupying the field, viz., who can enter into treaties, conventions and agreements with foreign countries or international organizations? One has to fall back upon provisions of the Constitution to fill the gap created by the Constitution itself.

The absence of specific law and the gaps created in the Constitution allows the Union Executive to exercise its power under Article 73²⁴. This Article confers upon the Government of India executive powers over all subjects in which Parliament has legislative competence. Article 73 clearly indicates that the powers of the Union executive do extend to matters on which the Parliament is competent to legislate and are not confined to matters over which the legislation has been passed already. Executive powers of the Union of India are specifically vested in the President under Article 53 of the Indian Constitution. Apart from vesting the executive power, this provision also provide for the exercise of such executive power either by him directly or through the officers subordinate to him in accordance with the Constitution. The Supreme Court in *Rao v. Union India*²⁵ has observed "executive power is the residue of functions of government, which are neither legislative nor judicial". Thus the Union Executive exercising its power under Article 73 enters into treaties with other countries and international institutions. the executive power of the Union to "enter into" and "implement" treaties, agreements and conventions is subject to the provisions of the Constitution²⁶.

Whereas law making power of legislatures is concerned, the power of legislating is divided by territorial extent and competence over subject matter²⁷. The Parliament can make laws for the whole of India on subjects

²³Vol. VII CAD (29th and 30th December 1948).

²⁴73. Extent of executive power of the Union

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty or agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution Council of Ministers

²⁵AIR 1971 SC 1002,

²⁶Article 73(1) starts with - "Subject to the provisions of this Constitution, the executive power of the Union shall extend... It means limitation or restriction or exception or yielding to other provisions of the Constitution.

²⁷Article 245 and 246 read with VII schedule of Indian Constitution



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specified in List I of Schedule VII and the legislature of the any State can make laws applicable within the territory of that State over the subjects contained in List II. List III is designated as Concurrent List over which the Parliament as well as the legislature of the States can exercise jurisdiction, subject to the overall power of the Parliament. Article 253 confers exclusive power on the Parliament to enact laws to implement international agreements. This power overrides even the other provisions in Chapter I of Part XI of the Constitution which deals with the distribution of powers between the Union and the States. The provisions of Article 253, therefore, gives power to the Parliament to enact laws on matters listed in List II of Schedule VII, in order to implement international treaties, agreements, conventions or decisions taken international conference, association or other body. Hence, the power of the Parliament on matters of international law can be stated to be plenary. Further, the residuary power of legislating is also with the Parliament. This enables the Parliament to legislate on matters not listed in Schedule VII.

This Article is in conformity with the object declared by Article 51(c)²⁸. Treaty-making and implementation of treaties, etc. is a subject of Union Legislation, under Entry 14, List I. But it would have been difficult for the Union to implement its obligations under treaties or other international agreements had it not been competent to legislate with respect to State subject in so far as that may be necessary for that purpose. In India, the provisions of treaty once signed do not automatically form part of the law of the land. The doctrine of Monism as prevailing in European countries is not applied in India²⁹, but it is the doctrine of Dualism which is applied in India³⁰. A treaty entered by India cannot become a law of the land and it cannot be implemented unless Parliament passes a law under Article 253. The obligations arising under the agreement or treaties are not by their own force binding on Indian nationals. The power to legislate in respect of treaties lies with Parliament under Entries 10 and 14 of List I of the Seventh Schedule. The text of Article 253 assumes that legislation would be required for implementing international treaties, agreements or conventions. India, therefore, follows the dualist approach since it is imperative to pass a law by the Parliament to give effect to any treaty/international convention.

COMPARATIVE STUDY

In United States of America, the Article VI of U.S. Constitution declares that a treaty which is made by the Federal Executive with the assent of the Senate must be supreme even though it trenches upon the normal sphere of the States as outlined by the other provisions of the Constitution³¹. Thus in *Missouri v. Holland*³², the U.S. Supreme Court held the Migratory Bird Treaty Act passed by the Congress, was valid although the States had a constitutional title to migratory birds within them. A treaty made by the U.S. may override private rights created by a State law.

²⁸ Article 51(c) in The Constitution Of India 1949

(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration PART IVA

²⁹ Jatin Kumar Das, *Law of Copyright*, PHI Learning pvt Ltd, New Delhi p-69

³⁰ <https://rostrumlegal.com/constitutional-commitment-to-international-obligations/>

³¹ Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

³² 252 U.S. 416 (1920) <https://supreme.justia.com/cases/federal/us/252/416/case.html>



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But in Canada, Section 132 of the British North America Act provides that the Dominion Parliament has exclusive power to implement a treaty when it comes within Section 132 or where the general residuary power under Section 91 is applicable³³. But, the Dominion Parliament cannot legislate to implement the agreement without the consent of the Provinces, if the international convention was signed by Canada as an independent State, not as a member of the British Commonwealth of Nations, and the matter of the Convention relates to the classes of Provincial subjects. It would thus appear, that the Dominion Parliament still lacks the whole of the treaty-making power.

Whereas in Australia, there is no separate treaty-making power in the Constitution for Australia. Section 51 of the Constitution Act of Australia gives the Commonwealth, the power over "External Affairs"³⁴. In *King v. Burgess*³⁵, it was laid down that the external affairs includes agreements entered into by Australia and the Commonwealth. Legislation to give effect to such agreement is valid despite its effect on States.

ROLE OF JUDICIARY IN RESOLVING CONFLICT BETWEEN CENTRE AND STATE UNDER ARTICLE 253

Higher Judiciary in India have played an important role in overcoming the challenges in implementing the provisions of treaty/ international covenants to protect the rights of its citizens. Courts in India, in certain cases, refused to implement treaty provisions in municipal courts without any legislation to that effect. But, at the same time, it has upheld the provisions of human rights treaties and given effect to those provisions where there is no contradictory municipal law. Judiciary has played an important role over the years in realizing certain provisions of international conventions and protecting the rights of its citizens by basing its decisions on international legal principles. It would be worthwhile to discuss a few judicial pronouncements in this regard.

In *Maganbhai Ishwarbhai Patel v. Union of India*³⁶ Justice Shah "The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power; thereby power is conferred upon the Parliament which it may not otherwise possess. But, it does not seek to circumscribe the extent of the power conferred by Article 73. If, in consequence of the exercise of executive power, rights of the citizen or others are restricted or infringed, or laws are modified, the exercise of power must be supported by legislation: where there is no such restriction, infringement of the right or modification of the laws, the executive is competent to exercise the power."³⁷

In *P.B. Samant v. Union of India*³⁸, Public-Interest Litigation (PIL) was filed seeking writ of mandamus restraining the Union of India from entering into final treaty relating to Dunkel Proposals without obtaining sanction of the Parliament and State Legislatures. It was argued that, in exercise of its executive power under Article 73, the Union Government cannot trench upon the subjects in the State List. It was submitted that Dunkel Proposals dealt with the subjects like agriculture, irrigation, cotton and other matters that are within the exclusive domain of the States. It was also submitted that the Dunkel Proposals will also affect the maintenance of roads, bridges, communications etc. which too are in the State List. Based on these premises it was argued that unless the consent of States is obtained, the Union Government cannot enter into any agreement on the Dunkel Proposals which are being discussed as part of Uruguay Round of Trade Negotiations under the auspices of GATT. The Court dismissed the petition by holding that the power under Article 73 was expansive

³³ Section 132 of the British North America Act 1867. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries

³⁴ Commonwealth of Australia Constitution Act 1900 (Cth) s 51(xxix)

³⁵ 1936] HCA 52; 55 CLR 608; (1936) ALR 482 available at <https://jade.io/jf/a=outline&jd=63895>

³⁶ 1969 AIR 783, 1969 (3) SCR 254, 1970 (3) SCC 400

³⁷ Ibid

³⁸ AIR 1994 Bom. 323



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enough to enable the Union to negotiate treaties in support of Article 253. It held: "It is difficult to accede to the contention that though the Parliament has power to enact laws in respect of matters covered by the State list in pursuance of treaty or the agreement entered into with foreign countries, the executive power cannot be exercised by entering into treaty as it is likely to affect the matters in the State list."³⁹

In *S. Jagannath v. Union of India & Ors*⁴⁰ the court upheld the Environment (Protection) Act, 1986, enacted to implement decisions taken at the U.N.'s Conference on the Human Environment in 1972. Further, more to the point is *Dada v. State of Maharashtra*⁴¹, in which the Narcotic Drugs and Psychotropic Substances Act, 1985, was upheld as a law which implemented the International Convention of Psychotropic Substances, 1971. Again, in the year 2005, the apex court in the case of *State of West Bengal v. Kesorum Industries Limited*⁴², held that a Treaty entered into by India cannot become law of the land and it cannot be implemented unless Parliament passes a law as mentioned under Article 253.

In a recent judgment of 2014 on recognizing transgender as third gender and enforcing their rights guaranteed in the Constitution as citizens of this country, the Supreme Court in *National Legal Services Authority v. Union of India and others*⁴³, observed that generally, a legislation is required for implementing the international covenants, unlike the position in the USA where the rules of International Law are applied by the municipal courts based on the theory of their implied adoption by the state, as a part of its own municipal law. The court, while interpreting Article 51 read along with Article 253 of the Constitution of India, held that if the Parliament has made any legislation which is in conflict with International Law, then Indian courts are bound to give effect to the Indian law. However, in the absence of contrary legislation, municipal courts in India would respect the rules of International Law. Therefore, the Indian commitment to International Treaty obligations under Constitution of India is defined under Article 51(c); which although is only a Directive Principles of State Policy, yet the power of Parliament under Article 253, to enact laws for implementing the treaty obligations is an important provision in this direction.

PARLIAMENTARY PROPOSALS FOR AMEND ARTICLE 253

The members of the Parliament had made an attempt to amend the Constitution with respect to negotiation and entering into treaties. The first such attempt was made on 5th March, 1993 by Shri George Fernandes, Member of Parliament, Lok Sabha he gave notice of intention to introduce the Constitution (Amendment) Bill, 1993 for amending Article 253 to provide that treaties and conventions be ratified by each House of Parliament by not less than one half of the membership of each House and by a majority of the legislatures of not less than half the States. But the Bill was not listed for consideration during the life of that Lok Sabha⁴⁴.

Shri Satyaprakash Malviya⁴⁵, enquiring whether the Government proposes to introduce any legislation to amend the Constitution to provide for parliamentary approval of international treaties. The question was answered on May 12, 1994 in the negative⁴⁶.

In February, 1992, Shri M.A. Baby, Member of Parliament, Rajya Sabha gave a notice of his intention to introduce the Constitution (Amendment) Bill, 1992 to amend Article 77 of the Constitution of India. Similarly on the same lines as suggested by Shri M.A. Baby Shri Chitta Basu, Member of Parliament, Lok Sabha gave notice of his intention On July 17, 1994, to introduce a Constitution (Amendment) Bill, 1994, but the same had not been taken up for consideration during the life of that Lok Sabha⁴⁷.

³⁹ AIR 1994 Bom 323, 1994 (4) BomCR 491 at para 5 available at <https://indiankanoon.org/doc/983278/>

⁴⁰ (1997) 2 SCC 87 at page 143, AIR 1997 SC 811.

⁴¹ (200) 8 SCC 437

⁴² AIR 1997 SC 811.

⁴³ (2014) 5 SCC 438.

⁴⁴ Report of the Commission on Centre-State Relations 2010, para 3.8.05 page no. 30 at para 3.7.15

⁴⁵ Member, Rajya Sabha tabled a question (No. 6856)

⁴⁶ <http://shodhganga.inflibnet.ac.in/bitstream/10603/76456/13/chapter%207.pdf>

⁴⁷ Report of the Commission on Centre-State Relations 2010, para 3.8.05 page no. 30 at para 3.7.17



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The Private Member's Bill to amend the Constitution introduced by Shri M.A. Baby came up for discussion in the Rajya Sabha in March, 1997. Shri Pranab Mukherjee, M.P., suggested that there should be an informed debate and discussion on the issue and that one should not rush with Constitutional amendments on the matter. Finally opined that more debate should go into the matter before effecting such an amendment⁴⁸.

RECOMMENDATIONS OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION
The Commission was appointed to review the existing arrangements between the Union and States as per the Constitution of India. The NCRWC observed in its report Volume II Constitutional Governance and the Management of Centre-State Relations at Chapter-3 titled Legislative Relations Between the Union and States that "Article 246 (1) read with Entry 14 of List I- Union List of the Seventh Schedule empowers Parliament to make laws with respect to "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries". As per Article 253, Parliament has, power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This article overrides the distribution of legislative powers provided for by Article 246 read with Lists in the Seventh Schedule to the Constitution.

Accordingly the NCRWC recommended that the Parliament should make a law on the subject of Entry 14 of List I to streamline the procedures involved. The following aspects may be incorporated in the proposed law to be enacted by the Parliament on the subject of Entry 14 of List I⁴⁹.

1. Agreements relate to defense, foreign relations etc. which have no bearing on individual rights or rights of States of the Indian Union can be put in a separate category on which the Union may act on its own volition independent of prior discussion in Parliament.
2. Other treaties which affect the rights and obligations of citizens as well as those which directly impinge on subjects in State List should be negotiated with greater involvement of States and representatives in Parliament.
3. Treaties or agreements which, when implemented, put obligations on particular States affecting its financial and administrative capacities. In such situations, in principle, the Centre should underwrite the additional liability of concerned States according to an agreed formula between the Centre and States.
4. Financial obligations and its implications on State finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time.

SUGGESTIONS

On the basis of above discussion in order to reduce conflict or friction between States and the Union and for expeditious decision-making on important issues involving States, the researchers have made the following suggestions.

1. The Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute.
2. Giving effect to treaties without the consent of Parliament and State Legislature would result in collapse of Indian Federalism. Hence prior consent of the Parliament must be obtained before entering into contract by the President.
3. If the subject matter of treaty falls under State List, Parliament before making any law consent of the states must be obtained.

⁴⁸P.M. Bakshi, 'Treaty Making Power under our Constitution', A Consultation Paper presented to the National Commission to Review the Working of the Constitution-January 8, 2001.

⁴⁹ Report of the Commission on Centre-State Relations 2010, para 3.8.05 page no. 50

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4. Prior consultation by the Union Government with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List.
5. Need to implement the recommendations of NCRWC with respect to legislative powers to overcome from the Centre State legislative conflicts

CONCLUSION

In the absence of any law enacted by the Parliament under Entry 14 of List I of the VII Schedule. The President enjoys the power to conclude treaties with the foreign countries subject to certain limitations and the manner contemplated by the Constitution. Treaties in India do not require the approval of the legislature before they are finally ratified. Every treaty concluded by the President does not unlike in United States, Australia and Switzerland form part of the law of the land unless expressly made so, as in the United Kingdom by legislative authority. Treaties concluded in the international level cannot have binding force in India without enacting a law for implementing. The Parliament has exclusive power to make law for implementing any treaties and that power is exercisable even if the subject matter of the treaty to the State List.

The executive power to enter in to treaties without any checks and balances poses a great threat to Federal Structure of Indian Polity. It is said that the Constitution classified the legislative powers available to the Union and the States on areas that belonged exclusively to the Union and States and also areas over which they have concurrent power and this entire scheme of division of legislative powers between the Union and States which formed the basis of Indian federalism is taken away through Article 73 (1) read with 253. Further, it is argued that giving effect to treaties without the consent of Parliament and State Legislature would result in collapse of Indian Federalism. Theoretically Parliament was to have the final say in determining whether and what laws would be enacted to implement the international obligation arising out of an international treaty. But parliamentary government in India is designed in such a way that by the time Parliament reflects on the desirability of implementing legislation it is already faced with a fait accompli.

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AN ANALYTICAL APPRAISAL OF CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

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Introduction

The employment of contract labour is mainly responsible for empowerment of our community due to their committed work with efficiency, sincerity and hard work. But then how for the existing legal framework has helped in empowering the contract labour a million-dollar question. The employment of contract labour has increased enormously in the aftermath of Liberalization, Privatization and Globalization. Again it is interesting to find out up to what extends the role of the Government, Private sector and the Judiciary are involved in regulating and abolishing contract labour in India

Contract Labour is a significant and growing form of employment. It is prevalent in almost all industries, in agriculture and allied operations and in service sector. It generally refers to workers engaged through an intermediary and is based on a triangular relationship between the user enterprises, the contractor (including the sub-contractor) and the workers. These workers are millions in number and generally belong to the unorganised sector. They have very little bargaining power, have little or no social security and are often engaged in hazardous occupations endangering their health and safety. They are often denied minimum wages and have little or no security of employment. On the other hand, reasons like sporadic nature of work, difficulty in ensuring closer supervision by the employer or cost effectiveness, flexibility in manpower deployment, concentration in core competencies etc. justify the system of contract labour.

The deplorable condition of contract labour in India was studied by various Commissions, Committees, and also the Labour Bureau and the Ministry of Labour before and after independence. All these organizations have found the condition of contract labourers to be appalling and their employment exploitative in nature. The concern for providing legislative protection to this category of workers, whose conditions have been found to be abysmal, resulted in the enactment of the Contract Labour (Regulation and Abolition) Act (hereinafter referred to as the Act) by the legislature in 1970. The principal aim of the Act was and still is to prevent exploitation of contract labour and also to introduce better conditions of work.

Salient features of the Contract Labour (Regulation and Abolition) Act 1970

1. Objects and purposes

The Act seeks to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances. The title of the Act suggests; it contains provisions to prohibit as well as regulate the employment of contract workers. In *Gammon India Ltd. v. Union of India*, the Supreme Court of India explained the objects of the Act in the following terms:

"The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by section 10 of the Act."

2. Application

The Act applies to every establishment/contractor in which 20 or more workmen are employed or were employed on any day in the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months, 20 or more workmen. It does not apply to establishments where the work performed is of intermittent or seasonal nature. An establishment wherein work is of intermittent and seasonal nature will be covered by the Act if the work performed is more than



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120 days and 60 days in a year respectively. The Act also applies to establishments of the Government and local authorities as well Appropriate Government

4. Appropriate government

The jurisdiction of the Central and state governments has been laid down by the definition of the 'appropriate government' in Section 2 (1) (a) of the Act, as amended in 1986. The appropriate government, with respect to an establishment under the Contract Labour (R&A) Act, 1970, is the same as that in the Industrial Disputes Act, 1947. In the light of the judgement of the Supreme Court in Air India Statutory Corp. Ltd and Others vs United Labour Union and Others, the Central Government has become the appropriate government with respect to all central public sector undertakings.

5. The Central and State Advisory Boards

The Central Government and State Governments are required to set up Central and State Advisory Contract Labour Boards to advise the respective Governments on matters arising out of the administration of the Act as are referred to them. The Boards are authorised to constitute Committees as deemed proper.

The Central Advisory Board- a tripartite Body was reconstituted on 24th June 2002 and the non-official members hold office for a term of three years. The Chairman of the Board was appointed on 10th June 2005 for a period of three years. Seventy-three meetings of the Central Advisory Contract Labour Board (CACLB) have been held so far. The last meeting was held on 2nd June, 2008. The re-constitution of the CACLB as well as the nomination of the Chairman is under process.

The existing Central Advisory Contract Labour Board has held four meetings during 2007-2008 under report and considered various issues relating to abolition of contract labour system in certain establishments. The working of the Act was also reviewed in this meeting.

6. Registration of establishments and licensing of contractors

The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. The Act makes it mandatory for the principal employer, that is, the user enterprise engaging contract workers, to obtain a certificate of registration from the concerned authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour, except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules.

The maximum number of contract workers who may be engaged in the establishment in question through the concerned contractor is required to be specified in the licence. In addition, the licence may contain conditions relating to hours of work, fixation of wages and essential amenities. Contract workers must be engaged in accordance with the conditions specified in the licence.

The concerned authorities may revoke a registration certificate or licence issued under the Act if it is found that it has been obtained by misrepresentation or suppression of any material fact. A licence may also be suspended or revoked if the conditions on which it has been granted are not complied with or if the licence holder acts in violation of any provision of the Act or Rules.

7. Welfare and health of contract labour

The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities have been made obligatory. In case of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same. The principal employer is required to provide the prescribed amenities in the event of the contractor failing to do so within the stipulated time.

8. Payment of Wages

Contract workers are required to be paid wages every month at a rate not below the prescribed minimum wage rate. The responsibility for payment of wages to contract workers primarily vests with the concerned contractor. The Act fastens liability on the principal employer to pay wages to the contract workers if the contractor either fails to make payment or makes short payment. In such a case, the principal employer may subsequently recover the amount from the contractor.

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When contract workers perform the same or similar kind of work as the directly employed workers in an establishment, they should be paid the wages at the same rate as applicable to the workers directly employed by the principal employer of the establishment. Furthermore, the contract workers would in such a case have the same hours of work and be entitled to holidays and other conditions of work on par with the directly employed workers. The Contract Labour (Regulation and Abolition) Central Rules, 1971 contain a similar provision.

9. Penal Provisions

For contravention of the provisions of the Act or any rules made under it, the punishment is imprisonment for a term of up to three months and a fine of a maximum of Rs10, 000. The Act provides for inspection of premises where contract workers are employed. As part of the process, the Inspector may make enquiries with the workers and examine necessary registers and records.

Contravention of the provisions of the Act is an offence punishable with imprisonment and/or fine. Prosecution for an offence under the Act may be initiated on a complaint made by the Inspector or with his or her sanction.

10. Other provisions

The Act makes provisions for the appointment of Inspecting staff, for maintenance of registers and records and making of Rules for carrying out the purpose of the Act. In the central sphere, officers of the Central Industrial Relation Machinery (CIRM) have been appointed as Inspectors.

Prohibition of employment of contract labour

Section 10, the pivotal provision of the enactment, empowers the central as well as state governments to prohibit the employment of contract labour in any process, operation or other work in any establishment by the issue of a notification. The government has to consult the appropriate tripartite advisory board constituted under the Act, that is, the central or concerned state advisory board as the case may be, before issuing any such notification. It is required to consider the following factors while deciding on the issue of abolition of contract labour in any work, process or operation:

- Whether the process, operation or work is incidental to or necessary for the industry
- Whether the process, operation or work is of a perennial nature
- Whether it is ordinarily done through regular workers in the establishment in question or other establishments carrying on similar activities
- Whether it is sufficient to employ a considerable number of whole-time workers
- What the conditions of work are in the establishment in question and
- What benefits are provided for the contract workers in the establishment?

The government has the power under section 10 to prohibit contract labour in any process or work in accordance with the aforesaid guidelines regardless of whether or not it is actual manufacturing work and regardless of whether it is termed by the employer as core work or non-core work.

While the central Act makes no such distinction, the Government of the State of Andhra Pradesh has made an amendment to the Contract Labour Act drawing a distinction between core and non-core activities. In that state, the use of contract workers is prohibited in core activities except under certain circumstances. On the other hand, the use of contract workers in non-core activities is freely allowed.

On the basis of the guidelines contained in section 10, the central government and state governments have issued notifications prohibiting the employment of contract workers in different kinds of work in various establishments.

The issue of absorption consequent upon abolition

The Contract Labour Act is silent on the issue of whether or not the concerned contract workers would be entitled to absorption in the service of the principal employer after the issue of such a notification. In the SAIL case, the Court held that it could not read in a remedy not specified in the Act. Consequently, it held that the principal employer cannot be required to absorb the contract labour working in the establishment concerned. However, if the principal employer intends to



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employ regular workers in the concerned process, operation or work, preference should be given to the erstwhile contract workers if they are suitable for the work.

Thus, the issues of continued employment of the concerned workers in the establishment in question and their absorption in service are left to the discretion of the employer. Furthermore, it would not be open to the erstwhile contract workers to directly raise any industrial dispute against the principal employer. Only the direct workers of the principal employer can raise an industrial dispute espousing their cause if they choose to do so.

Conclusion

The authors respectfully concludes that, despite series of legislative initiatives taken in favor of contract labour yet, the abuse of the contract labour system non-payment or reduced payment of dues, lack of welfare amenities, insecurity or lack of continuity of employment, deprivation of other perks and benefits such as medical, housing, travel, etc, continues because of lack of responsiveness on behalf of the intermediary or the contractor, who needs to be monitored strictly in order to strengthen the system.

Suggestions

Through this article the authors humbly propose the following suggestions...

- 1 All efforts should be made to ensure that provisions of the 1970 act and the rules made thereunder are implemented in letter and spirit.
- 2 Labour enforcement machinery at the centre and in states must be strengthened by providing requisite manpower and other facilities.
- 3 States must constitute tripartite state advisory boards under the act. As a number of states have not constituted such boards, it asked such states to constitute these boards at the earliest.
- 4 Payments should be made to contract workers through banks. Necessary amendments should be made in the act and rules.
5. Creation of machinery for adjudication of disputes, as regards contract labour.
6. Definitions of terms worker/workmen should be suitably amended on the lines of those under the Bombay Industrial Relations Act, so as to include contract labour under it.
7. Equal wages for equal work, to "strictly", be the responsibility of the principal employer, failure of which shall result in severe punishment, to the principal employer and his agents.

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