

Assessment Period 2016-2021



B.M.S. COLLEGE OF LAW, BENGALURU
Bull Temple Road, Basavanagudi, Bengaluru-560019



CRITERION 3 – RESEARCH INNOVATION AND EXTENSION

Key Indicator – 3.2 Research Publications and Awards

Metric No. 3.2.3:

Number of books and chapters in edited volumes/books published and papers published in national/ international conference proceedings per teacher during last five years

Submitted to



THE NATIONAL ASSESSMENT AND ACCREDITATION COUNCIL



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

Metric No. 3.2.3:

Number of books and chapters in edited volumes/books published and papers published in national/ international conference proceedings per teacher during last five years

INDEX

SL. NO.	PARTICULARS	PAGE. NO.
2020-21		
1	Rights of Patient's in India- An ignored and forgotten topic Dr. Manisha Banik Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	8-22
2	Constitutional Validity of Forms Acts 2020 Vis-a Vis Dr Sathish KS. Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	23-29
3	Conundrum of Media – Right to Privacy at Peril Dr. Sujatha S Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	30-35
4	Redressal Mechanism under E-Commerce Rules, 2020- A Blessing for E-Consumers Dr. Gayathri Bai.S Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	35-38
5	An Analysis of India Combating Piracy in Indian Ocean Region Gurvinder Kaur Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	39-45
6	The Impact of Criminal Tribes Act, 1871 on the Social Life of the Criminalised Tribes- An Overview Harish Lambani Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	46-49



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

7	Agricultural Labour Problems and Challenges during the period of COVID-19 Pandemic Kanya Naik Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	50-54
8	International Framework on Child Labour and Education Dr. Roopa S Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	55-62
9	Media Trial Vis-a Vis Right to Free Speech- A Critical Analysis Ms. Vasavi LS Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	63-69
10	Impact of the Agenda 2030 on Indigenous Peoples- An International Perspective Sahana Florence P Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	70-74
11	Domestic Violence and Its Impact on Children as Secondary Victims: An Overview Shruthi T Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	75-78
12	Intersection of Technology with Indian Motor Vehicles Act, 2019 Priyanka Vaidyanath and Rathan Sagar Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	79-88
13	The Right to Health and Development in India: Bioinformatics and Medical Infrastructure loss in India Rajiv G Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	89-92
14	The Role of Panchayats in the Effective Working of Anganawadis under the Integrated Child Development Services Ramya K Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	93-96



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

15	Developing Sui Generis System for the Protection of Trade Secrets in India- An Analytical Study Veena Nadigar Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	97-102
16	Legal Framework on Piracy and Data Protection in the USA Shwetha P Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	103-106
17	Rule of Law as an Idea of Public Law Dr. Nalini R Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	107-108
18	An Analysis of Legal Regulations of Bio Diversity Systems in India Dr. Veerabhadraiah C Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, Volume 8 Issue 4 (X) October- December 2021	109-115
19	Evolution of Consumer Rights as Human Rights - An Assessment Abhishek Sharma P Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	116-126
20	Caveat Emptor v. Product Liability under Consumer Protection Law Dr. Gayathri Bai S Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	127-132
21	An Analysis of Consumer Protection Act -2019 : Dr. Nalini R Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	133-135
22	Consumer Protection (E-Commerce Rules),2020-A Critical Analysis Dr. Roopa S Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	136-142
23	Role of the Central Consumer Protection Authority in Protecting the Consumer Rights Dr. Satish K S	143-148



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

	Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	
24	Impact of Pandemic on Supply of Essential Commodities Guruvinder Singh Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	149-154
25	What the Future holds for the Indian Consumers Post the Coronapocalypse Rachana R L Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	155-159
26	Patient's Rights During The Pandemic: A Critical Analysis Ramya K Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	160-162
27	Unfair Trade Practice During COVID-19 Pandemic- an Extract Dr. C.Veerabadhriah Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2020	163-167
2019-20		
28	Re (Presenting) Refugee Women in Bengal's Partition Narratives' Roshni Sharma Title of the Book: Partition of India ISBN: 978-0-429-42295-9	168-175
29	An Empirical study of Working conditions of Agriculture Labour : A Case Study of Rani Bennur Taluk Kanya Naik Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2019	176-179
30	A Study on the effect of Cross Diversification of Portfolio: A Study based on Back Testing Dr. Anitha D'Souza & H Sai Sunder Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2019	180-191
31	Analysis of case laws- On Biodiversity International and National Regime Dr. Sujatha S Name of the Conference proceedings: International Journal of	192-196



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

	Advance Science and innovative research 3ISBN-2394-7780, 2019	
32	An Analysis of Constituent Assembly Debate for Adopting Article 40 for organising village Panchayats through Constitution of India Dr. C Veerabhadraiah Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2019	197-199
33	Agenda 2030: A study on coherent and comprehensive strategies for poverty reduction Dr. Anitha D'Souza Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2019	200-205
34	The Banjara Tribes in the Era of Globalization and their Cultural Crisis Harish Lambani Name of the Proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2019	206-211
35	A Study of Indian Tribes and their rights, land-aliation and constitutional safeguards Harish Lambaani Name of the Proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2019	212-218
36	Impact of COVID-19 Pandemic on flow of FDI into India Dr. Gayathri Bai S Name of Proceeding A Special Issue for National web Conference on Impact of COVID 19 in India: Issues, Challenges and opportunities ISSN- 08869367, 2020	219-227
2017-18		
37	Role of Citizens Journalism through Internet in Reporting War and Conflict: An Introspection C. Krishna Bharadwaj H Name of the Book: International Relations and Ethnic Conflict in Asia ISBN- 9781522505822, 2017	228-239
38	International Convention and role of UN Agencies in Combating Terrorism: An Overview C. Krishna Bharadwaj H Name of the Book: Terrorism, Its Legal Framework and Beyond, ISBN-978-93-843705-2-7, 2017	240-270



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

39	Construction of a proper research report: An overview Author: C. Krishna Bharadwaj H Name of the Proceedings: Scholarly Communication and the Publish or Perish Pressure of Academia ISSN- 23267607, 2017	271-281
40	A Critical study on Present Day Violations of Rights of Women in India Author: C . Krishna Bharadwaj H Name of the Proceedings: National Conference on Protection of Rights and Dignity of Women in Digital Era ISBN-978-93-80751-72-6, 2017	282-293
2016-17		
41	An Analysis of Constituent Assembly Debate for Adopting Article 40 for organising village Panchayats through Constitution of India Dr. C Veerabhadraiah Name of the Conference proceedings: International Journal of Advance Science and innovative research ISBN-2394-7780, 2019	294-305



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-JOURNALS : duredh@bmscl.ac.in ANDREDO : anna.dureddy@bmscl.ac.in

Number of books and chapters during the year 2020-21

Volume 8, Issue 4 (X)
October - December 2021

ISSN: 2394 – 7780



International Journal of
Advance and Innovative Research



Indian Academicians and Researchers Association
www.iaaedu.com



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in principal@bmscl.ac.in dean@bmscl.ac.in clerk@bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X) October - December 2021

Editor- In-Chief

Dr. Tazyn Rahman

Members of Editorial Advisory Board

Mr. Nakibur Rahman

Ex. General Manager (Project)
Bongaigoan Refinery, IOC Ltd, Assam

Dr. Alka Agarwal

Director,
Mewar Institute of Management, Ghaziabad

Prof. (Dr.) Sudhansu Ranjan Mohapatra

Dean, Faculty of Law,
Sambalpur University, Sambalpur

Dr. P. Malyadri

Principal,
Government Degree College, Hyderabad

Prof.(Dr.) Shareef Hoque

Professor,
North South University, Bangladesh

Prof.(Dr.) Michael J. Riordan

Professor,
Sanda University, Jiashan, China

Prof.(Dr.) James Steve

Professor,
Fresno Pacific University, California, USA

Prof.(Dr.) Chris Wilson

Professor,
Curtin University, Singapore

Prof. (Dr.) Amer A. Taqa

Professor, DBS Department,
University of Mosul, Iraq

Dr. Nurul Fadly Habidin

Faculty of Management and Economics,
Universiti Pendidikan Sultan Idris, Malaysia

Dr. Neetu Singh

HOD, Department of Biotechnology,
Mewar Institute, Vasundhara, Ghaziabad

Dr. Mukesh Saxena

Pro Vice Chancellor,
University of Technology and Management, Shillong

Dr. Archana A. Ghatule

Director,
SKN Sinhgad Business School, Pandharpur

Prof. (Dr.) Monoj Kumar Chowdhury

Professor, Department of Business Administration,
Guahati University, Guwahati

Prof. (Dr.) Baljeet Singh Hothi

Professor,
Gitarattan International Business School, Delhi

Prof. (Dr.) Badiuddin Ahmed

Professor & Head, Department of Commerce,
Maulana Azad Nationl Urdu University, Hyderabad

Dr. Anindita Sharma

Dean & Associate Professor,
Jaipuria School of Business, Indrapuram, Ghaziabad

Prof. (Dr.) Jose Vargas Hernandez

Research Professor,
University of Guadalajara, Jalisco, México

Prof. (Dr.) P. Madhu Sudana Rao

Professor,
Mekelle University, Mekelle, Ethiopia

Prof. (Dr.) Himanshu Pandey

Professor, Department of Mathematics and Statistics
Gorakhpur University, Gorakhpur

Prof. (Dr.) Agbo Johnson Madaki

Faculty, Faculty of Law,
Catholic University of Eastern Africa, Nairobi, Kenya

Prof. (Dr.) D. Durga Bhavani

Professor,
CVR College of Engineering, Hyderabad, Telangana



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in principal@bmscl.ac.in dean@bmscl.ac.in clerk@bmscl.ac.in

Prof. (Dr.) Shashi Singhal

Professor,
Amity University, Jaipur

Prof. (Dr.) Alireza Heidari

Professor, Faculty of Chemistry,
California South University, California, USA

Prof. (Dr.) A. Mahadevan

Professor
S. G. School of Business Management, Salem

Prof. (Dr.) Hemant Sharma

Professor,
Amity University, Haryana

Dr. C. Shalini Kumar

Principal,
Vidhya Sagar Women's College, Chengalpet

Prof. (Dr.) Badar Alam Iqbal

Adjunct Professor,
Monarch University, Switzerland

Prof.(Dr.) D. Madan Mohan

Professor,
Indur PG College of MBA, Bodhan, Nizamabad

Dr. Sandeep Kumar Sahratia

Professor
Sreyas Institute of Engineering & Technology

Dr. S. Balamurugan

Director - Research & Development,
Mindnotix Technologies, Coimbatore

Dr. Dhananjay Prabhakar Awasarikar

Associate Professor,
Suryadutta Institute, Pune

Dr. Mohammad Younis

Associate Professor,
King Abdullah University, Saudi Arabia

Dr. Kavita Gidwani

Associate Professor,
Chanakya Technical Campus, Jaipur

Dr. Vijit Chaturvedi

Associate Professor,
Amity University, Noida

Dr. Marwan Mustafa Shammot

Associate Professor,
King Saud University, Saudi Arabia

Prof. (Dr.) Aradhna Yadav

Professor,
Krupanidhi School of Management, Bengaluru

Prof.(Dr.) Robert Allen

Professor
Carnegie Mellon University, Australia

Prof. (Dr.) S. Nallusamy

Professor & Dean,
Dr. M.G.R. Educational & Research Institute, Chennai

Prof. (Dr.) Ravi Kumar Bommiseti

Professor,
Amrita Sai Institute of Science & Technology, Paritala

Dr. Syed Mehrtaj Begum

Professor,
Hamdard University, New Delhi

Dr. Darshana Narayanan

Head of Research,
Pymetrics, New York, USA

Dr. Rosemary Ekechukwu

Associate Dean,
University of Port Harcourt, Nigeria

Dr. P.V. Praveen Sundar

Director,
Shanmuga Industries Arts and Science College

Dr. Manoj P. K.

Associate Professor,
Cochin University of Science and Technology

Dr. Indu Santosh

Associate Professor,
Dr. C. V.Raman University, Chhattisgarh

Dr. Pranjal Sharma

Associate Professor, Department of Management
Mile Stone Institute of Higher Management, Ghaziabad

Dr. Lalata K Pani

Reader,
Bhadrak Autonomous College, Bhadrak, Odisha

Dr. Pradeepta Kishore Sahoo

Associate Professor,
B.S.A. Institute of Law, Faridabad

Dr. R. Navaneeth Krishnan

Associate Professor,
Bharathiyan College of Engg & Tech, Puducherry



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in principal@bmscl.ac.in dean@bmscl.ac.in clerk@bmscl.ac.in

Dr. Mahendra Daiya

Associate Professor,
JIET Group of Institutions, Jodhpur

Dr. Parbin Sultana

Associate Professor,
University of Science & Technology Meghalaya

Dr. Kalpesh T. Patel

Principal (In-charge)
Shree G. N. Patel Commerce College, Nanikadi

Dr. Juhab Hussain

Assistant Professor,
King Abdulaziz University, Saudi Arabia

Dr. V. Tulasi Das

Assistant Professor,
Acharya Nagarjuna University, Guntur, A.P.

Dr. Urmila Yadav

Assistant Professor,
Sharda University, Greater Noida

Dr. M. Kanagarathinam

Head, Department of Commerce
Nehru Arts and Science College, Coimbatore

Dr. V. Ananthaswamy

Assistant Professor
The Madura College (Autonomous), Madurai

Dr. S. R. Boselin Prabhu

Assistant Professor,
SVS College of Engineering, Coimbatore

Dr. A. Anbu

Assistant Professor,
Acharya College of Education, Puducherry

Dr. C. Sankar

Assistant Professor,
VLB Janakiammal College of Arts and Science

Dr. G. Valarmathi

Associate Professor,
Vidhya Sagar Women's College, Chengalpet

Dr. M. I. Qadir

Assistant Professor,
Bahauddin Zakariya University, Pakistan

Dr. Brijesh H. Joshi

Principal (In-charge)
B. L. Parikh College of BBA, Palanpur

Dr. Namita Dixit

Associate Professor,
Shri Ramswaroop Memorial University, Lucknow

Dr. Nidhi Agrawal

Assistant Professor,
Institute of Technology & Science, Ghaziabad

Dr. Ashutosh Pandey

Assistant Professor,
Lovely Professional University, Punjab

Dr. Subha Ganguly

Scientist (Food Microbiology)
West Bengal University of A. & F Sciences, Kolkata

Dr. R. Suresh

Assistant Professor, Department of Management
Mahatma Gandhi University

Dr. V. Subba Reddy

Assistant Professor,
RGM Group of Institutions, Kadapa

Dr. R. Jayanthi

Assistant Professor,
Vidhya Sagar Women's College, Chengalpattu

Dr. Manisha Gupta

Assistant Professor,
Jagannath International Management School

Copyright © 2021 Indian Academicians and Researchers Association, Guwahati
All rights reserved.

No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior written permission. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgment of author, publishers and source must be given.

The views expressed in the articles are those of the contributors and not necessarily of the Editorial Board or the IARA. Although every care has been taken to avoid errors or omissions, this publication is being published on the condition and understanding that information given in this journal is merely for reference and must not be taken as having authority of or binding in any way on the authors, editors and publishers, who do not owe any responsibility for any damage or loss to any person, for the result of any action taken on the basis of this work. All disputes are subject to Guwahati jurisdiction only.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in





B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in principal@bmscl.ac.in dean@bmscl.ac.in clerk@bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X) October - December 2021

CONTENTS

Research Papers

REHABILITATION OF SEXUALLY ABUSED CHILD: AN OVERVIEW	1 – 8
Ashapurna Mohanty	
LEGAL AID AND SOCIAL RESPONSIBILITY- A PERSPECTIVE ON THE ROLE OF LAW SCHOOLS IN FACILITATING LEGAL SERVICES	9 – 13
Ashwini	
GOVERNMENT POLICIES AND PROGRAMS TOWARDS EMPOWERMENT OF RURAL YOUTH THROUGH NEHRU YUVA KENDRA OF DHARWAD DISTRICT	14 – 16
Basavaraj Goravar and Dr. C. C. Banasode	
A CRITICAL STUDY ON LEGAL IMPLICATIONS OF MINOR'S AGREEMENT IN INDIA	17 – 20
Dr. Boregowda S.B	
LEGAL REGULATION OF FASHION TECHNOLOGY THROUGH INTELLECTUAL PROPERTY RIGHTS	21 – 23
Dr. Chetana S.B	
INTERNATIONAL MANDATE FOR PROTECTION OF RIGHTS OF INVISIBLE DOMESTIC WORKERS: A STUDY	24 – 31
Dr. Dhanalakshmi C.V	
RIGHTS OF PATIENTS IN INDIA- AN IGNORED AND FORGOTTEN TOPIC	32 – 37
Dr. Manisha Banik	
CONSTITUTIONAL VALIDITY OF FARM ACTS, 2020 VIS-A-VIS FEDERALISM	38 – 44
Dr. N. Sathish K. S.	
CONUNDRUM OF MEDIA- RIGHT TO PRIVACY AT PERIL	45 – 49
Dr. Sujatha. S	
WOMEN'S PROPERTY RIGHTS VIS-A- -VIS WOMEN EMPOWERMENT MEANS TO GENDER EQUALITY IN INDIA-A STUDY	50 – 54
Dr. Kavyashree N	
REDRESSAL MECHANISM UNDER E-COMMERCE RULES, 2020- A BLESSING FOR E-CONSUMERS	55 – 58
Dr. Gayathri Bai S	



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in admission@bmscl.ac.in library@bmscl.ac.in

AN ANALYSIS OF INDIA COMBATING PIRACY IN INDIAN OCEAN REGION	59 – 65
Gurvinder Kaur	
THE IMPACT OF THE CRIMINAL TRIBES ACT OF 1871 ON THE SOCIAL LIFE OF THE CRIMINALIZED TRIBES- AN OVERVIEW	66 – 69
Dr. B. P. Mahesh Chandra Guru and Ms. Shabeena Tabassum	
AGRICULTURAL LABOUR PROBLEMS AND CHALLENGES DURING THE PERIOD OF COVID-19 PANDEMIC	70 – 74
Kanya Naik	
INTERNATIONAL FRAMEWORK ON CHILD LABOUR AND EDUCATION	75 – 82
Ms. Vasavi L. S.	
MEDIA TRIAL VIS-A-VIS RIGHT TO FREE SPEECH - A CRITICAL ANALYSIS	83 – 89
Ms. Vasavi L. S.	
THE ABROGATION OF ARTICLE 370 -ITS PROPRIETY AND IMPLICATIONS	90 – 93
Mrs. Preethi Harish Raj	
CRITICAL STUDY ON THE SOCIAL SECURITY OF UNORGANISED WORKERS	94 – 106
Sowmya N. S	
IMPACT OF THE AGENDA 2030 ON INDIGENOUS PEOPLES - AN INTERNATIONAL PERSPECTIVE	107 – 111
Ms. Sahana Florence P	
DOMESTIC VIOLENCE AND ITS IMPACT ON CHILDREN AS SECONDARY VICTIMS: AN OVERVIEW	112 – 115
Shruthi T	
IN -SITU AND EX-SITU METHODS FOR CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY	116 – 121
Dr. Kariyanna K.S and Dr. N.D. Gowda	
INTERSECTION OF TECHNOLOGY WITH INDIAN MOTOR VEHICLES ACT 2019	122 – 131
Priyanka Vaidyanath and Rathana Sagar	
THE RIGHT TO HEALTH AND DEVELOPMENT IN INDIA: BIOINFORMATICS AND MEDICAL INFRASTRUCTURE LAWS IN INDIA	132 – 135
Rajiv G	
THE ROLE OF PANCHAYATS IN THE EFFECTIVE WORKING OF ANGANWADIS UNDER THE INTEGRATED CHILD DEVELOPMENT SERVICES	136 – 139
Ramya K	



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in admission@bmscl.ac.in library@bmscl.ac.in

DEVELOPING SUL-GENERIS SYSTEM FOR THE PROTECTION OF TRADE SECRET IN INDIA: AN ANALYTICAL STUDY

140 – 145

Veena Nadigar

LEGAL FRAMEWORK ON PRIVACY AND DATA PROTECTION IN THE USA

146 – 149

Roopa S.

RULE OF LAW AS AN IDEA OF PUBLIC LAW

150 – 151

Dr. Nalini R

THE INCREASING RISK OF BREAST CANCER WITH HIGH BMI

152 – 156

Mohammed Mohammad Habash, Raakad Kamel Saadi and Ruaa Farok Nassif

MYCOTOXIN AND FUNGAL INFECTION IN POULTRY FEEDS

157 – 162

Tiba Dahir Mansour Al Sultani, Anmar Abdulrazzaq, Salar Ayad Fakhri and Wurood Hameed N. Al-Zuhairi

A REVIEW OF APPEARANCES OF VISUAL POLLUTION AND THEIR EFFECTS ON HUMAN HEALTH IN BAGHDAD CITY

163 – 168

Luma. H. Ali Al- Azawii

PATTERNS OF COMMUNITY EMPOWERMENT THROUGH THE UTILIZATION OF VILLAGE FUNDS IN MATA AIR VILLAGE, CENTRAL KUPANG DISTRICT, KUPANG REGENCY

169 – 179

Susana C.L. Pellu, Imanta Imanuel Perangin Angin and Aelsthi Nandara

POLICY STUDY ON THE USE OF NTT MOTIF WEAVING UNIFORMS IN THE SCOPE OF THE EAST NUSA TENGGARA PROVINCIAL GOVERNMENT TOWARDS MULTICULTURALISM AWARENESS IN THE BUREAUCRACY

180 – 189

Yovita UN, Dr. David BW Pandie, MS and Dr. Laurensius P. Sayrani, MPA

AN ANALYSIS OF LEGAL REGULATION OF BIO DIVERSITY SYSTEMS IN INDIA

190 – 196

Dr. Veerabhadraiah C

CONSTITUTIONAL AND LEGAL DIMENSIONS OF TRIAL BY MEDIA – AN ANALYSIS

197 - 204

Prof. (Dr) N. Dasharath and Dr. Shobha Rani. M

HOPE FAMILY PROGRAM EVALUATION (CASE STUDY OF SOCIAL WELFARE OF PEOPLE WITH DISABILITIES IN KUPANG CITY)

205 – 220

Markus Tac, Laurensius P. Sayrani, Hildigardis M. I Nahak and Alfandy F. Manuain

IMPLEMENTATION OF STUNTING PREVENTION PROGRAM IN EAST FLORES REGENCY

221 – 237

Dominikus Fernandez, Rikhardus S. Klau and Adriana R. Fallo



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in admission@bmscl.ac.in library@bmscl.ac.in

MEANING OF INDONESIAN DEMOCRACY FROM THE BORDER OF THE UNITED STATE OF THE REPUBLIC OF INDONESIA - THE DEMOCRATIC REPUBLIC OF TIMOR LESTE 238 – 251

Alfridus Saverius Daniel Dari, Ananias Riyoan Philip Jacob and Rex Tiran

PATTERNS OF COMMUNITY EMPOWERMENT THROUGH THE UTILIZATION OF VILLAGE FUNDS IN MATA AIR VILLAGE, CENTRAL KUPANG DISTRICT, KUPANG REGENCY 252 – 263

Susana C. L. Pellu, Imanta Imanuel Perangin Angin and Aelsthri Ndandara

POLICY STUDY ON THE USE OF NTT MOTIF WEAVING UNIFORMS IN THE SCOPE OF THE EAST NUSA TENGGARA PROVINCIAL GOVERNMENT TOWARDS MULTICULTURALISM AWARENESS IN THE BUREAUCRACY 264 - 273

Yovita U.N, Dr. David B.W Pandie MS and Dr. Laurensius P. Sayrani MPA

GENERATION MECHNISM OF FALLING – TONE CHORUS EMISSIONS USING BACKWARD WAVE OSCILLATOR (BWO) THEORY 274 - 279

Ravindra Pratap Patel



RIGHTS OF PATIENTS IN INDIA- AN IGNORED AND FORGOTTEN TOPIC

Dr. Manisha Banik
Assistant Professor, BMSCL

ABSTRACT

In India rights of patients is mostly confined to the limits of providing treatment and healthcare to the patients. Rights of patients in all developed nations include some basic rights such as right to information, right to informed consent, right to privacy and right to records apart of basic right of treatment. The present health care system in India in its struggle to provide health care facilities to all have in fact ignored the rights of patients in all aspect. It is to be acknowledged that only providing medical treatment does not complete the duty of the State in protecting the rights of Patients in India. Hence, this research paper makes an elaborate study on the rights provided to patients in India under various laws, regulation, and guidelines. It analyses if those rights are actually implemented by highlighting the results of some surveys and studies. This paper also studies the views and opinion of the judiciary with the help of landmark case laws.

Keywords- Patients' rights, Charter of Patients' Rights, Public Health, Right to information, Right to informed consent, Code of Medical Ethics.

INTRODUCTION

India is a country which is considered to have a well comprehensive legal framework with established laws and legal principles to protect all of the basic rights. Be it rights of citizens, women, children, consumers, workers, or prisoners, one names it and there is a definite set of rules and system to protect the same. Rights of patients is not an exception to it and there are definite statutes and laws granting and protecting it. This research paper at first elaborately discusses these rights of patients under Indian legal system and then makes an attempt to analyze if those rights are effectively preserved and restored in India or not.

Meaning of Patients-

According to Cambridge dictionary 'patient' means a 'person who is receiving medical care, or who is cared for by a particular doctor or dentist when necessary.' The word 'patient' has not been defined anywhere under Indian Law. The term covers those people who receive healthcare services by doctors or medical professionals. However, Article 42 of the Constitution of India mentions that the Government including state governments have a duty to provide healthcare services and improving public health.¹

Laws governing Patient Rights

The laws governing rights of people who approach healthcare establishments or medical professionals in India include:

- The Constitution of India, 1950
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002
- Drugs and Cosmetics Act, 1940
- Clinical Establishment(Registration and Regulation) Act, 2010
- Indian Penal Code, 1860 and Code of Criminal Procedure, 1973

Rights of Patients in India according to Charter of Patients' Rights

The National Human Rights Commission(NHRC) with an intention to ensure the protection and promotion of Human rights of those who are among some of the most vulnerable sections of society – ordinary patients and citizens seeking health care across India drafted an enabling document the Charter of Patients' Rights. Another objective of this Charter is to generate widespread public awareness and educate citizens regarding what they should expect from their governments and health care providers—about the kind of treatment they deserve as patients and human beings, in health care settings.

According to the Charter of Patients' Rights, the NHRC has incorporated the following as rights of patients:

- 1) **Right to Information-** According to Annexure 8 of Standards for Hospital level 1 by National Clinical Establishments Council set up as per Clinical Establishment Act 2010, 'every patient has a right to

¹ Article 42, Constitution of India, 1950; Entry 6, List II, Schedule VII, Constitution of India, 1950



adequate relevant information about the nature, cause of illness, provisional / confirmed diagnosis, proposed investigations and management, and possible complications to be explained at their level of understanding in language known to them.¹ The Medical Council of India Code of Ethics includes the provision that the treating physician has a duty to ensure that this information is provided in simple and intelligible language to the patient to be communicated either personally by the physician, or by means of his / her qualified assistants.¹ Patients Charter by National Accreditation Board for Hospitals (NABH) provides that every patient and his/her designated caretaker have the right to factual information regarding the expected cost of treatment based on evidence. The hospital management has a duty to communicate this information in writing to the patient and his/her designated caretaker. Further it states that they should also be informed about any additional cost to be incurred due to change in the physical condition of the patient or line of treatment in writing. On completion of treatment, the patient has the right to receive an itemized bill, to receive an explanation for the bill(s) regardless of the source of payment or the mode of payment and receive payment receipt(s) for any payment made.² The Consumer Protection Act, 1986 also provides that patients and their caretakers have a right to know the identity and professional status of various care providers who are providing service to him / her and to know which Doctor / Consultant is primarily responsible for his / her care. Further it adds that the hospital management has a duty to provide this information routinely to all patients and their caregivers in writing with an acknowledgement.

- 2) **Rights to records and reports-** Rights to records and reports as incorporated in various laws and regulations are as follows: Annexure 8 of Standards for Hospital level 1 by National Clinical Establishments Council set up as per Clinical Establishment Act 2010 states that 'Every patient or his caregiver has the right to access originals / copies of case papers, indoor patient records, investigation reports (during period of admission, preferably within 24 hours and after discharge, within 72 hours). This may be made available wherever applicable after paying appropriate fees for photocopying or allowed to be photocopied by patients at their cost.' MCI Code of Ethics Section 1.3.2 envisages that 'the relatives / caregivers of the patient have a right to get discharge summary or in case of death, death summary along with original copies of investigations. The hospital management has a duty to provide these records and reports and to instruct the responsible hospital staff to ensure provision of the same are strictly followed without fail.'
- 3) **Rights to Emergency Medical Care-** According to MCI Code of Ethics Sections 2.1 and 2.4 it is the duty of the hospital management to ensure provision of such emergency care through its doctors and staff, rendered promptly without compromising on the quality and safety of the patients.
- 4) **Right to Informed Consent-** Every patient has a right that informed consent must be sought prior to any potentially hazardous test/treatment (e.g., invasive investigation / surgery / chemotherapy) which carries certain risks. It is the duty of the hospital management to ensure that all concerned doctors are properly instructed to seek informed consent, that an appropriate policy is adopted and that consent forms with protocol for seeking informed consent are provided for patients in an obligatory manner. It is the duty of the primary treating doctor administering the potentially hazardous test / treatment to explain to the patient and caregivers the main risks that are involved in the procedure, and after giving this information, the doctor may proceed only if consent has been given in writing by the patient / caregiver or in the manner explained under Drugs and Cosmetic Act Rules 2016 on informed consent.
- 5) **Right to confidentiality, human dignity, and privacy-** All patients have a right to privacy, and doctors have a duty to hold information about their health condition and treatment plan in strict confidentiality, unless it is essential in specific circumstances to communicate such information in the interest of protecting other or due to public health considerations. Female patients have the right to presence of another female person during physical examination by a male practitioner. It is the duty of the hospital management to ensure presence of such female attendants in case of female patients. The hospital management has a duty to ensure that its staff upholds the human dignity of every patient in all situations. All data concerning the patient should be kept under secured safe custody and insulated from data theft and leakage.

¹ India releases charter of patient rights – Future Medicine ..., <https://futuremedicineindia.com/u-e-lv/medico-legal/1810/india-releases-charter-of-patient-rights>.

² Charter of Patients' Rights for adoption by NHRC



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

- 6) **Right to second opinion-** Every patient has the right to seek second opinion from an appropriate clinician of patients' / caregivers' choice. The hospital management has a duty to respect the patient's right to second opinion and should provide to the patients' caregivers all necessary records and information required for seeking such opinion without any extra cost or delay. The hospital management has a duty to ensure that any decision to seek such second opinion by the patient / caregivers must not adversely influence the quality of care being provided by the treating hospital as long as the patient is under care of that hospital. Any kind discriminatory practice adopted by the hospital, or the service providers will be deemed as Human Rights' violation.

Other Ancillary Rights of Patients in India

Some of the other rights which are provided to patients in India under various laws and regulations are as follows:

- Right to transparency in rates and care according to prescribed rates wherever relevant.
- Right to non-discrimination-
- Rights to safety and quality care according to standards.
- Right to choose alternative treatment options if available
- Right to choose source for obtaining medicines or tests
- Right to proper referral and transfer, which is free from perverse commercial influences
- Right to protection for patients involved in clinical trials
- Right to protection of participants involved in biomedical and health research
- Right to take discharge of patient or receive body of deceased from hospital
- Right to Patient Education
- Right to be heard and seek redressal

Assessment of Effectiveness of Patients' Rights

Any right without application is like a toothless tiger, patients' rights laid down in various laws and regulations are not an exception to it. A recent study wherein data was collected from 120 hospitalized patients revealed that 76% of the patients were aware of patients' rights and 73% about its goal but only 43% knew that it was applicable in India irrespective of the absence of a legal bill or charter. There was significant difference between private and general wards respondents showing very low awareness of 44%.¹ The study also revealed that as the rate of patient right awareness and practice was compared, it was seen that in most of the rights there was high awareness except the right to informed consent, while many rights were not satisfactorily practised in the hospital like the patient's right to be informed, right to informed consent and the right to grievance redressal.² In another survey conducted on patient-physician communication around HIV testing, a number of gaps between practice and guidelines were identified.³

The obvious question which arises now is that do the patients in India are really aware of their rights and if yes how much to these rights are implemented and preserved. The Charter of Patient Rights is undoubtedly a welcoming effort, but it is reduced to a mere document until and unless there is a proper framework accountable to the people which would supplement those rights. Moreover, apart from the Charter of Patient Rights, most of the other laws and regulations have a duty-centric approach and does not represent patients' rights. They imposed certain duties on the medical practitioners and care takers, mostly in the form of guidelines which are mostly unknown for a greater section of patients in India. Often, people do not realize their specific rights at the time of their care because those rights are either not clearly defined or included in a bundle of papers that

¹ Fernandes AB, D'Cunha S, Suresh S, "Patient Rights: Awareness and Practice in a Tertiary Care Indian Hospital," Int J Res Foundation Hosp Health Adm 2014; 25-30

² Ibid

³ Datye V, Keilmann K, Sheikh K, Deshmukh D, Deshpande S, Porter J, Rangan S, "Private Practitioners' communication with patients around HIV testing in Pune, India," Health Policy Plan, 2006 Sep; 21: 343-52



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

patients need to sign during registration. So, its lack of awareness among the people which is turning these rights ineffective mostly.

Judicial Interpretation of Patients' Rights

Effective implementation of rights always needs a just and fair interpretation of the law which provides those rights. Hence, to assume the effectiveness of patients' rights in India, it becomes imperative to examine the judicial interpretation of the same with the help of the following case laws:

The landmark case law on one of the most basic but forgotten patient rights, right of informed consent is of *Samira Kohli v. Dr. Prabha Manchanda & Another*¹. In Samira Kohli, the petitioner, consulted with Dr. Prabha Manchanda, the respondent, regarding her prolonged menstrual bleeding. She was admitted to the respondent's clinic where she signed the consent form for hospital admission, medical treatment and for surgery. The consent form for surgery described the procedure to be undergone by the petitioner as 'diagnostic and operative laparoscopy. Laparotomy may be needed.'² The petitioner was subjected to a laparoscopic examination under general anaesthesia. While the petitioner was unconscious during her examination, the respondent's assistant took the consent of the patient's mother for a hysterectomy. After this, the respondent removed the patient's uterus (abdominal hysterectomy), ovaries and fallopian tubes (bilateral salpingo-oophorectomy). The petitioner filed a complaint before the National Consumer Disputes Redressal Commission (NCDRC) under the CPA, claiming compensation of INR 25 lakh from the respondent. Her complaint alleged that the doctor had been negligent and that the radical surgery, by which her uterus, ovaries and fallopian tubes had been removed, had been performed without her consent. The petitioner claimed compensation for the loss of her reproductive organs, irreversible damage to the body, loss of the opportunity to become a mother, diminished prospects of matrimony and emotional trauma. The NCDRC dismissed the complaint on the grounds that the hysterectomy had been performed with adequate care and that the patient had voluntarily sought treatment at the respondent's clinic. Aggrieved by the order, the petitioner filed an appeal in the Supreme Court of India. The court overruled the order passed by the NCDRC and held that:

...there was no consent by the appellant for performing hysterectomy and salpingo-oophorectomy, performance of such surgery was an unauthorized invasion and interference with appellant's body which amounted to a tortious act of assault and battery and therefore a deficiency in service.³

The court, however, observed that even though the respondent's act was in 'excess of consent,' the act was done in good faith and for the benefit of the petitioner. Consequently, the compensation that was directed to be paid to the petitioner was significantly less than claimed.

Kohli's case importance in moulding informed consent jurisprudence in India lies in these facts that it rejected the principle of reasonable person standard, for information disclosure and that it adopted a socio-economic line of reasoning to establish the liability. It is noteworthy to mention here the observation made by the Judges in this case:

In India, [the] majority of citizens requiring medical care and treatment fall below the poverty line. Most of them are illiterate or semi-literate. *They cannot comprehend medical terms, concepts, and treatment procedures.* They cannot understand the functions of various organs or the effect of removal of such organs. They do not have access to effective but costly diagnostic procedures. Poor patients lying in the corridors of hospitals after admission for want of beds or patients waiting for days on the roadside for an admission or a mere examination, is a common sight. For them, any treatment with reference to rough and ready diagnosis based on their outward symptoms and doctor's experience or intuition is acceptable and welcome so long as it is free or cheap; and whatever the doctor decides as being in their interest, is usually unquestioningly accepted. *They are a passive, ignorant and uninvolved in treatment procedures.*⁴

¹Samira Kohli v. Dr. Prabha Manchanda and Another (2008) 2 SCC 1. Available at: <https://indiankanoon.org/doc/438423/> (accessed 29 November 2021).

² Ibid

³ Ibid

⁴ Samira Kohli v. Dr. Prabha Manchanda and Another (2008) 2 SCC 1. Available at: <https://indiankanoon.org/doc/438423/> (accessed 29 November 2021).



The Judges while highlighting the poor condition of the patients in India also raised a question on the relevance of informed consent in India. They were of the opinion that :

The poor and needy face a hostile medical environment inadequacy in the number of hospitals and beds, non-availability of adequate treatment facilities, utter lack of qualitative treatment, corruption, callousness, and apathy. Many poor patients with serious ailments (e.g., heart patients and cancer patients) have to wait for months for their turn even for diagnosis, and due to limited treatment facilities, many die even before their turn comes for treatment. What choice do these poor patients have? Any treatment of whatever degree is a boon or a favour, for them. *The stark reality is that for a vast majority in the country, the concepts of informed consent or any form of consent, and choice in treatment, have no meaning or relevance.*

Now, here the question which arises is that whether the right of informed consent is optional and not a basic right which should be available to all irrespective of their background and financial status? Will it be justified to treat informed consent right as a luxury which will be provided for only a section of the society?

Few other observations of Supreme Court in this context are worthy of reproduction:

In **Martin F. D'Souza v. Mohd. Ishfaq**, the Supreme Court opined that "101. The Commission should have realized that different doctors have different approaches, for instance, some have more radical while some have more conservative approaches. All doctors cannot be fitted into a straitjacketed formula and cannot be penalized for departing from that formula....102. While this court has no sympathy for doctors who are negligent; it must also be said that frivolous complaints against doctors have increased by leaps and bounds in our country, particularly after the medical profession was placed within the purview of the Consumer Protection Act. To give an example, earlier when a patient who had a symptom of having a heart attack would come to a doctor, the doctor would immediately inject him with morphia or pethidine injection before sending him to the Cardiac Care Unit because in cases of heart attack time is the essence of the matter. However, in some cases, the patient died before he reached the hospital. After the medical profession was brought under the Consumer Protection Act vide Indian Medical Assn. v. V. P. Shantha ((1995) 6 SCC 651), doctors who administer morphia or pethidine injection are often blamed, and cases of medical negligence are filed against them. The result is that many doctors have stopped giving (even as family physicians) morphia or pethidine injection even in emergencies despite the fact that from the symptoms the doctor honestly thought that the patient was having a heart attack. This was out of fear that if the patient died the doctor would have to face legal proceedings....111. The courts and the Consumer Fora are not experts in medical science and must not substitute their own views over that of specialists. ...112. It must be remembered that sometimes despite their best efforts the treatment of a doctor fails. For instance, sometimes despite the best effort of a surgeon, the patient dies. That does not mean that the doctor or the surgeon must be held to be guilty of medical negligence unless there is some strong evidence to suggest that he/she is."¹

In **Kusum Sharma v. Batra Hospital**², Supreme Court observed that "78. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection."³

The legal system has to strike a careful balance between the autonomy of a doctor to make judgments and the rights of a patient to be dealt with fairly. Indian courts tend to give sufficient leeway to doctors and expressly recognize the complexity of the human body, inexactness of medical science, the inherent subjectivity of the process, genuine scope for error of judgment, and the importance of the autonomy of the medical professional.⁴

CONCLUSION

India has undoubtedly come across a long journey in providing and protecting the basic rights of patients by adopting laws, regulations, and guidelines. The Charter of Patients' Rights by The National Human Rights Commission is a welcoming step towards adopting a well comprehensive system in that regard. But what has been observed both through some studies and surveys as mentioned earlier in this research work is that some

¹ Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1.

² Kusum Sharma v. Batra Hospital (2010) 3 SCC 480

³ Ibid

⁴ Amit Agrawal, 'Medical Negligence: Indian Legal Perspective', Ann Indian Acad Neurol, 2016 Oct; 19(Suppl 1): S9-S14.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : www.bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

sections of the society are well aware of their rights as a patient but are hesitant to claim or implement them while there is another section who are all together in dark. In fact, due the poor condition of the public health sector, some patients' right like informed consent, right to information, right to privacy, right to records and reports are a mere formality and is considered as a luxury for the patients. More or less the same view is highlighted in judicial pronouncements as well. The Judiciary has also opined that due to overburden of medical professional specially in public sector, it some rights like right to choose, informed consent are high expectations.

Hence, it is the need of the time to reconsider the framework of medical system and laws on it in India and make efforts to adopt a system where the basic patients' rights will not be considered a luxury but natural human rights. Till then the Patients' Rights in India is for sure an ignored and forgotten topic.



CONSTITUTIONAL VALIDITY OF FARM ACTS, 2020 VIS-A-VIS FEDERALISM

Dr. N. Sathish K. S.

Assistant Professor, BMS College of Law, Bengaluru

INTRODUCTION

The Constitution provides a federal system of government in the country, even though it describes as a 'Union of States'. The term Federalism implies that, the Indian federation is not the outcome of an agreement between independent units and the units of Indian federation cannot leave the federation. The distribution of legislative powers between the Union and States is fundamental and basic principle of a Federal Constitution¹. These powers are divided between the Union and States not by any law passed by the Union, but by the Constitution itself. Union-State relations have been a critical issue for a long time, from the very beginning when the Constitution was drafted and came into force; this issue came into light for discussions. Of course, the relations between the Union and States have been established and incorporated under the Constitution, but it seems that either the provisions are not sufficient or the implications of the same has not been made out properly. But, it is a fact that there is something wrong somewhere, which has created the complications between the States and also between the Union and States. Because of these complications, relations between these two agencies have not been harmonized. It is also true that to sort out this problem a lot of efforts have already been made out, but till today this position is not harmonized. At present, the problem of Union-State legislative relations has assumed the same importance which had the marginal problem in pre-independence India.

Recently, the Union Parliament has passed three agriculture related Acts which is commonly known as Farm Acts, 2020². Before being enacted by the Parliament, the farm laws were promulgated as ordinances on 5th June 2020. Passing of these laws gave rise to a big controversy among all the stake holders particularly the Union, the States and the Farmers because of the various socio-economic, political, legal and constitutional issues which involved within these three controversial Acts. Writ petition was filed to challenge the Constitutional validity of these legislations³. At this juncture the researcher made an attempt in this research paper to analyse the scheme of distribution of legislative powers between the Union and States under the Indian Constitution and this research paper is undertaken to critically analysis into the Constitutional validity of the controversial and contentious Union Farm Acts 2020 in the light of the Principle of Federalism & Basic Structure.

Brief History of New Acts

India is and has been an agrarian country. After independence, farmers used to sell their products directly to the consumers. But due to prevailing system of Zamindars or money lenders, farmers were trapped in perpetual debt. Farmers need to buy seeds, fertilizers and other things required for growing a crop, for buying all these things they need money so farmers took loans from Zamindars or money lenders who used to charge a very high interest rate on the principal amount. Farmers were unable to pay such a hefty amount and in such cases to get their money back money lenders or the Zamindars used to buy the whole produce of the farmers but, they paid very less amount to farmers because farmers did not have the bargaining power. Now to again sow their fields farmers required money so this cycle continued and farmers were always in debt.

This process was very exploitative to help the farmers and end this system Government of India introduced APMC (Agriculture Produce Market Committee) Act. It was introduced in 1960's at the very same time when green revolution started in India many experts believe that in the major of green revolution APMC Act played a major role. APMCs set up Mandis or Markets across India where farmer's produce was sold. There are around 7000 APMCs in India at present. Now, the process of selling the produce is that after harvesting crops are brought to the Mandis or Markets where they sell the produce through auctioning or price discovery. Whom are the farmers selling the crops? Not to the government but the middlemen or Arhatiyas. Middlemen are people

¹ Subash N.Singh, *Centre State Relations in India*, H.K. Publishers, Delhi (1990), P.73

² (1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and (3) The Essential Commodities (Amendment) Act, 2020 dated 27.09.2020

³ Section(s)2,3,4,5,6,7,13, 14, 18 and 19 of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 Act which came force 27.09.2020. It is submitted that this act is violative of Article 14, 15 and 21 of the Constitution of India and accordingly, liable to be struck down as Unconstitutional, illegal and void.



between the farmer and the retailer or big traders. For example, farmers sell their vegetables to the middlemen and then the vegetable vendor buys vegetable from the middleman, vegetable vendor will not buy directly from the farmers. Government gives license to these Middlemen; shops, storage facilities etc. are provided to them in APMC markets. Many people work in these APMCs, there is storage of grains, so it requires laborers, accountants so overall it is a self-thriving ecosystem. One thing which should be noted here is these APMC markets are regulated by state governments, a tax is charged on each transaction so in a way government knows at price produce is being sold.

Now what about the produce that are not bought by the middlemen in these markets? This is being bought by the government at MSP (Minimum Support Price). MSP is constant throughout the country. MSP also ensured that produce bought by the middlemen were not below a certain price. When everything is so good are farmers happy? According to National Crime Bureau report 2018, 1,34,560 suicides were reported in India out of which 10,350 were farmers remember this was total number of reported cases. This system was good seeing 1960's but with time we need to evolve similarly, not much was done to APMCs and some problems popped up. Middlemen started exploiting farmers they formed cartels or an understanding among themselves and started buying the produce at MSP only and sold to traders at a high rate. For example, MSP for onion is Rs.8.5 per kg (data as of February 06, 2019) but we buy onions at Rs 35 – 80 per kg depending on State. In a way we can say Minimum Support Price became Maximum Selling Price. Voice arose from time to time to remove these defects and in response government brought the three Acts in 2020¹. These three farm Acts seek to replace ordinances issued in June 2020².

These Acts envisage to bring change in some of the key aspects of the farm economy trade in agricultural commodities, price assurance, farm services including contracts, and stock limits for essential commodities. These Acts sought to bring much needed reforms in the agricultural marketing system such as removing restrictions of private stock holding of agricultural produce or creating trading areas free of middlemen and take the market to the farmer.

We have already discussed the process currently in place well according to the new market place law, farmers can sell their produce anywhere not just in the APMC approved mandis or market places but literally anywhere i.e., they can sell inside the State, outside the State, or if they wish they can also sell it online. Which means according to union government this law is been brought in to give freedom of choice to farmers they will have a variety of marketplaces. The government says, this is actually going to do good to them because they can choose from several options.

Federalism and distribution of powers

The Constitution provides a federal system of government in the country, even though it describes as a 'Union of States'³. The term federalism implies that, the Indian federation is not the outcome of an agreement between independent units and the units of Indian federation cannot leave the federation. With respect to the nature of Indian Constitution the Supreme Court ruled differently in various cases. In *State of West Bengal v. Union of India*⁴ the apex court held that the Indian Constitution did not propound a principle of absolute federalism. Whereas in *Kesavananda Bharati v. State of Kerala*⁵, some of the judges of the Supreme Court regarded federal character of the Indian Constitution as, basic Structure of the Constitution. In *State of Rajasthan v. Union of India*⁶, BEG, C.J., characterized the Indian Constitution as "more Unitary than Federal", and having the 'appearance' of a Federal structure. In *State of Karnataka v. Union of India*⁷, BEG, C.J., said: "our Constitution has, despite whatever federalism may be found in its structure, so strongly unitary features also in it.....". In

¹ Supra Note.2

² The central government in COVID-19 period promulgated three Ordinances on June 5, 2020

³ Article 1 of the Indian Constitution

⁴ AIR1963 SC 1241

⁵ AIR 1973 SC 1461

⁶ AIR 1977 SC 1361 at p. 1382.; (1977) 2 SCC 592

⁷ AIR 1978 SC 68 : (1977) 4 SCC 608



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

*Satpal v. State of Punjab*¹ the Supreme Court again held that ours is a Constitution is the combination of federal structure with unitary features.

India undoubtedly is a Union of States whether we describe our Constitution as federal or quasi federal. Units of the Union have also certain powers as has the Union itself. The Indian Constitution contains federal and non-federal features, therefore, it is not purely federal and purely unitary, it is combination of both hence rightly termed as "Quasi-Federal"² Constitution.

Professor Dicey says that the distribution of powers is an essential feature of federalism³. He also found the root cause of division of powers in the very object for which a federal polity is established. Prof. K.C. Wheare the champion of normative federalism echoed the Diceyan concept of essentially of division of powers under a federal system. The details of the division of powers between the National and State Legislatures may vary under every different federal Constitution, but the basic on which the division of powers should rest are similar in all the federations. The general principle guiding the division of powers has been very highly pointed out, Prof. Dicey when he said whatever concerns the national as a whole should be placed under the control of national government. All matters which are not primarily of common interest should remain in the hands of the several States.

Scheme of Distribution of Legislative Powers in India

The Constitution of India came into force with effect from the 26th January, 1950. The Constitution of India possesses a very elaborate and comprehensive scheme of the distribution of powers between the Union and States. It follows no single pattern of division of powers prevalent in any traditional federation. It makes its own mode of division of powers, combination of the Canadian and the Australian method of distribution of powers is evident under the Indian Constitution⁴. The federal scheme in the Constitution of India is adopted from the Government of India Act, 1935⁵. Borrowing the pattern of treble enumeration from the Government of India Act, 1935, the framers of our Constitution added the distribution of legislative powers between the Union and States in Part XI of the Indian Constitution, commencing from the Articles 245 to 256 and VII Schedule. There are two fold distribution of legislative powers have been made under the Constitution between the Union and States⁶. The first one with respect to the territory and another one is with respect to subject matter.

As regards the territory Article 245(1) provides that Parliament has power to make laws throughout the territory of India, States can make law to whole territory of State is concerned⁷. According to Clause (2) of Article 245 a law made by Parliament shall not be deemed to be invalid on the ground that it has extra-territorial operation, i.e. takes effect outside the territory of India. Article 246 of Indian Constitution provides for the distribution of legislative powers between the Union and State with respect to the subject matter⁸. In India the legislative

¹ (1982) 1 SCC 12

² Jain, M.P. *Indian Constitutional Law*, Wadawan and Co., New Delhi (5th edn, 2003), p.23

³ Dicey, A.V. *An Introduction to the Study of Constitution*, MacMilan & Co. Ltd., London (10th edn, 1965), p. 151

⁴ Amal Ray, "Inter-Governmental Relations in India", Asia Publishing House, 1966 p.24

⁵ D.J.De. "The Constitution of India", Asia Law House, Hyderabad Vol. 2, 2002, P.1952.

⁶ Jain, M.P. "Indian Constitutional Law", wadhawa Nagpur P.557.

⁷ Article 245(1) of the Indian Constitution; Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

⁸ Article 246 includes the following clauses:

1)Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the seventh Schedule (in this Constitution referred to as the "Union List").

2)Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

powers of the Parliament and State Legislatures have been divided into three lists in the Seventh Schedule of the Constitution. Seventh Schedule contains three lists i.e. Union List having 97 subject matters on which the Parliament having exclusive power to make laws, State List contain 66 subject matters on which State Legislature can make laws and there are 47 subject matters in the Concurrent List on which both Union and State Legislatures can make laws concurrently. State List covers only Sixty Six items it is comparatively small field than Union List even though State Legislation is curtailed by making a number of entries in the State List, subject to entries in the Union List¹ or Concurrent List² or any other law made by Parliament³. Some items in Concurrent List are made subject to Union List⁴ or to any law made by the Parliament⁵. The Article 246 would show that the non obstante clauses are mere aids to the interpretation of the entries in the three lists that is whether the subject matter of legislation in question appertains to the List II or List III. The course indicated by these clauses is that the court must proceed in the following order: list I, List III and thereafter List II⁶.

Apart from this scheme if any matter does not fall under any of the lists, then as per Article 248 read with Entry 97 of the Union List, Parliament can exercise the residuary legislative power. In *Dhillon*⁷ case the Supreme Court by majority has ruled that once it is found that the subject matter of the impugned legislation does not fall under any entry in List II or III then Parliament can take recourse to the residuary power, or it can be combined with any entry in List-I. Since the Article 246 (2) gives power to two Legislatures, a conflict can arise between laws passed on the same subject by the two Legislatures. To deal with this situation, the complicated provisions of Article 254 may be analyzed into the following propositions.

1. Clause (1) says that if a State law relating to a Concurrent Subject is repugnant to a Union law relating to that subject, then whether the Union law is prior or later in time, the Union law will prevail and the State law shall to the extent of such repugnancy be void⁸.
2. The State law however does not become void as soon as the Union Parliament legislates with respect to the same subject. There is nothing to prevent the State Legislature to legislate with respect to a concurrent subject merely because there is a Union law relating to the same subject. Art 254 (2)⁹ is attracted only if the State law is repugnant to the Union Act¹⁰, which means that the two cannot stand together¹.

3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

¹ State List Entries 11,13,17, 22, 23,24, 32 & 54

² State List Entries 11,13, 26, 27 & 57

³ State List Entries 12, 37& 50

⁴ Concurrent List Entries 19 & 32

⁵ Concurrent List Entries 31, 33(a) & 40

⁶ Jennings, "Some Characteristics of the Indian Constitution", Published by Geoffrey Cumberlege, Oxford University Press 1953, P.61

⁷ (1971) 2 SCC 779 : AIR 1972 SC 1061

⁸ Article 254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

⁹ Article 254 (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:

¹⁰ *Amalgamated E.C. v. Ajmir Municipality* AIR 1969 SC 221 (234)

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

Union Supremacy

In addition to the long arms of Union and Concurrent Lists leaning balance of legislative powers in favour of the Parliament, there are several ways in which the plenary powers of the Union Legislature are ensured by Constitution. The scheme under the Constitution tilting balance of legislative powers in favour of the Union may be conveniently divided in to three heads².

1. Legislative Methods of the Union to Control over States;
2. Provisions under the Constitution ensuring national supremacy in legislative fields and

Legislative Methods of the Union to Control over States

In spite of clear demarcation of Union and State subjects under the Constitution, Union Legislature exercises control over the power of State Legislature to make laws. Those circumstances are explained hereunder.

1. Previous sanction to introduce legislation in the State Legislature (Article 304).
2. Bills which must be reserved for President's consideration
3. Instruction of President required for the Governor to make Ordinance relating to specified matters [Article 213(1)].
4. Veto power in respect of other State Bills reserved by the Governor (Article 200).

Provisions under the Constitution ensuring national supremacy in legislative fields

1. Power of Parliament to Legislate in the National Interest (Article 249)
2. Legislation with the Consent of States
3. Legislation for Giving Effect to International Agreements
4. Legislation during Proclamation of Emergency
 - a. National Emergency
 - b. Failure of Constitutional Machinery in States

The Constitutional (101st Amendment) Act, 2016

Prior to the constitution came into force the concept of Goods and services was a State subject and it was placed under Entry 48 of the Provincial List of VII Schedule of the Government of India Act, 1935. As per this entry Provincial Legislature could make legislation on the subject "taxes on the sale of goods and on advertisements". But there was no subject "tax on sale of goods" in the Federal List. Hence, only State legislatures were having exclusive power to make law on that subject. Again, there was no restriction on states power to levy tax on sale of goods. Each States Legislation relating to sales tax had its own separate definition clauses with respect to sale.

After Constitution came into force, Entry 54 of the States List deals with the "taxes on sale or purchase of goods." As a result of this entry only State Legislatures can make law on taxes relating to sale of goods. There was no corresponding provision in the Union List for levying tax on the sale of goods so as to give power to the Union Legislature to make law on this subject. But, the 6th Constitutional Amendment Act, 1956 substituted the words "taxes on the sale or purchase of goods other than newspapers", subject to the provisions of entry 92A of Union List. Therefore the entry gives power to the State Legislature to make law on the subject taxes on the sale or purchase of goods other than the newspapers. But such law enacted by the State Legislature is subject to the law made by the Parliament under entry 92A of the Union List. This 6th Constitutional Amendment Act, 1956 also inserts a new entry to the Union List i.e. entry 92A it states about "Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter State trade or commerce."³ As a result of this Constitutional Amendment, legislation pertaining to levy tax on the sale or purchase of goods

¹ *Zaverbhai v. State of Bombay*, AIR 1954 SC 752.

² Anirudha Prasad, "Centre-State power under Indian federalism", Deep & Deep Publication, New Delhi 1986 p. 90

³ Section 2 of the Constitutional (6th Amendment) Act, 1956.



conferred to the Union Legislature. This position is continued until enactment of the 101st Constitutional Amendment Act, 2016¹.

Before Hundred and First Constitutional Amendment Act, 2016 State cannot tax services and vice a versa, Centre cannot tax goods within State. As a result there was no scope for enactment of GST in India without making amendment to the Constitution. For GST to be implemented Article 246 needs to be overruled, otherwise there is no chance of implementing the GST. In this regard the 101st Constitutional Amendment Act was enacted to make certain changes to the Constitutional provisions so as to implement the GST.

State exclusive jurisdiction over agriculture

Agriculture is a multi-faceted activity and therefore, the framers of the Constitution distributed the various subjects of legislation in respect of agriculture and related matters between the Union and the States on a threefold pattern.

1. Agriculture and most matters ancillary to or directly connected with it, were placed within the exclusive legislative and executive competence of the States. (vide Entries 14, 15, 16, 18, 21, 28, 30, 32, 45, 46, 47 and 48 of the State List)².
2. The matters of Concurrent jurisdiction of the Union and the States relating to agriculture are: 'Prevention of the extension from one State to another of infectious or contagious diseases or pests of affecting men, animals or plants' (Entry 29); Trade and commerce in, and the production, supply and distribution of products of any industry (including one having a nexus with agriculture) controlled by the Union by virtue of a law made by Parliament under Entry 52, List I, or of food-stuffs, cattle fodder, raw cotton and raw jute (Entry 33); and 'Price control' including that of agricultural products and agricultural inputs (Entry 34). Apart from the above, 'Economic and social planning' in Entry 20 of the Concurrent List is comprehensive enough to include planning and development of agriculture and related activities.
3. Certain matters related to 'agriculture' in the State List have been made expressly subject to List I or III. Examples of these matters are to be found in Entries 17, 24, 26 and 27 of the State List.

Constitutional Validity of Farm Acts, 2020

The Central Government has invoked Entry 33 in the List III which essentially deals with trade and commerce. Agriculture though, is exclusively a state subject listed in Entry 14 in List II along with Entry 26 in List II which refers to "trade and commerce within the state". The path taken by the Union Government weakens the spirit of cooperative federalism which is a part of the basic structure of the Constitution even when the Judiciary has upheld the legislative powers of states in Intra-state Agricultural marketing. The Laws certainly have a poor legal validity but are expected to pass the test of constitutionality when challenged in the apex court.

The issue has been raised by many farmers that how can the Centre take decision on something which has been listed under the State list. In Indian Constitution, the VII schedule has defined the subjects of jurisdiction for Union and State Governments. List I has subjects reserved for union Government (Union List), List II has subjects reserved for the state Government (State List) and List 3 has the subjects reserved for the both state and Union government (Concurrent List). Agriculture has been listed under the entry no. 14 of State list. Now while formulating the Farm Act union Govt. has invoked the Entry 33 of list III which says that the Parliament can make laws in Public Interest on the matters involving trade, commerce, production, supply and distribution of industrial Products. Article 249 of Indian Constitution deals with "the power of Parliament to legislate with respect to a matter in the state list in the national interest." This Article gives the power to the Parliament to make laws with respect to any matter enumerated in the State List if it comes to the national interest. Taking the same contention Writ Petition was filed before the Supreme Court of India and it was registered as *Rakesh*

¹ The Constitution (One Hundred One Amendments) Act, 2016 was enacted w.e.f 8th September 2016

² Accordingly, agricultural education and research, protection against pests and prevention of plant diseases; preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass; land, rights in or over land, land tenures including the relation of landlord and tenant; collection of rents; transfer and alienation of agricultural land; land improvement agricultural loans; colonization; fisheries; markets and fairs; money-lending and money-lenders; relief of agricultural indebtedness; cooperative societies; land revenue; maintenance of land records taxes on agricultural income; duties in respect of succession to agricultural land and estate duty in respect of agricultural land, have all been made exclusive responsibility of the States.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : www.bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

*Vaishnav & Ors v Union of India & Ors*¹. Court stayed The implementation of the three farm laws 1) Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; (2) Essential Commodities (Amendment) Act, 2020; and (3) Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.

CONCLUSION

Based on the foregoing discussion, it can be concluded that the spirit of Indian Constitution demands that the Union and States are independent to make laws in their respective field assigned by the Constitution. Though the Union has supremacy in certain situations that is also mentioned in the Constitution itself, but that does not gives them legitimacy to encroach upon the State List and If Union Government keeps on transgressing the limits, then it will ultimately destroy the fabric of the basic structure of the Constitution i.e Federalism. The fact that under the scheme of our Constitution, greater power is conferred upon the Union vis-a-vis the States does not mean that States are mere appendages of the Union. With the sphere allotted to them, States are supreme. The Union cannot tamper with their powers. Hence the Independent Judiciary must playing its judicial activism role interfere in such a situation suo-motu and delimit adversarial federalism of the Union and shows them the path of cooperative federalism in order to save the basic structure of the Indian Constitution. Though the Agriculture remains within the State List, the State is handicapped from exercising any control over the agriculture and curtailed the power of the State to impose any tax or cess by the APMC resulting in a huge income loss for the State Governments. In the light of above premises, the author submits that the three Farm Acts on agriculture enacted by the Union Parliament goes against the spirit of federalism, hence legally speaking, their Constitutional validity shall be highly questionable & debatable before the Court of law and judiciary definitely upheld and protect the basic structure of the Indian Constitution.

¹ *Rakesh Vaishnav & Ors v Union of India & Ors*, WP.1118/2020



CONUNDRUM OF MEDIA- RIGHT TO PRIVACY AT PERIL

Dr. Sujatha. S

Associate Professor, BMS College of Law, Basavangudi, Bengaluru

"The court of public opinion moves much faster than the law"-T.E

INTRODUCTION

Media involvement and passing verdict in under trial cases are increasing rapidly the impact of media is also affecting the Judges where they are somehow compelled emotionally or through other factors to take decision based on the media criticism and there are many examples on the same, media house has an upper hand when the verdict needs to be passed in high profile cases. The media has also involved themselves in investigation and provide opinion on the same to general public which is actually and roadblock to investigation agency. Its rightly said that if there must be a smooth running of the democracy then freedom of speech and expression must prevail, though the media helps in social, political changes but sometimes they are also used as a tool for other unethical activities which tampers the tranquillity of the country.

Media holds a power to interpret the opinions of the public at large and also capable of highlighting any such issue or news through its electronic mode and gain public attention. The media is considered to be one of the efficient tools in a democratic country in the Indian constitution under article 19(a) which guarantees freedom of speech and expression also provides this right to the media as the makers of the constitution have envisaged that existence of powerful media is the cornerstone of a democratic country especially in India which is diverse with various culture and customs.

Its undisputable that in many dimensions the unprecedented media has being beneficial to the general public and it has also gained appreciation from state and judicial organs where fearless and ethical journalism has helped them to serve justice to people who were victimised, however as we know that every coin has two sides so does media as its well known fact that right to freedom of speech and expression is not absolute in nature and hold certain restriction these restrictions are imposed so that it would not overpower other freedom.

The role of media is not confined towards expression of an individual's opinion or views but it's also responsible and tool to build one's view on various aspects such as regional national and international agenda. One of the main objectives of the media is to mobilize the thinking process of millions of people the media role is magnum where justice learned hand of the United States quoted that "the hand that rules the press, the radio, the screen and the far spread magazine rules the country". In recent era media also plays a role of the judiciary where they are conducting trial on their respective platform without any authorisation and pass the verdict against any individual even before the trial would start before the court of law. Media cannot usurp the functions and deviate the actual function of the state and misguide the public.

The current generation which is found of breaking news and increase of competition the media has opted various other ways to increase the TRP and also attract the attention of viewers are has more often amounted to distortion of facts and sensationalization, this act as an encouraging factor and motives the use of intrusive newsgathering practices which tend to violate the privacy of people who are subject to such coverage. The issue is worsened when the media extensively covers sub-judice matters by providing opinions that are prejudicial to the interest of parties who have been tried by the judiciary.

MEDIA TRIAL

In our society whenever a sensitive issue has been taken up by the state and judicial authorities there is always curiosity where they look forward for every minute update on the issue as it being the talk of town and try to collect information from the available sources in order to cater such section of society the media would self-analyse and interpret facts and publish the same to public at large however such investigation by the media is prohibited in India but still there is existence of such practice where the media house pass verdict against the individual based on the unreliable facts and make a person accused or innocent this procedure is called as

MEDIA TRIAL

In the recent times there have been several events where the media has indulged in conducting trial and has also passed verdict even before the court gives its judgement and such verdict have had a major impact on the lives of the individuals who were involved in said incident, and also have labelled many persons as accused and criminals.



2-Prejudice to Judicial Process

The principle of natural justice; 'every accused has a right to a fair trial' clubbed with the principle that 'Justice may not only be done it must also seem to be done'. In present context media has been known as court of public and have directly indulged themselves in interfering with court proceedings, this act of media which overlooks the golden principle of jurisprudence 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt' is a grave injustice caused to the seekers of justice and also hampers the image of judiciary in public at large.

The apex court have made observation regards to the presumption where it states that "to emphasise on the fact that the presumption is legal in nature. This should not be destroyed at the very threshold through the process of media trial especially when an investigation is pending in the matter. Such a subversion of the criminal justice system would be in derogation of the rule of law and would also impinge upon the protection granted to an accused under Article 21 of the Constitution. It was also observed that protection of such presumption is essential for maintenance of the dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country. Reporting or criticism in sub-judice matters must be subjected to checks and balances so as not to interfere with the administration of justice".¹

The present media has created a major blockage towards the criminal justice administration of the nation where the media is constantly abusing their powers and also their interference in the role of other authorities have made people lose hope in the justice system and administration of our country. Media have their implied right enshrined under article 19(1)(a)² of the Indian constitution, this freedom encompasses the right to freely express one's opinion through writing, speaking, printing pictures or any other form and this right was termed as foundation of democracy because without free discussion and expression of once opinion its impossible for a government to perform³

The judges and investigating authorities who are involved cases which are of high profile shall also be influenced by the media trial as there are also human beings who stand on the same footing as the other humans are who hold similar emotions and sentiments and they are also subjected to such prejudice trials conducted by media and the probability of they being influenced stands evident and this would violate the fair trial and also the basic principles of natural justice and judicial process.⁴ There are various instances where the apex court have drawn the line between the phrases such as "media trial", "fair trial" and freedom of speech and expression.⁵

Influence on Judges

The Supreme Court in State of Maharashtra v. Rajendra Jawanmal Gandhi⁶ observed that has held that a trial by press, electronic media or by way of a public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice and a Judge is to guard himself against such 'pressure'.

The apex court held that "Conviction, if any, would be based not on media's report but what facts are placed on record. Judge dealing with the case is supposed to be neutral. Now if what petitioner contends regarding denial of fair trial because of these news items is accepted it would cause aspiration on the Judge being not neutral. Press report or no reports, the charge to be framed has to be based on the basis of the material available on record. The charge cannot be framed on extraneous circumstances or facts deforms the material available on record. While framing the charge the Court will from prima facie view on the basis of the material available on record. To my mind, the apprehension of the petitioner that he would not get fair trial is perfunctory and without foundation. None of the news items, if read in the proper prospective as a whole, lead to the conclusion that there is any interference in the administration of justice or in any way has lowered the authority of the Court. The Trial Court has rightly observed that after the charge sheet has been filed, if the Press revealed the contents

¹Anukul Chandra Pradhan v. Union of India; (1996) 6 SCC 354

²Freedom of Speech and Expression

³Ramesh Thappar V. state of Madras A.I.R 1950 S.C 124 - 3-

⁴Manu Sharma v. State (NCT of Delhi); (2010) 6 SCC 1

⁵P.C. Sen, In re; AIR 1970 SC 1821 and Reliance Petrochemicals Ltd. v. Indian Express Newspapers, Bombay (P) Ltd.; (1988) 4 SCC 592.

⁶Crl. M.P. No.839/97



of the charge sheet it by itself by no stretch of imagination amounts to interference in the administration of justice."¹

The apex court have clearly differentiated the role of media and judiciary and has provided clarity stating that the media and judiciary are two different institutions and there is no possibility for overlapping of power or functions, hence its forbidden to discharge the function of other body which it is entitled to. This clarification states that media houses are expected to perform within their sphere that is journalism and not involve or act as special agent of the court.²

Effect of Media trial

Arushi-Hemraj Murder Case

This case gained a lot of media attention and was in the news for a very long time. Arushi was murdered along with her household worker Hemraj in May, 2008. Initially, a lot of names occurred on the suspect list. The sensational media coverage was criticized by many as a trial by the media, which involved salacious allegations against Arushi and suspects. The media raised questions on Arushi's character as her affair with Hemraj, though no provident evidence had been found for the same. The parents were convicted for the murder and sentenced to life imprisonment in November, 2013. But it was argued by many critics that the case was based on very weak evidence, the evidence was not strong enough to fully blame parents for the murder, there were other suspects too but because of media trial interference, it raised questions in minds of the people. In the Allahabad High Court, the decision was challenged by the Talwar's, which later in 2017 acquitted them as giving them benefit of doubt and calling the evidence as unsatisfactory.

Sheena Bohra Murder Case

In the year 2012 Indrani Mukerjee was arrested for the murder of Sheena Bora, the shocking news, in this case, was that Sheena was the daughter, not the sister as claimed by Indrani Mukerjee. The media highlighted the case and even after her arrest Indrani never accepted that she had two children and was stuck to her statement claiming Sheena as her sister. The murder also brought into light the murky financial dealings of Indra Mukerjee and her husband Peter Mukerjee. They successfully manipulated facts hence no trail was initiated against them for three years. The personal life of Indrani Mukerjee had been pierced by the tormenting eyes of the media which paved the way for fresh debate in the murder trial issue of the accused. Indrani's character and personal life, all the aspects which have no relation with the investigation of the murder of Sheena were under the public lens of scrutiny through media. The journalism ethics had been again under the controversial debate due to their meddling with the personal matter of the accused.

Jessica Lal Murder

In 1999, Jessica Lal (model turned barmaid) working in a restaurant owned by socialite Bona Ramani in Mehrauli, South Delhi's, was shot dead by Manu Sharma (alias Siddharth Vashisth), son of Congress former Union Minister, Vinod Sharma after Jessica refused to serve liquor to him and his friends. This case immediately gained media coverage after the murder when the accused was acquitted by the trial court. This case became one of the top cases where the public pressure and media compelled the justice system to take a second look at this case. Though Manu Sharma was acquitted initially in the year 2006 as the Delhi police failed to sustain the grounds on which they had built up their case after public outcry due to the media coverage of the case, the Delhi High Court sentenced him to life imprisonment.

Sushanth Singh Rajput Case

In the wake of the death by suicide of the popular Indian actor, Sushant Singh Rajput, the reporting of this case provided for a sad state of affairs by news reporting channels. The reporting by such news channels hampered the investigation which was exponentially important for justice administration. Several Public Interest Litigations were filed in the Bombay High Court against the media trials in the wake of such reportage. The phenomenon of declaring the accused as a convict even before the Court had given its judgment, is called media trials. It is the widespread coverage of the guilt of the accused and imposing a certain perception about him, regardless of any of the verdict given by the court of law. In the present case, the reputation of the partner of the deceased actor, actress Rhea Chakraborty, was brutally torn apart by the media houses in what may constitute a "media trial".

¹Sushil Sharma v. The State (Delhi Administration) and Ors 1996 CriLJ 3944.

- 4 -

²K. Anand v. Delhi High Court; (2009) 8 SCC 106 as well as M.P. Lohia v. State of W.B.; (2005) 2 SCC 686 - 5-



Freedom of Press V/s Right to free and fair trial

Freedom of the press has always been a cherished right in most of the democratic countries and the press has rightly been described as the fourth pillar of democracy whereas a fair trial is a fundamental right which flows from article 21 of the Constitution. Denial of the fair trial is the denial of human rights¹. The right to a fair trial is an absolute right that is provided to any individual, within the territory of India vide Article 14, Article, 19, Article 20, Article 21 and Article 22 of the Constitution of India. The trial conducted by media flouts the principle of fair trial. Under Article 19(1)(a) of the Constitution, the rights of the freedom of Press have been recognized as Fundamental Rights and under Article 21 of the Constitution the accused/suspect and under trial and the Civil litigant have Fundamental Right to have a free and fair trial², every person, therefore, has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty. Thus, right to a fair trial being a fundamental right cannot be refused to any person by the virtue of Constitution³. The Supreme Court explained that a "fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated."⁴

The media has impact trial at a larger extent, where the trial conducted by media hinders the fair trial, there are several instances where the media houses have extended their rights which is prejudicial in the interest of the public. The media's impact on public is to greater extent where the media is known to be truthful and anything against them will be termed biased and unethical. The Hon'ble Apex court held that "No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case."⁵ The Supreme Court of India has held that "freedom of the press extends to engaging in uninhabited debate about the involvement of public figures in public issues and events. But, as regards their private life, a proper balancing of freedom of the press as well as the right of privacy and maintained defamation has to be performed in terms of the democratic way of life laid down in the Constitution"⁶.

The Contempt of Courts Act, 1971

The trials conducted by media or nay publication made by the media is immune from contempt proceedings. However, any publication which interferes with or obstructs or tends to obstruct any proceeding, be it civil or criminal, and the course of justice, which is actually a pending proceeding, constitutes the contempt of court. It has been termed as contempt because some of the acts which are published before the verdict given by the court, can mislead the public and affect the rights of the accused of a fair trial. Such kind of publications may be related to his previous convictions or the confession he made in front of the police or merely character assassination of the accused. Article 19(1)(a) of the Constitution of India guarantees, freedom of speech and expression and Article 19(2) permits reasonable restrictions to be imposed. Article 19(2) does not refer to administration of justice but interference of administration of justice is clearly referred to in the definition of 'criminal contempt' in Section 2 of the Contempt of Courts Act, 1971 and in Section 3 amounts to contempt. Therefore, any publications or media coverage which interfere or tend to interfere with the administration of justice amount to criminal contempt under the Contempt of Court Act and the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

Regulating Bodies

Currently there is no statutory body which would govern the news channels majorly all are self-regulated. The News Broadcasting Standards Authority is one such regulatory body which has been created by the association of news broadcaster's which has a set of ethical code which regulate the television content, the said body has

¹Rattiar v. State of Madhya Pradesh AIR 2012 SC 1485-6-

²Maneka Gandhi Vs Union of India 1978 SCR (2) 621

³Mohd. Hussain @ Julfikar Ali v. The State (Govt.OfNct), Criminal Appeal No. 1091 of 2006

⁴Zahira Habibullah Sheikh v. State of Gujarat(2005) 2 SCC (Jour) 75

⁵Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr AIR 1961 SC 633

⁶R. Rajagopal v. State of T.N(1994) 6 SCC 632-7-



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-JOURNAL : editor@bmscl.ac.in ADDRESS : editor@bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

very limited powers where it can censure, admonish and warn any such broadcasters who are violating the code ethics and also fine such broadcasters a sum of Rs. One lakh if there is a violation, Broadcast Editors Association is also a body which works on similar note. The media house has separate body which governs the advertisements and those bodies are governed through agreements and not have any statutory power for the same¹

200th LAW COMMISSION REPORT

The law commission of India in its 200th report released in 2006 august has titled it as "Trial by Media: Free Speech and Fair Trial Under Criminal Procedure Code, 1973" which broadly deals with several aspects of rights relating to freedom of speech, freedom of press, right to fair trial. The commission has said, "Today there is feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice". Justice M. Jagannadha Rao stated that this was taken up by Suo-moto considering the prejudicial coverage of news and information. In the current scenario there is an extensive use of electronic media and its clearly visible that the media publications have gone through a drastic change and this change is unhealthy as it has encouraged many prejudicial news affecting the public opinion.

The commission report has tried to elaborate the pros and cons of media trial where it has made recommended to address the hindering effect of medial trial on criminal justice system, further it has recommended in prohibition of publication anything that is prejudice to accused and such publication shall be prohibited from time the accused is arrested. The report noted that at present, under Section 3 (2) of the Contempt of Court Act, such publications would be contempt only if a charge sheet had been filed in a criminal case. The Commission has suggested that the starting point of criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case. Another controversial recommendation suggested was to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting touch publication or telecast. The 17th Law Commission has made recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.

CONCLUSION

Media in today's world has emerged to be a necessary evil and there is an alarming need to regulate the same there is a grave necessary to have stringent laws as its evident that there is competition of media houses and commercialization of information has encouraged many unlawful practices which is against the public good. The role of Media to provide information emerge as one of the fundamental rights enshrined under part III of the constitution, right to speech and expression which directly reflect the publication are subject to certain restriction which are provided under Article 19(2) of the constitution.

One of the effective methods to regulate media is to bring them under the liability of contempt jurisdiction where the court will be empowered to penalise and punish those who violate the basic conduct and ethics. The apex court have approved many contempt cases against media as they cannot be permitted with right to freedom of speech and expression to that extent which would prejudice the trial.

-9-

¹ The Advertising Standards Council of India -8-



REDRESSAL MECHANISM UNDER E-COMMERCE RULES, 2020- A BLESSING FOR E-CONSUMERS

Dr. Gayathri Bai S

Assistant Professor, BMS College of Law, Bangalore

INTRODUCTION

E-commerce is playing a vital role in fulfilling the demands and needs of consumers in all aspects but the question is, are consumers satisfied with service provided by e-commerce entities. E-commerce means selling and buying goods/ services through digital platform. There are many e-commerce players like Amazon, Myntra, Ajo, Flipkart, tatacliq, etc., selling goods, providing services through online platforms. People who are purchasing through online platform are called e-consumers. In the present digital era, consumer is a king as he gets all the goods at his finger tips for selection and the same will be delivered at his door step within no time.

In India, e-commerce is regulated according to E-Commerce Rules, 2020. The said rule monitors and controls the activities of e-commerce players and at the same time it protects the interest of e-consumers. Because of advanced technology, e-commerce has grown enormously and simultaneously it is attracting greater number of consumers at global level as there is no jurisdictional limit on e-commerce entities. The new E-Commerce Rules, 2020 deals with duties and liabilities of e-commerce entities. The primary issues about online shopping are privacy issues, unfair trade practices, misleading advertisements, etc.,. When a consumer uses digital platform, he needs to share many sensitive data with e-commerce entity, but sometime, without the consent of consumers his/her personal sensitive data will be shared with the third person which violates consumers' privacy and at the same time it is punishable under Information Technology Act, 2008. But the question is how many e-consumers are aware about the platform available for them to protect their rights. The major issue involved here is the terms & conditions in privacy policy adopted by the e-commerce entities which are different standards and it always go unnoticed by the e-consumers. There must be some standard privacy policy to be laid down by the authorities.

The research paper will throw light on how effectively the present e-commerce rule is addressing the issues mentioned above relating to e-consumers and redressal mechanism in India. It also throws light on measures to be taken by the authorities in creating awareness among e-consumers and the active role of consumer authority in redressal mechanism.

E-commerce entity

A person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a market e-commerce entity.¹ Apart from e-commerce entities, inventory e-commerce entity and market e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers². Amazon, Flipkart, etc falls under market e-commerce entity category.

Duties of e-commerce entities³

- To appoint a nodal person of contact who shall be a resident in India to ensure the compliance of the e-commerce rules. This helps in resolving the jurisdictional issues while addressing the issues relating to off shore e-commerce entity and also give easy access to the consumers in India.
- E-commerce entity shall disclose clear/ correct information relating to name of the entity, principal office, details of the websites, contact details and details about the grievance officer on their online platform and the same shall be accessible to all the consumers for easy communication specially for quick redress of their grievances.
- E-commerce entity shall not indulge in unfair trade practices, in case they practice unfair trade practices defeating the interest of the consumer, it shall be inquired by the consumer commission.

¹ Definition under Rule 3 of E-commerce Rule 2020.

² E-commerce Rule, 2020

³ Rule 4 of E-Commerce Rule, 2020



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

- There shall be appointment of grievance redressal mechanism who has a duty to acknowledge the receipt of the consumer complaint within 48 hrs and it should be addressed within one month.
- Discrimination between the consumers shall be permitted in an arbitrary manner affecting the rights of the consumers.

The above duties are imposed on all the e-commerce entities, but how far these duties are complied by them. In the present pandemic situation purchase through online mode has been increased but most of the e-consumers are not aware about the above provisions. Many times, the information disclosed on websites will not be clear and sometime it will not be available /accessible for consumers.

Redressal Mechanism under E-Commerce Rule, 2020

In the present situation, e-consumers prefer online mode of redressal mechanism. As per the rules mentioned above, every e-commerce entity should appoint grievance officer in its premises facilitating the speedy disposal of cases. Many online sale platforms do not disclose the name and address of the grievance officer. The New Consumer Protection Act, 2019 provide provisions for establishment of mediation cells at commissions at all level to facilitate speedy disposal of the consumer complaints. As per UNCTAD model, the online mediation and conciliation mode can also be adopted instead of regular consumer forum proceedings¹. Ticket number for each complaint lodge shall be allotted which will help the consumers to track the status of their complaints which is really helps e-consumers to get remedy.

A few digital platforms of e-commerce entity mislead consumers by giving incorrect information or through misleading advertisement. There is no doubt that the e-commerce rules provide provisions dealing with such situation but whether the consumers know about the online redressal mechanism. As per the new rules, every e-commerce entity must have redressal office in its premises and provide remedy for consumers. There are so many digital platforms provided by e-commerce entities to expand their business. To attract consumers, they indulge in unfair trade practices by quoting less price than the actual cost. The consumers who want goods at affordable price should not become a scape goat because of such unfair trade practice.

When goods are sold through online platform, it becomes difficult for consumers to check quality and sometimes, they won't get goods as per their expectations. In such situations, the 'Return & Refund Policy' of e-commerce entities play a vital role but again there is no uniformity adopted by them and same needs to be addressed. Another major issue which needs to be addressed in e-commerce and protection of e-consumers interest is online financial fraud and e-consumers are the major victim. In this situation, there must be some initiative to be taken by e-commerce entity to take action to safeguard the interest of consumers. As we are all know that anybody can access digital platform information globally, at this point it becomes difficulty for a consumer to find out proper authority to access justice specially when an entity is an overseas entity.

The new Consumer Act, 2019 has provided provisions for establishment of Central Consumer Protection Authority having power to investigate and provide remedy for consumers, but the question is how far this authority is functioning effectively and reaching consumers specially e-consumers. The practical issues involved in online purchase mode are many entities do not disclose the name and address of the entity which shakes the confidence of e-consumers, proper breakup value of the goods will not be specified by the entity which will be purchased by consumers. Many overseas entities are selling goods in India and it consumes a lot of time and quite expensive also and at the same time redressal mechanism for online purchase is a complicated process which defeats consumers' interest.

Consumer Protection Councils

The Consumer Councils shall be established at Centre and State level by the respective governments to fulfill the following objectives:

- To promote and protect the rights of consumers.
- Protection against the hazardous goods sold in the market.
- To protect against misleading advertisements, unfair trade practices practiced by the sellers relating to quality, quantity, price, etc.
- Right to access to all variety of goods for competitive prices.

¹ UNCTAD E-Commerce Guidelines 2017.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

- To protect the right to seek appropriate remedy at consumer forums.
- To create awareness about consumers' education.

These consumer councils must take initiative to create awareness among all classes of consumers specially provisions and forums relating e-consumers disputes in the present situation. The consumer councils can join hands with NGOs which are working for protection of consumer rights. Being an advisory body, the council can make recommendations for the implementation of provisions of 2019, Act and the Central government can constitute standing council to monitor the implementation of the consumer councils.

Central Consumer Protection Authority

The Centre Government under the new Act can establishment Central Consumer Protection Authority to regulate unfair trade practices, misleading information and to prevent violation of consumers' rights. The authority also has responsibility to promote, protect and enforce consumers rights in the market.¹ The above activities will be funded by the central government from time to time.

Powers of the Authority

- Power of general superintendence
- Power of investigation
- Recommend for adoption of international laws/ practices to protect the interest of consumers
- Undertake and promote research in consumers right in cooperation of NGOs and other institutions.
- To take action against misleading advertisements, investigation and imposing penalty

Consumer Forums Redressal Agencies

Under the new Act 2019, various platforms are established to redress the grievances of all classes of consumers like District Redress Commission, State Redress Commission and National Commission for appropriate remedy. State government can establish District Commission at each district consisting of President and two members or more in consultation with the Central government. The district commission has the jurisdiction to allow complaint when the monetary value of the goods/services is not exceeding 1 crore. The proceedings will be conducted by the President and one member, the admissibility of the complaint by the commission shall be decided within 21 days from the date of filing a complaint. If the complaint is not be rejected within the above mentioned date, it shall be deemed to be admitted. In case the complaint is rejected, the complainant shall be heard by the commission before rejecting the complaint.

Mediation Redress Mechanism

As per the new Act 2019, the provision to establish mediation cell at district commission for the speedy disposal of the matter. As per section 37 of the 2019 Act, the district commission can refer the complaint to the mediation with the consent of the parties after the first hearing of the complaint by the commission. This provision is a new hope for consumers to get quick and appropriate remedy. As per UNCTAD Guidelines on E-Commerce 2017, online mediation and conciliation opportunities can be made available to consumers for easy disposal of cases. As mentioned above, the 2019 Act provides express provisions for mediation as a redressal mechanism to resolve consumer disputes. The mediation cell shall be established at district and state commission by the state governments and Central government will establish mediation cell at national commission.² In the same manner, state consumer commission and national consumer commission also dispose consumer complaints as per the provisions of the new Act 2019.

The mediation cell shall maintain panel of mediators who will be training and appointed for a period of 5 years and eligible for reappointment. The mediation proceedings will be conducted by the appointed mediator by considering the rights and obligations of the parties, the usage of trade and the circumstances giving rise to the consumer disputes and other factors as per the principles of natural justice.³ The mediation proceeding shall be completed as prescribed by the regulations, if any settlement is reached by the parties and it shall be recorded in writing and signed by the parties and their respective representatives if any. On the basis of the settlement agree of the parties, the mediator shall write a settlement report and forward the same to the commission. On the

¹ Sec 10 of CP Act, 2019

² Section 74 of CP Act, 2019.

³ Sec 79 of CP Act, 2019.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

basis of the settlement report, the commission shall pass an order accordingly. If there is no settlement arrived by the parties in mediation proceedings, same shall be reported and commission shall continue its hearing of the matters without causing any delay. In a similar manner state consumer commission and national commission shall conduct its proceedings of the complaint filed by the consumer.

In the present scenario, the ADR mechanism is playing a vital role in resolving many disputes. As mentioned above as per UNCTAD model if online mediation is adopted by the consumer commissions, it will reduce the burden of the consumer forums, saves time, cost effective and consumers will get appropriate remedy within time.

CONCLUSION

To conclude, the Consumer Protection Act, 2019 and E-Commerce Rules are recently enforced in India to tackle many issues which are raised due to more use of internet facilities by all, specially by the teenage consumers. Due to advanced technology, we have become more vulnerable and our rights as a consumer are violated to a larger extent. We have moved from the traditional rule of caveat emptor to product liability principle where the manufacturer, dealer, supplier and sellers are held responsible for selling defective goods through digital platform or other modes to consumers. As highlighted above, consumer is a king and king deserves a best.

Statutes:

1. Consumer Protection Act, 2019
2. Information Technology Act, 2000

BIBLIOGRAPHY:

1. Winfield and Jolowicz on Tort, Ed 19, Sweet & Maxwell, South Asian Edition, 2015
2. V.R. Choudhry, 'Law of Consumer Protection', Premier Publishing Company, Ed 2004
3. S.P. Sen Gupta, 'Commentaries on the Consumer Protection Act', Kamala Law House, Kolkata, Ed 13.
4. Chakraborty's 'Law of Consumer Protection', Dwivedi Law Agency.
5. Ratan Lal & Dheeraj Lal, Law of Torts, ED 2018
6. Taxman Consumer Protection Act 2019, Ed 2020, Taxman Publication



AN ANALYSIS OF INDIA COMBATING PIRACY IN INDIAN OCEAN REGION

Gurvinder Kaur

ABSTRACT

Maritime piracy is a very important issue for International politics and when data shows that there is a surge of 20% attacks worldwide which is reported according to a report by the International Maritime Bureau of the International Chamber of Commerce (ICC)¹ released in January 2021. Maritime security is the need of the hour and when the trade between countries is becoming voluminous the necessity is even more. The main intention of this paper is to highlight the non-traditional threat in the Indian Ocean region- PIRACY. It is noticed now and then that ships and vessels are attacked and looted by Somalian Pirates. The main choke points in the Indian Ocean are the Eastern African Coast – Gulf of Aden and Gulf of Guinea and the other being St. of Malacca which is also one of the busiest routes. So my paper will be dealing with what is the role that India is playing to combat piracy, the Maritime Piracy Bill, and also suggestions to solve the shortcomings. The research methodology is Doctrinal, various reports and UN data is collected and an assessment is done on the role India is playing to reduce the impact of piracy.

Key Words – Maritime Security, Piracy, Indian Ocean, East African Coast, St. of Malacca.

INTRODUCTION

Shipping in the Indian Ocean Region (IOR)

The Indian Ocean Region is one of the busiest routes for International as well as regional shipping. In geopolitical terms, this region is gaining importance because of the strategic location of many hubs in and around the Indian Ocean. This is partly because of the crucial strategic significance of the trade routes that criss-cross it. These are vital to the economies both of the extra-regional countries, which are dependent on the rich resources of the Indian Ocean Region (IOR), and to the countries within the region itself.

Two-thirds of the world's seaborne trade in oil, 50% of the world's seaborne container traffic, one-third of the world's seaborne bulk cargo, and the world's highest tonnage in the seaborne transportation of goods are reported to transit through the Indian Ocean each year.² It is not just the extra-regional traffic from the Suez Canal and ports in the Middle East to destinations in East Asia, North America, and Europe that is important, but also the intra-regional trade and various sub-regions of IOR - East Africa, the Gulf, the Indian sub-continent and Southeast Asia. While larger ships are occasionally hijacked by Somali pirates, the smaller vessels in the local trade provide the 'bread and butter' targets and steady income for the pirates. The income comes not only from the ransoms received for the release of hijacked vessels but also possibly from protection money received for not hijacking vessels. There is nothing new to this. Piracy has been endemic to the Indian Ocean for centuries, with the coast of East Africa from Somalia south to Mozambique once being so unsafe that it was referred to as the Pirate Coast.

Background of Piracy

Pirates are not just functional characters but are one of the most serious and devastating threats faced in the International Waters and High Seas. The era between 1650 – 1730 is known as the golden age of piracy as there existed thousands of pirates who looted and killed the ships, vessels, and sailors. Though maritime piracy has existed for over 4 centuries now, sailors could not report the atrocities that happen to them till 1992.³

In the year 1992, the IMB (International Maritime Bureau) formed the piracy reporting center (PRC) which is serving as one point of contact for sailors who can now report piracy, armed robbery, and stow away incidents. Even though many people claim that piracy was only in the 16th or 17th century but the bitter reality is that even in the 21st-century piracy can be witnessed.⁴

Piracy has gained attention only after regular attacks by the Somalian Pirates which is not more than 15 years. If we see the history and geography of Somalia, it is seen that frequent wars, famine have aggravated their economic problems which have given birth to pirate gangs who go to the seas to hold seafarers as hostages and

¹ <https://www.icc-ecs.org/>

² <https://www.tandfonline.com/action/journalInformation?journalCode=rior20>

³ Maritime Piracy In The 21st Century – ALL INDIA LEGAL FORUM

⁴ IMB Piracy Reporting Centre (icc-ecs.org)



claim ransom in return for their lives. The occurrence of piracy activities is spread across the globe and is most prevalent in the areas of the Caribbean, Gulf of Guinea, Strait of Malacca, and the Indian Ocean.¹

For the year, 2019 alone 119 incidents of piracy were reported, in 2018 the cases were worse as around 156 cases were registered. Though the number of people taken to hostage has decreased by a good margin, the statistics concerning weapons have increased and it thereby affirms IMB's concerns regarding the threats on the security of sea travelers and the ships.²

Gulf of Guinea

It covers the West African Coast and has been identified by IMB that 95% of global piracy happens in this place. In the 1980s there was an increase in the number of investments by MNC's in Nigeria but these activities of piracy were quite high so in the long run, it was noticed that the region surrounding the Gulf of Guinea lost on a lot of international economic investment and thereby depriving the areas of development opportunities. This contributes to a range of other economic activities, including fishing and tourism. These economic deficiencies combined with unemployment result in a never-ending chain of crime. And ironically, this chain of crimes is a product of piracy and armed robbery and also the root cause of the same.³

Indian Ocean

The Indian Ocean is considered a free sea where ships, merchants can use the sea without any restrictions and permission. But then things changed after the advent of Europeans in the 15th century. They inflicted a sense of supremacy over the waters and slowly grabbed sovereignty over the Indian Ocean. Thereby, they began imposing restrictions, taxes, etc to exert their powers on waters. This affected the local communities across many coasts and agitated many. This led to the formation of aggressive groups that the Europeans perceived as "outlaws" and piracy became a major weapon in the hands of these people. In 2011, there were around 201 cases reported and in 2019, 162 incidents were reported. So we can see a marginal decrease in the cases.⁴ In September 2021, India joined as an observer in the Djibouti Code of Conduct(DCOC) a multinational group that aims at countering maritime piracy and providing safe and secure seafaring in the Indian Ocean Region.⁵

The Strait of Malacca

The St. of Malacca is the region connecting Andaman and the South China Sea. This region is an important travel route for Indo- Sino trade and investigation, it faces a lot of maritime piracy incidents. The regions around Indonesia are mostly equipped with weapons such as knives and guns.⁶ In 2018, Indonesia reported 36 actual and attempted occurrences whereas in 2019 there were only 25 actual and attempted incidents had occurred. The numbers have drastically reduced.⁷ In the year 2020, 16 cases had been reported in the Indonesian region, and 15 ships were attacked in the Singapore Strait, but most of them were low-level crimes.⁸

Maritime Piracy Laws and Enforcement

International Laws regarding maritime piracy is prima facie governed by Article 100 to 107 of the United Nations Convention on the Laws of the Seas(UNCLOS). Though Article 105 of the UNCLOS is made clear that, apart from the power of the states to capture pirate ships within their jurisdiction, any state may seize and arrest the pirate ships and their inhabitants of those water who aren't a part of the jurisdiction of any state at all.⁹

¹ <https://www.cambiasorisso.com/sea-pirates-of-the-21st-century-are-gangs-run-by-criminal-masterminds-hostage-negotiator>

² News - Maritime piracy incidents down in Q3, yet Gulf of Guinea remains a hot spot (icc-ccs.org)

³ Pirates are kidnapping more seafarers off West Africa, IMB reports - ICC - International Chamber of Commerce (iccwbo.org)

⁴ The forgotten history of piracy in the Indian Ocean | OUPblog

⁵ India joins Indian Ocean grouping against piracy as observer | Latest News India - Hindustan Times

⁶ Strait of Malacca | strait, Asia | Britannica

⁷ Indonesia - number of piracy attacks 2020 | Statista

⁸ Pirates are kidnapping more seafarers off West Africa, IMB reports - ICC - International Chamber of Commerce (iccwbo.org)

⁹ Piracy Under International Law



On the issue with the definition of piracy given in Article 101 of the UNCLOS is that it restricts the definition of piracy to the high seas that too only between two ships or aircraft. Earlier the system was used to keep track of the ships on high seas was AIS(Automatic Identification System) but now they have been replaced by LRIT (Long Range Identification Tracking) System. The reason why LRIT's are preferred more is because AIS systems used to be turned off by the sailors so that they don't get tracked by the pirates, but the LRIT system is only accessible to designated authorities and thereby ensure the security of the sailors without the fear of being tracked.¹

Enforcement of anti-piracy instruments is an arduous task; this argument can be understood if we look at the maritime security regime in general. Maritime security measures usually operate at national, regional, and international levels simultaneously. It is submitted that the anti-piracy regime suffers from weak surveillance, capacity-building, and enforcement mechanisms. With regards to Somali piracy, the UNGA has emphasized that the international community must assist the Somali government in strengthening its institutional capacity to fight piracy and tackle underlying causes.

The United Nations Security Council has also called upon member states and international organizations to assist Somalia and nearby states by enhancing their capacity to ensure coastal security. The lack of capacity is mostly with regards to enforcement infrastructure, naval force, legal institutional, lack of trained personnel, lack of appropriate law to deal with the issue, and so on. With respect to Somalia, the United States and European Union have initiated capacity-building programs; these programs are based on the understanding that maritime security is a multi-dimensional concept and it requires capacity building at both sea and land. They aim at addressing the wider governance issue which is the root cause of maritime piracy. Thus, they tend to provide a link between security, institution, and the socio-economic environments in such countries.²

One of the most important factors for the suppression of piracy is international and regional cooperation between states.³ It is submitted that states have always taken international and regional cooperation against maritime security threats rather seriously, especially when piracy is involved.⁴ International and regional cooperation can be influenced by geopolitical or other issues; this makes the attainment of a conducive environment for achieving cooperation between states a complicated task. For instance, due to various unresolved delimitation claims, many coastal states have unsettled claims against their neighbors or otherwise. Such unresolved claims could affect inter-state relations. This would not only cause strains in cooperation efforts but also cause overlap of efforts.⁵

Another important issue is the "soft law" nature of the regime. The Conventions, including UNCLOS, UN resolutions, IMO resolutions, and IMO codes are couched in soft law terms. The adoption of such a law is dependent upon the member states. In other words, such laws do not have legally binding consequences, except for the UNSC resolution adopted under Chapter VII of the UN Charter. In the case of maritime security regime under UNCLOS as well, the element of national security makes international law-making a lot more difficult, as states are not willing to compromise with their sovereignty. Thus, in such a situation, soft law is the best

¹ The declining impact of piracy on maritime transport in the Indian Ocean: Statistical analysis of 5-year vessel tracking data - ScienceDirect

² Bueger, C., and T. K. Edmunds. 2017. "Beyond Sea Blindness: A New Agenda for Maritime Security Studies." *International Affairs* 93 (6): 1293–1311. doi:10.1093/ia/iix174

³ Gottlieb, Y. 2015. "Combating Maritime Piracy:

Inter-Disciplinary Cooperation and Information Sharing." *Case Western Reserve Journal of International Law* 46: 303.

Guilfoyle, D. 2008. "Piracy off Somalia: UN Security Council Resolution 1816 and IMO Regional Counter-Piracy Efforts." *International and Comparative Law Quarterly* 57 (3): 690. doi:10.1017/S0020589308000584.

⁴ EU NAVFOR Somalia. 2009. "Successful International Cooperation against Piracy." Accessed 01 January 2018. <http://cunavfor.eu/successful-international-cooperation-against-piracy/>

⁵ Sousa, I. "Maritime Territorial Delimitation and Maritime Security in the Atlantic." Paper presented at the Atlantic Future Workshop, University of Pretoria, Pretoria, South Africa, June 2014.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

possible option to make maritime security instruments, which give enough latitude to states with respect to enforcement and implementation.¹

Measures adopted by India to Combat Piracy in Indian Ocean Region

The measures taken by the Indian Government can be viewed at three levels. Firstly, operationally via kinetic means, by deploying naval ships with armed helicopters to patrol the piracy-prone areas. Secondly, in the international arena, by participating in the various multilateral fora that have been set up to combat piracy, and thirdly, internally by taking steps to arrest and prosecute pirates and strengthen the fight against piracy via a piracy bill.

Operationally, the Indian Navy commenced anti-piracy patrols in the Gulf of Aden from October 2008. Indian Naval ships operate independently and are not part of the multinational forces that operate in the area. To achieve a high degree of cooperation with other maritime forces, India is an active participant in various cooperative mechanisms like "Shared Awareness and De-confliction (SHADE)" that have been established to facilitate sharing of information. In addition, India, Japan, and China (all three nations operate independently) have agreed to coordinate patrols thereby ensuring effective and optimum use of the combined maritime assets to escort ships, especially in the Internationally Recommended Transit Corridor established for use by all merchant ships in the Gulf of Aden. The Director-General Shipping has launched a web-based registration service where merchant ships can register with DG Shipping in order to avail of the escort facility provided by Indian Naval ships in the Gulf of Aden.

Due to the spread of piracy in the Indian Ocean, Indian Naval and Coast Guard ships have also been deployed in piracy-prone areas nearer the Indian coast. As a result, around 1000 plus ships of various nationalities have been escorted and around 40 piracy attacks were prevented by Indian forces deployed in these areas. At the international level, India continues to take up the issue of piracy and its attendant ramifications at various fora and advocates steps to be adopted by the international community. Internally, India arrests and prosecutes pirates as per the laws of the land, a weak point as of now as there is no specific penal code that addresses the issue of piracy. In arresting and prosecuting pirates, India is one of the few nations that do so. In order to strengthen the fight against piracy, a piracy bill was introduced in the Lok Sabha during the 15th session in April 2012.

Piracy can be eradicated by addressing the root causes, an aspect well recognized by the international community. The root cause of piracy in the Indian Ocean lies on land i.e., the instability in Somalia. Addressing this issue requires an international understanding and sustained effort.²

India on 17th September 2020 had joined the Djibouti Code of Conduct (DCOC), a grouping on maritime matters aimed at countering piracy, as an observer as part of efforts aimed at enhancing maritime security in the Indian Ocean region. The move to join the grouping followed a high-level virtual meeting held on August 26. The development comes at a time when India is shoring up its position in the Indian Ocean and nearby waters as part of its overall Indo-Pacific policy. India has signed reciprocal military logistics support agreements with Australia and Japan this year to increase interoperability with the navies of those countries.

The DCOC, which aims to repress piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden, was adopted on January 29, 2009, by the representatives of Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, Tanzania, and Yemen.

Comoros, Egypt, Eritrea, Jordan, Mauritius, Mozambique, Oman, Saudi Arabia, South Africa, Sudan, and the United Arab Emirates signed on later, taking the total countries in the grouping to 20. As an observer at DCOC, India looks forward to working together with member states towards coordinating and contributing to enhanced maritime security in the Indian Ocean Region. Under the code of conduct, the member states cooperate in countering piracy and armed robbery on the high seas and promoting the implementation of relevant UN Security Council resolutions. They also cooperate in the investigation, arrest, and prosecution of persons suspected of having committed acts of piracy and armed robbery against ships, the interdiction and seizure of

¹ Boyle, A. 2005. "Further Development of the Law of the Sea Convention: Mechanisms for Change." *International and Comparative Law Quarterly* 54 (3): 563-584. doi:10.1093/iclq/lei018.

Boyle, A. 2014. "Soft Law in International Law-Making in International Law." In *International Law*, edited by D. Malcolm, 141-158. Evans, Oxford: University Press.

² <https://idsa.in/askanexpert/IndianGovernmenttocombatpiracyintheIndianOcean>



suspect ships, the rescue of ships and people subject to piracy and armed robbery, and the conduct of joint operations.¹

The Anti – Maritime Piracy Bill, 2019

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines piracy to include any acts of violence, detention, or destruction committed for private ends against persons or property on board a ship on the high seas or outside the jurisdiction of any state.² Acts of piracy threaten maritime security by endangering the welfare of people traveling by sea and the security of navigation and commerce.³ These acts may result in the loss of life, physical harm, hostage-taking, disruptions to commerce and navigation, and financial losses to ship-owners. As per the International Maritime Organisation, during 2018 and 2019, 84 acts of piracy were reported globally.⁴

Currently, India does not have domestic legislation on maritime piracy. In the past, provisions of the Indian Penal Code, 1860 (IPC) pertaining to armed robbery and the admiralty jurisdiction of certain courts have been invoked to prosecute pirates.⁵ However, the sovereignty of India extends only up to the territorial waters of India (12 nautical miles from the coastline)⁶. Piratical acts by a foreigner committed outside the territorial waters of India do not constitute an offense under the IPC. For example, in the Alondra Rainbow case (1999), the Mumbai High Court acquitted the accused on grounds that India did not have the jurisdiction to prosecute them.

In 1995, India ratified the UNCLOS, which gives a uniform international legal framework for combatting acts of piracy. Consequently, the Piracy Bill, 2012 was introduced in Lok Sabha in April 2012. The 2012 Bill lapsed with the dissolution of the 15th Lok Sabha. The Anti-Maritime Piracy Bill, 2019 was introduced in Lok Sabha on December 9, 2019, and has been referred to the Standing Committee on External Affairs for detailed examination.

Highlights of the Bill:

- The Bill enables Indian authorities to take action against piracy in the high seas. The Bill brings into law the UN Convention on the Law of the Sea. It applies to the sea beyond the Exclusive Economic Zone (EEZ), i.e., beyond 200 nautical miles from India's coastline. The Bill defines piracy as any illegal act of violence, detention, or destruction against a ship, aircraft, person, or property, for private purposes, by the crew or passengers of a private ship or aircraft. Piracy also includes inciting and intentionally facilitating such acts of violence, and voluntarily participating in the operation of a pirate ship or aircraft. Committing an act of piracy will be punishable with: (i) life imprisonment; or (ii) death, if the act of piracy causes or seeks to cause death. Participating, organizing, aiding, supporting, attempting to commit, and directing others to participate in an act of piracy will be punishable with up to 14 years of imprisonment, and a fine.⁷

CONCLUSION

Challenges confronted by Indian Navy

- Low Capital allocation-** While the Indian Navy is now more networked and technology-enabled than it was in the past, it still continues to face budgetary constraints. The allocation to the Navy has reduced

¹ <https://www.hindustantimes.com/india-news/india-joins-indian-ocean-grouping-against-piracy-as-observer/story-ki47pyuwxJcZhk4Wzbxr9O.html>

² UNCLOS+ANNEXES+RES.+AGREEMENT

³ Piracy Under International Law

⁴ Piracy under international law, Oceans and Law of the Sea, United Nations, <https://www.un.org/depts/los/piracy/piracy.htm>.

⁵ Report no. 16, on "The Piracy Bill, 2012", Ministry of External Affairs, August 14, 2012, https://prsindia.org/sites/default/files/bill_files/SC_Piracy_Bill_2012.pdf.

⁶ The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, <http://legislative.gov.in/sites/default/files/A1976-80.pdf>

⁷ The Anti-Maritime Piracy Bill, 2019 (prsindia.org)



from 18 percent of the defence budget in 2012-13, to 13 percent in 2018. Such low levels negatively impact future force planning and capability development.

- **Gap between promises and delivery** - For the Indian Navy to be recognised as a 'net security provider' in the IOR, it needs to bridge the gap between commitment and implementation. Most IOR littorals lack the necessary capacity to ensure the security of their declared maritime zones and perform their rights and duties. These littorals look towards India to ensure its security. However, India has a poor track record in converting capital into deliverables or influence. Therefore, India needs to develop a defence diplomacy fund through which the current situation of poor delivery can be altered.
- **Poor allocation of resources** - When it comes to allocation of resources, there is no concept of prioritisation in the Ministry of Defence. There is also hardly any adequate dialogue between the Ministry of Defence and Ministry of External Affairs. While the resource pool is indeed limited, the allocation which Indian Navy receives for foreign assistance has to be prioritised and shared with the relevant executing agencies. India must look to engage in a participative programme between the service provider and the agencies that are the sources of funds. This will go a long way in ensuring the Indian Navy's ability to convert money into influence.¹
- **Weak coordination in various maritime aspects** - Maritime security entails not only hard-security aspects like protecting EEZ, HA/DR operations, asset allocation, or conducting anti-piracy patrols, but also includes issues related to blue economy, climate change, and coastal maritime infrastructure. Coordination and building synergy between the various stakeholders is the most important and challenging task. All agencies concerned should be coalesced under one umbrella agency and work together to sort out the different inter-agency issues. The Indian National Security Council Secretariat (NSCS) or a proposed National Maritime Commission (NMC), will be the most appropriate organisation to carry out this role.²

Suggestion – What India can do.

- **Develop multiple strategies and impose costs on adversarial stands** - To be successful in the emerging competition arising in the Indian Ocean, India needs to be willing to pay the costs and develop multiple strategies in various domains ranging from diplomatic, informational, military, maritime research, blue economy, industrial development, cultural and educational domain, energy, to climate and weather concerns. Developing these multiple strategies should involve not only the navy, military or the Ministry of Defence, but a multitude of other government agencies as in the case of China. Developing friendly, supportive, and accommodative relationships has always driven Indian engagement in the IOR. Since most littorals do not want to be in a position of choosing sides between major players like India and China, at worst, India should accept neutrality. Therefore, India must look to develop multiple strategies that impose costs on adversarial stance against Indian interests.
- **Work to develop a multilateral security architecture for Western Indian Ocean** - Over the years, various maritime security cooperation mechanisms have been developed in the Western Indian Ocean. Few examples include: Combined Maritime Forces (CMF), Contact Group on Piracy off the Coast of Somalia (CGPCS), Djibouti Code of Conduct (DCoC), and Regional Maritime Information Fusion Center (RMIFC) in Madagascar. However, while these frameworks exist, they remain under-optimised. While some have remained as loose, ad hoc form of cooperation, others are heavily dependent on funding from the European Union, or lack the necessary political buy-in.³ Therefore, the need of the hour is developing a security architecture for the WIO by strengthening existing frameworks and working together to serve the interests of the region. India, which has long maintained a presence in Western Indian Ocean, is well-placed to play a greater role and shape the maritime security architecture in the region. India should look to offer greater capacity building assistance, training and skilling of

¹ Manu Pubby, "Cabinet Secretariat raps MoD, MEA for not involving NSA" *The Economic Times*, August 21, 2019.

² Setting up of a National Maritime Commission was proposed by Indian Chief of Naval Staff Admiral Karanbir Singh while delivering a speech on the topic "Indian Ocean-Changing Dynamic-Maritime Security imperatives for India" as part of a series.

³ Christian Bueger, "What is the right security architecture for the Western Indian Ocean?" Keynote address at the International Maritime Conference 2019, held in Karachi, Pakistan, February 2, 2019.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-JOURNALS : editor@bmscl.ac.in ANDRISO : anna@bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

professionals in maritime domain and sharing operational experience to countries in the WIO. The Information Fusion Centre-Indian Ocean Region (IFC-IOR) launched in December 2018 has established linkages with 13 international maritime agencies and more than 16 countries,¹ including various WIO littorals that can play a more prominent role in increasing regional maritime domain awareness. This has been a big step towards achieving the Indian vision of SAGAR (Security and Growth for All in the Region) and working towards capacity building, coordinating incident responses, sharing submarine safety information, and assisting in keeping the global maritime commons open and accessible for all. As a tool for diplomacy, the IFC-IOR should cooperate closely with regional mechanisms including the Djibouti Code of Conduct network, Regional Maritime Information Fusion Center (RMIFC) in Madagascar and Regional Coordination Operations Center (RCOC) in Seychelles to develop shared standard operating procedures.

¹ Curtain raiser Maritime Information sharing Workshop 2019. Press Information Bureau, Ministry of Defence, Government of India, June 11, 2019, New Delhi.



THE IMPACT OF THE CRIMINAL TRIBES ACT OF 1871 ON THE SOCIAL LIFE OF THE CRIMINALIZED TRIBES- AN OVERVIEW

(Mr. Harish Lambani, Assistant Professor, BMSCL)

ABSTRACT

The unsettled wandering set of communities of India during the British Times were categorized as wrong doers and were criminalized through the Criminal Tribes Act of 1871 (CTA). There has been much discussion amongst the academicians particularly belonging to the criminalized communities about the impact of CTA on the socio-economic life of those wanderers. An attempt is made in understanding the historical factors, issues and the necessity for such a law.

Keywords: Crime, Tribe, Nomads, CTA etc.

INTRODUCTION:

No one is a conceived criminal. Criminal is the result of society. How he is made a criminal clarifies the circumstance of the making of criminal tribes and their examples and progress. The Criminal Tribes Act was one of the many laws passed by the British colonial government that applied to certain identifies groups of people in India based on their nature and characteristics of life. Many communities of traders, craftsmen, and pastoralists were called the criminal tribes during the colonial rules. The officers of the British government were suspicious of roaming people. They were against the movable artists and merchants (who hawked their stocks in villages) and pastoralists (who wander in search of fresh pastures for their animals). Consequently, the colonial administration to check these activities of the moving tribes passed the Criminal Tribes Act and listed many tribes of India as Criminal Tribes.

The Criminal Tribes Act: The Criminal Tribes Act 1871 was first implemented mostly in the Punjab Province of Northern India and later was extended to the Bengal Presidency and other areas in 1876, and in the year 1911 the law was covered through the central provinces and the Madras Presidency. By 1924 the CTA covered almost the entire British India. The purpose of the Act had been to suppress "Hereditary Criminal" sections of Indian society.

A total of about 200 communities were affected by this law. Today's de-notified communities are the ones who were covered by this act and were later de-notified by our first Prime Minister Jawaharlal Nehru in 1952, when this Act was scrapped, being considered by Jawaharlal Nehru to be a blot on the law book.¹

The late 19th century had been a particularly hard period for the policy maker in British India, with economic depression, unemployment, strikes and growing political radicalism. Poverty, alcoholism, ill health (and crime) had not disappeared even in England in spite of decades of social legislation. There was great temptation for believing - preferably supported with scientific proof - that crime was a hereditary trait, and called for measures to re-engineer society on biological, rather than social or political bases. The pseudo-science of Eugenics seemed to provide an explanation, among many other issues, to the problem of rising crime and poverty.

Indian criminality was linked to the introduction of the railways, the new forest policy, repeated famines and so on. The administrative rationale was that with the introduction of certain policies designed to raise revenue, some communities had irrevocably lost their means of livelihood. The wandering groups were put at a halt. The act categorised the communities of craftsmen, traders and pastoralists as criminal tribes, mainly, because they moved from one place to the other. It came to be believed that they were criminal by birth. These communities were forced by the government to live in notified village settlements. They could move out of these villages only after a permit was granted to them. They were continuously watched by the village police. Thus, they lost their customary rights to move freely in the region. The colonists wanted them to settle down at one place because it was easy to control and collect taxes from the settled communities. But, the effect was something disastrous that lead the groupsto survive their living by committing crime. How else could they live except by committing crime, especially if there was no property to support them? The relationship between **itinerant** (The one who travels from place to place) and **sedentary** (Settled at one place) communities has become increasingly problematic in modern times. The more the itinerant communities get marginalised to the main sphere of society

¹ Dr.B.P.Mahesh Chandra Guru and Ms. Shabeena Tabassum, Feb 2017, The Banjara Community of India: Status, Problems and Prospects, International Journal of Trend in Research and Development, Volume 4(1), ISSN: 2394-9333



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

because of transformative processes, the more they become suspect from the point of view of the sedentary society they interact with. In real terms, their increasing marginality simply compounds the already existing prejudices against them. This is true with the wandering groups that their suffering being an itinerant was unwelcoming and is so even in the present times.

The plethora of new legislation that the British introduced created new 'criminals' all the time. These were either people ignorant of the new laws, or those willfully defiant of the ones which encroached on their traditional rights - for instance, forest laws. There were a number of communities who did not know the newly imposed forest laws under which they were forbidden to collect honey, bamboo leaves, or medicinal herbs which they used to barter with the villagers. They continued to do so, partly in ignorance, partly thinking this to be their hereditary right. The large number of new laws on common pastures for grazing of cattle similarly turned whole communities into criminal tribes by the British administration because they continued to graze their cattle. It is true that the wandering groups have suffered from such a complex laws and policies that remain hidden and constantly hunted their livelihood. Once the wanderers supposedly were the Kings of Jungles; faced threat of punishment even for picking wood for fuel. The champions of distance trade; became the scapegoat of tyrannical foreign rule.

A Historian, David Arnold has suggested that this law was brought into force because many identified tribes were small communities of poor, low-caste and nomadic people living on the fringes of the society. Living as petty traders, pastoralists, gypsies, hill and forest dwelling tribes, they did not conform to the British colonial idea of civilized living, which involved settled agriculture and waged labour. Because it came to be thought that behavior was hereditary rather than learned, crime became ethnic, and was merely a social determinism till then became biological determinism. This paradigm shift seems to have arisen out of the prevalent belief in 19th century Europe that people with peripatetic lifestyles were a menace to society and required control, or at least surveillance.¹

The Criminal Tribes Act (CTA) 1871 was fairly broad in scope and much discretion was given to local administrators and village elites to decide who should be subjected to the law and how to enforce punishments (Sec. 2 of the CT Act, 1871: "If the Local Government has the reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor General in council, and may request his permission to declare such tribe, gang or class to be criminal tribe"). Provisioning such an authority to the local government was a mockery by the British law makers. Firstly they have destroyed the local economies which were our heritage for centuries irrespective of caste based profession of Sedentary and trade of the itinerants (nomads) with a monopoly transport system. The itinerants (nomads) were the one who were affected under this section. Those who never stayed at one place obviously the Local Government identify as strangers to their jurisdiction, irrespective of good behavior, branded as the offenders and stigmatized whomsoever they noticed.

Further, Sec.4 of the CT Act, 1871: "If such tribe, gang or class has no fixed place of residence, the report shall state whether such tribe, gang or class follows any lawful occupation, and whether such occupation is, in the opinion of the Local Government, the real occupation of such tribe, gang or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based: and the report shall also specify the place of residence in which such wandering tribe, gang or class is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein." The supervision and control intended was maybe to serve the authoritarian interest as a caretaker government. However, it has failed in its performance. Taking the relevancy of this section with the Pardis, Guzzars, Banjaras, Bhils, Minas, Kurabas, Kurumas Dangers, Madhura etc., identification as a criminal tribe is done without any mischance. It imposed a lawful stigma as criminals on the community that lived a respectful life. 'Enabling to earn its living', remain only on the law book; rather left nowhere and ruined the Tribes without any proper settlement even after Independence. Though they were not criminals, were pushed by the circumstantial law and policy into hardship to cause theft only to feed the bellies. Having destroyed the source of survival, not allowing feed even on the forests and not even allowing cultivating the land and expecting to live in dignity was an impossible phenomenon².

¹ Radhakrishna, Meena (2001). Dishonoured by History: "Criminal Tribes" and British Colonial Policy. Orient Blackswan, p. 2, ISBN 81-250-2090-X.

² Criminal Tribes Act 1871



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

Sec. 6 of the CT Act barred the then Courts from questioning the validity of notifications whether the provisions complied or not; this is a vehement lapse not allowing the law to serve the interest of the affected tribes, thus denial of justice totally on all parliances.

Sec. 13 directed asking the tribe to settle at the place of residence prescribed by the local government. For the purpose of this section, the mobile groups gradually became a habitat, located on the hill tops, forests, and edges of the forest, barren land, deserted areas and such places where there is no accesses to either the civic amenities or even access to the local administration itself. The plight of such an arrangement still remains amongst the forced settled groups.

Sec.18 provisioned for the maintenance of the register by the magistrate to take roll calls of such tribes, groups, or class. Maintenance of register means one has to present himself whenever called upon at such place and time by the magistrate or any such authorities. It specifies the jurisdiction of movement hence causing a circumscribing limit beyond which one cannot move. The very basic right of freedom of movement and liberty was snatched in a blot on ink permanently. It also Authorized many supervisors, and legalizing their dominance and exploitation. Sub – standard treatment of citizens by the fellow citizens added another social disease in the cast based Indian society. A new class was created 'CRIMINALS BY BIRTH'. It stigmatized those tribes then, and now it is carried forwarded.

After India's Independence, there was a ray of hope of getting out of the stigma as criminals amongst the Notified Criminal Tribes under CT Act 1871. But, it took a new twist. The post Independence Government came up with a fanciful law "Habitual offenders Act 1952". That gave a new identity to those Criminal Tribes under CT Act 1871.

IMPACT OF CT ACT: The colonial government prepared a list of "criminal castes", and all members registered in these castes by caste-census were restricted in terms of regions they could visit, move about in or people they could socialise with. ¹In certain regions, entire caste groups were presumed guilty by birth, arrested, children separated from their parents, and held in penal colonies or quarantined without conviction or due process.

Colonial Justification; When the Bill was introduced in 1871 by British official T.V. Stephens, said: "... people from time immemorial have been pursuing the caste system defined job-positions: weaving, carpentry and such were hereditary jobs. So there must have been hereditary criminals also who pursued their forefathers' profession

James Fitzjames Stephen testified, "When we speak of professional criminals, we...(mean) a tribe whose ancestors were criminals from time immemorial, who are themselves destined by the usage of caste to commit crime, and whose descendants will be offenders against the law, until the whole tribe is exterminated or accounted for in manner of thugs"²

The castes and tribes "notified" under the Act were labelled as *Criminal Tribes* for their so-called "criminal tendencies". As a result, anyone born in these communities across the country was presumed as a "born criminal", irrespective of their criminal precedents. This gave the police sweeping powers to arrest them, control them, and monitor their movements.

Once a tribe was officially notified, its members had no recourse to repeal such notices under the judicial system. From then on, their movements were monitored through a system of compulsory registration and passes, which specified where the holders could travel and reside, and district magistrates were required to maintain records of all such people.

The British government was able to summon a large amount of public support, including the nationalist press, for the excesses committed, because the Criminal Tribes Act was posed widely as a social reform measure which reformed criminals through work. However, when they tried to make a living like everybody else, they did not find work outside the settlement because of public prejudice and ostracisation. The pastoralist and the wanderer group's livelihood were lost. They were asked to settle in places which are not native to them. They became poor and disrespected by other people in society. They were treated as outcaste and faced exploitation

¹ Cole, Simon (2001). *Suspect identities : a history of fingerprinting and criminal identification*. Cambridge, MA, USA: Harvard University Press. pp. 67-72. ISBN 978-0-674-01002-4.

² Raj and *Born Criminals Crime, gender, and sexuality in criminal prosecutions*, by Louis A. Knafla. Published by Greenwood Publishing Group, 2002.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

The implementation of the CTA, indeed, manufactured a large number of criminals in India. The colonial state saw dacoity as the hereditary trade of certain communities. The impact of the Act was enormous. Police were given unlimited powers to control them, arrest them for no reason and monitor their movements through compulsory registration and passes. They were prohibited from recourse to appeal and use of judicial system, and district magistrates maintained regular records of so called 'Born Criminals'. They were arrested without any intimation or valid reason; they were doubted for any crime that took place in the vicinity. Their Right to live, Right to Speak, Right to Information and Right to Privacy were continuously violated. Well, as an extension of this Act, separate 'Reformatory Settlements' were established for boys, aged between four and eighteen, far from their families. Here they were subjected to low paid work and compelled to report the guard rooms several times a day, so that they did not escape the premises. In 1936 Jawaharlal Nehru talking of this Act commented that 'no tribe can be criminals by birth', and the Criminal Tribes Act, 1871, were repealed in 1949, as it was against the spirit of Indian Constitution and a shameful colonial legacy.

After India's Independence, there was a ray of hope of getting out of the stigma as criminals amongst the Notified Criminal Tribes under CT Act 1871. But, it took a new twist. The post Independence Government came up with a fanciful law "Habitual offenders Act 1952". That gave a new identity to those Criminal Tribes under CT Act 1871.

HABITUAL OFFENDERS ACT 1952:

After independence The Criminal tribes under CT Act 1871 were de-notified. The massive crime wave after the criminal tribes were de-notified led to a public outcry and the Habitual Offenders Act (HOA) 1952 was enacted in the place of CTA 1871; it states that a habitual offender is one who has been a victim of subjective and objective influences and has manifested a set practice in crime, and also presents a danger to society. The HOA effectively re-stigmatized the already marginalized "criminal tribes". The previously criminalized tribes still suffer a stigma, because of the ineffective nature of the new Act, which in effect meant relisting of the supposed de-notified tribes. Out of 313 identified Nomadic Tribes, 198 were de-notified (Vimuktha jati - Ex-Criminal Tribes). Today the social category generally known as the de-notified and nomadic tribes includes approximately 80 million people in India.¹ In 2008, the National Commission for Denotified, Nomadic and Semi-Nomadic Tribes (NCDNSNT) of Ministry of Social Justice and Empowerment recommended those same reservations as available to Scheduled Castes and Scheduled Tribes be extended to around 110 million people of denotified, nomadic or semi-nomadic tribes in India; the commission further recommended that the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 be applicable to these tribes also. Today, many governmental and non-governmental bodies are involved in the betterment of these denotified tribes through various schemes and policies.

CONCLUSION

Commemorating 31 August 2021 that marks the 69th year of the repeal of the Criminal Tribes Act, 1871. This act was the most draconian law passed by the British colonial state, under which millions of nomadic and semi-nomadic communities were declared criminals and put under continuous surveillance, making their lives impossible. 31 August is celebrated as Vimukta Jatis day in India by the de-notified tribal communities. The Criminal Tribes Act is a stain on the history of British India. The stigma it has caused has a deep impact on socio-economic standards of the nomadic, semi-nomadic and other wandering groups since the time of imposition of this harsh law. The stakeholders on this front viz. the Government, NGO's, such other social institutes has the burden to help these groups to get rid from the shadow of stigmatization.

¹ C. R. Bijoy (February 2003). "The Adivasis of India – A History of Discrimination, Conflict, and Resistance". PUCL Bulletin. People's Union for Civil Liberties. Archived from the original on 16 June 2008. Retrieved 31 May 2007.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

AGRICULTURAL LABOUR PROBLEMS AND CHALLENGES DURING THE PERIOD OF COVID-19 PANDEMIC

Kanya Naik
Assistant Professor, Law

ABSTRACT

The problems of Agricultural Labour exist since ancient times. The problems and challenges faced during the period of COVID – 19 mounts to lose the hopes of survival especially in the Agricultural Sectors and in specific with labour force. The Nation declared Lockdown since March 24, 2020 onwards by the authorized Chairman of the Disaster Management as laid down by the Disasters Management Act 2005 and he is none other than the Prime Minister of India. Low wages, exploited working hours, rude Behavior with labour, work life balance, working conditions People at executive level thinks the Labour as a commodity and never realize that labour is not a commodity. Sometimes work involves in using pesticides to protect the crops which leads to hazardous environment and the smell to be tolerated which leads to occupation health disorders. The Government of India has keen interest to overcome from the agricultural labour problems and the challenges faced by them. The agricultural labourers' problems is a peculiar phenomenon and it cannot be predetermined, however an appropriate Government at both Central and State jurisdiction has taken several remedial measures to overcome from this and which do not yield any result. Labourers have lost their jobs during the period of COVID-19. To commute to the work place there is no transportations and hence cannot honor the time of commitment. There will be a chain link with agricultural laborers during the production of food ingredients and hence without their support one cannot survive and hence government have lot of plans to alter the working conditions of the Agricultural labourers by enacting the laws and amended the existing law. Undivided Hindu law family is now witnessing a nuclear family. The labour force is shifting from their cultural activities to industrialization where they can get more financial resources. The labourers will work on two types of land cultivation. 1. Rain feed cultivation land and 2. Water feed cultivation land apart from this seasonal plant workers where in which the job will depend only on certain periods the question will arise what they have to do there afterwards? What about their financial obligations to lead the life and to care for the family members? it is essential to know that the Agricultural labourers are covered under Socio Legal Protection or not. Labourers in the agriculture section is in safe zone or not, what is the dependency level can be determined very easily.

INTRODUCTION

Agriculture: it is a question whether agriculture is science or Art? Practically one will select either Science or Art. People will not agree as science because there are no scientific procedures to be followed. As the days crosses everything has become science. Now testing of soil for construction of House, it will decide how many courses of paya is required to sustain the building otherwise building will collapse. While digging water seepage will occur and construction cannot be so easy this is also a science to stop by curing the soil. To find out the growth of the crops is possible or not land is cultivatable or not can be determined again by testing the soil. Once again, any chemical fertilizer is added to grow the crop or not or whether it is purely nature and organic fertilizer is used can be determined and hence it is strongly argued that it is a science. This is not a pure science but it is an applied science. Hence Agriculture means covering all the areas like crop production and its sub components such as horticulture, livestock rearing, fisheries, forestry.

Laboure's: unskilled person working for wages is called as Laboure's

Agriculture labourers: unskilled person who works in an agricultural industry in any form for wages or remuneration or in barter system of some exchange is identified as Agriculture labourers. It is not necessary to work only in the crop producing field but also storage place transportation of products from one place to another place in other words any eatable items involves with the labourers is called as agriculture labourers

Problems: The difficulties or the hurdles the former or the agriculture labourer are facing and it is a big question that how to resolve this? It can be resolved by intervening by the entry of government

The labourer can be classified into two major groups (1) Family Agricultural Labourer and (2) Hired Agricultural labourer

Family Agricultural Labourer work on the family farms and there are no fixed hours or days of work or fixed payment



Hired Agricultural Labourer work on hired basis with fixed number of hours and days for payment this is sub divided into Free agricultural labourer and unfree agricultural labourer. The Free Agricultural Labourer are having capacity to accept or reject the conditions of employment and wages offered by the employer. The Unfree agricultural labourer are those whose bargaining power is virtually non-existent or has been surrendered. Further it has classified into major 4 divisions based on the length of the services. The are as follows:

- a) For a period of one year
 - b) For a single crop
 - c) For short term
 - d) Daily labourers
- a) For a period of one year: This is fixed for a period of one year. Palikapu is the name given in one state and Chief permanent agricultural farm servant. Only a few people can afford to buy and fifth five year hire this type of labourer. This is costing more to the employer. But the high-fifth
 - b) For a single crop season (Rabi or Kharif) : this class of labourer employed not for the entire year but for a single crop season from ploughing to harvesting. Dependin upon the area and the particular crop this involves a period of 5 to 8 months. For example, 'Bhagia' labourers of Gujarat employed in this manner. They usually get a share of the form produced but alternatively they may be paid a fixed quantity.
 - c) For Short term: this category is engaged on a short term bases for the time necessary to complete agricultural operation (for more than single day to a season). Rice growers of kerala engaged labourers for a short term for budding or ploughing. Their local name is 'Baniyala'.
 - d) Daily labourers: They are in fact to be found in a greater or lesser degree in every part of india. They may have land of their own or of the employer (termed as "dina Kuly" "Dina Majur" at various places).

Similarly, the unfree agricultural labour class can be sub divided into 3 sub groups:

1. Annual Unfree Agricultural labour class: they may also be termed as attached a labourer. This class is serving on a full-time year-round basis. Bond-servants of this type from lowest cast, where formally quite common in south india. They are called as Dhers or holeyas. Another example as reported by Dr M N Sreenivasan a form of that bondage is known as Jetha,
2. The attached workers in most of the cases work from morning till night and did all kinds of domestic and agricultural works.
3. Beck and all labour: whenever the master needs services of these labourers they have to attend his call. The employer generally grants some loans to workers without interest and in consideration of this debtors workers has to work in the fields of employer creditors. Such group of workers appeared to be typical in orissa. One group of workers in coaster zone where known locally as Kothias. The advantage in such an arrangement was that the employer was assured of the worker's service on any day. He required him without having to pay for the whole year. That Mohindersingh has reported " Kamia" group of labourers of Bihar under this class. The haly system of surath district in Gujarat represents another instance of beck and call relationships.
4. Forced labourers: They are termed as Begar in Uttarpradesh and Bihar. This type of forced , typical unpaid short termed labour constitutes forced labour class or beggar. Dr AM Lorenzo defines it as customary right of the land lord to extract to a certain number of days , free labour from their ryots (Tenants). This claim ranges between 3 to 20 days annually without payment.
5. The unfree class labourer cannot refuse to work. This Bondage is due to a traditional attachment to a family or an estate; or due to indebtedness or allotment of a plot of land or tenancy of employer's holding. They usually gets a lower wage and their hours of work is irregular.
6. There exist no single, homogeneous class of labour; there are considerable variations, depending on nature and composition both of labour and its employment. The proceeding analysis shows the distinction between organized and unorgansied employment. Due to slow pace of industrialization only a little population of labour class could be accommodated in organized sector living the majority still dependedt on unorganized sector, where working nd living jconditions are less regulated, less prescribed, less norms, and less achieved than jthe standard norms, due to lack of collective bargaining. The majority of



unorganized labourers are agricultural labourers, having some special characteristics which differentiate them from organized or industrial labour exposing them to exploitative factors. The atrocities of caste and class structure being socially, economically and politically, depressed and the peculiar situations of agricultural employment, lack of the employer – employee relationship, seasonality of employment, less demand and more supply ration, lack of collective bargaining, and isolation of rural population restrained them to share the fruits of development despite contributing to the national economy. It is clear from the review of meaning and statistical profiles that it is difficult to provide precise definition of meaning to agricultural labour and due to imbalance in-between population explosion and economic growth, majority of the population depends on agricultural employments. The profile of composition established the fact that main constituents of agricultural labour class belongs to scheduled caste, scheduled tribes and backward classes. Caste is still one of the deciding factors of social economic and political status, up to a large extent, at least in rural India.

The Problems faced by Agricultural labourers

In the beginning most of the countries of the world has similar occupational structure. With the advent of industrial evolution the process of industrial development, subsequently altered this pattern. However, Indian occupational structure was not altered subsequently. This stagnant position has contributed to the increase in households living below poverty line. The failure of land reform and other planning's for the development of rural working forces, rather than on social forces. The ultimate effect is that landlords still continue to rule over rural labour. The misfortune is that they agricultural workers are steeped in ignorance and those who impact knowledge are themselves exploiters. That is the reason why the rural poor still look upon land around with wistful eyes. In order to appreciate and eradicate the problems of agricultural labourers, they need to evaluate the sociological factors which have resulted into failure of their economic development. These sociological factors may have negative as well as positive character.

- a) First group of problems arise out of the persistence of old social institutions like caste, joint family tribes, traditional religious organizations and serfdom. They also emerged out of old forms of social control like supernatural sanctions, authoritarian norms complicated and intricate caste family Tribal religious and other customary sanctions penetrating almost every core of life of the Indian community. They further emanate from large scale of illiteracy, ill-health and unemployment
- b) Second group of problem arise from the very nature of the economic development which has been inaugurated by the government since independence. They arise due to industrialization of commercialization of introducing money economy in every corner of the country. They also arise out of agrarian policy and from the very character of the economic order which is wishes to establish. For example commercialization brings out a shift in power and authority in the village. Not the farmers and the producers but the owners and administrators are becoming the ruling group.
- c) Unemployment. Underemployment and disguised unemployment is the Third group of problems. And which is the cause for all other problems
- d) Agricultural Wages
- e) Experience of different states in the implementation of Minimum Wages in Agriculture
- f) Income : per capita income of house holds of agriculture labourers
- g) Indebtedness
- h) Problems of Bonded labourers and its systems
- i) Problems of Migration
- j) Problems of organizations
- k) Working conditions and conditions of work
- l) Hours of work
- m) Occupational risks

Types of problems

An agricultural Labour problems and challenges during the period of COVID-19 Pandemic



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

Corona Virus started from China's wuhan city spread not only to India but also to the entire globe. The decesses are powerful and it kills the people in a very large scale and in the exponential way. Before we aware to take necessary steps lot of people lost their life's. Government of India has to declare the lockdown in order to avoid the spared of the decesses. As per the disaster management ACT 2005, Chairman being the head of the constitution and administration of the country the prime minister used his powers to declare lockdown in view of the delink the chain of spread of the decesses. During the period of lockdown there were no transportation to commute from one place to another place. Their movement is restricted. People advised not to come out of the house. All activities have come to total halt. The crops grown which were to be cut from the field and make it dry to sell the raw products to the customers. Due to the fear of death labourers has not come out of the house. Because of two reasons 1. They got effected themselves 2. It effects to others from the people. The crops or any other production from the agricultural productions unable to move from the place itself as there was no transportation. The food materials which is perishable items have spoiled for examples tomato and water melon, kharbooja, muskmelon, vegetables. Consider the case of Milk, curd which cannot reach the required customers and cannot be stored also. The agricultural labourers became helpless as there was no possibility to move their product whether perishable items or nonperishable items. Food is essential for everybody. Many people has died due to hungry. Due to the restriction of movement of people, agricultural labourer movement also restricted and hence they cannot go out of their house which resulted in losing their job and became unemployed. Once they became unemployed their house per capita income reduced and they have gone below the poverty line. The stored food materials are not sufficient to eat. On the other hand to cut the grown up crops, agricultural labourers are not available. Many people have migrated during the lock down period. They forced to stay wherever they are. Agricultural laborer's are not ready to accept for changes. As mentioned earlier the types of laborer available in the market everybody lost their jobs. Owners were also effected because they have to incur heavy loss with the grownup crops unable to cut and distribute to the required places. Since there were no transportation.

Low wages,: As the laborer's are available in surplus quantity the demand is very less and hence agricultural laborer's are getting low wages. Even government cannot manage and cannot take any action since they too know that earning is impossible during the period of COVID-19 Pandemic.

Exploited working hours, : If the agricultural laborer's willing to work for more hours with the low paid wages then only they will get job otherwise they may not even get that job. Keeping in view of the family members and dependents on this bread earning agricultural laborer they have to accept and forced to stay extended hours.

Rude Behaviour with labourer,: every minute is counted by the owner since he is the paying master. The master thinks I am losing the money for idle time and hence he behaves very rudely with the agricultural labourer's

Work life balance, Agricultural labourer's have to balance at work as well as their family. Especially women agricultural labourer's they have to cook and take care of their kids and children with a time bound preparation of food etc. on the other hand they have to serve with their masters otherwise the master will terminate from the job itself if he or she is a bonded labourer then he will give lot punishments and they cannot escape from this since there is no other alternative for their survival working conditions: working conditions of labourer especially during the period of COVID-19 pandemic is very critical. It is very difficult to maintain the distance as it involves close movements. Further it is an impossible task to use frequently sanitization because it is a food manufacturing industry otherwise the food items will be contaminated with sanitization materials. People may fall sick even then they have no excuses since far away labourers cannot reach the place in time

People at executive level thinks the Labour as a commodity and never realize that labour is not a commodity. : Executives of agricultural industry treats their subordinates as commodity and they have rights over them. They treat with in humanity. Just a banana leaves after casting meals the banana leaves will be throw away from the dinning hall similarly the labourers are also treated once the job required is completed they will never ask the labourers problems.

Sometimes work involves in using pesticides to protect the crops which leads to hazardous environment and the smell to be tolerated which leads to occupation health disorders.: Pesticides are dangerous to health but it is inevitable to be with it because if we do not apply or spray the pesticides to the crops, immediately worms or insects will attack the crops and crops will not yield properly and production of food will become very low or poor quality and cannot be used with full extent and hence use of pesticides is very essential. By neglect or oversite or by absent mind without washing the hands if he consumes he will die on the spot. The smell



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

produced by the pesticides cannot tolerate if it continues for a period of 15 days one will fall sick due to the bad air produced by the pesticides

Chain Link of problems: to purchase of good strengthened and production yielding seeds in bulk shortage of money or insufficient money and will wait to receive the loan from bank - depending on the rain feed land or water filed land seeds to seed in the field and rearrange for this labour force is essential during the period of covid-19 it has come to total halt. Assuming that without any hassel this part is over then feeding water and remove the unwanted growing of any other plants and maintenance of clean in he field. Afterwards crop cutting and to disburse, load and unload in the transportation. Then it needs storage space to preserve the materials and to create an awareness among the general public the materials are available here. They have to pay the commission to the middle men. The profit will get less because of cheating, involving the middle men loss of production etc. these are some major problems faced by the agricultural labourers during the period of COVID-19 Pandemic.

Remedial measures by government: Government has taken some remedial measures such as relaxed the covid-19 rules to the agricultural labourers and its sectors such as movement of materials and transportation to shift the food products to the market and to ensure to reach to the consumers as end users. Government has given 6000 INR to all the farmer and its agricultural labourers who are enrolled in the systems. Amended the existing rules to sell the product directly from the farmers production unit itself instead of selling through middle men and APMC Yards. Waived the loan interest from the banks. Organized to receive the loan from the banks not only for the seeding and maintenances but also to construct their houses

Conclusions: Agriculture is one of the prioritized sectors in India as it depends for food. The people working in this sector are called as agricultural labourers and they are facing lot of problems and the challenges faced by the labour force cannot be determined easily. The natural calamity and the disaster effect the agricultural labourer even one cannot imagine. Corona virus COVID-19 pandemic worsen the situation of the agricultural labourers. Covid-19 pandemic created the worst situation to every body in the nation and especially with agricultural labourers including male, female and children and adolescents. Government has taken several measures to resolve the problems of the agricultural labourers but not yet resolved completely. Government has introduced lot of reforms to give benefits directly to the farmers but farmers are still resisting to receive the same.

BIBLIOGRAPHY

1. The Times of India Metro newspaper
2. The Hindu English Daily National newspaper
3. Prajavani, Kannada Prabha, Vijaya Karnataka, vijayavani, samyukta Karnataka, udayavani are leading kannada daily
4. Agricultural labour and the law by Srivastava MK, Deep and deep publications, New Delhi 1st edition
5. Census Report of India 2020
6. World bank staff working paper no 320 published in feb 1979
7. Article "small farmers and landless in south Asia" published in Feb 1979 in asian pacific journal
8. Change in the incidence in the rural poverty and recent trends in some aspects of agrarian economy, Indian journal of Agricultural economics vol. 42 issue 1, Jan-Mar 1987
9. The problems of employees working in an unorganized sector during COVID-19 Pandemic, Umesalma, IASAT journal vol 8 issue 1, 2020 jan-mar 2020
10. A Glimpse on ILO Standards on migrant labours and their rights in India, Kanyanaik, published in international journal of Advance and innovative Research, Vol 6. Issue 4 oct-dec 2019



INTERNATIONAL FRAMEWORK ON CHILD LABOUR AND EDUCATION

Dr. Roopa S

Assistant Professor, BMS College of Law

I. INTRODUCTION

Child labour is not about children performing small tasks in the house nor is it about children participating in work suitable to their level of development, but it is concerned with performance of work which is contradictory to national and international standards.¹ It has to be noted that the international policy framework governing child labour and child education is strong, robust, orchestrated and categorized because a number of International Conventions, Covenants, Treaties and Declarations are in place. Child labour and a child's right to education are directly or indirectly associated with many international standards and initiatives.² Several international bodies are putting in efforts and implementing various programmes to combat child labour and impart quality education.

The research paper primarily focuses on the international framework governing child labour and education. It comprises of the International Conventions, Regional Conventions and other international instruments relating to child labour and education. It also analyzes the relationship between the international framework and Indian Constitution and to what extent India has complied with the international provisions relating to child labour and education.

II. International Policy Framework Concerning Child Labour And Education

The broad international policy framework concerning child labour and education adopted by the United Nations, International Labour Organization and Regional arrangements are discussed hereinafter.

a) The Geneva Declaration of the Rights of the Child, 1924

The Declaration articulates that a child must be protected against every form of exploitation.³ Also, it explicitly posits that the means essential for the material and spiritual development of the child should be provided.⁴

b) Universal Declaration of Human Rights, 1948

The UDHR specifically states that slavery or servitude which includes child labour should be prohibited in all their forms.⁵ Motherhood and childhood are entitled to special care and assistance.⁶ Every individual is assured of right to free and compulsory education at elementary stage, higher education shall be made accessible on the basis of merit and technical education shall be made generally available to all. It also envisages that no government, group or individual should interfere or act in a way to destroy the rights and freedoms guaranteed under Universal Declaration of Human Rights.⁷

c) Declaration of the Rights of the Child, 1959

¹ *Child Labour and Education for All- A Resource Guide for Trade Unions and A Call Against Child Labour and for Education for All*, Education International, 2013, p. 5, available at https://www.ilo.org/actrav/info/pubs/WCMS_305446/lang--en/index.htm (accessed on 18/04/2021)

² *Mainstreaming Child Labour Concerns in Education Sector Plans and Programmes*, International Labour Organization, 2011, p. 1, available at https://www.ilo.org/moscow/information-resources/publications/WCMS_308699/lang--en/index.htm (accessed on 15/04/2021)

³ The Geneva Declaration of the Rights of the Child, 1924, available at <http://www.un-documents.net/gdrc1924.htm> (accessed on 15/04/2021)

⁴ *Id.*

⁵ Art. 4, Universal Declaration of Human Rights, 1948, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed on 15/04/2021)

⁶ Art. 25, Universal Declaration of Human Rights, 1948, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed on 15/04/2021)

⁷ *Ibid*, Art. 30



This Declaration is the amplification of the rights of the child as provided in the UDHR, 1948.¹ It stipulates that every child irrespective of physical, mental or social conditions is bound to receive free and compulsory elementary education.² Also, the child shall be protected against all forms of exploitation and shall not be admitted to employment before an appropriate minimum age as would prejudice his health or education or intervene with his physical, mental or moral development.³ The best interests of the child shall be the paramount consideration.⁴

d) International Covenant on Civil and Political Rights, 1966

The Covenant expressly provides that family is the fundamental group or unit of society and is therefore entitled to protection by society and the State.⁵ It categorically articulates that every minor shall be protected in his family, society and the State. It prohibits discrimination on the grounds of race, colour, sex, language, religion, national or social origin, property or birth with respect to the same.⁶

e) International Covenant on Economic, Social and Cultural Rights, 1966

This Covenant vehemently pronounces that children and young people should be protected from economic and social exploitation. Law punishes the employer if their employment affects health, morals or poses danger to the child's life. It obligates the States to set age limits below which paid employment of children shall be prohibited and punished by law.⁷ Further, the State Parties should recognize the right of everyone to free and compulsory primary education, accessibility of secondary education and higher education.⁸

f) The United Nations Convention on the Rights of Child, 1989

Primary education shall be free and compulsory, secondary education and vocational education shall be made accessible for every child.⁹ Children should be protected from performing hazardous work which tends to interfere with child's education and also child's physical, mental, spiritual, moral and social development.¹⁰ While taking decisions on the rights of children, the public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, shall take into consideration the best interests of the child.¹¹ The State Parties may take appropriate legislative, administrative, social and educational measures to protect the child exploitation while living with the parents, guardian or any other person.¹² The Convention also mandates that the state parties shall recognize the right of every child to an adequate standard of living, which is crucial for its physical, mental, spiritual, moral or social development.¹³

III. Conventions Adopted By International Labour Organization Relating To Child Labour

The Conventions adopted by International Labour Organization relates to various aspects of child labour such as minimum age for employment of children and obligations on the state parties to make an effort to abolish

¹ Article 25 (4) of Universal Declaration of Human Rights, "Motherhood and Childhood are entitled to special care and assistance"

² Principle 5, Declaration of the Rights of the Child, 1959, available at <https://cpd.org.rs/wp-content/uploads/2017/11/1959-Declaration-of-the-Rights-of-the-Child.pdf> (accessed on 20/04/2021)

³ *ibid*, Principle 9

⁴ *ibid*, Principle 2

⁵ Art. 23, International Covenant on Civil and Political Rights, 1966, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed on 15/04/2021)

⁶ Art. 24, International Covenant on Civil and Political Rights, 1966, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed on 15/04/2021)

⁷ *ibid*, Art. 10(3)

⁸ *ibid*, Art. 13

⁹ *ibid*, Art. 28

¹⁰ Art. 32, Convention on the Rights of the Child, 1989, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed on 15/04/2021)

¹¹ *ibid*, Art. 3

¹² *ibid*, Art. 19

¹³ *ibid*, Art. 27



various crimes against children. The following are some of the International Conventions on child labour and education:

a) Minimum Age (Industry) Convention, 1919

The first international Convention on child labour adopted by ILO provided that children under the age of fourteen years shall not be employed or made to work in any public or private industrial undertaking.¹ Children under twelve years of age shall not be employed in manufacturing activities, mines and transport business.² India has ratified the Minimum Age (Industry) Convention, 1919 on 9th September, 1955.

b) ILO Forced Labour Convention, 1930

This Convention obligates the members of the ILO to curtail the use of forced or compulsory labour in all its forms within the shortest possible period.³ The term forced or compulsory labour includes all work or service which is extracted from any person under the menace of penalty and for which the said person has not offered himself voluntarily.⁴ The term "menace of penalty" refers to penalties imposed in order to coerce someone to work.⁵ Penalties can come in different forms including violence, intimidation, accumulated debt, retention of identity papers, threats of denunciation to immigration authorities and so on.⁶

c) ILO Minimum Age Convention, 1973

It obligates the members to adopt a national policy designed to achieve the effective abolition of child labour and to lay down minimum age for admission to employment or work taking into consideration the fullest physical and mental development of young persons.⁷ The minimum age for admission to employment shall be 15 years so that the children would have completed compulsory education. In case of economically and educationally backward countries, minimum age shall be 14 years. Thus, the Convention does not completely forbid employment of children below the minimum age of employment. National laws may be framed permitting employment of children between the age group of 13-15 years in light work which does not affect the school attendance and health of the child.⁸

d) ILO Declaration on the Fundamental Principles and Rights at Work, 1998

Under this Declaration, all the members of ILO have the obligation to respect four core labour standards which are as follows: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) elimination of all forms of forced or compulsory labour; (c) effective abolition of child labour and (d) elimination of discrimination in respect of employment and occupation.⁹

¹Art. 2, Minimum Age (Industry) Convention, 1919, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMEN,T,P55_NODE:CON,en,C005,/Document#:~:text=Children%20under%20the%20age%20of,the%20same%20family%20are%20employed (accessed on 18/04/2021)

²*ibid*, Art. 6

³Art.1, ILO Forced Labour Convention, 1930, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 (accessed on 22/04/2021)

⁴*ibid*, Art.2

⁵ International Labour Organization, "What is forced labour, modern slavery and human trafficking", available at <https://www.ilo.org/global/topics/forced-labour/definition/lang-en/index.htm> (accessed on 13/05/2021)

⁶International Labour Organization, "The Meanings of Forced Labour", 10 March 2014, available at https://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm (accessed on 13/05/2021)

⁷Art.1, ILO Minimum Age Convention, 1973, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138 (accessed on 15/04/2021)

⁸*supra* at 2

⁹ Organization for Economic Cooperation and Development, *Combating Child Labour- A Review of Policies*, Organization for Economic Co-operation and Development, (2003), p. 114, available at <https://3lib.net/book/964009/022024?dsouce=recommend> (accessed on 20/04/2021)



e) ILO Worst Forms of Child Labour Convention, 1999

The Convention applies to everyone under the age of 18 years. It imposes obligation on the state parties to take immediate and effective measures to secure the prohibition of worst forms of child labour. It prohibits all forms of slavery or practices resembling slavery such as sale and trafficking of children, forced or compulsory labour, child prostitution, child pornography, offering of a child for illegal activities like production and trafficking of drugs or work by its nature as is likely to harm the health, safety or morals of children.¹ It advocates international co-operation amongst member States for giving effect to the provisions of the Convention including support for social and economic development, poverty eradication programmes and universal education.² The two core Conventions were ratified by India.

f) Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict

It mandates that the State Parties shall take all possible steps to make sure that that persons below 18 years shall not directly part-take in hostilities.³ The states shall increase the minimum age for the voluntary recruitment of persons into their national armed forces.⁴ The Protocol also lays down the rehabilitation and social re-integration mechanism for persons who are victims of armed conflicts. The afore-mentioned mechanism shall be achieved through international co-operation, technical co-operation and financial assistance amongst the member states.⁵

g) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The elimination of the sale of children, child prostitution and child pornography can be achieved by adopting a holistic approach, addressing the underlying factors like poverty, lack of education, gender discrimination and harmful traditional practices.⁶ The State Parties shall prohibit the sale of children, child prostitution and child pornography⁷ under criminal law and impose penalty.⁸

h) Domestic Workers Convention, 2011

It needs to be highlighted that the domestic workers contribute significantly to the global economy and domestic work is undervalued as it is performed by women and girls who belong to disadvantaged communities.⁹ The Convention calls for the elimination of all forms of forced or compulsory labour, abolition of child labour and elimination of discrimination.¹⁰ The Labour Conference has also adopted the Domestic Workers

¹ *ibid* at 36

² Art. 8, ILO Worst Forms of Child Labour Convention, 1999, available at https://www.ilo.org/wcmsp5/groups/public/---cd_norm/---declaration/documents/publication/wcms_decl_fs_46_en.pdf (accessed on 15/04/2021)

³ *ibid*, Art. 1

⁴ *ibid*, Art. 3

⁵ *ibid*, Art. 7

⁶ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, available at <https://www.ohchr.org/en/professionalinterest/pages/opsccrc.aspx> (accessed on 16/04/2021)

⁷ *ibid*, Art. 1

⁸ *ibid*, Art. 3

⁹ The Domestic Workers Convention, 2011, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 (accessed on 18/04/2021)

¹⁰ Suneetha Eluri and Alok Singh, *Unionizing Domestic Workers: Case Study of the INTUC- Karnataka Domestic Workers Congress*, (2013), p. 22, available at https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_218933/lang--en/index.htm (accessed on 18/04/2021)



Recommendation which augments the Domestic Workers Convention¹ by aiding in the effective implementation of the rights of the domestic workers stipulated in the Convention.²

IV. REGIONAL ARRANGEMENTS CONCERNING CHILD LABOUR AND EDUCATION

The regional arrangements aim at promotion of child welfare by specifying the minimum age for employment and also prohibit child prostitution. It calls for concerted effort of the member states to combat violence against children. The following are some of the regional arrangements on child labour and education:

a) European Legislative Policy Framework Concerning Child Labour and Education

The Charter of the Fundamental Rights of the European Union prohibits employment of children.³ The minimum age to enter employment should not be lower than the age of compulsory education and the Charter recalls that when young people are admitted to work, the working conditions should be appropriate to their age.⁴ The age of compulsory education shall be 15 years and with respect to occupations regarded as dangerous the minimum age of admission to employment shall be 18 years.⁵

b) SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia

The main objectives of implementing this Convention are three-fold. Firstly, to unite the State Parties in their determination to redeem the promises made by them to the South Asian Child⁶ at the World Summit for Children and successive SAARC summits. Secondly, to work together with commitment and diligence towards the development and protection of the South Asian Child. Lastly, to make appropriate regional arrangements in order to assist the member states in fulfilling and protecting the rights of the child, taking into account the changing needs of the child.⁷ This Convention proclaims that the development of the full potential of the South Asian Child is a critical concomitant to the region's collective march towards accomplishing solidarity, justice, peace and human progress.⁸

c) SAARC Convention on Preventing and Combating Trafficking in Women and Child for Prostitution

The Preamble emphasizes that the practice of trafficking in women and children for the purpose of prostitution constitutes violation of basic human rights and dignity.⁹ It calls for co-operation amongst member states to effectively deal with prevention, interdiction and suppression of trafficking in women and children and also promote rehabilitation and repatriation of the victims of trafficking.¹⁰ The members shall take all appropriate measures to declare trafficking an offence under their respective criminal law and impose punishment.¹¹

V. OTHER INTERNATIONAL INSTRUMENTS CONCERNING CHILD LABOUR AND EDUCATION

¹ *id.*

² *id.*

³ Art. 32, Charter of the Fundamental Rights of the European Union, available at <https://rm.coe.int/16802f5eb7> (accessed on 20/04/2021)

⁴ Organization for Economic Cooperation and Development, *Combating Child Labour- A Review of Policies*, Organization for Economic Co-operation and Development, (2003), p. 116, available at <https://3lib.net/book/964009/022024?dsourc=recommend> (accessed on 20/04/2021)

⁵ *ibid* at 54

⁶ Art. I, SAARC Convention on regional arrangements for the promotion of child welfare in South Asia, available at https://www.ilo.org/newdelhi/WCMS_251025/lang--en/index.htm (accessed on 18/04/2021), "South Asian Child shall mean a national of any Member State of the South Asian Association for Regional Cooperation (SAARC), below the age of 18 years unless, under the national law, majority is attained earlier."

⁷ *ibid*, Art. II

⁸ *id.*

⁹ *supra* at 59

¹⁰ Art. II, SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, available at https://www.ilo.org/newdelhi/WCMS_251026/lang--en/index.htm (accessed on 18/04/2021)

¹¹ *ibid*, Art. III



Apart from the International Covenants, Declarations, Conventions and Regional Conventions, various World Conferences and Programmes have laid stress upon the importance of free education and prevention of exploitation of children. The other international instruments relating to child labour and education are:

a) The International Programme on the Elimination of Child Labour

It was launched in 1992 to mobilize and operationalize ILO's mandate with regard to child labour.¹ India was the first country to sign an MOU with the ILO for the purpose of executing IPEC and the main goals to be accomplished were ² to provide for educational rehabilitation of the children and strengthen the capacity of government and other organizations towards elimination of child labour.

b) The Millennium Development Goals

The UN Millennium Declaration proclaimed in September, 2000 commits nations to a new global partnership to reduce extreme poverty by setting time bound targets to be complied with before 2015 that are known as the Millennium Development Goals.³ There are linkages between the millennium development goals and child labour.⁴

- i. Goal 1 emphasizes on eradication of extreme poverty, ensuring employment opportunities and thereby reduce hunger.⁵
- ii. Goal 2 aims to achieve universal primary education.⁶
- iii. Goal 3 is concerned with promotion of gender equality and empowerment of women.⁷

c) Education for All

The World Conference on Education for All held at Jomtien, Thailand in 1990 committed to make primary and secondary education a high development priority. This was reaffirmed at the World Education Forum in Dakar, Senegal in April 2000. It has set various goals which included⁸ early childhood care and education, access to suitable learning and life skills programmes and eradication of gender disparities in primary and secondary education. The EFA Global Monitoring Report is responsible for the publication of the progress made in achieving the aforesaid goals through policy reforms.⁹

VI. ANALYSIS OF INTERNATIONAL INSTRUMENTS WITH SPECIAL REFERENCE TO INDIA

In 1974, Government of India adopted a National Policy on Children which declared that children are nation's greatest assets. Eventually, India ratified the UNCRC, 1989 on 11th December, 1992 which mandated the state parties to pass legislations in conformity with the provisions of the Convention. Various government ministries, government departments, international agencies, non-governmental organizations and legal fraternity must be involved in the implementation mechanism. Hence, Child Labour (Prohibition and Regulation) Act,

¹A Decade of ILO- India Partnerships-Towards a Future Without Child Labour (1992-2002), International Labour Organization, 2004, p. 4, available at https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_124342/lang--en/index.htm (accessed on 18/04/2021).

²supra at 63, p.17

³Education International, *A Resource Guide for Trade Unions and a Call Against Child Labour and for Education for All*, International Labour Organization, 2013, p. 24, available at https://www.ilo.org/actrav/info/pubs/WCMS_305446/lang--en/index.htm (accessed on 26/04/2021).

⁴supra at 2, p. 3

⁵supra at 65

⁶The Millennium Development Goals Report, United Nations, 2015, p. 4, available at [https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf) (accessed on 18/04/2021)

⁷supra at 68, p. 5

⁸Education International, *A Resource Guide for Trade Unions and a Call Against Child Labour and for Education for All*, International Labour Organization, 2013, p. 25, available at https://www.ilo.org/actrav/info/pubs/WCMS_305446/lang--en/index.htm (accessed on 26/04/2021)

⁹id.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

(CLPRA)1986 was subsequently amended in 2016. Article 21-A¹ and Article 45² of the Indian Constitution ensures free and compulsory education. It is in consonance with Article 28 (1) (a)³ of the UNCRC. Article 24 of the Constitution postulates that, "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment." Under Article 39 (e)⁴ and 39 (f)⁵, the states are obligated to direct their policy towards protection of child from abuse and exploitation. It is in unison with Article 32 (1) of UNCRC.⁶

Further, India has ratified the ILO Minimum Age Convention, 1973 and the ILO Worst Forms of Child Labour Convention, 1999 in June 2017. In accordance with the international standards, Right of Children to Free and Compulsory Education Act, 2009 which mandates free and compulsory education to children between 6 to 14 years of age was enacted. The International Conventions have declared child as a person below the age of 18 years as child, whereas Indian legislations have specified 14 years. Although, the ILO Minimum Age Convention, 1973 provided that the minimum age for admission to employment is 15 years so that the child would have received education, the Child Labour legislations in India have failed to consider the same.

Even though the CLPRAA, 2016 appears prima facie to be in conformity with the aforesaid international standards, in reality it is not so. It prohibits the employment of children below the age of 14 years in any occupation or process. It allows employment of adolescents who are between 14 to 18 years of age in other occupations except hazardous occupations or processes. Therefore, per se it might seem that the amendment is in line with the ILO Minimum Age Convention, 1973, nevertheless, it is violating several international standards. This is because the amendment has reduced the list of 83 occupations and processes set out in the Schedule to include only mines, inflammable substances or explosives and hazardous process. This implies that children can be employed in works like chemical mixing units, cotton farms, battery recycling units and brick kilns. Further, the Act is defective because it shall not apply to children working in family enterprises and audio-visual entertainment industry which includes advertisement, films, television serials, or any such other entertainment and sports. In a country like India, poverty and economic necessity might coerce families to employ children in activities inappropriate to their age. This might result in denying them elementary education.

The Indian judiciary has acknowledged the importance of international conventions in various decisions. In 1993, while delivering the landmark judgment of *Unni Krishnan v. State of Andhra Pradesh*⁷, the Court referred to the educational provisions as laid down in Article 26(1) of UDHR and Article 13 of ICESCR. It is pertinent to note that in *M C Mehta v. State of Tamil Nadu*⁸, the Supreme Court reiterated that the Convention accords

¹ Art. 21-A, Constitution of India, "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law determine."

² Art. 45, Constitution of India, "The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

³ Art. 28 (1) (a), UNCRC, "State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular make primary education compulsory and available free to all."

⁴ Art. 39 (e), Constitution of India, "The State shall, in particular, direct its policy towards securing- that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

⁵ Art. 39(f), Constitution of India, "The State shall, in particular, direct its policy towards securing-that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

⁶ Art. 32 (1), UNCRC, "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

⁷ Ruchira Gupta, "A Law that Allows Child Labour", The Hindu, August 10, 2016, available at <https://www.thehindu.com/opinion/columns/A-law-that-allows-child-labour/article14560563.ece> (accessed on 19/04/2021)

⁸ 1993 AIR 2178

⁹ AIR 1997 SC 699



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

© HANS / DUBCH / PILLON / W / SANDRO / MANA / DUBCH / PILLON

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

special protection to children's rights, aims at continuous improvement in the situation of children all over the world and guarantees their development and education in conditions of peace and security. Thus, it can be concluded that the Convention not only protects the child's civil and political right, but also extends protection to child's economic, social, cultural and humanitarian rights.¹

VII. CONCLUSION

It can be inferred from this Chapter that a plethora of International Conventions, Covenants, Declarations and Treaties are in place to tackle child labour and provide quality education across the globe. In India, various constitutional provisions ensure right to education, freedom from exploitation and healthy childhood. The CLPRA, 1986 and RTE Act, 2009 were implemented with the same objectives. However, the CLPRAA, 2016 is contradictory to the international policy framework. It is curtailing the smooth implementation of the Right of Children to Free and Compulsory Education Act, 2009.

¹ *id.*



MEDIA TRIAL VIS-A-VIS RIGHT TO FREE SPEECH - A CRITICAL ANALYSIS

Ms. Vasavi L. S.

Assistant Professor, BMS College of Law

ABSTRACT

In a democracy, the right to freedom of expression, and press freedom, is fundamental. There is still a need for certain rights to be supported by law, but equality is not entirely unlimited or absolute. The role of the media cannot be denied because it keeps the public informed, trained and alert. It often acts as a watchdog for the government's functions and corruption, making them publicly accessible through different media sources, such as television, radio, and newspapers. Therefore, it provides a chance to address topics entirely for free. But, media today are seen to serve as "public court" as well as are trying to intervene with the court proceedings, which overlooks the fundamental difference between an "accused" and a "convict," which takes into account the golden principles of "pronouncement of innocence to the point where it proves guilty." The analysis concentrates on the equilibrium between independence and limitations.

Trial by media reveals various facets of society. This article examines how such a media trial impacts the accused's right to a fair trial and the tension between press freedom, fair trial and judicial independence. And the culture that has a direct effect on every Constitution's judicial system, and we cannot deny the fact that India itself is a significant example of how much he is the most extraordinary victim of the act of the media trial in the field of judgements.

The study shows that lawyers conclude that judges changed their decisions because of media manipulation and that the verdict was influenced by an "extensive review of cases by the media before the judicial process was completed." It also states that "India has long remained reluctant to allow unrestricted access by the media to its functions and deliberations." People will suffer tremendously if external influences of some sort vitiate the decision-making process. In cases under investigation, research was carried out on media interference. The literature suggests that the media trial is a complex mechanism in which individuals are condemned without being heard.

Keywords – Media Trial, Fair Trial, Judiciary, Justice, Judgements, Contempt, Accused, Victim, miscarriage of Justice.

INTRODUCTION

In the present scenario, the media houses are also seen as "public courts" and begin to interfere with the proceedings of the Court that miss the crucial difference between "accused" and "convict," to maintain the golden standards of "innocence presumption until it has proved itself guilty." Therefore, prejudicing the public, even the courts, that the accused, who is supposed to be innocent, is believed to be a criminal living without addressing all his rights or freedoms. The solution to these issues is often a sensitive issue. These questions have not been adequately answered and are urgently needed to deal with this problem.

In simple words, free speech or freedom of expression means freedom to say what is felt and regarded as the first condition of freedom. It is the manifestation of thinking in words with no restrictions at all. It is seen as an inherent right and is not provided for by the state or the government. But by any individual in its natural character, it is an innate right. It does not mean that the constitutions of different countries cannot guarantee it. The protection of the right to freedom of expression is paramount in a liberal democracy. This provides a chance to address topics entirely for free. Free speech means communicating ideas regardless of the medium used. Such rights must always be supported by law so that no one is robbed of them.¹

Press freedom is essential in a democratic society as it serves the public interest by delivering views and information without prejudice. It is an anticipation that the press will neutrally communicate news so that the public has no impact or distortion on the real problem. The press is a robust tool for holding the government accountable for its acts of violence. Much as "freedom of expression" should not limit the "freedom of the press," too. The "freedom of the press" can be enforced based on "reasonable limits," as set out in Article 19(2) of the Indian Constitution.

The role of the media cannot be denied as it informs, educates and alerts the public; it is regarded as the "fourth pillar" of democracy. It acts as a watchdog for the functions and corruption of the government by making them

¹ D D Basu, Commentary on The Constitution of India, Wadhwa and Company Nagpur 6th Ed., 2019.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

available to the public in different media such as TV, radio, journals, etc. But, at the same time, another problem has to be looked at: the press often tries to sensationalize news and misrepresent reality so that it catches people's attention to keep up with the competition in this region. It is an organization that begins to judge any problem by blatantly ignoring the 'presumption' concept rather than allowing the citizens to know any evidence. There are cases in which the media go beyond their limitations. It can also pose a risk to the right to a fair trial. For these purposes, press freedom must act within acceptable limits like all other freedoms.

Media, neutrally distributed to society, are considered preferred rather than conduct trials by media that may be contrary to the fair trial. If the press reports a wide range of issues subjugated in a pending case before a Court, the problem reaches its height. It publishes opinions and facts that clearly harm the interests of the parties. The judicial institution can administer a fair trial. The trials through the media should be prevented, or the judiciary should intervene.¹

It is essential to fix this problem of the "media trial." Press freedom should not be such as to hurt people or culture as a whole. The media should be accountable for their behaviour, and therefore their liberty cannot be absolute, like any other right.

MEDIA TRIAL

The media trial is undoubtedly an unreasonable intrusion in the judicial process. First of all, it would be helpful to try to identify what the "media trial" really entails before examining the question of the justifiability of media trials. 'Proceedings' is a word related to the judicial process. Any justice system is essentially subject to a fair trial for the accused. Trials are simply court proceedings. India is a country where everyone is curious to learn about sensational and high-profile events. People themselves begin to gather information to guide the case. In this process, the media publish themselves in journals, blogs and news outlets, publishing their own version of facts about the people's hunger for these sensations. This is referred to as research journalism that is permitted in India. In media and media proceedings, the force of influence and of revolutionizing masses to perceive a guilty or innocent intellect. Media proceedings are not only a legal matter. It also constitutes a political problem. It destroys the lawyers of the legal path on the one side.²

On the other hand, it distracts the laypeople, the 'public in the republic,' from fundamental problems such as economic catastrophes, unemployment or increasing rights. Authoritarian regimes often have invisible diversion ministries that manifest themselves in the media. Democracy demands constant watchfulness.

In 2015, Justice Kurian Joseph, during his address at the Bar Summit in Chennai, while citing the pressure on the courts in the Nirbhaya rape case has pointed out that "lawsuits still unresolved, the media trial should be evaded, thus avoiding the immense burden caused by this.

*"Before a case is over, stop trying (cases) in the media. Don't ever pursue a dispute in the press; it pressurizes on judges and citizens as well." He recalled that one day a judge who dealt with the case told him, They would hang him if he didn't offer the penalty. He referred to the pressure amount produced. If I hadn't punished them, they'd be (like) that if the press had already made their decision. However, he continued, It wasn't because the media had said it, but because it had reasons to give the punishment."*³

THE IMPACT OF MEDIA TRIAL

Now the media is a "public court", which can also be named "Janta Adalat", and has started interfering in court proceedings to the extent that even before the Court, it takes its own decision. While the "innocence presumption, whether it is not found guilty" and the "criminality beyond reasonable doubt" laws remain at stake, the primary distinction between an accused and the accused has been disregarded entirely. We now have a mass trial where the media itself investigates the accused and generates a public opinion even before the Court becomes aware of the case. This procedure obstructs the public, leading to the assumption many times that the accused, who is thought to be innocent, is a criminal with no right or freedom of remedy. Where there is unfair coverage of prosecution and the media believes, through its trial, that the accused person is a suspect, it will become prejudice to the "administration of justice", and the case is of media contempt.

¹ Juhi P. Pathak, Introduction to Media Laws and Ethics, 2014, Shipra Publications, New Delhi.

² Madhavi Goradia Divan, Facets of Media Law, 2nd Ed., EBC Publications.

³ DNA India Newspaper, May 19th 2016, Source PTI, <https://www.dnaindia.com/india/report-se-judge-cites-nirbhaya-case-says-no-to-media-trial-2108070>, accessed on 04/12/2021.



To a point, it is agreed that the media catalyzes the quick success of the trial and media advocacy by publicizing those evidence, as best seen in Jessica Lal's case. However, until the trial has started, the media cannot declare the innocence or guilt of the people involved in the case based on their opinion. The judge, and not the media, is responsible for determining the guilt or innocence of an individual following our constitutional scheme. In addition, an individual's credibility may be irreparably damaged if he/she is prematurely convicted.¹

THE INFLUENCE OF MEDIA OVER THE SOCIETY

Paid news from any political party or other large organization may quickly mislead the media from its proper aim, and the media, instead of being a light to the world or an eye-opener, becomes a pawn in the hands of powers. As a result, media that was once for the people, by the people, and of the people has now become for the sponsor, by the sponsor, and of the sponsor. These difficulties can sometimes give rise to media trials, in which the media proves someone guilty even before a court of law can decide.²

The Supreme Court, in the case of *State of Maharashtra v. Rajendra Jawanmal Gandhi*, remarked that a trial by press, electronic media, or public agitation is the polar opposite of the rule of law. Parties have a constitutional right to a fair trial in a lawsuit before an impartial panel uninfluenced by press dictation or popular opinion. This might quite easily result in gross injustice; thus, a Judge should be wary of any such pressure and carefully adhere to the principles of the law.³

The media's gaze has entered the personal life of the primary culprit in the Sheena Bohra Murder Case, Indirani Mukherjee, who the media have extensively accused. Every part of her personal life and character was scrutinized in public by the media. There have been countless occasions when the press had undertaken an accused's trial and issued a verdict even before the judiciary decided.

Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendment to the Contempt of Courts Act, 1971), the Law Commission's 200th report, has advised a law prohibiting media from revealing anything prejudicial to the accused's rights from the time of the arrest to investigation and trial in criminal proceedings.⁴

VIEWS BY THE INDIAN COURTS OF MEDIA TRIAL

In India, the courts have the power to pass pre-publication or pre-broadcasting injunction or prior restraint order in sub-judice matters. The two-pronged test of necessity and proportionality has to be satisfied before ordering postponement of publication. Moreover, the injunction order should only be passed if reasonable alternative methods or measures would not prevent the said risk. The defendants must send the plaintiff a written notice, through electronic means, before airing any story involving the plaintiff, obtaining his viewpoint. Suppose the plaintiff refuses to speak or does not respond within a reasonable period. In that case, he will not be forced to do so, and the story will be broadcast with the information that the plaintiff has declined to speak to defend himself.⁵

The Press Council of India Act established a body known as the Press Council of India, a statutory self-governing entity. Its overarching goal is to safeguard journalistic freedom. The Council may caution, reprimand, or punish a newspaper or news agency for their professional misconduct, a violation of a code of journalistic ethics, or an offence against the public interest. It might also denounce the government or other organizations

¹ Abilasha Rathore & Kanika Satyan, Judicial Intervention in the Sub-judice -The emerging issues of Trial by Media, Bharati Law Review, 2015, http://bharatilawreview.com/uploads/46-57_Abilasha_Rathore_Kanika_Satyan_FF.pdf, accessed on 06/12/2021.

² Nandi, K. (2011). Investigative Role of Media: Responsibility to the society. <http://docplayer.net/50431743-Investigative-role-of-media-responsibility-to-the-society.html>, accessed on 02/12/2021.

³ *State of Maharashtra v. Rajendra Jawanmal Gandhi* (1997) 8 SCC 386.

⁴ 200th Report of the Law Commission on "Trial by Media: Free Speech v. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)".

⁵ Sudhanshu Ranjan, 'Media on Trial', The Times of India, <https://timesofindia.indiatimes.com/edit-page/media-on-trial/articleshow/1460248.cms>, accessed on 04/12/2021.

⁶ Justice Manmohan in Shashi Tharoor's defamation case on Arnab Goswami and Republic TV news channel, <https://www.opindia.com/2017/12/while-republic-tv-win-the-case-the-news-minute-looks-for-shashi-tharoors-victory/>, accessed on 03/12/2021.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

interfering with journalistic freedom. While conducting an inquiry under the Press Council Act, it has the same powers as a civil court in deciding a dispute under the Code of Civil Procedure. The Council might also order that the council's findings be published in that defaulting newspaper. The Council has the authority to take action against infringing periodicals based on complaints brought to it. The Press Council protects press freedom and upholds and enhances the standards of newspapers and other organizations. It is mainly made up of newspapers responsible for policing the behaviour of fellow members.¹

As a result, the Council has taken on the function of a self-regulating body of the newspapers together. In addition to conducting investigations into complaints presented before it, the Council also has the authority to review allegations *suo moto*. It has the capacity to issue observations against officers, including the government if it deems as essential for the discharge of its tasks. In a nutshell, the Press Council is a statutory, quasi-judicial, self-regulating organization with no teeth (power to impose legal penalties). The influence of the Press Council of India is limited, and the rise in media sensationalism and rivalry among newspapers has expedited the media's departure from conventional accountability and ethical principles. As a result, the invasion of individual and collective rights is increasing, necessitating the need for a reinforced statutory entity in the media industry.²

The Relationship Between The Media And Judicial Independence – Madrid Principles

The International Commission of Jurists, the Centre for the Independence of Judges and Lawyers, and the Spanish Committee of UNICEF sponsored a meeting in Madrid, Spain, in January 1994, with attendees from 40 nations. The meeting's goal was to investigate the link between the media and judicial independence as protected by the United Nations Principles on the Independence of the Judiciary, which was established in 1985. The gathering also aimed to develop guidelines addressing the nexus between free expression and judicial independence. The preamble to this text highlights the Rule of Law. For the Rule of Law to prevail, freedom of speech, particularly freedom of the press, becomes a crucial component in a democratic society. The courts and the media are both given tasks and obligations under this document.

The fundamental concept enshrined in the document is freedom of expression, including media freedom. It is the role and right of the media to acquire and transmit information to the public. And also, to comment on the administration of Justice, including cases before, during, and after the trial. The core idea is not subject to any specific constraints, and its application is quite broad.³

LANDMARK JUDGEMENTS

There is a very different category of media people in the criminal court system who cover high-profile trials. The way the proceedings contain witnesses, testimony and critical elements may also be influenced by this.

1. Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr. (3rd September 1973)

A curfew has been implemented in a limited area of Andhra Pradesh. The Court considered the curfew, and no law was applied to uphold the curfew to be arbitrary. "Deccan Chronicles," while the curfew law was pending, published it and clarified why the case was enforced in conjunction with its historical context. At that time, it was observed that no comment should be made in a dispute that could raise significant risks of bias to any trial. In contrast, a dispute continued in a courtroom, e.g. prejudice to any judgement taken by the judge, the defendant or any other general public having access to such news media. In this case, the fact that reality was established before the judicial decision was still seen as an appropriation of the Court, even though someone who published such news opines that it is valid.⁴

2. R.K. Anand v. Delhi High Court (29th July 2009)

The Supreme Court examined the main issues involved in the media dispute. The case arose from an NDTV private T.V. in the infamous BMW hit and point that ensued in the death of six people by speeding a BMW car

¹ Media Organisation, Orissa State Open University, <http://osou.ac.in/resources/DJMC-01-BLOCK-03.pdf>, accessed on 06/12/2021.

² id; Murali Krishnan, Hindustan Times, October 13th 2020, <https://www.hindustantimes.com/india-news/media-trial-causing-great-damage-to-judiciary-attorney-general-kk-venugopal/story-XXroXLeMrdHYAKP85SjsgL.html>, accessed on 03/12/2021.

³ Nabeela Tareen, 'Salient features of The Madrid Principles on the principles on the relationship between Media and Judicial Independence', <https://legaldesire.com/salient-features-of-the-madrid-principles-on-the-principles-on-the-relationship-between-media-and-judicial-independence/>, accessed on 02/12/2021.

⁴ Y.V. Hanumantha Rao v. K.R. Pattabhiram & Anr. AIR 1975 AP 30.



driven by a wealthy family. A fatal connection between the public prosecutor and his witnesses and the defence. While the proceedings were pending, NDTV broadcast a sting proceeding to reveal how a senior defendant applied himself to a charge negotiated with the help of a public prosecutor specializing in defence. The Delhi High Court opened the Suo-Moto proceeding and debarred the public prosecutor and defendant council from practice for four months by making them guilty of contempt of court. The appeal was eventually referred to the Supreme Court, and the NDTV was convicted by a media court trial, which was not allowed to display the stings until it received permission from the High Court. The Supreme Court of India dismissed the argument, stating that such a path would not be an exercise in journalism, but rather the media would be working as a special vigilance agency for the court. The Supreme Court ruled that NDTV was not guilty of media trial, which can be defined as "the influence of television and newspaper coverage on a person's reputation by fostering a widespread perception of guilt independent of any judgement in a court of law." The Court denied R.K Anand's appeal and gave him a notice for the increase of sentence.¹

3. Manu Sharma v. State of Delhi (Jessica Lal Case)

This case is famously recognized as Jessica Lal Murder Case, where the incident resulted from a young woman's cold and bloodied murder in 1999. She was a waitress at a prominent Delhi restaurant. Manu Sharma, a key accused, was a son of a strong politician. In 2006, all nine convicted were acquitted by the Court in Delhi. As to the acquittal, a considerable amount of public dismay arose. The media fought against the corruption of the proceedings by utilizing the political links used by the accused, how the witness was made into a hostile and how shoddy the prosecution was. The media reported on the ludicrous lack of Justice by the public. The Delhi High Court, later on, ordered the case to be re-examined without waiting for the government's appeal against the acquittal of the accused. The retrial, mainly due to media scrutiny, led to the conviction of defendants who had been released earlier.²

4. Nupur Talwar v. Central Bureau of Investigation (Arushi Talwar Case)

It's a case involving the murder of a 14-year-old teenager in her home, which drove tabloid journalism to a new low in their defamatory coverage of the inquiry; portions of the media demonstrated a reckless disregard for the law. Aside from the trial by media, the incident prompted significant legal problems that necessitate remedy, including invasion of privacy, breach of confidence, and defamation of both living and deceased people. The media delved into the personal lives of Arushi and her parents, publishing Arushi's private communications and portraying Arushi's father as a killer. The victim's parents were framed for their daughter's murder even before the case was proven in court.

Due to the media's involvement, which biased the judges' minds, the victim's parents were given a life sentence. The parents of the victim appealed the judgement. After hearing the appeal, the Allahabad High Court acquitted the parents of Arushi Talwar, holding that the CBI had presented no evidence of the parents' guilt beyond a reasonable doubt. The media has skewed the outcome of the Arushi Talwar case by accusing the victim's parents of murder before the court's decision.³

5. Sexual Harassment controversy of Jasleen Kaur (August 2015)

The Jasleen Kaur harassment scandal arose from Jasleen Kaur's claim of sexual harassment levelled against Sarvjeet Singh in 2015. Jasleen Kaur, a Delhi lady, accused a guy, Sarvjeet Singh, of harassment on Facebook with a photo in August 2015. The post quickly went popular on Indian social media and drew a lot of attention. She gained significant support for speaking out against eve-teasing and sexual harassment, including from national celebrities and lawmakers. Sarvjeet was arrested the next day and released on bail later on. The media conducted a Trial in which Sarvjeet was tagged on national news networks as a "National Pervert" and "Delhi ka Darinda" (Delhi's predator). An eyewitness vouched for Sarvjeet's innocence a few days after the occurrence, increasing genuineness to Sarvjeet's narrative.

After four years, the Indian Court cleared Sarvjeet of all accusations and declared him innocent in 2019. However, he had lost his work by that time and could not locate another job due to media publicity.⁴

¹ R.K. Anand v. Registrar (2009) 8 SCC 106.

² Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1; Venkatesen J., Supreme Court confirms life term to Manu Sharma - The Hindu, April 19th 2013, <http://www.thehindu.com/news/national/supreme-court-confirms-life-term-to-manu-sharma/article403180.ece>, accessed on 07/12/2021.

³ The Arushi Murder case; Nupur Talwar v. Central Bureau of Investigation and Anr. AIR 2012 SC 1921.

⁴ The Logical Indian, <https://thelogicalindian.com/news/saravjeet-singh-jasleen-kaur/>, accessed on 04/12/2021.



CONCLUSION

We can conclude by saying that the trial by media has more of a negative impact than of any positive ones. The courts must appropriately govern the press. Wherever a government-controlled media doesn't benefit democracy, the credibility of the individual and the judgment of the courts are harmed even further by the consequences and results of unexplained publications. Media trials have, therefore, only helped the people in a few cases because it does not happen, so it has to be restricted. Media, as many call it, "the general public's eyes and ears." Justice Markandey Katju questions 'if lines can be drawn for the medical and legal profession, why not for media?'. There is a thin-line difference between control and regulation, where the former has no freedom, and the latter has freedom but is subjected to reasonable restrictions.¹

Media is our society's backbone. The dependence of the general public on it, the confidentiality and the faith entrusted to it, which blindly embraces the reality of media-published news, is to become a responsible media. In fact, this requires the presence of responsible media. No liberty can be absolute, as precious as it may be. This also applies to the freedom of the press. Not only is press freedom subject to existing laws of our country, like contempt and defamation, but it also bears responsibility for the community in which it works. It should take on specific tasks in fulfilling its function.

The press has a responsibility to uphold such integrity and decorum and avoid consent, in the presence of veritable newspapers or fair commentaries, to the vulgarity, obscenity, character killings, and violation of citizens' privacy incitement of violence, disorder and disintegration. The media deeply feels this rule of subjugation and complains that courts do not regard the law of subjugation during the trial. However, the sub-judge rule must be urgently liberalized and enforced only in crucial cases that would possibly impact the trial and not in any event that could have an extensive effect on the trial. Another major restriction to media stings and trials is public interest. When there is no public interest, the media loses ground and becomes self-serving or manipulative.²

Norms That the Media Should Follow For Any Media Trial To Avoid Any Issues on The Path of Justice Under The Constitution of India Are –

As a responsible media outlet, it should adhere to the following guidelines while reporting on a crime or other connected news:

- The case's accuracy must be maintained and checked before it is reported/published, and seen by everybody.
- Every caution must be taken to prevent any opinion-based writing, i.e. supporting or defaming any person or party.
- The right to privacy shall not be infringed upon.
- When reporting court proceedings, accuracy is of paramount significance.
- Reports that are based only on suspicion or personal opinion will not be publicized.
- It is always forbidden to express appreciation for an act of violence.
- The title must not be meant to be dramatic or provocative on purpose; it must be appropriate for the content printed beneath it.
- In the event of an error, rectification must be published as soon as possible.

BIBLIOGRAPHY

1. D D Basu, Commentary on The Constitution of India, Wadhwa And Company Nagpur 6th Ed., 2019.
2. M. P. Jain, INDIAN CONSTITUTIONAL LAW, 16th ed. 2020, Lexis Nexis.
3. Juhi P. Pathak, INTRODUCTION TO MEDIA LAWS AND ETHICS, 2014, Shipra Publications, New Delhi

¹ Markandey Katju, The Hindu, July 13th 2016, <https://www.thehindu.com/opinion/lead/media-cannot-reject-regulation/article3374529.ece>, accessed on 04/12/2021.

² Nimisha Jha, Academike, Lawetopus, <https://www.lawetopus.com/academike/media-trials-india/>, accessed on 03/12/2021.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : www.bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

4. Madhavi Goradia Divan, Facets of Media Law, 2nd Ed., EBC Publications.
5. Sahay Mukul, Media Law and Ethics, Wisdom Press, 2011.
6. Abilasha Rathore & Kanika Satyan, Judicial Intervention in the Subjudice -The emerging issues of Trial by Media, Bharati Law Review, 2015.
7. Consultation paper of Media Law, Government of India, Law Commission of India, 2014 May.
8. Arpan Banerjee, Judicial Safeguards Against "Trial By Media": Should Blasi's "Checking Value" Theory Apply In India? Vol. 2, p. 28, Journal of Media Law & Ethics, 2010.
9. Rashmi Rawat, Media trials: The Escalating Influence on Judiciary, MYADVO Blog, <https://www.myadvo.in/blog/media-trials-the-escalatinginfluence-on-judiciary/>
10. Anil B. Divan, "Making judiciary more transparent", <http://www.thehindu.com/opinion/lead/making-judiciary-moretransparent/article6277602.ece>
11. J. Venkatesan, "Apex court to lay down coverage norms", <http://www.thehindu.com/todays-paper/Apex-court-to-lay-down-coverage-norms/article15284971.ece>
12. Manu Sebastian, "Times Now" s Parallel Trial in Tejpal Case blatantly interfered with Justice" <https://thewire.in/media/times-now-parallel-trialtarun-tejpal-case>



IMPACT OF THE AGENDA 2030 ON INDIGENOUS PEOPLES - AN INTERNATIONAL PERSPECTIVE

Ms. Sahana Florence P

Assistant Professor, Law, BMS College of Law, Bangalore

ABSTRACT

The world's estimated 476 million persons are Indigenous Peoples, belonging to 5,000 different groups, in the 90 countries worldwide are at the heart of the 2030 Agenda with its promise to "Leave No One Behind". They make up 6.2% of the world's population, yet account for about 15% of the world's poorest. The 2030 Agenda for Sustainable Development is of critical importance to Indigenous Peoples. It is also imperative that Indigenous Peoples are engaged, at all levels, to ensure that we are not left behind. They lag on virtually every social, economic, or political indicator considered in the Sustainable Development Goal's (hereinafter referred to as SDG's), they continue to face substantial challenges. Indigenous peoples as one of the major groups should be supported in reporting on their contribution to the implementation of the sustainable development goals. The research findings reveal that, despite the inclusion of indigenous peoples as a disaggregation variable, there is little mention of indigenous people in sustainable development goals. No doubt, that the consultation and formulation of the Agenda 2030 involved indigenous peoples, raising hopes for sustainable development goal's and specified the need to ensure that indigenous peoples can contribute to country-level progress reviews. However, the current UN assessment is that despite progress on some sustainable development goals, the program is at risk of failing to meet the goals. The main object of this article is to examine and evaluate the impact of Sustainable Development Goals on the Indigenous peoples, excavating their developmental issues and human security challenges. The author adopted the doctrinal method of research to draw a particular conclusion.

Keywords: Indigenous Peoples, SDG's, Agenda 2030, Substantial, Excavating, Impact of the agenda 2030 on indigenous peoples- An international perspective.

INTRODUCTION

Indigenous peoples play a unique and valuable role in ensuring the sustainable management of a significant share of the world's lands, ecosystems and biodiversity. Indeed, the territories of indigenous peoples are home to 80 per cent of the world's biodiversity. Equally important, the food systems of indigenous peoples are anchored in sustainable livelihoods and the principle of ensuring the food sovereignty and well-being of communities.¹

It is, therefore, an especially unfortunate reality that indigenous peoples are among the people most likely to be left behind – poverty rates among the world's estimated 370 million indigenous peoples² are significantly higher than for populations at large – as a result of discrimination, historic injustices, and inability to protect their internationally enshrined rights to their lands and territories.

The 2030 Agenda for Sustainable Development defines the global development agenda for the next 15 years. For indigenous peoples, it is regarded as an improvement compared to the Millennium Development Goals, where indigenous peoples were largely invisible. The 2030 Agenda consists of 17 goals and 169 targets of which 92 % are closely linked to human rights. 73 out of the 169 targets have substantial links to the UN Declaration on the Rights of Indigenous Peoples.³ Indigenous peoples participated in the global consultation process towards the 2030 Agenda and, while not all their concerns were included, their advocacy resulted in a framework that makes explicit references to indigenous peoples' development concerns and that is founded on principles of universality, human rights, participation, equality and environmental sustainability – core priorities for most indigenous peoples. It aims to combat inequalities and discrimination and "leave no one behind", and

¹ International Fund for Agricultural Development, *Partnering with indigenous peoples for the SDGs*. (2019), https://www.ifad.org/documents/38714170/41390728/policybrief_indigenous_sdg.pdf/e294b690-b26c-994c-550c-076d15190100.

² Ibid

³ http://www.unsceb.org/CEBPublicFiles/CEB_2016_6_Add.1_%28inequalities_framework%29.pdf (visited Nov 30, 2021).



contains a strong commitment to the disaggregation of data.¹ Indigenous peoples as one of the major groups should be supported in reporting on their contribution to the implementation of the SDG.

The current involvement of indigenous peoples in the SDG's is noted and some of the shortcomings in recent reporting on progress towards meeting the goals are highlighted.² The Agenda 2030 for sustainable development has given indigenous peoples a certain level of expectation. As the world is getting ahead towards 2030, there is a little ray of hope among indigenous peoples that their priorities and rights will be recognised.³

The Sustainable Development Goals (SDGs)

The sustainable development goals also known as the Global Goals were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. The 17 SDGs are integrated they recognise that action in one area will affect outcomes in another and that development must balance social, economic and environmental sustainability. Countries have committed to prioritising progress for those who are furthest behind.⁴

The most cited definition of sustainable development is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'⁵ Over this time, it has worked for peace and security, population control, literacy and education, health, economic development and employment opportunities. The 2030 Sustainable Development Agenda (SDA) is, in its own words, "a comprehensive, far-reaching and people-centred set of universal and transformative Goals and targets."

What do the SDG mean for Indigenous Peoples?

Indigenous peoples have continued to face substantial challenges. They, along with other minority groups, have pushed for recognition that the next steps for development must leave no one behind. *The 2030 Agenda has the potential to be transformative for indigenous peoples if its implementation respects these principles.*⁶ Indigenous peoples believe that the SDG's may be an opportunity for advancing, promoting and recognizing the rights of indigenous peoples. Yet, Indigenous Peoples have faced difficulty in seeing their perspectives reflected in the 2030 Agenda. Although all of the 17 goals are relevant for Indigenous Peoples, only 4 out of 230 indicators specifically mention Indigenous Peoples.

Many have additionally argued that these few indicators in which Indigenous Peoples are included do not reflect Indigenous definitions of well being. The Major Group for Indigenous Peoples explained in their 2016 paper, "For Indigenous Peoples around the world, 'leaving no one behind' means respecting subsistence economies and promoting nonmonetary measures of well-being."⁷ While the 2030 Agenda is beneficial to all global citizens, only the full and effective participation of Indigenous Peoples in the development, implementation, monitoring and review process of action plans and programs on sustainable development at all levels, will provide an opportunity for the fulfilment of the rights of Indigenous Peoples, as prescribed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁸

Indigenous Peoples and the SDGs

¹ Indigenous World 2020: The Sustainable Development Goals (SDGs) and Indigenous Peoples - IWGIA - International Work Group for Indigenous Affairs, , <https://www.iwgia.org/en/ip-iw/3658-iw-2020-sdgs.html> (visited Nov 30, 2021).

² Richard Madden & Clare Coleman, *Visibility of indigenous peoples in sustainable development indicators*.

³ What do the Sustainable Development Goals Mean for Indigenous Peoples? | Cultural Survival, , 2017 , <https://www.culturalsurvival.org/news/what-do-sustainable-development-goals-mean-indigenous-peoples>.

⁴ <http://www.Undp.org/sustainable-development-goals>

⁵ Closing the Gap and the Sustainable Development Goals: listening to Aboriginal and Torres Strait Islander people; Closing the Gap and the Sustainable Development Goals: listening to Aboriginal and Torres Strait Islander people, (2019), <http://www.unesco.org/> (last visited Nov 30, 2021).

⁶ Department of Economic and Social Affairs, *Indigenous Peoples and the 2030 Agenda*, UNITED NATIONS (2017).

⁷ <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/what-do-sustainable-development-goals-mean-indigenous>.

⁸ Supra Note 4



The Sustainable Development Goals are grounded in a vision that aims to transform our world. They aspire to build a world free of poverty, hunger and disease, in which every woman and every girl enjoys full gender equality, where the environment is protected and where all people have access to quality education and decent work.¹ Many of the 17 Sustainable Development Goals and targets are relevant to indigenous peoples and have direct linkages to the human rights commitments in the UN Declaration on the Rights of Indigenous Peoples or the ILO Convention 169 on indigenous and tribal peoples' rights. When, in 2015, the international community agreed on 17 Sustainable Development Goals (SDGs), a set of targets for improving lives while protecting natural resources by the year 2030, they included specific mention of indigenous peoples and acknowledged that there can be no truly sustainable development without protecting the traditional knowledge and territories of indigenous people.

All 17 SDGs are relevant to indigenous peoples. But there are six direct references to indigenous peoples in the 2030 Agenda, including in Goal 2 related to agricultural output of indigenous small-scale farmers, and Goal 4 on equal access to education for indigenous children² but the goals on health, education, poverty reduction, food security, peace and security, women's empowerment and reduced inequalities are generally relevant for indigenous peoples.³ The inclusion of IPs and the active engagement and contribution by the indigenous peoples in the 2030 SDGs agenda shall promote the recognition and protection of their rights, aspirations, and self-determined sustainable development. Equally, indigenous peoples are an indispensable component if SDGs were to be fully achieved.⁴

There is constant debate on SDGs since its inception including its meaning, history as well as its implications in development theory and practice. Amongst them is the persistent lack of direct references to the indigenous peoples in many areas that are closely relevant to their issues. This has resulted in the rights of indigenous peoples including collective rights, cultural integrity and Free Prior and Informed Consent (FPIC), as well as their holistic and self-determined development approaches not reflected in the SDGs among others. Therefore, it is of utmost importance that stakeholders from all walks of the societies at all national, regional and international levels including and especially the indigenous peoples request their rights and aspirations in all dimensions of sustainable development to be manifested in the agenda aligning with the UNDRIP, 2007 and ILO Convention 169.⁵

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) constitutes the overarching framework that defines what sustainable development means for indigenous peoples.⁶ If adequately implemented, the UNDRIP can help overcome challenges faced by indigenous peoples in the development context by:

- Fully including indigenous peoples and ensuring that they benefit from local, national and global development efforts, on an equal footing.
- Respecting indigenous peoples' right to self-determined development and ensuring that development contributes to the full realisation and strengthening of their potential by supporting their development priorities and institutional and management capacities.
- Protecting indigenous peoples from adverse impacts of development, which may undermine their rights and well-being if their specific needs and aspirations are not addressed.

Impact of SDGs on Indigenous Peoples

Development and human rights are not contradictory concepts, and they should go together. Indigenous peoples are not opposed to development works, because they know that development works will eventually benefit them. But, if development is for people, their participation should be ensured. They have a different perspective on development which is, self-determined, just and sustainable. Indigenous people are the embodiment of sustainable development. Achieving SDGs means respecting and protecting indigenous human rights,

¹ International Labour Organisation, *Sustainable Development Goals Indigenous Peoples in Focus* 1-12 (2016), https://www.ilo.org/global/topics/indigenous-tribal/publications/WCMS_503715/lang-en/index.htm.

² <https://sdg.iisd.org/commentary/guest-articles/no-sustainable-development-without-indigenous-peoples/>

³ Department of Economic and Social Affairs, *supra* note 9.

⁴ <https://aippnet.org/sustainable-development-goals-indigenity-a-practical-guide-for-indigenous-peoples/>

⁵ Ibid

⁶ Department of Economic and Social Affairs, *supra* note 9.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

recognising their customary institutions, and their sustainable resource management systems, going beyond the social and environmental safeguards to fully respect human rights, equitable benefit sharing, and accountability.

¹The lack of attention to Indigenous status is surprising given the acknowledged disadvantage that Indigenous peoples face across the world. The Indigenous peoples' visions of development were not included in the SDGs and their collective rights were not given sufficient recognition to be consistent with the commitment in the World Conference of Indigenous Peoples (WCIP) Outcome Document to give "due consideration to all the rights of indigenous peoples in the elaboration of the Post-2015 Development Agenda and also ignored the provision of UNDRIP that affirms indigenous peoples right to self-determined development."² The SDGs also do not affirm the collective rights of indigenous peoples to their lands, territories, and resources. There are no specific targets relating to indigenous peoples security of land, territories and resources.³ Indigenous people have been seeking specific consideration in the development of SDG indicators.

In 2015, the UN Permanent Forum on Indigenous Issues recommended that 'the Inter-agency and Expert Group on Sustainable Development Goal Indicators and the United Nations Statistical Commission actively engage with indigenous peoples in developing key indicators relating to indigenous peoples' rights to their lands, territories and resources, free, prior and informed consent, empowerment of indigenous women, access to justice and special measures addressing the particular circumstances of indigenous peoples regarding relevant health, education and socio-economic development targets of the 17 goals'.⁴

Despite the inclusion of ethnicity as a disaggregation variable, there is little mention of ethnicity in the SDG goals or indicators. Disappointment has been expressed by the indigenous peoples with the general lack of references in the 2030 agenda. Implications for achieving SDGs in the global context is lagging in achieving several SDGs targets. Indigenous peoples have been seeking specific considerations in the development of SDGs indicators. Therefore, critically reviewing the findings and recommendations of the inquiry is in order.

The development of SDG indicators, and the work to date on their implementation, include little mention of Indigenous peoples. This is despite the strong calls by various international groups representing Indigenous peoples for the development of Indigenous peoples to be included and recognised in the SDG process.⁵ This lack of interaction mirrors the lack of action to date by the international statistical community and many national statistics agencies to address the repeated calls for the development of statistics on Indigenous peoples. Without reliable information on the economic and social condition of Indigenous peoples, they can easily be ignored in national policymaking, their substantial resourcing needs to be overlooked and discrimination disregarded.⁶

The UN Permanent Forum on Indigenous issues additionally warns that "The 2030 Agenda involves serious risks for indigenous peoples, such as clean energy projects that encroach on their lands and territories. To avoid negative impacts, the implementation of the SDGs need to take place in conformity with the United Nations Declaration on the Rights of Indigenous Peoples. It is also important that programs to implement the 2030 Agenda are culturally sensitive and respects indigenous peoples self-determination as well as collective rights in terms of land, health, education, culture and ways of living."⁷

Risks Involved in SDGs for indigenous peoples

Despite the above advances, the SDGs also involve risks for indigenous peoples. Disappointment has been expressed by indigenous peoples with the general lack of references in the 2030 Agenda to the following:

¹ WACC | What do the SDGs mean for the world's Indigenous Peoples?, , <https://waccglobal.org/what-do-the-sdgs-mean-for-the-worlds-indigenous-peoples/> (last visited Nov 30, 2021).

² Ibid

³ Supra note 17

⁴ Madden and Coleman, *supra* note 5.

⁵ Ibid

⁶ UN DESA, *State of the World ' s Indigenous*, NEW YORK 250 (2009), <https://www.un.org/development/desa/indigenouspeoples/publications/2009/09/state-of-the-worlds-indigenous-peoples-first-volume/>.

⁷ <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/what-do-sustainable-development-goals-mean-indigenous>



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

- Collective rights in terms of land, but also health, education, culture and ways of living;
- The concept of self-determination, as enshrined in the UN Declaration on the Rights of Indigenous Peoples;
- Holistic development approaches are not too focused on GDP growth, industrialization and increased production;
- The principle of free, prior and informed consent, which is essential for self-determination;
- Cultural sensitivity across several goals, such as on health and education, including for instance education in indigenous mother tongues.
- SDGs focus only on the economic aspects of sustainability rather than human rights-based, eco-system based and knowledge-based approaches for formulating SDGs.

Recommendations/ Suggestions

- Indigenous peoples, as one of the major groups, should be supported in reporting on their contribution to the implementation of the Sustainable Development Goals;
- Member States should facilitate indigenous peoples' participation in national-level processes to plan, implement and monitor national frameworks for the 2030 Agenda, including their capacity building;
- Data-disaggregation and recognition of Indigenous identity in national statistics as well as integration of community-based data from Indigenous communities will allow for assessing progress for Indigenous Peoples.
- Ensuring Indigenous Peoples' participation in implementation, follow-up, and review;
- Indigenous Peoples can contribute to the development of national action plans, follow-up and review at all levels, including for the voluntary national reviews at the High-Level Political Forum;
- Greater awareness of the SDGs among the government/ non-government organs and the society is required.

CONCLUSION

It is our collective responsibility to support indigenous peoples and ultimately, the well-being of our planet. There is a need to avoid policies, programmes and projects to achieve the SDGs that have a negative impact or infringe on indigenous peoples' rights. Therefore, the procedural rights of indigenous peoples to be consulted, to participate and to give or withhold free, prior and informed consent must be upheld in all processes aimed at achieving the SDGs. Such an approach will make the Agenda relevant for indigenous peoples and ensure that they are not left behind while ensuring coherence, effectiveness and efficiency in states' efforts to comply with their human rights obligations and development commitments.

REFERENCES

- Closing the Gap and the Sustainable Development Goals: listening to Aboriginal and Torres Strait Islander people; Closing the Gap and the Sustainable Development Goals: listening to Aboriginal and Torres Strait Islander people, (2019),
- Cultural Survival, <https://www.culturalsurvival.org/news/what-do-sustainable-development-goals-mean-indigenous-peoples>.
- Department of Economic and Social Affairs, Indigenous Peoples and the 2030 Agenda
- International Fund for Agricultural Development, Partnering with indigenous peoples for the SDGs.
- Introduction, <http://www.unsceb.org/CEBPublicFiles/CEB>
- Indigenous World 2020: The Sustainable Development Goals (SDGs) and Indigenous Peoples - IWGIA - International Work Group for Indigenous Affairs,
- International Labour Organisation, Sustainable Development Goals Indigenous Peoples in Focus
- Richard Madden & Clare Coleman, Visibility of indigenous peoples in sustainable development indicators
- What do the Sustainable Development Goals Mean for Indigenous Peoples?
- WACC | What do the SDGs mean for the worlds Indigenous Peoples?
- <https://www.un.org/development/desa/indigenouspeoples/publications/2009/09/state-of-the-worlds-indigenous-peoples-first-volume/>.



DOMESTIC VIOLENCE AND ITS IMPACT ON CHILDREN AS SECONDARY VICTIMS: AN OVERVIEW

Shruthi T

Assistant Professor, BMS College of Law

ABSTRACT

Domestic violence is an omnipresent social pathology. It is one of the most common and under-represented problem that affects most women across the world. It stands out to be the epitome of gender inequality. A systemic attempt is made to trivialize the problem labelling it to be a familial conflict. It is a clear violation of human rights which often is ignored by most states. The major reason for perpetual existence of domestic violence despite legal frameworks is the need for power, control and authority in a patriarchal set up. It results in a huge loss in terms of psychological trauma, economic problems, hindrance to social well-being. There is also a growing concern in academic discourse on how domestic violence causes long lasting impact on children who are often profiled as secondary victims. This article intends to highlight on psychological, social psychological perspective and the education system incongruent to understanding the repercussions of domestic violence. The study also makes suggestions to combat and alternative measures to rehabilitate secondary victims.

Key Words: Domestic violence, child, secondary victim, abuse

INTRODUCTION:

Domestic Violence against women is an omnipresent problem that needs the attention of the hour. It is one of the most underestimated social problems. It is to be noted that usually women and children are the primary and secondary victims of domestic violence. ¹ (United Nations, 2010)

Domestic violence is an act of pattern of behavior. This involves abuse or violence perpetrated by one individual or group of individuals against one individual or group of individuals. The abuse or violence can be of varying kinds. ²

It could involve physical or emotional or psychological or financial or verbal. It is a common misunderstanding that physical violence alone tantamount to domestic violence. (Gayathri M 2017)

Domestic violence was brushed off to be more of an interpersonal issue between two individuals in a relationship rather than a social pathology. The United Nations urged its members states to consider acts of domestic violence as a serious violation of human rights. It was around this effort made by the UN that most of the countries including India took the initiatives to even consider intimate partner violence to be domestic violence and drag it to the ambit of legal scrutiny.

We need to understand that domestic violence is an act of human rights violation within a domestic setup. There are two kinds of victims that a perpetrator or group of perpetrators that are impacted. They are primary and secondary victims. Primary victims are those who are targeted directly by the perpetrator or group of perpetrators that receive direct forms of abuse. Secondary victims are those that witness domestic violence or intimate partner violence and will have to face the repercussions of short or long term. ³

Study shows that children who witness domestic violence during most part of their childhood or formative years are likely to grow up to be more susceptible to violence or inflict violence of one form or the other. (Black & Newman, 2000)

This study aims at overviewing the often neglected aspect of domestic violence vis a vis the overall impact on children.

² Thormaehlen, D J, and E R Bass-Feld. "Children: the secondary victims of domestic violence." *Maryland medical journal* (Baltimore, Md. : 1985) vol. 43,4 (1994): 355-9.

³ Stiles, Melissa M. "Witnessing domestic violence: the effect on children." *American family physician* vol. 66,11 (2002): 2052, 2055-6, 2058 passim.



Profiling children as secondary victims:

Domestic violence can take various forms. The basic structure is of two kinds. They are direct and indirect. Direct abuse is when the mother is subjected to direct targeted violence. Indirect is when children, even are not directly subjected to violence but are simply exposed, as part of interpersonal conflict between the parent/guardians/ caregivers. Studies have shown that, even if children do not witness violence directly and only hearing will affect them equally. It is said that children assume they have a part in the causation of violence, try to predict the future instances of violence. The problem lies in profiling children as 'secondary victims'. Even though there is good amount of research to indicate the long lasting effects of domestic violence on women and children is equal, popular discourse has failed in manifesting the same. The categorization of women to be primary victims and children as secondary victims only further establishes that children are only impacted by domestic violence. Their role is made to be passive, while the role of perpetrator of violence and the woman have a dual relationship, while children play a passive role. This is the very core of the problem which deviates state and its entities in making children too the focal point in policy making, rehabilitation. This notion limits the scope in gauging the effects of domestic violence on children and also establishes the fact as to why they are called 'secondary victims'.¹

The psychological impact of domestic violence on secondary victims:

It is often said that children are resilient enough to adapt to changes easily. However, research shows that the impact that children are left with for a lifetime if professional help is not looked for.² (Lewis et al., 2017)

The focus of care, protection and rehabilitation has always been primary victims. Children require stability and nurture to thrive. World Health Organization in its report discusses social determinants of adult health. This report is made in the direction of creating a link between early childhood trauma and adult mental health. The amount of exposure of an infant or a child to physical or emotional or psychological trauma is equivalent to being exposed to it directly.³

The maternal health care system too is showing growing concerns over how the unborn fetus, when exposed to domestic violence, shows deterrent growth in the brain and the size of it. Few studies indicate that fetus exposed to domestic violence in the womb have a likely chance of growing up with physical ailments (such as inflammation) that further leads to psychological distress (such as clinical depression).⁴

The secondary victims of domestic violence have both short-term and long-term impact that could play a detrimental role in defining their social and mental well-being. The different stakeholders from varying fields have always expressed concern over the trauma suffered by secondary victims which is considered to be equivalent to the trauma suffered by primary victims. There is a likely chance of this trauma being mentioned to turn to post-traumatic stress disorder. An infant or child biologically expects his or her caregiver to protect at all times of stress. In case the caregiver is in a state of stress and is unable to provide the kind of nurture and protection that is naturally expected then it will turn out to be a sense of deception. The child will grow up feeling insecure in all the other relationships as an adult.

Children in their formative years are completely dependent on their caregivers for emotional regulation. In times of distress such as repeated pattern of domestic violence pushes them to the edge of being more vulnerable. This emotional regulation cannot be provided by the caregiver when she is in a state of high distress. Hence, the safest place seems to be the most terrifying.⁵

A Gauge through Social Psychological Perspective:

The social psychological perspective provides a unique understanding of both short term and long-term effects of domestic violence on secondary victims. The social constructivist approach deals with the evolution of social beings from the quality of interaction an individual has with his or her social environment. This approach helps

¹ Callaghan, J. E. M., Alexander, J. H., Sixsmith, J., & Chiara Fellin, L. (2018). Beyond "Witnessing": children's experiences of coercive control in domestic violence and abuse. *J. Interpers. Violence* 33, 1551-1581

² Lewis, N.V., Larkins, C., Stanley, N. et al. Training on domestic violence and child safeguarding in general practice: a mixed method evaluation of a pilot intervention. *BMC Fam Pract* 18, 33 (2017).

³ Gerhardt, Sue & Matthes, Michiel. (2011). Why Love Matters: How Affection Shapes a Baby's Brain.

⁴ K Kendall-Tackett - Child abuse & neglect, 2002

⁵ Dr. Nadine Burke Harris – The Deepest Well: Healing the Long Term Effects of Childhood Adversity, 2018



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

in understanding that children exposed to prolonged domestic violence find it part of normalcy to experience violence or they could grow up and be perpetrators of violence themselves.¹

Society and state are required by ethical standards to accommodate devised change for any individual or groups of individuals if marginalized in one way or another. There is growing concern over the negative implications of domestic violence on secondary victims. However, this is indicative in developed countries as opposed to developing or underdeveloped countries. Most underdeveloped countries still struggle to combat the problem of domestic violence. The Republic of India has enacted legislation that aims to protect women against violence of different forms within the family. The enactment is titled, 'The Protection of Women from Domestic Violence Act, 2005'. This law when enforced applied to India except for the state of Jammu and Kashmir. But as per Section 96 of the Jammu and Kashmir Reorganisation Act, 2019, it is extended to the state of Jammu and Kashmir. This enactment has stressed up protecting women from the perils of domestic violence of various forms and providing remedies. However, the perpetrator cannot be penalized. The framework devised reflects the responsibility on part of the state in combating the ever-prevalent social problem of domestic violence.²

A thriving democracy such as India has taken a long time to consider domestic violence to be a social pathology from its earlier consideration of an interpersonal conflict. Hence, it becomes difficult for any developing and underdeveloped countries to have a paradigm shift in equivocally helping curb problems of domestic violence on both primary and secondary victims.

There is a web of ambiguity in the basic understanding of how domestic violence affects secondary victims. There are studies made in most fields of knowledge to gauge the impact of domestic violence on children. There seems to be a gap in the redressal mechanism for the same.

Implications of domestic violence on secondary victims and education

Studies indicate that children who are exposed to domestic violence in any form have a lasting effect in their educational attainment. Children are comforted by stability. This very foundation shakes in case of domestic violence. Children who come from broken homes find solace in going to school as they find comfort and safety.³ The impact of domestic violence can be observed in the formative years. It gets manifested through behavior. Children belonging to the age group of zero to five manifest it through extreme separation anxiety from the parent who is not abusive. Children of very young age have a limited scope to cope with distress such as domestic violence. They learn to cope in their best possible ability. However, this might not be conducive to the societal standards or expectations as, the society is not designed to accommodate these weary aspects of childhood.

Education staff in the west are trained at the basic level to identify children in distress caused due to domestic violence. They work closely with social welfare officers which help facilitate the problem. The problem lies with developing and underdeveloped countries wherein are still under progress.

Domestic violence, children, and education are closely connected. One of the major reasons for dropping out from school is being subjected to domestic violence. There are other impacts such as concentration problems, cognitive disabilities (stress response shuts all other capabilities of the brain)⁴, irritable state of being, unforeseen behavior, hostile state of being, hyperactivity. Children who are subjected to a pattern of violent behavior at home become highly cognizant of possible danger outside of the home as well. If a child is going through unsurmountable emotional upheavals, that acts as a hindrance in cognitive ability to perform well in the academic arena.

Impact on young individuals:

Older children who are exposed to consistent pattern of domestic violence of one form or the other display psychological ailments such as, self-harm, suicidal tendency, masochism, susceptible to substance abuse, disinterest in education.

¹ Markward, Martha J. "The Impact of Domestic Violence on Children." *Families in Society*, vol. 78, no. 1, Feb. 1997, pp. 66-70, doi:10.1606/1044-3894.738.

² Gayathri, J Pol Sci Pub Aff 2017, 5:4 DOI: 10.4172/2332-0761.1000313

³ Dorothy Byrne & Brian Taylor (2007) Children at Risk from Domestic Violence and their Educational Attainment: Perspectives of Education Welfare Officers, Social Workers and Teachers, *Child Care in Practice*, 13:3, 185-201

⁴ Gerhardt, Sue & Matthes, Michiel. (2011). Why Love Matters: How Affection Shapes a Baby's Brain.





INTERSECTION OF TECHNOLOGY WITH INDIAN MOTOR VEHICLES ACT 2019

Priyanka Vaidyanath* and Rathan Sagar**

*Assistant Professor and **Student, BMSCL

ABSTRACT

Traffic Violations has been one of the major concerns in India since a long time. According to the 2019 Road Accident report by Government of India Ministry of Road Transport & Highway Transport Research Wing, 4,49,002 incidents occurred in the country, resulting in 1,51,113 deaths and 4,51,361 injuries. Great majority of automobile accidents are caused by human negligence such as over speeding, neglecting safety gears, dereliction of traffic rules and distracted driving whilst not discounting poor road conditions. Companies such as Tesla, Waymo, Pony.ai are pioneering in Auto-Pilot and smart vehicles with in built Artificial Intelligence (AI) technology. Auto-Pilot system replaces human drivers in the process of driving, with human supervision, as of today. The invention of Auto-Pilot system is supported by governments all over the world to improve transportation safety, but seems to lack the legal regulations of the same.

This paper analyses the legality of auto-pilot vehicles in India with respect to Indian Motor Vehicles Act (MVA) 2019. Since auto-pilot vehicles utilize advanced technology such as Artificial Intelligence in decision making process, the paper considers the intersection of Technology and MVA. The research involves doctrinal methodology of research by relying on existing relevant statutes, case laws, scholarly literatures, and governmental reports.

KEYWORDS: Artificial Intelligence, Auto-Pilot vehicles, Automobile Accidents.

INTRODUCTION

Motor vehicle accidents is akin to every country regardless of the infrastructure and development of the state. Law has been dynamic with the development and automation of vehicles as well in terms of regulation of the traffic. Be it installation of cameras, disposing of motor vehicle cases, law has adapted to the changing scenario. Likewise, advanced technology has led to the creation of auto pilot cars, which can run autonomously. Auto pilot cars are backed by artificial intelligence technology which guides the car to steer on road. Artificial intelligence is an umbrella term under which different scientific technologies can be seen such as natural language processing, predictive analysis, face recognition and much more. Though the use of technology on a whole itself seems to be an unregulated domain, the application of the same in vehicles can be regulated through the existing Motor Vehicle Act either by interpreting the statute to suit the existing scenario or to amend the statute to regulate auto pilot cars. The nomenclature of auto-pilot, self-driving car and autonomous vehicle is used synonymously in this paper.

Auto Pilot Cars

The impact of the fourth industrial revolution is seen on the automobile industry as well, wherein, the research and development of the industry is focusing on self-driving cars. Self-driving cars are such motor vehicles which work mostly autonomously and hardly seek human attention. Today's autonomous cars can accelerate, break and steer independently¹, while being able to read and interpret the environment that it is in. These cars make use of scientific technologies such as Artificial Intelligence, Radar, computer vision, Lidar to name a few. The main technological backing behind such cars is artificial intelligence. Artificial intelligence is one such recent technological innovation which has left no stone unturned. From health care, education, national security, climate change to weapons, artificial intelligence can be seen in all domains.

The artificial intelligence found in the autonomous vehicle requires large amount of data, sourcing from camera, radar sensors, lidar sensors and other allied equipment which collects information and passes it onto the AI software². Stating a real time scenario, Tesla is one of the leading automobile companies with progressive autonomous car which can 'autosteer' on a complex road structure, 'smart summon' can steer and navigate

¹ SYNOPSISYS, <https://www.synopsisys.com/automotive/what-is-autonomous-car.html> (last visited Nov. 14, 2021)

² Ben Lutkevich, Self driving car (autonomous car or driverless car), SearchEnterpriseAI, (Nov. 14, 2021) <https://searchenterpriseai.techtarget.com/definition/driverless-car>



obstacles and maneuver on road¹. These cars require the input of end destination which by itself will choose the optimal road and navigate through, until the destination.

Pathbreaking technology in self driving cars, is the 'environmental perception' which can read and perceive the environment to steer through. Radar sensors perceive the distance between the self driving car and the vehicle in front of that, while visual sensors recognizes the traffic signals and Laser sensors fuse the real world data with the data in the AI system².

To understand the autonomy in these vehicles better, the NHTSA National Highway Traffic Safety Administration has shelled out a hierarchical differentiation where:

- Level 0 denotes *no aspect of automation* while the driver is in complete control of the vehicle.
- Level 1 *function specific automation* the driver retains overall control of the car and there are certain controls which are autonomous and these may not be linked or dependent on each other,
- Level 2 is a *combined function automation* which involves at least two such primary controls which work mutually without the drivers involvement
- Level 3 is *limited self driving automation* where in the driver need is seen occasionally while the car is able to control and run independently in most aspects
- Level 4 is high automation where the driver is needed to perform certain secondary actions
- Level 5 is full self driving automation the vehicle takes on the full control including the safety measures and the driver is needed only to feed the end destination³.

According to research statement by Mckinsey, level 4 autonomy is expected to be in running between 2020-2022 and level 5 autonomy by the end of 2030⁴. The implication of benefit and magnitude of legal regulation directly depends on the level of automation in self driving cars.

The need to develop and implement the autonomous vehicle are searing owing to the deaths by road accidents due to human negligence, traffic congestion, inefficiency in fuel consumption.

Regulation of automated cars is in need owing to the expanding market, while the level automation reverberates different legislative attention, such as, a semi autonomous car work on the basis of shared operational driving and fully autonomous cars enjoy complete control over the vehicle. In case of a semi autonomous car, the driver and the car should be in consensus owing to situational specific reaction by either of them⁵.

Advantages of Auto-Pilot cars⁶

Prevention of Crash: Human error was responsible for 94% of the 33,133 automobile deaths in 2017 in USA. Computers that use advanced algorithms and systems will effectively remove expensive human error. Auto-Pilot cars would eliminate major causes of accidents, such as intoxicated or inattentive driving. Auto-Pilot cars are expected to cut accidents by to 90%

¹ TESLA, <https://www.tesla.com/autopilot> (Nov. 20, 2021)

² Jianfeng Zhao, Bodong Liang and Qiuxia Chen, *The key technology toward the self-driving car*, Vol. 6 No. 1 International Journal of Intelligent Unmanned Systems, 2, 3-6(2018) 2049-6427 DOI 10.1108/IJUS-08-2017-0008

³ Anderson, James M., Nidhi Kalra, Karlyn D. Stanley, Paul Sorensen, Constantine Samaras, and Tobi A. Oluwatola, *Autonomous Vehicle Technology: A Guide for Policymakers*, RAND Corporation, 2016. https://www.rand.org/pubs/research_reports/RR443-2.html

⁴ MCKINSEY & COMPANY, <https://www.mckinsey.com/features/mckinsey-center-for-future-mobility/overview/autonomous-driving> (Last visited Nov. 23, 2021)

⁵ Pattinson, JA., Chen, H. & Basu, S. *Legal issues in automated vehicles: critically considering the potential role of consent and interactive digital interfaces*, 7 Humanit Soc Sci Commun, 153 (2020). <https://doi.org/10.1057/s41599-020-00644-2>

⁶ SELF DRIVING CARS: PROS AND CONS, <https://valientemott.com/blog/blog-self-driving-cars-pros-and-cons/> (Last visited Nov. 28, 2021)



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

Societal Cost Savings: When assessing the benefits and drawbacks of Auto-Pilot cars one of the most important considerations is the societal cost. According to reports, Auto-Pilot can save society an estimated 800 billion USD every year. Reduced expenses associated with automobile accidents, less burden on the healthcare system, more efficient transportation, improved fuel economy, and other factors can all contribute to total societal cost reductions.

Traffic Efficiency: The ability of Auto-Pilot cars to communicate in real time, allowing them to travel at optimal distances from one another. It is also ideal to figure out the ideal route for you to travel to avoid being stuck in traffic.

Better access and mode of transportation: Auto-pilot cars might be a safe and dependable form of transportation for persons who are unable or unable to drive. Individuals with disabilities or the elderly would be able to enter an Auto-Pilot car without endangering others. Auto-Pilot cars would also benefit cities with inadequate public transportation. Auto-Pilot cars can readily access places with limited infrastructure.

Environmentally Friendly: One of the most important consideration in the discussion over Auto-Pilot cars is the environment. Internal-Combustion engines will most likely not be used in automobile vehicles. Auto-Pilot cars will drive at steady speeds, continuous braking and acceleration will be reduced. All these things will help to reduce emissions and make the environment more sustainable.

Disadvantages of Auto-Pilot Cars¹

Security issues: The danger of hacking is one of the major drawbacks to Auto-Pilot cars. To communicate and cooperate with one another, Auto-Pilot cars would need to use the same network protocol. If a huge number of Auto-Pilot cars are connected to the same network, they might be hacked. Even a little security flaw might cause traffic congestion and collisions on congested highways.

Unemployment: Those who rely on driving for a vocation may find their profession outdated if Auto-Pilot become more common. Those in the trucking business, as well as bus and taxi drivers, will need to find other jobs. Auto-Pilot cars would also eliminate the need for fast food delivery and Uber Drivers.

Cost Expenditure: Auto-Pilot cars may save money for society in the long run, the initial cost of automated vehicles may be prohibitive. According to some estimates, owning fully Auto-Pilot car will cost an additional 250,000 USD per car. Costs should, of course, decrease as new technology evolves. However, in the early phases, the entry barrier may be too high for the general public.

Decision Making: One of the major considerations of Auto-Pilot cars is its inability to make decisions amongst a variety of bad outcomes. Considering what would happen if an Auto-Pilot car was faced with only two options such as; Taking a left turn and colliding with a person or taking a right turn and colliding with a tree, maybe hurting passengers. What option would the Auto-Pilot car take. The moral machine, built by a team at MIT aims to overcome this problem by gathering data on real-life judgements. The data gathered reveals significant disparities between population groups, making it impossible to program a conclusive response for Auto-Pilot cars.

System Crash: Weighing the benefits and drawbacks of Auto-Pilot cars, a system crash must be considered. As it is believed that Auto-Pilot cars would undoubtedly reduce the number of accidents, the risk factor is not reduced to completely. If the same is applied towards the Auto-Pilot system, the software or any component malfunctions would lead to a greater risk compared to the risk taken by the driver having control over the car.

International Legal Perspective on Autonomous Vehicles

The Vienna convention on Road Traffic of 1968, is the primary international convention that looks into regulation of road traffic, aims at regulating international road traffic and ensure safety through uniform rules². The convention defines motor vehicle as a vehicle which is normally used to carry persons³, likewise defines 'driver' as any person who drives a motor vehicle⁴. There has been no amendment made to the said Convention since the innovation of the autonomous vehicles. Since such auto-pilot vehicles are powered and run by

¹ SELF DRIVING CARS: PROS AND CONS, <https://valientemott.com/blog/blog-self-driving-cars-pros-and-cons/> (Last visited Nov. 28, 2021)

² INDIA CONST. Preamble

³ The Vienna convention on Road Traffic art 1(n) Nov 8 1968, UNTC

⁴ The Vienna convention on Road Traffic art 1(v) Nov 8 1968, UNTC



artificial intelligence, the debate whether AI is considered as 'person' under the law to attract liability is a question to be answered.

Further, the Convention mandates that the driver is responsible for the vehicle in traffic and is also in complete control and is also responsible for the behavior and action of the vehicle¹.

Further, the European Union also has certain regulations to address the issue of intelligent systems on roads. Cooperative Intelligent Transport Systems is one such guidance system which mandates all traffic signals, motor ways and vehicles to be technological equipped to send signals and communicate with technologically advanced vehicles².

Germany is the first country to have a regulation in place with regard to self driving cars as early as in 2017, while a in depth consideration is seen by the legislators in terms of ethical and legal questions³. In 2017, the amended Road traffic Act, for the first time allowed the drivers to share or transfer control to partial or fully autonomous cars on roads⁴, a "black box" to be placed in all cars with shared driving which records the command given by the car to driver to take over the control and legislation set out the compensation amount to be €10million in case of death by such vehicle⁵. In 2021, it passed the Autonomous Driving Act regulating fully autonomous vehicles and allowing them to function on certain pathways in public areas.

The said Act also define an autonomous vehicle as :

*"can perform the driving task independently within a defined operating area without a person driving the vehicle"*⁶

The legislation pertaining to self driving cars ensures that there is a separate pathway in which such cars can operate and not disturb the lane where the conventional motor vehicles use. Such an option emanates from the definition of "defined operating area" which is approved by the competent authority⁷.

Further, the legislation also sets out few technical criteria that is to be present in the car such as ability to follow the traffic regulations, a system to avoid accidents, in case of any functional issue to notify the technical supervisor to name a few. These technical functionalities is to be supervised by a technical supervisor by law who shall in the position to deactivate the system any point⁸. The said law also ensures that adequate measures are taken in lieu of data protection and cybersecurity. The Federal Motor Transport Authority will be the guiding authority under the Act to supervise, collect data and monitor the safety rules and precautions of autonomous cars⁹.

Likewise, many states in the United States of America have passed legislations to regulate self-driving cars where in as of today 29 states¹⁰ have passed legislations to regulate use of such cars. A safety guideline (A

¹ The Vienna convention on Road Traffic art 8 Nov 8 1968, UNTC

² A European strategy on Cooperative Intelligent Transport Systems, a milestone towards cooperative, connected and automated mobility, European Commission, COM(2016) 766 final, Brussels, 30.11.2016

³ DAIMLER <https://www.daimler.com/innovation/case/autonomous/legal-framework.html> (Last visited Nov. 26, 2021)

⁴ LIBRARY OF CONGRESS, GERMANY , <https://www.loc.gov/item/global-legal-monitor/2017-02-09/germany-government-proposes-automated-driving-act/> (Last visited Nov. 27, 2021)

⁵ Ibid,

⁶ Autonomous Driving Act, 2021, art 1 (Germany)

⁷ GERMANY: ROAD TRAFFIC ACT AMENDMENT ALLOWS DRIVERLESS VEHICLES ON PUBLIC ROADS, <https://www.loc.gov/item/global-legal-monitor/2021-08-09/germany-road-traffic-act-amendment-allows-driverless-vehicles-on-public-roads/> (Last Visited Nov. 27, 2021)

⁸ Autonomous Driving Act, 2021 § 1d, para. 3, (Germany)

⁹ Ibid, note14

¹⁰ Autonomous Vehicles | Self-Driving Vehicles Enacted Legislation, National Conference of State Legislatures, 18/02/2020, <https://www.ncsl.org/research/transportation/autonomous-vehicles-self-driving-vehicles-enacted-legislation.aspx>, (Last Visited Nov. 28, 2021)



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

vision for safety 2.0) has been released by the federal government. In pursuance of the said guidelines, The American Vision for Safer Transportation Through Advancement of Revolutionary Technologies (AV START) Act which sets out relevant definitions, regulation in line with existing federal laws, liability¹. Nevada was the first US state to legislate in 2011² which was followed by few other states and rest have issued executive orders.

Further, The United Kingdom also has Automated and Electric Vehicles Act 2018 the aim of which is to regulate automated and electric vehicles. The Act mainly focuses on the liability, causes for damage, insurance and extending the existing legislations such as Fatal Accidents Act 1976 etc³. one of the innovative aspect of the legislation is addressing of the charging points in case of electric vehicles⁴.

The legislation regulating the use of motor vehicles in India is the Indian Motor Vehicle Act 2019, the analysis of which with respect to autonomous vehicle can be found below.

Indian Motor Vehicle (Amendment) Act 2019

The MVA is a legislation in India that governs the use and operations of vehicles on the road. The Indian Motor Vehicle 2019 mandates that anyone who drives a vehicle must be always in control of it⁵. This means that if someone is even riding as a passenger, they are not allowed to simply put on their "Auto-Pilot" and let the car drive itself.

It defines the term "Vehicle" broadly, and it can take many forms such as cars, trucks, motorcycles, and bicycles. The act also imposes strict rules on driving licenses for different types of vehicles. This Act mandates that all drivers carry a driving license when operating a vehicle on public roads and highways in India. The driver's license should indicate the type of vehicle the person holds a license for to drive⁶.

The further part of this paper will discuss about driving licenses and its importance in India.

Section 2 (10) of the MVA defines the "driving license" as *the issued by a competent authority under chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.*

The recent advancements in technology have led to the development of self-driving cars. These cars are capable of functioning autonomously without any input from the driver. The MVA defines the term 'Driver' as a person who drives or oversees a vehicle. The Act does not regard automated system as a driver. However, it has not specifically dealt with emerging technologies like self-driving cars or electric vehicles yet.

There are many scenarios where liability arises due to automated driving systems. However, the Indian legislation has not provided any guidelines for these cases yet. This is problematic because uncertainty can lead to legal disputes between drivers and manufacturers, with unclear liability that could depend on the jurisdiction of the court hearing it.

The MVA mentions the liability of the driver of a self-propelled vehicle (any motor vehicle than an animal-drawn vehicle). The Act places the responsibilities of prudence on the driver. This brings out the question on how the clauses of MVA is outdated and needs to be updated to include clauses that protect both pedestrians and cyclists from traffic violations.

Auto-Pilot⁷ cars are vehicles that can sense its environment, navigating without human input. The MVA defines the specifications, duties, and liabilities of the driver. Traffic rules are mechanisms used to regulate traffic on roads. It is designed to establish economic and efficient movements of vehicular traffic. Road safety is the protection for people travelling on public land (roads), especially pedestrians and cyclists, from harm or accident.

¹ AV START Act 2017 (The United States of America)

² Note 17

³ Automated and Electric Vehicles Act 2018 (legislation.gov.uk)

⁴ Fatal Accidents Act, Sec 10, 1976 (United Kingdom)

⁵ Motor Vehicle (Amendment) Act, § 5, Acts of Parliament 32 of 2019 (India)

⁶ Motor Vehicle (Amendment) Act, § 2(10), Acts of Parliament 32 of 2019 (India)

⁷ TESLA, <https://www.tesla.com/>, (Last visited Dec. 01, 2021)



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

Auto-pilot cars are still in their infancy stage. MVA is old and inflexible. It is time to rethink the MVA considering the development of automated transportation technologies. It is important to establish a regulatory framework for Auto-Pilot cars which can balance the need to be innovative with safety concerns. India has one of the highest number road crashes¹ in the world due to lack of traffic rules enforced on drivers, lack of enforcement on existing rules, inconsistent implementation, traffic congestion and poor vehicle quality. The government² needs to take measures that ensure that Auto-Pilot cars are safe for drivers, passengers, and pedestrians alike. India is set to become the world's third largest³ passenger car market by 2026, and the country has seen a surge in demand for such vehicles. However, not many Indians know how to use them and there is a lack of awareness about the traffic rules and road safety of drivers and pedestrians. This includes educating people about safe driving practices and making sure they follow traffic rules.

Further, negligence has been mostly ignored by AI and MVA. Physical injury is at the heart of MVA, and previous research has centered on Autopilot⁴. Autopilot is a device that assists in steering, accelerating, and braking within its lane, if left unchecked may lead to catastrophic bodily injury. The Autopilot, which addresses human negligence, is one of the most intriguing and doctrinally interesting sorts of AI in development for two main reasons. The first is that by automating the driving duty and the second is liability of automobile accidents would shift away from the driver's negligence onto the manufacturers. The proportion of road fatalities in total deaths attributed to "Other Causes" has risen from 42.9 percent in 2015 to 43.9 percent in 2019. Since 2015, there has been an upward trend in the absolute number of deaths in "Traffic Accidents". In 2019 the number of fatalities increased by 1.3 percent (from 1,78,832 to 1,81,113) compared to 2018.

These problems mostly pertain to the breach part of the negligence part of the negligence concept. This is since decision assistance technologies are added to existing contexts: In areas of medical malpractice, financial advice, data security and driving, we have pre-existing negligence obligations. What changes is how individuals make decisions in these situations when Autopilot is incorporated and actions are taken. These breach-related problems, such as the extent of the applicable responsibilities whether activities represent reasonable care and what unanticipated repercussions exist in the new setting. The exception is the distributional issue, where negligence is ill-suited to solve, due to lack of obligation to ensure from a distributional standpoint.

According to the Ministry of Road Transport & Highways Transport Research Wing data, over speeding is the most common violation linked with accidents, accident-related deaths, and injuries in 2019, accounting for 71.1 percent of all road accidents, 67.3 percent of total deaths and 72.4 percent of total injuries, just as it was in 2018. The second most common cause of Negligence is driving on the wrong side of the road or lane indiscipline, which accounts for 5.4 percent of all accidents, 6.1 percent of all deaths and 5.5 percent of all injuries. Drunk driving, jumping red light and using mobile phone while driving all together accounted for 6 percent of all accidents and 8 percent of all deaths. The other group which includes factors such as road conditions, vehicle conditions and so on, accounted for 17 percent to 18 percent of all accidents, accident-related death, and injuries. The data of the above stated negligence increased in 2019 compared to 2018 underscores the necessity for tougher implementation of the MVA⁵.

AI's Liability as a Legal Person and its Impact on Auto Pilot Cars.

Corporations' personhood is frequently used as a model for the personhood of robots and other AI systems. To illustrate its futility and theological implications, it is important to quickly examine its legal status. A company is a legal entity made up of people who have come together to pursue a common goal. It is not essential to go into detail on the many theories that support corporate legal personhood, it is useful to know what they are.⁶

¹ Government of India Transport and Highway survey, <https://morth.nic.in/> (Last visited Dec. 03, 2021)

² India Brand Equity Foundation, <https://www.ibef.org/industry/india-automobiles.aspx> (Lat visited Dec 02, 2021)

³ Automotive Component Manufacturers Association of India, <https://www.acma.in/>, (Last visited Dec. 04, 2021)

⁴ Government of India Ministry of Road Transport & Highways Transport, Research Wing. Road Accident Report 2019

⁵ Government of India Ministry of Road Transport & Highways Transport, Research Wing. Road Accident Report 2019.

⁶ Artificial Intelligence & Intellectual Property, Eliza Mik OUP 2020



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

AI's legal entity allows it to engage in virtually all legal transactions in company with others, it also consolidates and demarcates its assets to protect them from their owners or their creditors. Legal personhood also makes it easier to pool resources and defend assets in aspect of responsibility, both procedural and financial.

Rights and responsibilities¹ can be defined in terms of AI, but there are no guidelines as to how many legal rights and responsibilities are required to be called a legal person. Normally, it is a right to own property as well as the ability to sue and be sued, which AI does not have now. A human being's legal personhood is commonly defined as something natural, such as feelings, intentions, and consciousness.

If AI exhibits behavior that may be proof of the attributes listed, it implies that autonomous machines mimic human behavior. At the same time, it suggests that we must examine how the need to respect AI's rights affects the rights of other legal entities. The rights of new legal persons impose a duty to respect the rights of previously established legal people. AI cannot have the same rights or liabilities as a natural person.

The responsibility of AI's conduct can be held accountable if it is a legal entity. If AI is regarded to have a juristic personality, it may be subject to both criminal and civil culpability. Pointing the recklessness or negligence of an AI would be difficult and proving *actus reus* and *mens rea* of an AI would be problematic since we cannot apply the same standards or methodologies to AI that we use for a human being. As a result, determining culpability under criminal law for AI in respect to a specific circumstance is difficult.

Scholars² and legal reform organizations have already proposed giving AI systems legal personalities to help with liability issues, such as an automated driving system entity in the case of Auto-Pilot cars entity in the case of driverless cars whose behavior may not be under the control of their 'driver' or predictable by their manufacturer or owner. Similarly, most arguments in favor of AI legal personhood are both too simple and very complicated. They are overly simplistic in the sense that AI systems exist on a continuum with hazy boundaries, a relevant category for such acknowledgement is yet to be abolished. If instrumental considerations demanded recognition in certain circumstances, this may be accomplished using current legal mechanisms. Many of the arguments are variations on the android fallacy, based on unspoken assumptions about the future development of AI systems for which personality would be both beneficial and justified. The preferable answer, at least for the time being, is to depend on existing categories, with responsibility for wrongdoing falling on users, owners, or manufacturers rather than AI system.

Safety measures prescribed in the Act only focuses on the two wheeler³ not that of a four wheeler or a car. Self driving cars delegate the driving control to the software systems and the manufacturer of such cars have a liability to ensure that there are certain safety guidelines and precaution taken care of. A survey report in the USA show cased that the public are fearful⁴ regarding their safety and it acts an important impetus in case of self driving cars. The safety aspect does not only mean the safety of persons in the car, but also the public safety in case of self driving cars deployed on road⁵. Further, the Act also mandates that the driver has a duty to stop in case asked by the police personnel⁶ and there exists an apprehension whether such autonomous cars can read the signals by a police official to halt the vehicle. Autonomous cars can only distinguish a human's action and comprehend it as an action requesting to stop the vehicle but cannot distinguish incase such an action is made by a police or by any other bystander on road. AI can only detect a person through facial recognition, and if

¹ Rakesh Sharma, *The Notion of Juristic Personality with Respect to inclusion and exclusion of Artificial Intelligence*, Legal Service India, <https://www.legalserviceindia.com/legal/article-4007-analysis-the-notion-of-juristic-personality-with-respect-to-inclusion-and-exclusion-of-artificial-intelligence.html> (Dec. 4, 07:00 PM)

² Chesterman, S. *Artificial Intelligence And The Limits Of Legal Personality*. 69(4), International and Comparative Law Quarterly, 819-844. (2020).doi:10.1017/S0020589320000366

³ Motor Vehicle (Amendment) Act, § 128, Acts of Parliament 32 of 2019 (India)

⁴ Jack Barkenbus Is Innovation China's Next Great Leap Forward? Vol. 34, No. 4 Science and Technology , 23-26 <https://www.jstor.org/stable/10.2307/26597985>

⁵ Ibid,

⁶ Motor Vehicle (Amendment) Act, § 132 (1)(a), Acts of Parliament 32 of 2019 (India)



such is the scenario then all the traffic police personnels facial data shall have to be stored in the software system¹.

Analysis of the empirical data

The researchers analyzed the mind set of Indian drivers through empirical research. Basic questions such as the preference of drivers between manual cars and auto mode; how often do they use camera feature; how often do they maintain their vehicles were a few.

Below seen are the data inferences analyzing the current mindset of the users. The data collection involved random sampling by circulating Google Forms and recording 77 responses from the generic group.

What type of transmission do you drive
74 responses

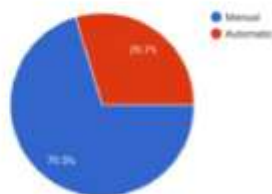


Figure 01

Do you utilise the reverse camera facility?
75 responses

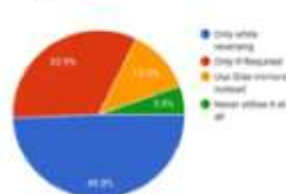


Figure 02

How do you address your Vehicle's Maintenance
77 responses

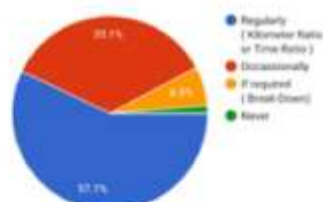


Figure 03

Age-Group
77 responses

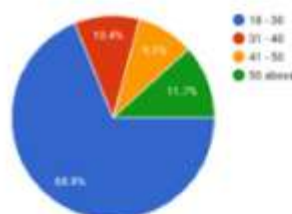


Figure 04

Figure 01 Highlights the preferred mode of driving and it still is the manual mode wherein 70.3% of the sampling results refer the same. The users have not made a shift to the technologically advanced mode of driving which eases their task of driving through the traffic. This bent of mind is also reflected in Figure 02 recording the use of reverse camera in a car which is one of the recent advancement in cars in India. Yet, the response highlight that (Figure 02) only 49% of them use the facility while the rest majority either use the side mirrors or ignore the presence of the camera. Further, figure 03 shows that the majority of the age group using the vehicle is that between 18 – 30 as compared to the other age groups and the response regarding the maintenance of car exposes that majority of them do maintain regularly (around 57%) while the rest does not.

The above analysis of the data reveals that the current indian mind set with regard to adaptability to the technological innovation is yet to reach a consensus. Though the majority of the age group using cars are young adults, data highlighted that use of camera, which is one of the simplest technological support in a car is also not utilised well.

¹ Christopher Rigano, "Using Artificial Intelligence to Address Criminal Justice Needs," NIJ Journal 280, January 2019, [https:// www.nij.gov/journals/280/Pages/using-artificialintelligence-to-address-criminal-justice-needs.aspx](https://www.nij.gov/journals/280/Pages/using-artificialintelligence-to-address-criminal-justice-needs.aspx)



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

This pattern of users choice raises a critical inference regarding the adaptability to self driving cars and the issue of maintenance. Auto-pilot cars require frequent maintenance since they sustain on the camera, radar and lidar features. Damage to any may lead to unwarranted results from the software, thereby posing a risk of accident.

Privacy in accordance with MVA

Privacy a quintessential element of right to life was recognised a fundamental right by the supreme court of India in 2017. The growing influence of technology on our day to day affairs, has made everyone's life at ease, parallelly encroaching on the private spheres. Similarly, apprehension of violation of privacy in case of auto pilot cars are one such. When seen through the perspective of privacy by design, AI has been no different, as privacy has not been a priority in the creation of AI technology. In the processing of personal data by AI, there is a considerable danger to individuals' rights and freedoms, which is fundamentally different from the risk posed by data breaches, but with very little "fallout" for the firms involved. The following are some of AI's privacy concerns.

The information scraping appears to violate the terms of service¹, for example; Facebook, YouTube, Instagram, Twitter and Venmo, according to a report by Canada's Office of the Privacy Commissioner (OPC) 'section 6 (ii)', while Clearview AI claims that the information is freely available on the internet, the OPC finds that express consent is required in the case of especially sensitive biometric information, as well as when the collection, use, or disclosure is beyond the reasonable expectations.

The Supreme Court's Stance on the "Right to Privacy" in the PUCJ Case was maintained in the historic 2017 verdict in '*K.S. Puttaswamy v. Union of India (SC 2017)*' by a nine-judge bench, which proclaimed privacy to be a fundamental right. The right to privacy's applicability in the context of wiretaps was recently reinforced in the Bombay High Court's October 2019 decision in '*Vinit Kumar v. Central Bureau of Investigations and Ors*', in which the Bombay High Court outlined the scope of the State's power to surveil its subjects. Particularly on matters that do not fall under the categories of "public emergency" or "in the interest of public safety."

Though the fundamental right to privacy is recognised by the apex court, there needs to be a statute law to regulate the area. Personal sensitive data are used by the auto pilot cars as well in terms of Location tracking, owner and passenger information, and other relevant data collected by the sensors². Tesla, one of the leading company in auto pilot cars uses high amount of data to create autonomy in algorithms, to evaluate the infrastructure³ and much more.

Owing to the lack of data protection regime as seen in other countries, it makes easier to the hackers to collect information about the passengers and customers making way for graver crimes.

SUGGESTIONS

It is evident by the analysis above that the existing motor vehicles Act does not suffice to regulate auto pilot cars in India. As seen in other jurisdictions, India also need to amend the existing legislation to regulate and affix liability to the owner as well as the company manufacturing auto pilot cars.

- Firstly, the definition of 'driver' under section 2(9) is to be expanded so as to include the artificial intelligence system which can be in charge of the auto pilot cars during the 'auto' mode. The current definition of 'driver' includes the word 'person' who acts as a steersman, since AI has not yet been awarded the status of a legal person, its best to amend the definition itself to : "*the person or the system in control of the vehicle*" which acts as a steersman.
- To define the term "system", to mean and include any technology under the guise of artificial intelligence utilised in developing an autonomous vehicle which guides the vehicle to perceive the environment, steer through the road and such system that suggest the human entity to act in case of an emergency.
- Section 2 (10) of the MVA defines 'driving license', *issued by a competent authority, authorizing a person specified therein to drive a motor vehicle of any specified class or description*. Holder of driving license is

¹ Guy Pearce, *Beware the Privacy Violations in Artificial Intelligence Applications*, ISACA Blog , (Dec. 3, 2021 , 4:15 PM)

² Cara Bloom, Joshua Tan, Javed Ramjohn, and Lujo Bauer , *Self-Driving Cars and Data Collection: Privacy Perceptions of Networked Autonomous Vehicles*, ISBN 978-1-931971-39-3 (July 12-14, 2017)

³ Artificial Intelligence & Autopilot, <https://www.tesla.com/AI> (Last visited Dec. 2, 2021)



not entitled to drive all kinds of vehicles¹. It states that a person holding a driving license is limited to drive registered class or description of the vehicle². Similarly Madras High Court held that there is a nexus between classification of the vehicles into different categories and the issue of driving license to persons to drive the vehicle belonging to different categories³. As there is no class or description of Auto-Pilot Vehicle, Section 2(10) needs to amend, inclusion of Auto-Pilot vehicles.

- Section 3 of the MVA states the necessity for driving license, not entitling a person to drive a motor vehicle in any public place, unless he holds an effective driving license. This section needs to be amended in case to permit Auto-Pilot cars on public roads.
- Section 5 of the MVA defines the responsibility of Owners of the motor vehicle, to only entitle a person meets the provisions under Section 3 and Section 4 to drive the motor vehicle. This section needs to be amended for permitting the Auto-Pilot feature.
- Section 10 of the MVA need to be amended with the inclusion of Auto-Pilot Cars, as it defines the holder of the driving license entitled drive the class or described vehicle.
- The Act may also include a special permit to own the autonomous vehicles with regard to the ability to read, interpret and act on the signals signalled by the autonomous vehicle.
- To include safety guidelines before such vehicle is on road such as good security system to avoid hacking of personal data from the system, safety alert in the vehicle in case of theft or in case of health emergency.
- To include product liability over the manufacturer in case of system failure or the failure of the software

CONCLUSION

It will take time to make the shift from driving vehicles with varied levels of autonomy to completely Auto-Pilot vehicles. Modern AI technologies and machine learning development are progressing rapidly in this direction, and is propelling the sector ahead. Top automakers such as GM, Ford, and Tesla are in the last phases of testing their Auto-Pilot cars, indicating that we are on the approach of witnessing a revolutionary change.

To witness the above-mentioned revolutionary change in India, there are various factors which needs to be addressed mainly on the provisions of MVA, requiring to be amended with the inclusion of permitting Auto-Pilot cars on the roads. On the other hand, considering that urban Indians spend 1.5 hours longer each day in traffic than those in neighboring Asian Nations, and due to the country's negligence on road and congested traffic and bad road conditions, the Auto-Pilot may fail to work as it is intended to work.

¹ Motor Vehicle (Amendment) Act, § 2(10), Acts of Parliament 32 of 2019 (India) (notes, pg 8 Bare Act)

² National Insurance Co. Ltd. V Shinder Kaur, A.I.R 1998 P.&H 184

³ United India Insurance Co. Ltd. V. Pala Nigmmal (1991) 2 Acc.C.C. 377



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

THE RIGHT TO HEALTH AND DEVELOPMENT IN INDIA: BIOINFORMATICS AND MEDICAL INFRASTRUCTURE LAWS IN INDIA

Rajiv G

Assistant Professor, B.M.S. College of Law, Bengaluru and, Research Scholar, Vel Tech (deemed to be) University, Avadi, Chennai, Tamil Nadu

ABSTRACT

The right to health has been an integral part of the right to live a life with dignity and the same has been upheld by the apex court of the country in various cases right from the inception of the Supreme Court of India. For a society it is of crucial importance to make sure that the personal health and health overall are being measured in the way of that can be attributable to the state. Health has always been a primary importance for the individuals and also largely the public health as a matter of functioning by the state. A point of consideration taken for the governments in order to facilitate a smooth running of the public policies in tune with the concept of welfare state would be factored by applying it to the matters of public health at both these levels. It is due to this concept of the welfare state that the role of the government has become enlarged in integrating public health as a matter of importance when it comes to the functioning of the State. The foundation for this right to health has been upheld by the Universal Declaration of Human Rights (UDHR)¹ and it is due to the setting of the attainable standards and the extension of the same by way of the Right to Development (RTD)² in the future by the United Nations.

The Universal Declaration of Human Rights or the UDHR³ specifically laid down the foundations for the right to health as this right was focused centrally with the creation of health systems that are attributable with a centralized agency. Various studies conducted comparative analysis of the attribution of right to health amongst the Nations and this brought into the picture such indicators which would suggest the monitoring of health systems and focus on the working of such organizations in lieu of attaining the highest standard of health and ensuring that these standards are delivered to the citizens and the people of the country. It is through these standards and indicators that the right to health is being realized and through such studies it shows that the health systems need to be improved to better realize the applicability of right to health as a means rather than a mere compulsion to be followed.

The researcher through this paper will focus on the study of Right to Health and Development in India especially through the existing framework of Law specifically related to bioinformatics and medical infrastructure laws in India.

Keywords: Law, Constitution, Bioinformatics, Biotechnology, Healthcare, Health.

INTRODUCTION:

The concept of health is perhaps one of the most generic and ancient in nature as protecting ones health is like a reflex action in sentient beings. However, as time passed the need for a structured society grew and power and administration hand in hand gave a new meaning to the term state. In view of this the role of providing healthcare has emerged as a need of the hour in recent times. Development on the other hand has been the measure of success for such administration and governance by the state and similarly healthcare is seen as one of the key factors in deciding the development of the State. Article 1 of the United Nations declaration on Right to development⁴ defines the Right to development as "...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."⁵

¹The Universal declaration of human rights - www.un.org Available at: <<https://www.un.org/en/universal-declaration-human-rights/>> accessed October 22, 2021

²"Declaration on the Right to Development" (OHCHR) www.ohchr.org Available at: <<https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx>> accessed October 22, 2021

³Ibid

⁴Supra Note 3

⁵Ibid



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

Health and Healthcare should be looked in separate lens as one is factorial of the other this also works similarly with the concepts of personal health and overall health of the State in form of its citizens. It is pertinent to consider that when spoken in terms of health it doesn't just attribute to the absence of any disease, but it is also attributable to the overall wellness of the individual. Public policy and its efficient functioning are detrimental to a competent discourse in a developed society.

Healthcare includes medical care in form of treatments and centres of medical parlance and another important aspect of healthcare is that of preventive care. Elements of preventive care have been really significant in the past decade especially in the recent outbreak of the pandemic. The government has made sure that simplistic communication is passed through in all mediums including the physical and digital mediums. It has elaborated the role of frontline workers¹ in the prevention and regulation of the pandemic and there by effectively displacing the preventive care in that form. One of the main factors of change in this regard was the government's decision of not just relying on the government resources but also opening up to private partnerships with non-state actors as well. All of this when the figures relating to the Annual expenditure is staggeringly low at just 0.9% of the GDP aimed at the public spending.² An elderly workforce, a growing middle class population, a rising proportion of lifestyle diseases, increased emphasis on public-private partnerships, accelerated adoption of digital technologies, including telemedicine, as well as an increased investor interest and Foreign Direct Investment inflows over the last two decades, are all driving the growth of the Indian healthcare sector.³ These developments have increased the need for better healthcare laws with more transparent approach.

It is therefore a cross section of the Right to Health and the Right to Development. To make sure that this transition is achieved, the mechanism to be adopted by the State has to be robust, transparent and efficient. India, being a densely populated country makes things difficult to have an all centric approach. It is ideal to divide the applicability of laws through different tiers of the government from the Panchayats to that of the Union Government. Public health being a State subject matter⁴ makes it obligatory for the State Government to route it through the local bodies, the funds for which would be allocated in the State budget.

BIO-INFORMATICS AND LAW IN INDIA

Bioinformatics as discipline is an amalgamation of Computer Science, Information Technology and Biology. The concept emerged in the 1960's and subsequently in the late 1970's with a study headed by O. Dayhoff, Walter M. Fitch, Russell F. Doolittle and others⁵ The study of the same has been relatively new in the given scenario. The laws surrounding bioinformatics largely integrate with the intellectual property and the subsequent rights that are a bi-product of the intellectual property. This study helped to develop bioinformatics as a single stream to analyse and understand biological information. Over the years there have been many interpretations and definitions by various authors from across the world. The definition of bioinformatics given by the National Centre for Bio-Technology Information is "the field of science in which biology, computer science and information technology merge into a single discipline.

There are three important sub-disciplines within bioinformatics: the development of new algorithms and statistics with which to assess relationships among members of large data sets; the analysis and interpretation of various types of data including nucleotide and amino acid sequences, protein domains and protein structures; and the development and the implementation of tools that enable efficient access and management of different

¹ "Prevention and Management of Corona Virus" (Ministry of Health and Family Welfare) <<https://www.mohfw.gov.in/pdf/PreventionandManagementofCOVID19FLWEnglish.pdf>> accessed October 29, 2021

² Sengupta A and Nundy S, "The Private Health Sector in India" (*BMJ (Clinical research ed.)* November 19, 2005) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1285083/>> accessed October 29, 2021.

³ A Study of the COVID-19 Impact on Financial Services" <https://www.researchgate.net/publication/354635683_A_Study_of_the_Covid19_Impact_on_Financial_Services_Healthcare_and_Education_Sector> accessed October 29, 2021.

⁴ The Constitution of India, 1950, VII Schedule, State List – Entry Number 6

⁵ "Scope of Bioinformatics in Biological sciences", Biology-Today.com <<https://www.biology-today.com/bioinformatics-biostatistics/Scope-of-Bioinformatics-in-Biological-sciences>> accessed October 29, 2021.



types of information.¹ Bioinformatics in India evolved along with the evolution of Information technology and the companies whose focus was upon the operations relating to life science and biotechnology started engaging in bioinformatics as well. This was due to the fact that a larger market scale in the area could be obtained as these companies already had considerable market shares in the area of life sciences and biotechnology.

India's biotechnology sector is one amongst the top tier in the Asia Pacific region and companies like Tata Consultancy Services, Infosys, WIPRO, BIOCON, etc., started making leaps in the bioinformatic sector. The main focus of this discipline was to respond to the demands for a flexible and efficient means of storing and managing large and complex biological data sets. Rapid developments in the said fields have brought in drastic changes and developments in information technology and therefore has resulted to produce a tremendous amount of information. The primary database constitutes from experimental research and its results like DNA, Protein sequencing, genome mapping, etc., The laws surrounding these, are largely intellectual property laws which protect these databases and also sue generis rights that could be used to protect the investment made over these data sets. However there is a need for specific laws concerning bioinformatics should there be individual areas of expertise taking birth from the discipline. For technologies that could be patentable and other such intellectual properties, the provisions of TRIPS could be seen as a yardstick but sue generis protection sees an effect only in the European Union. Therefore, it is apt to associate bioinformatics as a necessary part that requires protection not only in terms of intellectual property rights but also extend it to incorporate any other sub set of the same.

MEDICAL AND HEALTHCARE INFRASTRUCTURE IN INDIA

Medical infrastructure in India constitutes both the physical infrastructure and technological infrastructure brought in by the boom in information technology and recent innovation in medical science. Private health sector is in a considerably better position as opposed to the government health facilities. Health infrastructure is a key metric for determining a country's health-care policy and welfare system. It denotes the importance of making health-care facilities a priority for investment. India has one of the world's largest populations, which, when combined with widespread poverty, creates a severe challenge in the country. The country is geographically challenged, owing to its tropical climate, which are both a blessing and a curse.

A Subtropical Climate is favourable to agriculture, but it also provides a breeding ground for diseases. India's population is highly susceptible to diseases as a result of a combination of poverty, population density, and climatic variables. Infrastructure has been regarded as the foundation for providing public health services. Skilled labour; integrated electronic information systems; public health organisations, resources, and research are the five components of health infrastructure. When talking about health infrastructure, it is not just talking about the results of a country's health policy; but it is also talking about tangible capacity creation in the realm of public health delivery systems.

The term "healthcare" refers to the provision of services aimed at improving people's health. Healthcare is defined as anything that helps to greater health, such as good food, clean air, exercise, medical intervention, and so on. Physical structure (buildings, etc.) and human resources are both required to give the desired health services; therefore healthcare infrastructure is a good blend of both. The ultimate objective is to bring both of them towards the same horizon in order to make healthcare affordable and more accessible across all the sections of the society. Healthcare in the Tier-I cities are up to the mark with some of the leading cities of the world, however it is the rest of the country that has to be taken into consideration and states have to watch over and implement efficient laws when talking about affordable healthcare and access to good medical supplies and technology. Therefore when talking about the medical infrastructure, states have to ensure that there is the proper distribution of the health, healthcare benefits. The government must take an integrated approach that considers regional peculiarities with the support of local people; it must establish a decentralised structure that is district-based and which involves active participation from local level institutions such as Panchayats and Corporations.

As discussed above the healthcare (public health) falls under the state subject matter² and therefore it is high time that one has to look at the states responsibility in making sure the health, healthcare and public health are

¹National Center for Biotechnology Information, ncbi.nlm.nih.gov <<https://www.ncbi.nlm.nih.gov>> accessed October 29, 2021.

² Supra Note 10



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

met. Right to health is an extended fundamental right that is guaranteed through the Article 21¹ of the Indian Constitution. Right to health have been understood and interpreted through various judicial interpretations and has since become a part of the Article 21 making it an implied fundamental right that is subject to the constitutional protection. Hence the medical infrastructure and its laws in India are a mix of the state sponsored health and healthcare running in tandem with the private non state actors who have been encouraged to take up reforms in the medical infrastructure.

CONCLUSION

Right to health and Right to development are areas of concentration of laws and have a very broad subject matter. Similarly the laws relating to bioinformatics, laws relating to the medical infrastructure and laws relating to the healthcare are all different areas that are very broad and yet in the Indian scenarios are largely unexplored. Therefore the researcher has limited the area relating to bioinformatics and relating to the medical infrastructure into applicability towards the Right to health and Development. The right to health is a comprehensive right, stretching out not exclusively to convenient and proper medical care, yet additionally to the determinants of wellbeing, like admittance to protected and potable drinking water and sufficient disinfection, healthy occupational and ecological conditions, and access to health-related education and information. Right to improvement likewise investigates methods of advancement as a major right of citizens, alongside the directive principles that the constitution delivers. The Right to Development should ensure work, clinical consideration, and training and retirement aide, medical care, education and social security.

In the advent of advances in the technology of the study of medicine, the modes of experimentation in respect to the findings involved in these studies have radically changed. The Covid-19 pandemic has been an eye opener around the world as to how unprepared states can be with respect to the protection of the state against unknown pathological strains of a virus which was very much existent and deeply studied since the late 1980's. Collection of data especially biological information and its processing in invariable and in a densely populated country like India it is a large data set. Currently there isn't an exclusive law dealing with these bioinformatics and its usage in the medical healthcare infrastructure concerned. Therefore invariably this has to be dealt with constitutionally as both Right to Health and Right to Development are implied rights that have taken birth from the fundamental right of Life and Liberty as envisioned under the Article 21 of the Indian Constitution.

¹ Constitution of India - Article 21 - No person shall be deprived of his life or personal liberty except according to a procedure established by law.



THE ROLE OF PANCHAYATS IN THE EFFECTIVE WORKING OF ANGANWADIS UNDER THE INTEGRATED CHILD DEVELOPMENT SERVICES

Ramya K

Assistant Professor, B.M.S. College of Law, Bengaluru-19 and Research Scholar, Christ (Deemed to be) University

ABSTRACT

Anganwadis are a focal point of implementation of national level schemes pertaining to nutritional and educational well-being of children below the age of 6 years in India. These Anganwadis though carry out a variety of functions, end up facing challenges that are diverse in nature. The Panchayat system in the country plays a key role in the implementation of schemes proposed by governments at different level. This Research paper aims at bringing out the relation between these institutions with special preference to the role of Panchayats in aiding the working of Anganwadis.

Keywords/Phrases: Panchayats – Anganwadis – The Integrated Child Development Services – National Schemes – Challenges.

1. INTRODUCTION

'Today's children are tomorrow's citizens'; Anganwadis have a key role to play in shaping the future of these children through providing early primary education and following up their nutritional needs. Established before five decades throughout the country under the Integrated Child Development Services (ICDS) to combat hunger and malnutrition in the children below the age of 6 years, Anganwadis end up performing an array of functions such as nutritional services, health services, educational services including Mid-day meals, immunization, nourishment related programs and awareness programs not limited to children but extending to expectant and nursing mothers. As there are additional functions carried out by the Anganwadis, so are the additional challenges that creep into the working of Anganwadis.

Panchayats, on the other hand have a major role to play in facilitating the working of Anganwadis which is brought forth in this paper. The relation between the Panchayats as local governing bodies and their involvement in ensuring effective working of Anganwadis is the subject. While the first Chapter introduces the reader to the broad subject area, the second deals with Panchayat system as a matter of a constitutional mandate. Chapter three deals with Anganwadis under the ICDS and the challenges faced by the Anganwadis, Chapter four throws light on the role of Panchayats and the hurdles in the way of Panchayats in ensuring effective working of Anganwadis, Chapter five concludes the paper with suggestions.

2. THE PANCHAYATS

Inserted to the Constitution through the Constitution (Seventy-Third Amendment) Act, 1992, Panchayats from time immemorial were the immediate administrative and adjudicatory bodies functioning at village level. The idea of Gram Swaraj was rather borrowed by the already existing Panchayat system in the country. Though innumerable efforts were made to build the whole Constitution – designating village as the fundamental block – these efforts failed miserably¹. Nevertheless, after two failed attempts to constitutionalise the Panchayat system, in 1992 there was a successful endeavour thereby resulting in the insertion of Article 243² to the Constitution of India. The said insertion promises and has lived up to the potential in ensuring decentralisation of administration as it gives away the power of governance to the local bodies. The said Amendment was followed by another Amendment³ thereby incorporating the system of decentralisation to the urban areas.⁴ Though there are claims of shortcomings in the Constitutional provisions as well as the implementation of these provisions, the local governing bodies are a relief to any issue that is immediate in nature.

2.1. FUNCTIONING OF PANCHAYATS

Panchayats function at the village, Intermediate and District levels. Local governing bodies which are democratic to an extent and are vested with various responsibilities including preparation of plans for economic

¹ The Constituent Assembly Debates

² Article 243 – Article 243O, *The Constitution of India, 1950*

³ *The Constitution (Seventy-Fourth Amendment) Act, 1993*

⁴ Municipalities, Corporations – Article 243 P – Article 243 ZG, *The Constitution of India, 1950*



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

development and social justice, implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule¹ and also Powers, authority and responsibilities of Panchayats including matters such as Education (Primary & Secondary)², Adult and Non-formal education³, public health and sanitation⁴, family welfare⁵, women and child development⁶, social welfare⁷, public distribution system⁸. To carry out these functions, the Panchayat is dependent upon the Anganwadis directly or indirectly.

Though the functions carried out by the Panchayats are to be considered as a priority, it is unfortunate to understand that the elections and related matters are glorified beyond metes and bounds and the preliminary functions of the local bodies end up acquiring the secondary or at times tertiary status.

3. ANGANWADIS UNDER THE INTEGRATED CHILD DEVELOPMENT SERVICES SCHEME

Anganwadis are currently working under the Integrated Child Development Services Scheme the importance of which always stands out from the rest. Anganwadi - meaning the 'traditional courtyard' in which children would play, learn and also be nourished by the households; Government as a custodian of the children introduced a welfare scheme - the ICDS in 1975⁹. With the Anganwadis proving efficient, beneficiaries other than children were included under the schemes implemented by the ICDS through Anganwadis.

The Anganwadis Services Scheme (ASS), The Pradhan Mantri Mathru Vandana Yojana, National Creche Scheme, POSHAN Abhiyan, Scheme for Adolescent Girls, Child Protection Scheme to name a few, have been introduced under the canopy of ICDS.¹⁰

3.1. OBJECTIVES OF THE INTEGRATED CHILD DEVELOPMENT SERVICES SCHEME

ICDS Scheme represents one of the world's largest and most unique programs for early childhood development. ICDS also happens to be the foremost symbol of India's commitment to her children and India's response to the challenge of providing pre-school education on one hand and breaking the vicious cycle of malnutrition, morbidity, reduced learning capacity and mortality, on the other. The Ministry of Women and Child Development proposes schemes which are implemented by the ICDS.

The Integrated Child Development Services (ICDS) Scheme was launched with the following objectives:

1. To improve the nutritional and health status of children in the age-group of 0-6 years
2. To lay the foundation for proper psychological, physical and social development of the child.
3. To reduce the incidence of mortality, morbidity, malnutrition and school dropout.
4. To achieve effective co-ordination of policy and implementation amongst the various departments to promote child development.
5. To enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

3.2. CHALLENGES FACED BY ANGANWADIS

Anganwadis, established through the Integrated Child Development Services Scheme were India's response to the challenge of meeting the holistic need of children. The very Integrated Child Development Services Scheme is a unique outreach program for early childhood care and development. Anganwadis cater to the needs of the

¹ Article 243 G, *The Constitution of India, 1950*

² Entry 17, Eleventh Schedule, *The Constitution of India, 1950*

³ Entry 19, Eleventh Schedule, *The Constitution of India, 1950*

⁴ Entry 23, Eleventh Schedule, *The Constitution of India, 1950*

⁵ Entry 24, Eleventh Schedule, *The Constitution of India, 1950*

⁶ Entry 25, Eleventh Schedule, *The Constitution of India, 1950*

⁷ Entry 26, Eleventh Schedule, *The Constitution of India, 1950*

⁸ Entry 28, Eleventh Schedule, *The Constitution of India, 1950*

⁹ <https://icds-wcd.nic.in/icds.aspx>

¹⁰ *Ibid.*



society in various ways, but also have a plethora of issues revolving around them. The challenges faced by the Anganwadis can broadly be classified as:

3.2.1. Problems from the perspective of Children and other beneficiaries:

Children between the age 0-6 years are the ultimate beneficiaries as purported by the Integrated Child Development Services Scheme, however the same is inclusive of expectant and nursing mothers as well. Problems faced by the Anganwadis from their viewpoint are listed below:

Access to Anganwadis: Owing to the fact that Anganwadis in a few areas are located within the residential areas, the geographical accessibility of Anganwadis to people residing outside the conventional village – especially the Scheduled Caste and Scheduled Tribe colonies is a serious concern.

Lack of proper infrastructure: Infrastructure and availability of resources play a pivotal role in facilitating the all-inclusive development of children. Schemes proposed and implemented by the Integrated Child Development Services Scheme through Anganwadis reach the peers in parts owing to corruption, maladministration and other implementation issues. Studies show that a majority of Anganwadis do not have access to basic amenities such as sanitation, black boards, piped drinking water or uniforms for the peers.¹

Inadequate supply of nutrients – poor food grain supply: Reasons such as lack of adequate authorities at different levels to supervise the distribution of food grains and other micronutrients to the Anganwadis persist, thereby taking a toll on the overall supply of nutrients to the beneficiaries.

Inadequate knowledge of the Anganwadi workers/helpers: Most of the Anganwadi workers are not well-literate and their skill is limited. Though there are training/ skill development workshops conducted for these workers to keep them acquainted with new facilities, they are insufficient.²

3.2.2. Problems from the perspective of Anganwadi workers/Helpers:

Absence of Job security: Anganwadi workers and helpers are the basic functionaries of the ICDS and play an important role in the implementation of ICDS schemes, yet face many challenges which are listed below. Despite being the basic functionaries of the ICDS, Anganwadi workers and helpers are not accorded with the status of government employees, but are merely considered social workers/voluntary workers.

Honorarium being inadequate: Anganwadi workers suffer due to the inadequate honorarium paid to them. The pay is very basic and does not suffice the primary needs as well. Statistics also bring forth the fact that a majority of Anganwadi workers are in the below poverty level.³

Overload of Work: Though Anganwadis were brought into place to address the problem of hunger and malnutrition among children, they ended up being vested with additional responsibilities such as immunization, following up the nutritional needs of expectant and nursing mothers. Drawing and maintaining records pertaining to the above are another challenge. There is an absolute absence of proportion between the work that is churned out of the Anganwadi workers and the honorarium that is paid to them.

Inadequate dispensation of knowledge: Since Anganwadi workers and helpers are primarily involved in activities pertaining to medical observation, dispensation of nutritional supplements, it is more than important to acquaint the Anganwadi workers and helpers about the functions carried out by them.⁴

4. ROLE OF PANCHAYATS

¹Dr. K.A. Rajanna; *Problems and Prospects of Anganwadi Workers: A Study*, International Journal of Management, IT and Engineering, ISSN: 2249-0558, Vol.9, Issue I, Jan 2019

²India's Primary Policy Response: *The Integrated Child Development Services (ICDS) Program – a Report based on data from NFHS-2(1998-99)*, Source: World Bank: India's Undernourished Children: A Call for Reform and Action – Aug. 2005, available on www.motherchildnutrition.org accessed on November 10, 2021.

³Komala M, *The Awareness among Anganwadi Workers about Children with Developmental Delays*, an Article published on Jun, 2016, available on www.motherchildnutrition.org, accessed on November 15, 2021.

⁴*Supra* note 16.

⁵Sandip Patil, M.K. Doibale, *Study of Profile, Knowledge and Problems of Anganwadi workers in ICDS Blocks: A Cross Sectional Study*, Aug 2018, Journal of Health and Allied Sciences (12(2)), Department of Community Medicine, Jun 2016.



The involvement of people in their development and ensuring good governance through grass root level democratic Institutions like the Panchayat Raj Institutions and involving these bodies for the betterment of living/working conditions at the Panchayat level is an endeavour which has attained partial accomplishment.

The ICDS, which seeks to deliver basic amenities to children and other beneficiaries is dependent on active participation of Panchayats. The objective of involving the community by encouraging self-help in improving the quality of life and well-being of the children and other beneficiaries can be achieved through Panchayats. The ICDS is not confined to delivering services alone, but, extends to emphasising the importance of bringing about social change in the community. Despite the built-in element of community participation, ICDS has not been able to involve the community to the desired level, only a few proactive individuals come forward to contribute to the programmes. The very reason of choosing Anganwadi Workers/Helpers from among the locals is to ensure effective delivery of services owing to the familiarity they have with the community, but due to lack of support/involvement from the other peers, the Anganwadi workers/helpers remain stranded.

Studies suggest that a majority of panchayat leaders are not aware of the ICDS services. Hurdles such as non-participation in meetings, lack of time and information, less priority work area show up in the way of Panchayats thereby leading to non-participation.¹

CONCLUSION & SUGGESTIONS

- i. Augmentation of Anganwadi infrastructure to make every Anganwadi available with basic amenities like potable water facility and sanitation should be taken up by the concerned authorities with urgent priority.
- ii. There is a need to bridge the gap between the intentions of ICDS and its implementation. Anganwadis are playing an active role in rendering the nation with nourished, healthy children. The scheme incorporating services to overcome the nutritional hazards of the beneficiaries are to be relooked not only from the perspective of the objectives but their implementation.
- iii. There is an immediate need to bring about reforms in the funding pattern at Institutional level which is possible through a well deduced legal framework.
- iv. The labour standards of the international level² should be made applicable to the Anganwadi Workers and helpers in order to ensure access to the basic rights available to labourers.
- v. Redirection of the ICDS program towards prioritising on the children between 0-3 years of age shall contribute magnificently towards destroying malnutrition as the same sets in between this age group.
- vi. Panchayats being democratic institutions at the grass root level, should positively influence the working of Anganwadis. Most of the objectives of the Eleventh Schedule are rooted through the Anganwadis, collaboration between these institutions is the need of the hour.
- vii. The ICDS functionaries should approach/consult the Panchayat representatives at the initial stages of project planning pertaining to implementation of schemes and programs.

¹Shazia Manzoor and Shabana khurshid, *Panchayat Participation in ICDS Programme in District Budgam of Kashmir, India*, International Journal of Social Sciences, ISSN 2319-3565 Vol. 3(5), 25-28; May 2014

²ILO Declaration on Fundamental Principles and Rights at Work, 1998, www.ilo.org



DEVELOPING SUI-GENERIS SYSTEM FOR THE PROTECTION OF TRADE SECRET IN INDIA: AN ANALYTICAL STUDY

Veena Nadigar

Research Scholar, Christ University, Bangalore

INTRODUCTION

The critical detriments of economic growth are knowledge production and distribution. The extent to which firms can create and apply information through innovation determines their competitive advantage in what has become known as the knowledge-based economy. As a result, the role of intellectual property rights in maximizing the efficiency of information markets has taken on new significance.

The broad network of intellectual property rights available to producers of information includes patent and copyright law. It also consists of the less frequently discussed legal law protection of trade secrets. Trade secrets profoundly impact business success in the 21st century. The world transformed into a knowledge-based economy from a material-based economy.

The Indian government has declared the years from 2010 to 2020 as the "Decade of Innovations." The main aim of "this declaration is to develop an innovation eco-system in the country to stimulate innovations and produce solutions" for society, particularly concerning healthcare, energy, urban infrastructure, water, and transportation. The Ministry of Science and Technology promotes innovation through various schemes, including technology business incubators, research initiatives, and entrepreneurial programs. In addition, the government's Cluster Innovation Centre specifically seeks to redefine India's innovation paradigm beyond R&D and is focused on building twenty innovation clusters across the country that will support the national innovation agenda.¹

India has made prolific growth in the intellectual property field, but it lacks in developing trade secrets legislation. India does not have any legislation to protect trade secrets which makes foreign investors cautious about their safety of secrets². In 2008, the country drafted the National Innovation Act to protect Trade Secrets and confidential information, but it did not pass by either House of Parliament³. The Indian legislature adopts several ways for the protection of Trade Secrets and confidential information. The Judiciary mainly relies on the Law of Torts, Sec-27 of the Indian Contract Act, and equitable doctrines to protect trade secrets. But there is one limitation: if any person receives information about trade secrets independently, as through any independent development of some formula, the trade secret owner will not seek any protection⁴.

Trade secrets, one of the oldest forms of Intellectual property, have not been considered an essential tool for the growth and development of the corporation as compared to its counterparts' patents, copyrights, trademarks, and designs. Trade secrets are capsules of information that provide a competitive edge over an enterprise; they can succeed if kept secret. Trade secrets, like any other IPR, have immense commercial applicability. Their protection is justified on sound economic grounds, which makes an enterprise competitive. In addition, courts have noted that trade secrets law exists to institute a form of commercial morality, to impose specific moral standards on business relationships.

We are protecting trade secrets under common law and have no legislative protection for the same, but India being party to the TRIPS agreement, is obligated to protect undisclosed information; the kind of protection and its modalities are left to the discretion of the member states they can have a Sui-generis mechanism in the place as provided under Article 10bis of the Paris Convention and Art 39(2) and 39(3) of TRIPS⁵.

¹ Decades of Innovation: 2010-2012 Roadmap, CLUSTER INNOVATION CTR., available at <http://innovation.gov.in/innovation/inntoolkit/Cluster%20Innovation%20Centre/CIC.html>.

² Nikhil Nair." Are the trade secrets in India satisfactorily protected?" The World Journal of Juristic Polity, ISSN:2394-5044(2017)

³ <https://spicyip.com/2008/10/innovation-bill-2008-and-trade-secrets.html>

⁴ Melvin F. Jager, Trade secrets throughout the world, South Asian Edn, Vol-2, ISBN 978-93-81082-881(2012).

⁵ Section 7: protection of undisclosed information, WTO-Trade Related Aspects of Intellectual Property Rights, edited by Peter-Tobias Stroll, BRILL, 2008, ProQuest Ebook central



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

India has recognized the most popular forms of Intellectual property, including Copyright, Trademarks, Patents, Geographical Indications, but still a new type of intellectual property protected internationally; lack of protection in India, i.e., Trade Secrets. Trade secrets have no legal or statutory security in India. Indian Courts deal with trade secrets by principles of equity, common law, and the tort of "breach of confidence." Nevertheless, the utility of all these laws is limited, which requires a contractual obligation between the parties to the trade to maintain trade secrets.

Trade secrets law is usually confused with confidential information. Confidential information in a narrow concept, on the one hand, consists of information or data related to clients, management, etc. Meanwhile, a trade secret is a broader concept that includes business innovations, data, and related information about the company. With the nationalization in India, the demand for trade secret protection arises from fair competition in the market because disclosing the company's secrets will lead to the winding-up of companies. A trade secret is a need for the era.

International framework and definition of Trade Secrets.

The countries in the sample are all members of the World Trade Organization (WTO) and are subject to TRIPS provisions. The TRIPS Agreement was the first international agreement to protect trade secrets expressly¹. The approach laid out in the TRIPS agreement is based on the notion that protection against unfair competition should include the security of undisclosed information². In presenting this approach, the TRIPS agreement refers to the prior existing protection against unfair competition as shown in the Paris Convention for the protection of Industrial Property, a convention that the World Intellectual Property Organization administers. The similarities among countries in defining trade secrets correspond well with the three requirements of Article 39 of TRIPS. In fact, on this matter, TRIPS reflected then-current practices in many countries, and it has shaped subsequent lawmaking. In practice, the TRIPS requirements are as follows³:

- **Secrecy:** The information protected must be secret. Secrecy need not be absolute. The trade secret owner may share the information with employees and business partners. Instead, secrecy requires that the information is not publicly accessible and revealed to others only under conditions that maintain confidentiality concerning the broader public interest⁴.
- **Commercial Interest:** The information must have economic value as a result of its being secret. Trade secrets law most typically protects commercial information; that information must derive some utility from being kept secret.
- **Reasonable efforts to maintain secrecy:** The information must be the subject of reasonable efforts on the part of the owner to maintain secrecy. By its nature, a trade secret claim arises when measures to protect the secret have failed⁵.

Definition of Trade Secret:

Trade secrets exist in several laws worldwide and are protected in different forms as property, as IPR, under common law, Law of contract, etc. A trade secret refers to any information or data not disclosed to the general public and which the owner attempts to keep confidential⁶. Trade secret law and patents do not fall under the same subject matter. As patents, after a particular time, get open to the public or while registration processes, it gets public, which is not with trade secrets laws⁷.

According to Uniform Trade Secrets Act, 1970 and "information, including a formula, pattern, compilation, program device, method, technique or process, that:

¹ <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/>

² <https://www.oecd.org/sti/ieconomy/Chapter3-KBC2-IP.pdf>

³ <https://www.scribd.com/document/349152454/Chapter3-KBC2-IP>

⁴ Landes, W.M. & R.A. Posner (2003), The Economic Structure of Intellectual Property Law, Harvard University Press, Cambridge, MA.

⁵ <https://books.google.com/books>

⁶ American Express Bank Ltd Vs. Ms. Priya Puri MANU/DE/2106/2006

⁷ Abhinav Kumar, Pramit Mohanty & Rashmi Nandakumar, "Legal protection of Trade secrets: towards the codified regime", Journal of Intellectual property, Vol 11, (2006)



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

- Derives independent economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by, another person who can obtain economic value from its disclosure or use, and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy¹.

Trade secrets fill the gap in Intellectual Property by providing legal shelter to non-patentable, non-copyrightable innovations². On the other hand, trade secrets do not require any conformity to the definition of patentable matter. They need not be novel or non-obvious. The entire object behind its secrecy is its utility, so a trade secret has to be utilitarian in nature. The most important factor for a trade secret is that the content and an expression should remain a secret. The level of secrecy required to be ensured for confidential information is quite different from other forms of intellectual property³.

Intellectual property or Sui-generis.

The term property has always been a debatable topic under jurisprudence. India has enacted the Copyrights Act, 1957, which provides complete and comprehensive copyright protection in India. Further, it has enacted Trademarks Act, 1999, which repealed the Trade Merchandise Marks Act, 1958. The Patents Act, 1970 extends protection to patents in India. But, there is no specific law for trade secret protection in India. Multiple times trade secrets were not considered as property. Trade Secret law talks about disclosure rather than secrecy. Many courts treat trade secrets as an ordinary law matter rather than a part of Intellectual property, and due to that, they over-focus the confidentiality required to reach "bad actors", if we cover trade secrets under Intellectual Property⁴, then it will provide legal protection to innovative intentions.

Trade secret protection presents no conflict with Patent Law, as it is inconsistent with the patent policy of encouraging inventions. However, for trade secret protection, uniqueness/novelty in the patent law sense is not required. Further, unlike the holder of a patent, the owner of a trade secret does not have an absolute monopoly on the information or data that comprises the trade secret⁵. Other companies and individuals have the right to discover the elements of a trade secret through their research and hard work.

Consequently, inventors of items that may meet patentability standards would prefer to seek patent protection because such protection is far superior to the protection afforded by trade secret laws.

As far as copyright is concerned, there is no copyright in ideas, and hence copyright law cannot protect confidential information. Section 16 of Copyrights Act, 1957 states that "nothing in the Copyright Act should be considered as restraining an action for breach of confidence or breach of trust." There is thus no copyright protection of trade secret misappropriation claims.

Trade secrets as property.

The first question needs us to decide whether or not trade secrets ought to be treated as Property in any respect. The question is of little importance because if trade secrets are treated as mere contract rights, they are suitable only against the promisor. However, if they're treated as property rights, they provide exclusive rights that bind the world in a powerful sense. One possible argument against treating trade secrets as property is that they do not satisfy this exclusivity condition because the secret holder has no way to understand whether others have independently developed the secret on their own. Indeed, under the traditional formulation of the doctrine, other individuals have the privilege to reverse engineer the trade secret for their own use.

Most authors have tried to justify the trade secrets. The first and foremost question which comes into our minds is whether trade secrets are 'property' or not. To many, if trade secrets are property, then laws protecting them are normatively justified. Thus, the question of whether or not trade secrets are property has raged on for many

¹ Section 1(4) of Uniform Trade Secrets Act, 1985

² Pace Christopher Rebel J, The case for a Federal Trade Secrets Act, Harvard Journal of Law and Technology, 8(2)(1995) 427, 428, para 81, para 86

³ Section 29 of Indian Patents Act, 1970

⁴ Intellectual property Rights.

⁵ <https://www.coursehero.com/file/pqf8dg/In-contrast-a-customers%C3%A2-list-does-not-achieve-trade-secret-status-where-the/>



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

years. While some wonder why it matters, others believe that the shift toward calling intangible assets 'property' has created and will continue to create a change toward the over-protection of intellectual property¹.

Two primary theories consider trade secrets as property:

- **Exclusive theory:** Those who believe exclusive rights are the sole requirement for property disagree about whether trade secrets should be property. This analysis was followed in

Ruckelshaus Vs. Monsanto Co² case, the court termed trade secret as a property on the following grounds:

- We can assign trade secrets
- Trade secrets have characteristics to be covered under the property
- It can form 'res of trust.' It shifts to the trustee at the time of bankruptcy.

With the grounds mentioned above, courts suggested that trade secrets should be covered under the Constitution.

The problem with this argument is that trade secrets are not exclusive, as pointed out by the California Supreme Court in **Cadence Design Sys., Inc Vs. Avant Corp.** held that "the owner of the trade secret is protected only against the misappropriation of the secret by improper means and the subsequent use or disclosure of the improperly acquired secret. There are various legitimate means, such as reverse engineering, by which a trade secret can be acquired and used".

- **Integrated Theory:** Rather than looking at exclusion, integration theorists look at how the asset is acquired, used, and disposed of. They argue that exclusivity is not enough, nor necessary, to define the property. It is argued that trade secrets are property because they are acquired by the actions of the trade secret owner. After all, discoverers can make their "own use" of the information. After all, it is secret and because the owners can decide how information is disposed of by publication or transfer³. This theory, however, also fails to resonate. How is it that two people can acquire and use the same secret? Why should the acquisition and use of an idea free for all to discover merit any protection?

About trade secrets, perhaps the most robust common law intellectual property from today, Justice Holmes famously remarked:

The word "property" is an unanalyzed expression of certain secondary consequences of the primary fact that the law makes some rudimentary requirements of good faith. Whether the plaintiffs have any valuable secret, the defendant knows the facts, whatever they are, through particular confidence that he accepted. The property may be denied, but the confidence cannot be. Therefore, the starting point of the present matter is not property... but the defendant stood in confidential relations with plaintiffs⁴.

In other words, the idea of property as used in trade secrets is mainly relational. The entitlement to exclude originates in a specific set of circumstances, which is the Law's principle concern. The same is true in various shades of almost all common law intellectual property forms, often questioning their same classification as 'property.'

In Dwarakadas Srinivas V. The Sholapur Spinning & Weaving Co Ltd⁵, the court held that

"the word 'property' should be construed in the widest sense as connoting a bundle of rights exercisable, by the owner in respect thereof and embracing within the purview both corporeal and incorporeal rights. The word 'property' is not defined in the constitution, and there is no good reason to restrict its meaning".

Art 300A of the Constitution also consists of intangible properties. In **Entertainment Network (India) Ltd Vs. Super Cassette Industries Ltd¹**, the court stated that while analyzing the ownership of property, it should

¹ Trade Secrets reviewing the old regime: Mayank and Sarthak Kapila

² Ruckelshaus Vs. Monsanto Co., 467 U.S.986,1001-04(1984)

³ Adam Mossoff, "what is property? Putting the pieces back together", ARIZ.L.REV., 2003, at 371,405-06

⁴ E.I.du Pont & Co vs Masland, 244 U.S.1917,p.100,102.

⁵ Dwarakadas Srinivas of Bombay Vs. The Sholapur Spinning & Weaving Co.Ltd and Ors(18.12.1953-SC): MANU/SC/0019/1953



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

always be interpreted under Art 19(1)(g) r/w 300A, and Hon'ble SC also considered that copyright falls under the meaning of the word property of Art 300A and by following the interpretation done under the following circumstance, we can term trade secrets and confidential information as property.

In American Express Bank Ltd. v. Ms. Priya Puri,² The Delhi High court held that an employee's rights to seek and search for better employment are not curbed by an injunction even though she had confidential data. Therefore, held to be in favor of the defendant. Thus, the court differentiated between service trade secrets and routine day-to-day affairs of employers, which were in the knowledge of many and were commonly known to others that could not be called trade secrets. Trade secrets could be a formula, technical know-how, or a peculiar mode or method of business adopted by an employer, which was unknown to others.

As Marks Lemley notes, the law of trades originated in the interconnection of many common law doctrines: breach of confidence, breach of confidentiality, common law misappropriation, unfair competition, unjust enrichment, and trespass³.

By the mid-twentieth century, this had shifted, and courts came to view trade secret law as a branch of torts law, originating in a defendant's bad faith behavior. Eventually, the dominant view shifted to understanding trade secret law as a combination of contract and property principles⁴. If the trade secret is treated as part of the contract, it provides only the right against promisor, but if it is termed as property, it is exclusively available against the world.

The basic idea of property is to exclude other forms of enjoyment and restrict access to other than the owner. It limits the use and disclosure of information possessed by some others. Trade secret holders got the right to protect property, not because they own it. Still, they invented it like copyright and patent for the production of their business. Trade secrets should be protected as IPs like patents and copyright, which focus on innovation, changes, and the development of valuable information, etc.

Trade secret protection and confidential information

A piece of confidential information and knowledge increasingly drives business success; companies are honing their policies and practices to safeguard confidential information of commercial value against accidental, negligent, or willful misappropriation, misuse, sabotage, loss, or theft. Secret information or data needs proper protection and management if it is to be leveraged for competitive advantage. Once confidential information is disclosed to competitors, its value is lost forever. With due effort to keep information confidential or secret, such an intellectual asset becomes a property that may be licensed as a trade secret or used to obtain protection for other types of marketable intellectual property assets.

The Agreement on Trade Secrets of Intellectual property Rights (TRIPs), under article 39, urges its members to protect "undisclosed information" and "data submitted to governments or governmental agencies" through effective measures. This is the first that the protection of "undisclosed information" (i.e., trade secrets) has been expressly brought under the purview of an international agreement on intellectual property rights (IPRs). The International Convention for the Protection of Industrial Property (Paris Convention) covers unfair competition (Art 1(2)) in its competition. Article 39 of the TRIPs Agreement has linked the protection of trade secrets with article 10bis of the Paris Convention by stating that

"In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information... and data submitted to governments or governmental agencies...."

Thus, trade secrets need not be protected as a part of measures guarding against unfair competition. However, it is essential to know what constitutes a trade secret because the mechanism for its protection depends upon that.

¹ Entertainment Network(India) Ltd Vs. Super Cassette Industries Ltd(16.05.2008-SC):MANU/SC/2179/2008

² (2006) III LLJ 540 (Del); Michael Heath Nathan Johnson v. Subhash Chandra, 60 (1995) DLT 757 and John Richard Brady v. Chemical Process Equipments P. Ltd AIR 1987 Del. 372, in which the court took note of the contentions of the counsels who referred to English decisions to define trade secret.

³ Mark A.Lemley, the Surprising Virtues of treating Trade Secrets as IP Rights,61 Stan.L.Rev.311, 316(2008). <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1439>

⁴ Ibid



The significance of trade secrets, TRIPs mandate, and legal framework for its safety in India will be explored in this study.

What constitutes a trade secrets and confidential information?

The term "trade secret" is often used for confidential information associated with industrial and commercial activity. But a trade secret has been differentiated from confidential information as "information which, if disclosed to a competitor, would be liable to cause real harm to the owner of the secret... it must be the information used in the trade or business, and... the owner must limit the dissemination of it or at least not encourage or permit widespread publication"¹.

In Lord Greene, MR's Language in *Saltman Engineering Co Ltd Vs. Campbell Engineering Co. Ltd*², the confidential information "must not be something which is public property and public knowledge." Further, he states, "it is perfectly possible to have a confidential document. Still, it is a formula, a sketch, or something of that kind, which is the result of work done by the maker upon materials which may be available for the use of anybody... What makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be created by somebody who goes through the same process."

Thus, to be confidential, the information, even if in the public domain, the compilation and conclusions drawn from it need not be. Information may also comprise several items retrieved from the available pool of information, but its uniqueness lies in its separate and identifiable collection, which makes it confidential.

Trade secrets may be technical and business secrets. Technical secrets relate to the production of goods and services and consist of an invention, a manufacturing process, chemical formula or engineering and design drawings, and the know-how of the first kind. They also consist of craft secrets and recipes associated generally with cosmetic, food, and pharmaceutical trades. The most common example is coca-cola.

A firm about its activities generates business secrets. They include information on cost and pricing data, sales statistics, a list of consumers and sources of supply, market projections, and details of its promotional strategies and expansion plans. Such information may provide a firm competitive and comparative advantage over its rivals. Article 39 of the TRIPs Agreement covers both technical and business secrets in its ambit.

The intellectual property currently occupies a center stage in international trade. Enterprises rely increasingly on tangible or knowledge-based assets for creating and maintaining their competitiveness in the marketplace rather than on tangible or physical assets. Their ability to create, deploy, and strategically manage such proprietary assets is crucial for business success.

If a trade secret is treated as part of the contract, it provides only the right against promisor, but it is exclusively available against the world if it is termed as property. From the above analysis, trade secrets can be property and can be covered under Intellectual Property.

CONCLUSION

To conclude, the authors of this article respectfully submit that, in the 20th-century, trade secret legislation became a need. The above study focuses on the need for trade secrets in a country full of creativity and innovations. As businesses grow out of their parochial molds and go global, adequate secret protection is becoming necessary. Companies must remember that sufficient and effective creation, protection, use, and management of trade secrets are crucial factors determining their success. Due to lack of protection, many international companies show no interest in investing in Indian companies, which directly affects the country's economy. Protection of trade secrets as property has acquired great importance in the present scenario due to the emergence of different circumstances where it is preferred over patent protection.

It is distressing to accept that Indian Law doesn't place any relevancy upon the growth of recent and developing IPR laws globally. Therefore, a new trade secret legislation is the only way to ensure robust and effective IPR protection, which might successively open up new and profitable avenues for business scenarios in India to prosper.

¹ Stanghton, L.J. in *Lansing Linde Ltd V. Kerr*[1991]1 All ER 418 at 425. Art.39 of TRIPS agreement uses "undisclosed information" in this sense

² (1963)3 All ER 43 at 45



LEGAL FRAMEWORK ON PRIVACY AND DATA PROTECTION IN THE USA

Mrs. Shwetha P

(Assistant Professor BMSCL)

INTRODUCTION

Privacy is generally accepted as one of the main issues of computer and information ethics. New technologies raise a number of issues for privacy protection. Governments in many countries have recognised that this is a problem that their citizens are sensitive towards. Over the years, rapid technological advances have led to large volumes of data being generated through various activities, and increasing reliance of businesses on data-driven decision making¹. Thus, there are laws and regulations that attempt to address the issue of privacy. Behind those laws, however, there are philosophical concepts of privacy that are not always easy to identify but that are important to recognise if one wants to understand how and why privacy is legally protected.

"Data Protection refers to the set of privacy laws, policies and procedures that aim to minimize intrusion into one's privacy caused by the collection, storage and dissemination of personal data."² "Personal data generally refers to the information or data which relate to a person who can be identified from that information or data whether collected by any Government or any private organization or an agency³.

Data Protection in USA

The United States follows a sectoral approach to data privacy protection⁴. There is no specific federal legislation that ensures privacy and data protection in the United States.

The first legislation relating to Data Protection was Fair Credit Reporting Act 1970. This Act regulated the collection of Consumers Credit information and access to their credit reports. The main objective of this Act is to address the fairness, accuracy and the Privacy of the personal information contained in the files of the credit reporting agency. The Act has established a tripartite model for data protection legislation:

- 1) Provided notice to consumers of specific type of data record.
- 2) Established an administrative redress procedures administered by a governmental agency and
- 3) Defined the conditions under which the law enforcement could access the data by meeting various standards of proof⁵

In 1973, the Secretary's Advisory Committee on Automated Personal Data Systems, published by the U.S. Department of Health, Education and Welfare (HEW) report. This report mentioned about few fair information practices which were adopted by the US subsequently in the name of Privacy Act 1974. The following are the few fundamental principles laid down in HEW Report,

- 1) There should not be any personal data record keeping system whose very existence is secret;
- 2) There must be a way for an individual to look into the information relating to him or her in the record and how the same has to be used;
- 3) The rules also provided that for the individuals have a right to inform the organization purpose for which the data can be used;

¹ Data protection and privacy statutes in various countries: European Union – The General Data Protection Regulation, 2016; Australia – The Privacy Act, 1988; Canada – The Personal Information Protection and Electronic Documents Act, 2000; The Privacy Act, 1985.

² Vijay Pal Dalmia, "Analysis of the Exploitation of Personal data by Whatsapp and other Social media Platforms", available at : https://in.linkedin.com/in/vpdalmia?trk=pulse-article_main-author-card, (last visited on November 8, 2021).

³ Ibid.

⁴ Shawn Marie Boyne, "Data Protection in United States", 66 The American Journal of Comparative Law 299 (2018).

⁵ Stephen Cobb, CISSP "Data Privacy and data protection US law and Legislation" available at: [file:///C:/Users/sri/Downloads/US-data-privacy-legislation-white-paper%20\(1\).pdf](file:///C:/Users/sri/Downloads/US-data-privacy-legislation-white-paper%20(1).pdf), (last visited on November 8, 2021).



- 4) The way as to be provided for the individuals for correcting or amending the information.
- 5) The organization which are creating, maintaining, using or disseminating records identifiable personal data must assure the reliability of records.

These principles would bind all the organizations to comply with the code that would seek to protect the information of individuals. The congress ratified the privacy Act in 1974, though the HEW Report called for the legislation which is going to be applied to all automated personal data systems, but the legislation applied only to the federal agency database.¹ This Act declared that right to privacy is a personal and fundamental right protected by the Constitution of the United States². Though Congress mentioned its commitment towards Privacy in 1974, it failed to implement the Comprehensive data protection law. In USA Privacy is protected under two kinds of laws:

- a) Federal Laws
- b) State Law

Though there are few limitations in Common law and Constitutional Protections, Congress has enacted a number of Federal laws with the object of providing statutory protection to the individual's personal information.³ Congress has passed various laws protecting the personal information in the most sensitive areas of consumer life, including health and financial information, information about children and credit information.

The following are the few Federal Data Protection Laws:

Federal Trade Commission Act (FTC)

This is considered as the critical law relevant to data privacy and security. The Act was originally enacted in 1914 to strengthen the Competition Law. In 1938 section 5 of the Act was amended to include the activities which are misleading practices harmful to consumers. The most important principle of FTC is that the companies are bound by their data privacy and data security promises.

The Communication Act (1934)

The Communication Act, 1934, provides for a comprehensive scheme for the regulation of Intestate Communications⁴. This Act includes certain Data Protection principles applicable to common carriers, cable operators and also to satellite carriers. The Act was amended by the Telecommunications Act 1996, to impose the privacy and data security requirements on common carriers. The Act mainly centers on a category of information which is referred as "Customer proprietary network information (CPNI)"⁵. CPNI is defined as information relating to the "quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier," and is "made available to the carrier by the customer solely by virtue of the carrier-customer relationship."⁶ An obligation is imposed under Section 222 (c) of the Act on the carriers regarding CPNI.

Fair Credit Reporting Act (1970)

This Act was enacted in October 1970. The main object of this Act is to promote fair and accurate credit reporting and establishes procedures for the collection, use and protection of personal information held by the "Consumer Reporting Agencies". This Act is made applicable to all the consumer reporting agencies which provide consumer reports. The Act also obligates the authority to follow reasonable procedures to assure accuracy of the information. If it finds that the data is inaccurate or incomplete and cannot be verified, then it has to correct the data immediately. The Act recognizes the right of action of the injured consumer.

Family Educational Rights and Privacy Act (FERPA) 1974

¹ The Privacy Act 1974, 5 U.S.C. § 552.

² Alan Charles Raul, Tasha D Manoranjan and Vivek Mohan, "United States" *The Privacy, Data Protection and Cybersecurity Law Review* 283 (2014).

³ CRS Report, Data Protection Law: An Overview available at <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited on November 8, 2021).

⁴ *Benanti v. United States*, 355 U.S 96104 (1957)

⁵ The Communication Act, 1934, 47 U.S.C. § 222(h)(1).

⁶ *Ibid.*



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

This Act came into force from 1974. This Act protects the data included in the students' educational records and it is applied to all the educational agencies and institutions that receive funding from the U.S Educational department, including non-profit organizations¹. Under the Act if an educational agency or institution wants to publish information relating to students, then it has give public notice about the categories of the information it wants to publish to the public and also give reasonable time to the parents to inform whether such information should not be released².

Electronic Communications Privacy Act (1986)

The Electronic Communications Privacy Act was passed in 1986. This is the primary federal law that governs the monitoring of electronic communications in the workplace. The Act also prohibits the use of any information which have been acquired by illegal, wiretapping or electronic eavesdropping.

Video Privacy Protection Act 1988

The Video privacy protection Act was enacted in the year 1988, in order to "Preserve personal privacy with respect to the rental, purchase or delivery of video tapes or similar audio visual materials. This Act does not contain any data security provision which requires the entities to maintain relating to the consumer information from unauthorized access.

Health Insurance Portability and Accountability Act (HIPAA) (1996)

The Department of Health and Human Services Act has enacted (HIPAA) to regulate Medical information, which is called as "Protected Health information" (PHI). These regulations apply to health care providers, health plans and health care clearinghouses as well as business associates³.

Children's Online Privacy Protection Act (1998)

Children's online Privacy Protection Act was passed in the year 1998. This Act regulates the Collection and useful information relating to the children under the age of 13 years by Internet, Websites and Mobile applications⁴.

Financial Services Modernization Act (Gramm – Leach Bliley) (1999)

The Act is know as Gramm Leach Bliley Act. This Act imposes data protection obligation on the financial institutions. The *GLBA* is most well-known as the repeal the *Glass-Steagall Act of 1933*⁵. These obligations are centered on a category of data called Data "Consumer"⁶ "nonpublic personal information"⁷(NPI) and generally relates to :

- a. Sharing NPI with the third parties;

¹The Family Educational Rights and Privacy Act of 1974, 20 USC § 1232g.

² The Family Educational Rights and Privacy Act of 1974, 1232 g (a)(5)(A).

³ A "business associate" is defined as "with respect to a covered entity, a person who: (i) [o]n behalf of such covered entity . . . , but other than in the capacity of a member of the workforce of such covered entity or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter . . . ; or (ii) [p]rovides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation . . . , management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person."

⁴ *Supra* note 39 at 310

⁵ <https://www.investopedia.com/terms/g/gbla.asp> (last visited on November 9, 2021)

⁶ GBLA defines "consumer" as an "individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes" or "the legal representative of such an individual." 15 U.S.C. § 6809(9).

⁷ GBLA defines "nonpublic personal information" as "personally identifiable financial information" that is not "publicly available" and is either is "provided by a consumer to a financial institution," "resulting from any transaction with the consumer or any service performed for the consumer," or "otherwise obtained by the financial institution."



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

- b. Promoting privacy notices to consumers and
- c. Securing NPI from unauthorized access.

Non-Solicited Pornography and Marketing Act (CAN-SPAM Act)

This Act was passed in the year 2003 to set a national standard for the regulation of commercial email messages. Commercial email messages are defined as any email message, the primary purpose of which is the commercial advertisement or promotion of a commercial product or service¹. According to the law, subject lines must be clear and accurately reflect email content².

Consumer Financial Protection Act (CFPA) (2010)

This Act was passed in 2010. The Act has constituted Consumer Financial Protection Bureau, an independent agency under the Federal Reserve System. This Act was enacted in 2010 as Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPA created the Consumer Financial Protection Bureau (CFPB) as an independent agency within the Federal Reserve System³.

Apart from Federal Laws many of the U.S States have passed legislation mandating stronger protection of personal information than the Federal laws. Each state has its own constitution and among these states 10 States have explicit right of Privacy. The following are the few State Privacy and Data Protection Laws :

- California Online Privacy Protection Act (CalOPPA)
- California Financial Information Privacy Act
- California Shine the Light Law
- California Consumer Privacy Act
- Information Security Breach and Notification Act

CONCLUSION

The current legal landscape governing data protection in the United States is complex and highly technical. Although Congress has enacted a number of laws designed to augment individual's data protection rights, the current patchwork of Federal law and the State law are limited to specific industry participants, specific types of data, or data practices. Though "right to privacy" developed over the course of the 20th century, but this right generally guarded only against government intrusions and does little to shield the average internet user from private actors.

¹ *Supra* note 13 at 7

² Available at : <https://www.techopedia.com/definition/26266/can-spam-act> (last visited on November 9, 2021).

³ Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, tit. X, 124 Stat. 1376, 1955-2113 (2010) (codified at 12 U.S.C. §§ 5491-5603).



RULE OF LAW AS AN IDEA OF PUBLIC LAW

Dr. Nalini R

ABSTRACT

Public law refers to the relationship between the citizen and the state, whereas private law encapsulates the relationship between citizens. But what makes both public law and private law most interesting is Rule of law. In this small piece of writing the writer intends to show how the concept of rule of law, not only ensure the supremacy of law but also plays an important role in attainment of all forms of equality and justice especially in the field of Public law.

KEY WORDS: Rule of Law, Public law, Supremacy of law.

"When the Rule of Law disappears, we are ruled by the whims of men."

— TIFFANY MADISON

Rule of law in simple words means, law is supreme, and nobody is above the law. Law is different compared from one place to another. Something which is illegal or against the law may be totally normal in another place and similarly something said to be normal in one place may be against the law in another place. Unlike personal law that affects only a certain class or category of people, public law affects the society in whole.

Even though there is a lot of variation in different laws from place to place, we can see that there is one thing that is common everywhere, i.e. law is considered as supreme and nobody, nobody is above the law. The rich, the poor, the ruler, the ruled, everyone is below it and should obey it.

In the earlier days, law developed based on the local precedents and as well as the methods adapted were different between two different places. As time passed, it was seen that there were adaptations of law from one place to another. But as law is made and designed for a particular place by the political institutions of that place and as such they are specifically designed in such a way that they suit their specific needs and in the event if the same is to be considered for application at another nation, it would be just and necessary so as to examine the same for compatibility with the laws of that nations.

Contrary to oligarchy, according to the rule of law, all the members of the society, including the government are subject to law and the same is applicable even for those who makes those laws or enforces them and as well as the adjudicating authorities are bound to it. It also contradicts the so called divine rights or the God's mandate, which was the political and religious doctrine of the royal, wherein the king or queen i.e. the ruler is preselected by birth and not by the will of the people. The constitution of UK considers rule of law as the most fundamental doctrine. As a matter of fact, it is also said that the whole constitution itself was founded on the idea of the rule of law. The doctrine is also accepted in the Constitution of U.S.A and India as well.

Originally, the phrase "Rule of Law" is a derivation from the French phrase 'La Principe de Legality', which means "the principle of legality" and refers to a government that is based on principles of law and not of men. According to Plato, "Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state" and Aristotle wrote that "law should govern and those in power should be servants of the laws."

The development of the legal concept finds its roots in the history of various ancient civilizations. But in modern times, A.V.Dicey is credited for the popularisation of the expression of "the rule of law", as it had a long lasting influence, especially because of the reason that he had considered mainly three distinct elements such as firstly, nobody can be punished until and unless there is a clear breach of law; next, everyone is equal before law and nobody is above it and thirdly, law is the best protector of a citizens freedom. In the present day, there are various organization that are involved in promoting the rule of law.

Over time, the term 'rule of law' has been used to express a wide variety of ideas and as such the same also had several meanings and definitions. As a result, due to the differing conceptions, the rule of law doctrine has always been a topic of disagreement and debates. But as already said that nobody is above the law, even neither the Government is above that and the government or the administration has to act only within the permissible limits of law. There is a defined set of laws that also describes how the government needs to function which has to be adhered at all times. It is only when adhered to the principle of rule of law, the individual liberty and right can be protected in a better way.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-JOURNAL : editor@bmscl.ac.in ADDRESS : editor@bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

For the peaceful living of a society, it is necessary that it is built on foundation of laws under which each individual is equal and equally accountable as well. It is also necessary that the fundamental rights are enforced, and its violation being fairly adjudicated in the independent courts. According to The World Justice Project (WJP) Rule of Law Index, which has collected huge data on the rule of law, it is seen that since the past three years, there has been a noticeable decline in the rule of law around the world. Even though it is observed that the technical reforms and assistance have resulted in positive changes and encouraged governments to deliver its core duties to the citizens, still the number of countries declined in the past few years has outnumbered the countries that have improved. As such it is necessary to check on corruption, protect fundamental rights and also have a strong civil society that supports human rights and bodies that can tackle the challenges such as corruption.

When the United Nations was formed in 1945 with an intention to promote international cooperation, it was created on three pillars i.e. international peace and security, human rights and development. For the UN system, rule of law is a fundamental to international peace and security and as well as for political stability to achieve progress and development, both economically and as well as socially. It also protects the rights of the people and as well as fundamental freedom.

Every legal system is unique. Effective rule of law helps in the recognition of fundamental rights and reduction of corruption. It also helps to protect people from injustices irrespective of them being a large or small group. When there is a strong rule of law holding all individuals equal and accountable, it is also seen that the society lives in peace and prospers further resulting in a higher GDP per capita. Many countries also support the following of the rule of law adhering to the principles of human rights and also want to enforce it to corporations and institutions as well so that there would be transparency in resolving conflicts. As time passed, a lot of new things came under the rule of law. The advancement of the rule of law is essential for sustained development and as well as economic growth of a nation by eradicating poverty and hunger.

In this modern world, which is growing faster and faster than ever before, there is requisite of an independent judiciary so that the judges are not under any form of pressure and hence are free to make decisions impartially. Without the rule of law, there will be no peaceful interactions with one another. Law puts a boundary between what we want to do and what we can do. It touches every aspect of life including our freedom of expression, liberty, etc. especially when it would impact others in a negative way. Hence, there would be peace and harmony in the society. In fact, the modern democratic society is built on the concept of the rule of law. In India, the constitution is said to be the supreme and when the constitution of India was framed, several provisions were adopted from UK and USA. All laws made should comply with accordance to the constitution. But even after so many years, it sometimes feels that there have not been achievements up to the expected point.

Common law system of justice originated from the British and the same was also adopted by India. In India, the concept of "fair, just and reasonable" test was introduced by the Apex court in Article 21 after the Emergency. Despite its length, the Indian Constitution is highly flexible, and this has gained huge attention and praise. Time has played a major role in the evolution of society and with the passing of time; the judiciary of the nation has also played a major role in the shaping of the rule of law in India. Even though there are several instances wherein we can see that there have been instant positive approaches taken, still it is always argued that there has been not enough practical application with respect to the context.

The framers of our constitution have done a commendable job. Even though there are powers given to amend necessary parts, the whole of constitution cannot be changed. But the laws that were framed decades ago are still in existence, and with several amendments it has changed the crux of the matter. The rule of law being a very old concept has changed and evolved gradually to suit the modern days and if enforced in a rightful manner, would surely yield results that are beneficial for the development of the society in all fields. It is time that we focus on the weak areas and the loopholes so that they can be addressed in an efficient manner and each and every individual in the society ensures that they maintain the Rule of Law.

Rule of law ensures that law is supreme, and everyone is equal before law. It keeps a tab over the abuse of power by the authorities and in turn promotes qualitative life. This in turn helps in building the nation as there would be reduction of corruption and development in various sectors of the nation. As they say "Dharmarakshatirakshitah", if we uphold dharma, in turn, it will protect us.

REFERENCE

- The Council of Europe, International Commission of Jurists, United Nations, International Bar Association, World Justice Project, The International Development Law Organization (IDLO), The International Network to Promote the Rule of Law (INPROL), etc



AN ANALYSIS OF LEGAL REGULATION OF BIO DIVERSITY SYSTEMS IN INDIA

Dr. Veerabhadraiah C

Associate Professor of Law, B.M.S. College of Law, Bull Temple Road, Basavanagudi, Bangalore

ABSTRACT

The term biodiversity (from "biological diversity") refers to the variety of life on Earth at all its levels, from genes to ecosystems, and can encompass the evolutionary, ecological, and cultural processes that sustain life. India occupies only 2 per cent of the available landmass but harbours 8 per cent of the world's diversity. It is one of the 17 megadiverse countries in the world. The number of varied terrains and climates existent on the Indian subcontinent is unique and home to more than 50,000 species of plants and 40,000 species of animals. With a long coastline of 7516 km and the land frontier of 15000 km, it is one of the richest countries in terms of biodiversity. Thus legal regulation of bio diversity is essential for protection of life species.

The 17.41% of India's geographical area comprises of ecologically representative areas on land and in inland waters, as well as coastal and marine zones, especially those of particular importance for species, biodiversity and ecosystem services. The area is being conserved through 'protected areas' designation and management, and other area-based conservation measures.

Articulating India's commitment towards conserving biodiversity, the minister also said the country was fully committed to the global 30x30 initiative a global effort to protect at least 30% of the planet by 2030.¹ India is committed to joining hands in shaping the global conservation policy while making its own contribution in enhancing its conservation estate.

The author of this article is discusses the legislative provisions and various judicial decisions on protection of biodiversity.

Keywords: Biodiversity, Ecosystem, Judicial decisions and Legislative Provisions

INTRODUCTION

Biodiversity refers to the variety of living species on Earth, including plants, animals, bacteria, and fungi. While Earth's biodiversity is so rich that many species have yet to be discovered, many species are being threatened with extinction due to human activities, putting the Earth's magnificent biodiversity at risk².

India has set aside over 17.41% of its geographical area for meeting the country's conservation objectives and more areas are being identified to enhance this coverage. Biodiversity will have more events to celebrate this 2021. The fifteenth meeting of the Conference of the Parties (COP 15, October 2021) to the Convention on Biological Diversity (CBD) will reviewed the achievement and delivery of the CBD's Strategic Plan for Biodiversity 2011-2020. It is also anticipated that the final decision on the post-2020 global biodiversity framework will be taken. This new framework has included a focus on ensuring work to preserve biodiversity contributes to "the nutrition, food security, and livelihoods of people, especially for the most vulnerable. The efforts for a sustainable biodiversity will be represented in two new decades for the period 2021-2030: the UN Decade of Ocean Science for Sustainable Development and the UN Decade on Ecosystem Restoration.

Biological diversity is often understood in terms of the wide variety of plants, animals and microorganisms, but it also includes genetic differences within each species for example, between varieties of crops and breeds of livestock and the variety of ecosystems (lakes, forest, deserts, agricultural landscapes) that host multiple kind of interactions among their members (humans, plants, animals).

Biological diversity resources are the pillars upon which we build civilizations. Fish provide 20 per cent of animal protein to about 3 billion people. Over 80 per cent of the human diet is provided by plants. As many as 80 per cent of people living in rural areas in developing countries rely on traditional plant-based medicines for basic healthcare.

¹ <https://www.un.org/en/observances/biological-diversity-day#:~:text=This year 2021 the theme, to several sustainable development challenges>

² <https://www.nationalgeographic.org/encyclopedia/biodiversity/retrieved on 21/10/2021>



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

But loss of biodiversity threatens all, including our health. It has been proven that biodiversity loss could expand zoonoses - diseases transmitted from animals to humans- while, on the other hand, if we keep biodiversity intact, it offers excellent tools to fight against pandemics like those caused by corona viruses.

- Current negative trends in biodiversity and ecosystems will undermine progress towards 80% of the assessed targets of 8 Sustainable Development Goals.
- Three-quarters of the land-based environment and about 66% of the marine environment have been significantly altered by human actions.
- 1 million animal and plant species are now threatened with extinction.

The objectives of halting biodiversity loss and promoting the sustainable use of terrestrial and inland freshwater ecosystems are included in Sustainable Development Goal 15. The importance of biodiversity and the targets should reach by 2030.

India is home to 7.6 per cent of species of mammals all over the world, 12.6 per cent of species of birds, 6.2 per cent of species of reptiles, 4.4 per cent of species of amphibians and 11.7 per cent of species of fishes. India is home to four of the thirty-four biodiversity hotspots all over the world. Two of them, the Himalaya and Western Ghats lie entirely within the territory of India.

The loss of biodiversity is irreversible and hazardous. The cultural diversity that exists today is a result of biodiversity and when biodiversity is at stake so is cultural diversity. It affects the food chain and livelihood and the culture of millions.

The Indian Constitution encompasses the protection of Environment and this sentiment is enshrined in Article 48A and 51A (g) which states that "the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country and that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

In efforts to realize the Constitutional mandate of environmental protection, India has planned and executed multiple policies, programs and laws and one of the important laws in relation to biological conservation and bringing into effect the Convention on Biological Diversity (CBD) is the Biological Diversity Act 2002. There are multiple Acts and Rules related to Biodiversity in India such as the Indian Forests Act, 1927, the Air (Prevention and control of Pollution) Act 1981, Protection of Plant varieties and Farmer's Rights (PPVFR) Act, 2001 etc. India was one of the first few countries to bring about a comprehensive legislation on biodiversity conservation. The Biological Diversity Act, 2002 and the Biological Diversity Rules notified in 2004 give effect to the objectives of the CBD which is to conserve biodiversity, to have sustainable use of its components and to have fair and equitable sharing of the benefits arising from genetic resources and is the primary legislation through which the Access and Benefit sharing mechanism enshrined in the Nagoya Protocol is implemented in India¹.

The Biological Diversity Act, 2002

The Biological Diversity Act, 2002 was brought into force to fulfil the obligations under Convention on Biological Diversity (CBD) which was ratified by India.

The Biodiversity Act, 2002 also did the task of filling the gap in the legislation left by the previous environmental legislations like the Indian Forest Act, 1927, Wildlife Protection Act, 1972, Environment Protection Act, 1986. A strong legislation was needed to protect India from bio-piracy after it became an open economy in 1991. Hence the Act was passed in 2002, with the objective of conservation of biological diversity.

The Act was enacted to regulate the use and exploitation of biological resources of the country. The purpose was to protect the knowledge of biodiversity held by the local communities. It also involves the constitution of committees for implementing the provisions of the Act. The Act intends to protect and rehabilitate threatened species.

Three basic objectives of The Biological Diversity Act, 2002, (A) Conservation of Biological Diversity. (B) Sustainable use of its components. (C) Fair and equitable sharing of the benefits arising out of the use of biological resources.

¹ https://nlsabs.com/?page_id=146 retrieved on 12/12/2021



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

Legal compliances for biodiversity-related activities under the Biological Diversity Act, 2002

Persons who cannot undertake biodiversity-related activities

Section 3 of the Biodiversity Act, 2002 states the persons who cannot undertake biodiversity-related activities without the permission of the National Biodiversity Authority.

- Subsection (1) of section 3 states that no person referred to in subsection (2) shall without previous permission of National Biodiversity Authority get any biological resource present in India as well as knowledge associated to it for research or commercial purposes.
- Subsection (2) of section 3 contains the list of people who are required to take permission, persons who are not citizens of India, a non-resident citizen as defined under Clause 30 of Section 2 of Income Tax Act, 1961, and a body corporate, association or organization which has not been incorporated or registered in India and also an organisation though incorporated and registered in India but has in share capital or management non-Indian participation.

Transfer of results of research

Section 4 of the Act is regarding the transfer of results of research relating to any biological resources to a non-citizen or non-resident Indian for monetary consideration, it cannot be done without previous permission of the National Biodiversity Authority. The transfer does not mean publication of research papers or dissemination of knowledge in seminar or workshops.

Sections 3 and 4 not to apply to certain collaborative research projects

- Subsection (1) of Section 5 states that the provisions of Section 3 and 4 do not apply to collaborative research projects which involve the transfer or exchange of biological resources or information thereto among institutions, including Government sponsored institutions of India, and such institutions in other countries, if the conditions mentioned in subsection (3) are fulfilled.
- Subsection (2) of Section 5 of the Act states that all collaborative research projects other than the ones mentioned in subsection (1) shall remain in force except for the provisions of the agreement that are not consistent with the provisions of the Act. According to subsection (3) of section 5 of the Act, the collaborative research projects should conform to the guidelines issued by the Central Government and should be approved by the Central Government.

Application of intellectual property rights

Section 6 is concerned with the application for intellectual property rights for any invention based on any research or information collected on a biological resource obtained from India.

- Subsection (1) states that application of intellectual property rights should not be without the prior approval of National Biodiversity Authority. If a person applies for a patent, he can seek permission after applying for the patent but before the sealing of the patent by the patent authority.
- Subsection (2) of Section 6 states that the National Biodiversity Authority can, while giving approval levy a benefit-sharing fee or royalty or both or impose conditions comprising the distribution of financial benefits arising out of commercialization of such rights.
- Subsection (3) states that the provisions mentioned under section 6 shall not apply to any person who is applying for any right under a law relating to the protection of plant varieties enacted by the Parliament.
- Subsection (4) of section 6 states that where a right has been granted under subsection (3) then the authority granting approval shall endorse a copy of such document to the National Biodiversity Authority.

Compliance for Indian citizens for obtaining biological resource for certain purposes

Section 7 of the Act discusses the legal provisions which have to comply with by Indian citizens. It states that any citizen of India or a body corporate, association or organization which has been registered in India, shall take biological resource for commercial use or bio survey and bio utilization for commercial use without obtaining prior permission from the concerned State Biodiversity Board. The above provisions shall not apply to the local people and growers and cultivators of biodiversity, vaidas and hakims.

The organizational Structure of Authorities under the Act

A three-tier system was set up under the Biodiversity Act, a National Biodiversity Authority at the national level, State Biodiversity Boards (SBBs) at the state level and Biodiversity Management Committees (BMCs) at the local level. The functions of these authorities include the regulation of the activities of, advising the



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

Government in matters of biological diversity, sustainable use of its components, and equitable sharing of profits. It also includes granting of the approval under Sections 3,4 and 6 of Biodiversity Act, 2002.

Section 23 of the Act, explain the Functions of State Biodiversity Board. The functions of the State Biodiversity Board shall be to,

(a) advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilisation of biological resources;

(b) regulate by granting of approvals or otherwise requests for commercial utilisation or bio-survey and bio-utilisation of any biological resource by Indians;

(c) perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.

Section 24 of the Act of 2002, discusses the powers of State Biodiversity Board. according to this section State Biodiversity Board has power to restrict certain activities violating the objectives of conservation, etc.— (1) Any citizen of India or a body corporate, organisation or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board. (2) On receipt of an intimation under sub-section (1), the State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquires as it conservation, may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity: Provided that no such order shall be made without giving an opportunity of being heard to the person affected. (3) Any information given in the form referred to in sub-section (1) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

Establishment of National Biodiversity Authority

The National Biodiversity Authority is established under Section 8 of the Act. The section states that the National Biodiversity Authority shall be a body corporate having all the features of a company like perpetual succession, common seal etc.

Subsection (3) of Section 8 states that the head office shall be located in Chennai and offices can be set up at other places with the previous permission of the Central Government. The National Biodiversity Authority consists of a Chairperson, an eminent person having knowledge in the field of biodiversity and three ex-officio members one representing Tribal Affairs ministry and two others representing Environment and Forest ministry. All of them shall be appointed by the Central ministry.

Section 18 of the Act of 2002 discusses the Functions and powers of National Biodiversity Authority. As per this section duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.

Section 21 of the Act of 2002, explain the Determination of equitable benefit sharing by National Biodiversity Authority. According to this section, The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:

(a) Grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;

(b) Transfer of technology;

(c) Location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(d) Association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bioutilisation;

(e) Setting up of venture capital fund for aiding the cause of benefit claimers;

(f) Payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.



International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

The National Biodiversity Authority has got powers to frame Regulations under Section 64 of the Act of 2002. As per this section The National Biodiversity Authority shall, with the previous approval of the Central Government by notification in the Official Gazette, are regulations for carrying out the purposes of this Act.

Penalties under the Act

Subsection (1) of Section 55 states the punishment a person will get if he contravenes or attempts to contravene the provisions of Section 3 or Section 4 or Section 6, he will be imprisoned for a period extending to five years or fine which may extend to ten lakh rupees and if the damage caused is more than ten lakh rupees, the fine will be proportionately adjusted or both. Whosoever contravenes the provisions of Section 7 or any order under subsection (2) of Section 24 shall be punished with imprisonment for a period extending to three years or with fine up to 5 lakhs or both

Judicial response to protecting Biodiversity in India

The Hon'ble Apex Court in the case of *T.N. Godavarman v. Union of India*¹ has emphasised the importance of international conventions and treaties as under: "Duty is cast upon the Government under Article 21 of the Constitution of India to protect the environment and the two salutary principles which govern the law of environment are : (i) the principles of sustainable development, and (ii) the precautionary principle. It needs to be highlighted that the Convention on Biological Diversity has been acceded to by our country and, therefore, it has to implement the same. As was observed by this Court in *Vishaka v. State of Rajasthan* in the absence of any inconsistency between the domestic law and the international conventions, the rule of judicial construction is that regard must be had to international conventions and norms even in construing the domestic law.

The Uttarakhand High Court in *Divya Pharmacy v. Union of India and others*,² held that Biological resources are definitely the property of a nation where they are geographically located, but these are also the property, in a manner of speaking, of the indigenous and local communities who have conserved it through centuries. The court said that "Indigenous and local communities, who either grow 'biological resources', or have traditional knowledge of these resources.

Bayer corporation v/s Union Of India *Bayer Corporation v. Union of India*³, in this case the Bayer was granted for Nexavar, a liver and kidney cancer drug. The firm became aware that Cipla had also filed an application for approval to market the same product in a generic version. Bayer sued to stop Cipla from marketing their drugs.

The court directed the Drug Controller General of India not to give marketing authorisation to Cipla. The court appreciated the necessity of protecting patent rights even if the impugned product was not in the Indian market.

F. Hoffman La Roche v. Cipla⁴, In this case Roche filed a patent infringement suit against Cipla after it locally launched Erlotinib. Cipla filed a counter claim challenging Roche's patent. The pricing of Tarceva came into focus as well as that it was not manufactured locally.

The court stated that there was no infringement as the patent which was in question was a mixture of Polymorphs A and B, whereas the drug Tarceva drug consisted of only Polymorph B. The point here to be noted was that Roche had applied for patent of Polymorph B but was denied by the Indian Patent office as it did not satisfy the criteria of Section 3(d) and the test of patentability was not satisfied. Moreover, the court considered the intent of the legislature in enacting Section 3(d) and anti-ever greening laws and held public interest above everything. The court realised that in here a lifesaving drug was in question, and hence the drug which was made available by Cipla was three times less priced than the drug which was manufactured by Roche.

Further the court observes that the application to the Controller for patent on Polymorph B was rejected on the grounds that it did not show enhanced therapeutic efficacy over the closest prior art. Prior art would mean the knowledge existing in the public domain. The existing technologies can be understood to mean prior art.

¹ (2002) 10 SCC 606

² 2018 SCC Online Utt. 1035(S) No. 3437 of 2016

³ 2014 SCC Online Bom 963; (2014) 5 AIR Bom R 242

⁴ 148 (2008) DLT 598, MIPR 2008 (2) 35



*Bristol-Myers Squibb Company & Others Vs. Dr. Bps Reddy & Others,*¹ in this case

Bristol Myers Squibb(BMS) holds a patent for Dasatinib in India . It sued Hetero Drugs when it found that Hetero was seeking marketing approval to generic drug makers for drugs that have already been granted patents in India. This was prevented Hetero from manufacturing or selling its generic version. This case is a score for pro-patents groups. It also raises the question-can a linkage be made between india's patent office and DCGI, which is mandated by the Drugs and Cosmetics Act to check only for safety and efficacy?

CONCLUSION

India has made a framework regarding biodiversity which holds great significance in the protection of the environment. The present policy has some deficiencies which need to overcome. The solution is to make amendments and focus on implementation and adopt a stronger proactive community involvement. Through the creation of awareness, the citizens can be mobilised and change can be brought about in the current situation of biodiversity. Once the people are aware and know the consequences they can work towards protection and preservation of the environment. Awareness has to be created at the grass root level, the local communities need to be made aware of the Biological Diversity Act. Together we are stronger rather than few individuals trying to make a difference.

The stakeholder of traditional knowledge, need protection from international law from exploitation by vested interests. Article 27.3(b) of TRIPS Agreement which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties. The Doha declaration further says the TRIPS Council should also look at the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity, the protection of traditional knowledge and folklore. The fair and equitable sharing of the benefits arising out of the use of genetic resources is one of the three objectives of the UN Convention on Biodiversity(CBD)

The CBD recognises the sovereign right of states over their natural resources in areas within their jurisdiction.² The traditional knowledge can be misappropriated by vested interests by indulging in patenting the knowledge. An effective way of avoiding such practices would be to make sure that TK would always be duly recognised as prior art. Therefore, methods of documenting and sharing information on TK, such as databases and registers, in order to allow patent examiners to take them into account in prior art searches need to be explored.³

The assumptions are important in order to move towards a more equitable way of fostering and applying TK. However, it is also necessary to point out some other problems that local communities face when confronted with an international IPRs system.

Most basically the current patent system is practically inaccessible to indigenous peoples and communities, primarily because of their lack of funds, but also because often they have not received the education that is necessary to manoeuvre within the extremely complex legalities of the patent system. This makes it even more inaccessible for women as they are often at a social and economic disadvantage compared to men.

Furthermore, even if there were to be some other form of compensation provided besides the patent system, at the collective level or even individual level, it would be difficult to attribute 'ownership' to a particular local group, particularly when a product is widely used throughout a region⁴.

REFERENCES

1. Dr. Sukanta. K. Nanda, Environmental law, central law publication, Allahabad 2009.
2. Environment and pollution laws, Krishan Arora, Professional book publishers, New Delhi, 2008.
3. Environmental jurisprudence, Indrajit Dube, Lexis Nexis, Butter worths, NewDelhi, 2007.
4. Environmental law, S. C. Shastri, Eastern Book company, Third edition, Lucknow, 2008.

¹ CLA No. 1 of 2013

² Plant Breeders Bill Suffers Setback, 29/11/2014, available <http://www.ghanaweb.com/GhanaHomePage/regional/artikel.php?ID=337094>

³ The Review of Article 27.3(B) Of The Trips Agreement, And The Relationship Between The Trips Agreement And The Convention On Biological Diversity (Cbd) And The Protection Of Traditional Knowledge And Folklore, p 14, available at http://trade.ec.europa.eu/doclib/docs/2005/february/tradoc_111153.pdf

⁴ <https://blog.tpleaders.in/legal-compliances-biodiversity-india>



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : www.bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 8, Issue 4 (X): October - December, 2021

ISSN 2394 - 7780

5 Environmental law and policy in India. Divan and Rosencranz, Oxford University press, New Delhi, tenth edition, 2008 .

6. Lal's commentaries on Water and Air pollution and Environment (protection) laws, fourth edition 2000.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

Number of books and chapters during the year 2020-21





B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

BMS EDUCATIONAL TRUST



B.M.S COLLEGE OF LAW

Bull Temple Road, Bangalore

**Consumer Law, Advocacy and Research Centre
(CLARC, BMSCL)**

Conference Special Issue

**ONE DAY NATIONAL LEVEL MULTIDISCIPLINARY
CONFERENCE**

ON

**“Protection of Consumer Rights During the
COVID-19 Pandemic”**

Organized

In Collaboration with

**Consumer Rights, Education and Awareness Trust
(CREAT)**

Date: 20 November, 2020, Friday

An IQAC Initiative



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : www.bmscl.ac.in

Conference Directors

Dr. Anitha D'Souza

Principal

BMS College of Law, Bangalore

Sri. Y G Muralidharan

Founder

CREAT, Bangalore

Conference Coordinators

Dr. Veerabhadraiah C

Associate Professor

Dr. Gayathri Bai S

Assistant Professor

BMS College of Law, Bangalore



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-JURIS : ONLINE JOURNAL OF LAW AND LEGAL RESEARCH

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

CONTENTS

Research Papers

EMERGING REGULATORY FRAMEWORK FOR E-COMMERCE IN INDIA SOME INSIGHTS	1 – 8
Sapna Chadah	
EVOLUTION OF CONSUMER RIGHTS AS HUMAN RIGHTS - AN ASSESSMENT	9 – 13
Abhishek Sharma P	
MEDICAL PROFESSION AND CONSUMER PROTECTION ACT, 2019- ARGUMENTS AND COUNTER ARGUMENTS	14 – 16
Ashraya. S. Chakraborty and Prof. Ramesh	
PRODUCT LIABILITY AND CONSUMER PROTECTION ACT 2019	17 – 20
Bhavana Chandran	
ROLE OF CENTRAL CONSUMER PROTECTION AUTHORITY UNDER CONSUMER PROTECTION ACT, 2019	21 – 26
Dr. C. R. Jilova	
A STUDY RELATED IMPACT ON CONSUMERISM OF FOOD AND FOOD PRODUCTS DURING COVID PANDEMIC AND ITS LEGAL REGULATION	27 – 35
Chetana S B	
CAVEAT EMPTOR V. PRODUCT LIABILITY UNDER CONSUMER PROTECTION LAW	36 – 41
Dr. Gayathri Bai S	
A NEED FOR EFFECTIVE REGULATORY MECHANISM IN E-COMMERCE: A CRITICAL STUDY OF CONSUMER PROTECTION ACT 2019	42 – 45
Dr. Kavyashree. N	
AN ANALYSIS OF CONSUMER PROTECTION ACT, 2019	46 – 48
Dr. Nalini R	
CONSUMER PROTECTION (E-COMMERCE RULES), 2020 – A CRITICAL ANALYSIS	49 – 55
Dr. Roopa S	
ROLE OF THE CENTRAL CONSUMER PROTECTION AUTHORITY IN PROTECTING THE CONSUMER RIGHTS	56 – 61
Dr. Sathish K S	



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in principal@bmscl.ac.in dean@bmscl.ac.in clerk@bmscl.ac.in

COVID-19: IMPACT ON HEALTH AND SAFETY OF PEOPLE AND MEDICAL NEGLIGENCE OF HEALTH CARE PROVIDERS	62 – 67
Dr. Valarmathi	
INFLUENCE AND INVOLVEMENT OF PARTICIPATIVE MECHANISM IN THE RESOLUTION OF CONSUMER DISPUTES	68 – 74
Dr. N. Vani Shree and Mr. Akash Thakur	
IMPACT OF PANDEMIC ON SUPPLY OF ESSENTIAL COMMODITIES	75 – 80
Gurvinder Kaur	
CONSUMER PROTECTION AND E-COMMERCE	81 – 83
Mahantesh B Madiwalar	
CONSUMER PROTECTION AND ECOMMERCE CHALLENGES DURING THE COVID 19 WITH REFERENCE TO VERIFYING THE AUTHENTICITY OF CUSTOMER	84 – 90
Mahesh. K	
CONSUMER PROTECTION (E-COMMERCE) RULES, 2020: AN OVERVIEW	91 – 92
Suresha C. H.	
WHAT THE FUTURE HOLDS FOR THE INDIAN CONSUMERS POST THE CORONAPOCALYPSE?	93 – 97
Rachana RL	
PATIENTS' RIGHTS DURING THE PANDEMIC: A CRITICAL ANALYSIS	98 – 100
Ramya	
MISLEADING ADVERTISEMENT	101 – 103
Rity Singh	
CONSUMER PROTECTION IN THE AGE OF E-COMMERCE	104 – 111
Mr. Sajidur Rahman	
CONSUMER PROTECTION AND E-COMMERCE: PROTECTION OF THE CONSUMER IN DIGITAL SPACE	112 – 119
Shaik Feroz Ahmed	
CONSUMER PROTECTION AND E-COMMERCE	120 – 125
Sukanya. P. M.	
CONSUMER BEHAVIOUR IN TIMES OF PANDEMIC	126 – 131
Suneetha. D	
JUSTICE AND SATISFACTION FOR CONSUMERS WITH RIGHTS – CASE STUDY	132 – 138
Umesalma	



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : director@bmscl.ac.in / principal@bmscl.ac.in / dean@bmscl.ac.in / clerk@bmscl.ac.in

IMPACT OF PANDEMIC ON THE SUPPLY OF ESSENTIAL COMMODITIES CONCERNING FARMERS AND SMALL SCALE INDUSTRIES:

Vishnu V K

UNFAIR TRADE PRACTICE DURING COVID-19 PANDEMIC - AN EXTRACT

141 - 146

Dr. Veerabhadraiah C and Umesalma

ONE NATION ONE RATION CARD PLAN - AN ELIXIR TO EXISTING PROBLEMS OF PUBLIC DISTRIBUTION SYSTEM?

147 - 155

Varuni B R



EVOLUTION OF CONSUMER RIGHTS AS HUMAN RIGHTS - AN ASSESSMENT

Abhishek Sharma P

Assistant Professor of Law, BMS College of LAW

ABSTRACT

The Rights of Consumer have attained Statutory Protection across the globe. The rights enjoyed as Consumers have transformed the manner in which trade and commerce are conducted by assuring quality standards in all stages of sale and consumption. The free trade movement has created border less market with consumers interacting with the sellers across the globe with regard to their purchases. Consumers Laws are part of the Private Laws and are country specific making it inapplicable for global transactions involving Consumer Rights. The legal systems across the globe have accorded legal recognition for Human Rights to guarantee its enforceability. The rights of Civil, Political, Social and Cultural nature have gained universal recognition as justifiable Human rights. Consumer Rights though of recent origin are also considered as Human Rights and this evolution has reinforced the legal commitment towards individual Liberty. There exists references in the International Legal Instruments about the Consumer Rights and the need for its protection. It is desirable to have a separate Legal instrument with explicit recognition for Consumer Rights to achieve the uniform legal framework for their enforcement. This paper explores the evolution of Consumer Rights as Human Rights to suggest a separate legal instrument for Consumer Rights at the International Level for ensuring their implementation at the global level.

Key words : Consumers, Rights, Statues, Transnational Commercial activities, Uniform Legal framework, Human Rights

INTRODUCTION

Rights are considered as interests protected by Law and which can be enforced in the Courts of Law. Consumer Rights which aim to protect the Consumers from the commercial abuse in Sale Transactions enjoyed only Judicial recognition in various precedents. The Legal systems across the globe were later compelled to give the statutory recognition for the same. The analysis of the various available precedents on Consumer Rights reveal that the Courts had deployed various principles and doctrines of Common Law to recognise the Rights of a Consumer and grant adequate remedy in the event of their violation. Free Movement of Goods and services owing to Free Trade has increased interaction of the consumers with the suppliers and this has compelled the Governments to enact Statutes for recognising Consumer Rights and creating a Legal Framework for the same. These Consumer Rights have been constantly expanded to cover the changing forms of Purchasing patterns in the society. Human rights occupy a place of great significance in the Legal System of any country and they regulate the interaction between the Citizens and the Governments. Human Rights affect the Public Rights of the individuals and have propelling force on the functioning of the society. It is worth noting that, Consumer Rights are characterised as Private Rights as it affects the rights and obligations of the Consumer and the Seller with regard to their mutual rights and obligations and has less impact on the functioning of the society. However in recent times it is now accepted that Consumer Rights are also a part of the Human Rights and thus are of some relevance in the functioning of the Governments. This development also can be inferred to mean that the Governments can also regulate the relation between the Sellers and the Consumers.

Consumer Rights as Human Rights

The recognition of Consumer Rights as Human Rights is of trajectory in nature. The difficulty of recognising various rights as human rights is due to the impact on the enforceability and relevance of the Human Rights in the Legal Framework. There are many scholarly debates revolving on the point of admission of new rights and it's damaging climate in terms of the value and validity of existing human rights. It is generally accepted that the proclamation of new human rights is justified on the proof of its general acceptance in the Rights Jurisprudence and it's utility of protection and enhancement of individual's lives. It is apposite herein to note that Consumer Rights satisfy the twin requirement of General Acceptance and the utility in the development of the Individual. The Statutory Rights of the Consumers in situations of it being vires of the Constitution, would fail the test of Constitutionality and would be held as inapplicable if they are in contradiction of the Constitutional Rights. This inhibition can be solved if the Consumer Rights are raised to the extent of Human Rights so that it would be equal with the Constitutional Rights. With the equation of Consumer Rights as Human Rights, it becomes competent with the other Constitutional Rights on an equal basis for recognition and enforcement.



It is worth mentioning that, there are references and discussion about the Consumer Rights in the International Legal Instruments relating to Human Rights. Hence they have a better chance of being identified as human rights than some of the "new" rights as it involves only the elaboration and expansion of recognized economic rights. In the present frame work of Legal system across the Globe, Consumer laws have been a mixture of Contract, Tort, Criminal, and Administrative Law and it is in recent times, they have obtained the status of being an separate Statue. The Consumer Law is a part of both private and public law and has features of both substantive and procedural law. It is believed that identification of Consumer Laws and the rights involved therein will have a direct effect on the public aspect of Consumer Rights in terms of their enforcement. It is pertinent to note that, categorisation of rights as Human Rights is based on Political Considerations and the decisions taken in this regard are questionable.

Consumer Rights in International Legal Instruments

The 1948 Universal Declaration of Human Rights(hereinafter called as UDHR), the 1966 International Covenant on Economic, Social and Cultural Rights (hereinafter called as ICESCR) and the 1985 United Nations Guidelines for Consumer Protection (hereinafter called as UNGCR) constitute the International Legal Instruments relating to Consumer Rights.

The recognition of Consumer Rights as Human Rights raises a Jurisprudential question about the impact of such recognition on the protection of Consumers. Even before we could analyse their utility, there is need for conceptualisation of term Human Rights.

There has never been a definition of Human Rights which has been accepted universally. Instead there is consensus about the characteristics or the essentials which act as prerequisites for the Right to be recognised as Human Rights. It is apposite herein to examine herein whether Consumer Right possess those qualifications to be called as Human Rights. If it is agreed that that the recognition of new human rights is possible on fulfillment of certain Criteria, then it is required to examine what are those criteria and the tests for classifying rights as human rights. The understanding of these tests will provide the guidelines toward a definition of human rights and this will assist in examining whether there is a justification to classify consumer rights as human rights

There are predominately two modes for any Right to be recognised as Human Right. The firstmode mandates that the recognition/ declaration of a Right as Human Right by United Nations is necessary for it's acceptance. It is worth mentioning till date the Consumer Rights have not acknowledged by United Nations. However, Consumer Rights are recognised to be part of ICESCR under the category of Economical Rights. There exists scholarly debates on whether classification of Consumer Rights as Economic Rights under ICESCR can be deemed to be called as Recognition by United Nations. The second mode enlists the guidelines suggesting the characteristics of human rights and those Rights that fulfill these requirements will be considered to be human rights. It is matter of record that Consumer Rights have gained status of Human Rights since they have fulfilled the characteristics of Human rights.

The International Legal Instruments such as, UDHR and ICESCR are considered as source of Human Rights. However it is believed that mere enumeration of Rights in International Legal instruments cannot be considered as acceptable recognition as Human Rights. Additionally there lies an unanswered question as to whether the covenants constitute an exhaustive definition of human rights. There is consensus among the Legal Fraternity that categorisation of human rights recognized in the International Covenants alone as Human Rights is conservative because Laws are susceptible for change owing to the societal demands which demand recognition of additional rights as Human Rights.

There are scholarly works which tend to suggest certain characteristics of Human Rights. It is relevant herein to examine what are those characteristics which are fulfilled by Consumer Rights to gain better understanding on the utility of these rights in the International Legal Framework. There lies no agreement on these universal acceptance of these characteristics. However these characteristics shed light on the nature of human rights and can be used to explore whether consumer rights meet such substantive criteria. The following are the generally accepted Guidelines to determine whether a Right can be qualified as Human Rights.

- (1) Human rights should pertain to the entire human community and not to any specific group;
- (2) Human rights are the characterization of the individual as a primary concern, emphasizing the individual's prosperity, honour, and development.

It is relevant herein to examine whether Consumer Rights can satisfy the above guidelines. The Consumer rights are related to Private Rights and thus constitute Individuals and not that of the group rights. The term,





International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

The United Nations Guidelines for Consumer Protection (hereinafter called as UNGCP) 1985 is the mile stone in attaining Uniform Legal Framework for protection of Consumer Rights at the global level. The UNGCP was unanimously approved by the United Nations General Assembly on 9 April 1985. The International Organization of Consumer Unions (IOCU) which constitutes of more than 170 leading consumer organizations and 60 countries has initiated activities for universal recognition and acceptance of Consumer Rights as Human Rights. The UNGCP aims to provide the consumers the right of access to non hazardous products, as well as the promote just, equitable and sustainable economic and social development. The UNGCP requires the Governments develop the Domestic Consumer protection policies in line with these principles to suit the Economic and Social circumstances of the country and her population.

The UNGCP states following six main needs or the aims for development of Uniform Legal Framework for recognition of Consumer Rights as Human Rights and for applicability towards the International transactions:

- (a) The protection of consumers from hazards to their health and safety,
- (b) The promotion and protection of the economic interests of consumers;
- (c) Access of consumers to adequate information ...;
- (d) Consumer education;
- (e) Availability of effective consumer redress; [and]
- (f) Freedom to form consumer ... organizations."

It is believed that equation of Consumer Rights as Human Rights is only the beginning step towards the Uniform Legal frame work for protection of Consumer Rights. The UNGCP and the recognition by the International community that consumer protection is not merely an issue of domestic interest rather a matter of global concern is a positive step towards having the Uniform Legal framework for protection and enforcement of Consumer Rights for transnational transactions. It is believed that this would also motivate the National Governments to have in place a robust legal framework for protection and enhancement of Consumer Rights in the country. In alternative, the existing Legal framework can also be amended to suit the changing demands for effective enforcement of Consumer Rights and timely readdress for their violations.

CONCLUSION

The economy of society derives its existential status from the commercial activities of selling and buying of consumer products and services. The Consumers and Producers/ Sellers constitute the main Stake Holders in the Society. The Government also constitutes an integral part of the Consumer Law framework in the society as it has to ensure the protection and enforcement of Consumer Rights. The statutory recognition of Consumer Rights reflects the commitment towards the protection against the probable deficient products or services and commercial exploitation of the Consumers. The Consumer Rights qualify the standards as required for the recognition as Human Rights as they aim at the development and enhancement of liberty and lives of consumer's individual or private rights against the arbitrary actions of the Commercial entities or from the State Machinery. The transnational commercial relations requires for a separate and uniform Legal Framework of Consumer Laws to protect the Consumers by providing the timely readdress of the violations of their rights. The categorisation of Consumer Rights as International Human Rights and the establishment of UNGCP is a step towards the uniform legal framework for protection of Consumer Rights in relation to transnational commercial activities. This development also bears the impact on the domestic laws for Consumer Protection in the form of amendments to suit the changing patterns of Consumer behavior and their rights.

REFERENCES :

1. B.W. Harvey & D.L. Parry, The Law of Consumer Protection and Fair Trading, 4th ed. (London: Butterworths, 1992) 1-6
2. Deutch, Sinai, 'Are Consumer Rights Human Rights?', (Osgoode Hall Law Journal 32.3 (1994): 537-578) at p.17.
3. J.J. Shestack, "The Jurisprudence of Human Rights" in T. Meron, ed., Human Rights in International Law: Legal and Policy Issues, vol. 1 (Oxford: Clarendon Press, 1984) 69 at 70-74.
4. P. Alston, "Human Rights and Basic Needs: A Critical Assessment" (1979) Hum. Rts. J. 19 at 39.
5. S.K. Verma, M. AfzalWani, S.S. Jaswal, 'A Treatise on Consumer Protection Laws', (ILI Publication, 2004) at p.4



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : WWW.BMSCL.AC.IN

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

6. S.S Gulshan, 'Consumer Protection And Satisfaction: Legal and Managerial Dimentions', (2 nd Reprint 1996, New Age International Limited Publication) at p.30
7. United Nations Guidelines for Consumer Protection (as expanded in 1999). New York: United Nations 2003
8. United Nations. International Covenant on Economic, Social and Cultural Rights, 16.12.1966. Available at <https://www.ohchr.org/en/professionalinterest/pages/ceser.aspx>(most recently accessed on 14.11.2020).
9. V. BalakrishnaEradi, 'Consumer Protection Jurisprudence,' (LexisNexis Butterworths Publication) at p.4



CAVEAT EMPTOR V. PRODUCT LIABILITY UNDER CONSUMER PROTECTION LAW

Dr. Gayathri Bai S

Assistant Professor, BMS College of Law, Bangalore

ABSTRACT

Consumer is a king because the goods are manufactured and supplied on his demands. He can choose products of his choice, but he should be very careful while choosing the same. All the manufacturers compete among themselves to woo consumers by providing goods at cheaper price and sometime the consumers have to pay a heavy price after purchasing such products which will be defective. In the present scenario, many instances have taken place where the defective goods causing damage to consumers in many aspects. Previously, before passing the new Consumer Protection Act 2019, there was no effective legislation to impose liability on the manufacturers for supplying defective goods. But under 2019 Act, strict liability can be imposed on manufacturer, supplier and seller of defective goods which causes injury to consumers. Product liability is a new principle incorporated in 2019 Act and any disputes relating to product liability can be referred to consumer forum and the consumers will get damages caused by the defective goods.

Keywords: Consumer, Product liability, Manufacturer, Damages, Defective goods

INTRODUCTION

The marketing strategies for products have undergone a drastic change after enacting consumer law specially the new Consumer Protection Act 2019 which protects the interest of consumers against defective goods in an effective manner. The global market is expanded through e-commerce platforms which are facilitating the hassle-free delivery of goods specially during this pandemic situation. E-commerce, misleading advertisement, tele marketing, multilevel marketing, direct selling, are posing many challenges in the present situation. To cope up with such situations, the new the Act has brought many provisions relating to product liability, misleading advertisements, etc to protect the interest of consumers. The biggest challenge in this digital era is the misleading advertisement which are posing health hazardous to consumers and the same should be tackled immediately otherwise consumers lose faith in dispute redressal mechanism.¹

Consumer is a person who buys product or avail services for consideration and consumes the same.² The consumers are entitled for rights which are as follows under sec 2 (9):

- The right to be protected against the marketing of goods, products or services which are hazardous to life and property through misleading advertisements.
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services to protect consumers against unfair trade practices.
- Right to choose product in the competitive market specially in global market.
- Opportunity of hearing to protect his interest through redressal platforms.
- Right of redressal against exploitation by the manufacturers, seller, etc.
- Right to awareness about the rights available to consumers which can be done by governmental and non-governmental agencies.

Traditional approach of protection consumer rights

The principle of caveat emptor which says 'let the buyer beware' while purchasing any product in market which imposes a responsibility on them to check the goods before purchasing it and there was no liability on the manufacturer or seller for selling the defective goods because of which many times, consumers have suffered injuries after consuming the defective goods and the buyer had no right to recover damages in absence of goods warranty.³ The traditional rule of caveat emptor had imposed a responsibility on a consumer to be careful as a prudent man while purchasing goods. The government must take the responsibility of protecting the above mentioned rights through effective implementation mechanism which is lacking in India. When consumers

¹ Ratan Lal & Dheeraj Lal, Law of Torts, ED 2018, p167

² Sec 2 of Consumer Protection Act 2019

³ Winfield and Jolowicz on Tort, Ed 19, Sweet & Maxwell, South Asian Edition, 2015, p 167



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

purchase goods relying on advertisements which misleads them, can bring action against such misleading advertisements. As per the Act, a misleading advertisement in relation to goods or service means falsely describing the goods or services, false descriptions about the quantity, quality, warranty, nature and substance of the product and also includes intentionally hiding relevant information about the product while selling. Against this, a consumer can bring action for product liability which says the manufacturer or seller of goods or services will be liable to compensate the consumer for suffering injuries from defective goods.

Product liability laws in India

The legislations dealing with product liability are Indian Contract Act and Consumer Protection Act 2019. Under contract law if conditions/warranty may be implied or express about the nature of the goods are not fulfilled, the seller or the manufacturer will be liable to pay damages to consumers. But the issue with the warranty is it is like a privity of contract which means only buyer can bring action against the seller. If goods are used by some other person he cannot claim compensation against the seller/ manufacturer, in such circumstances action can be brought under sec of 82 the new Act.

As already mentions above, another piece of legislation to protect the interest of consumer is new Consumer Protection Act 2019 which is based on the common law principles. If goods sold are defective, as a result of which if consumer suffers any injuries, action for negligent can be brought against manufacture/seller and the principle of strict liability is applicable. Any person who uses defective goods need not to be the purchaser to bring action for negligent act.

The negligent act means a reasonable care has not been taken while manufacturing the goods. The plea of negligent and breach of warranty can be taken up by consumers, if it is failed the principle of strict liability is made applicable and manufacturer, supplier, seller all will be made liable for selling defective goods.¹

In *Wheels World v. Pradeep Kumar Khurana*,² the complainant filed a complaint against the petitioner for not providing the services during the warranty period due to which the complainant suffered loss both professionally and personally, the national commission awarded the compensation amount.

In India, criminal liability for supplying the defective goods can be imposed under many legislations such as food safety law, food adulteration law, Indian Penal Code, Drugs & Cosmetic law, BIS Act. Under these legislations, huge amount of fine with or without imprisonment can be imposed.

Sections 82-87 of the Act deals with product liability action which can be taken by consumer by filing complaint before an appropriate authority against manufacture, seller or service provider providing defective goods/ services.

Grounds for product liability action

- Product containing manufacturing defect
- Defective design
- Deviation from manufacturing specifications
- Product not confirming the express warranty
- Not containing the correct information about the usage of the goods
- Insufficient or deficiency in service
- Wrongful act of omission or commission or negligent acts
- Not issuing adequate information with respect to warning to prevent any harm by use of goods

Defences available in product liability actions

- The product is misused, altered or modified
- Product purchased by an employer to use in workplace and instructions are given to employer but same is not given to employees while using in workplace

¹ Chakraborty's 'Law of Consumer Protection', Dwivedi Law Agency, Ed 2015, p 256

² I (2008), CPJ, 234 NC



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

- Product sold as component to be used with other product
- Consumer shall not be under the influence of alcohol or drugs not prescribed by the medical practitioner while using the product
- The instructions to use the product is commonly known to consumer by the nature of the characteristics of the product

Case laws analysis

The basic principles regulating the product liability is negligence and strict liability evolved in Common Law. The principle laid down in *Donoghue v. Stevenson*¹ says the personal liability can be imposed not just on manufacturers but also on repairers, fitters, erectors, suppliers and assemblers.² The above said principle was incorporated in the old legislation and subsequently incorporated in new Act 2019. Sometimes a claimant can rely on the common law principles when the limitation period is expired to claim damages.³

The principle of strict liability has been followed by Indian courts to protect the interest of consumers if they suffer any injuries due to defective goods or services.

In India the product liability is imposed as per the principle of strict liability applied in *A.S. Mittal v. State of UP*⁴ is imposed by the honorable Supreme Court of India held that the liability depends upon the facts of the each case.

In *Airbus Industrie v. Laura Howell Linton*, in 1994 the High Court of Karnataka held that the appellants are liable on the basis of common law concepts of causation and negligence in absence of strict law. But now after enactment of new 2019 Act these types of cases can be decided under consumer law.

Reliefs for product liability are as follows:

- To remove defect
- To replace the goods with new goods of a similar description which shall be free from any defect
- To return the price or consideration to the complaint
- To pay such amount as may be awarded as compensation to the consumer for the loss or injury suffered by the consumer due to the negligence of the other party and in a fit case to award punitive damages
- To discontinue unfair trade manufacture
- To cease and stop the manufacture of hazardous goods
- Stop selling hazardous goods

Criminal liability

Under various laws, court can impose criminal liability of imprisonment from 6 months to life imprisonment depending upon the nature of injuries suffered by consumers and fine amount. The expiry of the warranty period may not prevent the awarding of damages. In some cases the consumer courts have extended the period of warranty for the period of distress also which was held in *Balaji Motors v. Devendra & Another*.⁵

Misleading advertisements

Many of us know that the promise made by companies in their product advertisements will not meet our expectations and promise made them. Pictures of flawlessly beautiful models in cosmetics goods advertisements and weight-loss products advertisements are the examples in the present situations which deceive public. Hidden fees & surcharges and terms & conditions in advertisements of financial products often speak what their ads do not. Yet, we cannot deny the fact that misleading advertisements continue to influence us and many a times persuade us into making a purchase. In digital era, it is easy for manufacturer to market

¹ (1932) UKHL 100

² Winfield and Jolowicz on Tort, Ed 19, Sweet & Maxwell, South Asian Edition, 2015, p 296

³ Winfield and Jolowicz on Tort, Ed 19, Sweet & Maxwell, South Asian Edition, 2015, p 297

⁴ AIR 1989 SC

⁵ 2013 CPL 534 (NC)



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

their goods through advertisements. Consumers easily carried away with attractive advertisements and purchase goods, but these advertisements should not mislead by giving false description and features of the goods. After consuming the goods, the consumers feel deceived most of the time because goods will not as it is shown in an advertisement and they suffer injuries. At present as per the study conducted by online community platform in New Delhi, 80 % of the consumers does not believe advertisements while purchasing goods.¹ In pandemic situation, Pathanjali product (Coronil) promoted as medicine to cure corona virus against which the union government issued an order banning the sale of the product, is an another incident. As per the study during May & June 2020 conducted in 220 districts across India, collecting 67, 000 responses which says that the consumers come across with misleading advertisement endorsed by celebrities, 23 % responses said they do not trust advertisement while purchasing product. Maximum number of consumers rely on these misleading advertisements as a result of which demand has been made to the government to take actions against such advertisements. In such situation, action can be brought against misleading advertisements as per the law. As per the new Act 2019, strict action can be taken by imposing criminal liability and to pay compensation to injured consumers. Celebrities endorsing goods through misleading advertisements should have moral & social responsibility and stop endorsing and giving false assurity about the goods. In Indian society people follow celebrities blindly and same is enmeshed by manufacture in marketing their products. The new Act 2019, has provided protection to consumers and traditional rule of caveat emptor does not play any role.

The new Act 2019 provides for establishment of the Central Consumer Protection authority under sections 10-27 to protect and promote the interest of consumer in digital era. The investigation authority has been constituted to investigate into the complaint made by consumers about misleading advertisements leading to unfair trade practices.

Role of Advertising Standards Council of India (ASCI)

ASCI is a self regulatory body established in the year 1985, regulating advertisement entities in India. It has the responsibility of self regulations to protect the interest of consumers against the misleading advertisements. All the advertisements must compile with codes such as honest, decent, lawful, truthful and not hazardous & harmful,

ASCI which can regulate advertisements in the market. As per ASCI, many complaints about misleading advertisements have been received with respect to the following products/ services:²

- 102 related to health care
- 20 related to education
- 7 related to personal care
- 6 related to food & beverages
- 8 in miscellaneous category

Redressal mechanism for misleading advertisement

As per Section 15(1) of the 2019 Act, the Central Authority shall have an Investigation Wing headed by a Director General for the purpose of conducting inquiry or investigation as may be directed by the Central Authority. A consumer can file a complaint with the Central Consumer Protection Authority against any advertisement which gives or conveys false description of a product or service or contains a representation constituting an unfair trade practice etc.

Pursuant to Section 17 of the Act, a complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers can be forwarded the District Collector or the Commissioner of regional office or the Central Authority.

The District Collector on the basis of a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints relating to violations of consumer

¹ www.livemint.com/industry/advertising/indian-consumers-, date:4/11/20 @ 4.00 pm

² www.scoopwhoop.com/advertising-council-says-these-brands date:4/11/20, @ 4.20 pm



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

rights, unfair trade practices and false or misleading advertisements and submit a report to the Central Authority or to the Commissioner of a regional office.¹

Section 21 of 2019 Act deals with the Power of Central Authority to issue directions and penalties against false or misleading advertisements which are as follows:

(1) If the Central Authority is satisfied after investigation that any advertisement is false or misleading or prejudicial to the interest of consumers or violating the consumer rights may issue directions asking the manufacturer or advertiser or publisher to discontinue such advertisement or to modify it within a prescribed time period specified in the order.

(2) The Central Authority is of the opinion that it is necessary to impose a criminal liability in respect of any false or misleading advertisement by a manufacturer or publisher imposing a penalty which may extend to 10 lakh rupees and for every subsequent contravention by a manufacturer or publisher can impose a penalty extend to 50 lakh rupees.

(3) If the Central Authority feels it necessary, it may prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to 1 year and for subsequent offence Central Authority may impose imprisonment which may extend to 3 years.

(4) Where the Central Authority is satisfied after investigation that any person is found to publish or is a party to the publication of a misleading advertisement it may impose on such person a penalty which may extend to 10 lakh rupees.

No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business, but such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.

Appeal against the order of Central Authority

As per Section 24 of 2019 Act, a person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of 130 days from the date of receipt of such order.

The authority has created a user friendly web portal to help consumers and it has facilitated e-filing of complaint by the consumers, till now around 31590 complaints have been filed and 30591 cases have been resolved by the authority.²

CONCLUSION

As per the legal provisions (new Act 2019), the product liability cases will be dealt very strictly and in the coming days new principles would evolved through judicial decisions to protect consumers' right. The new consumer law empowers consumers to fight back against all the unfair trade practices adopted by manufacturers and sellers when they are exploited by them. Consumer education is very much important and awareness about same to be created among them, the government and non governmental organizations must take initiative to meet this objective through initiating class action suits against unfair trade practices. Jago Grahak Jago is an initiative which highlights the right to consumer education through informational programmes and materials which enable all the consumers to take correct decision in purchasing goods and availing best services. As a social responsible citizen we need take up the task of consumer education from the gross root level and include about the same in school syllabus because in the digital era even small kid without having the legal capacity is opting for online purchasing without knowing the its consequences and it should be monitored effectively. At global level, world consumer movements have initiated many times but every individual must take first step to protect his right as a consumer and little care while purchasing any goods or availing services because precaution is better than cure.

BIBLIOGRAPHY

1. Winfield and Jolowicz on Tort, Ed 19, Sweet & Maxwell, South Asian Edition, 2015
2. V.R. Choudhry, 'Law of Consumer Protection', Premier Publishing Company, Ed 2004

¹ Sec 16 of CP Act 2019

² www.consumercomplaintinfo.com, 12/11/2020, @ 3.50pm



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : WWW.BMSCL.AC.IN

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

3. S.P. Sen Gupta, 'Commentaries on the Consumer Protection Act', Kamala Law House, Kolkata, Ed 13.
4. Chakraborty's 'Law of Consumer Protection', Dwivedi Law Agency.
5. Ratan Lal & Dheeraj Lal, Law of Torts, ED 2018
6. Taxman Consumer Protection Act 2019, Ed 2020, Taxman Publication



AN ANALYSIS OF CONSUMER PROTECTION ACT, 2019

Dr. Nalini R

Assistant Professor, BMS College of Law, Bangalore

INTRODUCTION

Finally a 3 decade old Consumer Protection Act 1986 has been replaced by Consumer Protection Act, 2019. The Consumer Protection Act, 2019 ("New Act") heralds the beginning of a new era of consumer rights in India that are in sync with new-age consumer expectations. It carries forward the rich legacy of The Consumer Protection Act, 1986 ("Act") that was considered path-breaking at the time of its enactment, but which was unable to meet the challenges of a rapidly growing, sophisticated and inter-dependent market for goods and services. This replacement was the need of modern Indian consumer. New consumer protection bill has many new provisions for customers. It is designed to help customers and it tries to overcome problems in providing basic rights to consumers of a major sector called e-commerce.

DEFINITION OF CONSUMER

In Old consumer protection act definition of consumer was only limited to buying goods or services, it did not talk about online purchase or offline purchase or teleshopping etc. New act has expanded the definition of consumer it includes description about online transactions and offline transactions, teleshopping and multi-level marketing and direct selling. Now new act also covers online transactions old act was also covering online transactions but there was not description included about online and offline transaction in old consumer protection Act.

What is Consumers Protection Act

Consumers Protection Act is formed to save the interest of the consumers by establishing authorities for timely and effective administration and settlement of consumer disputes.

Salient Features of the Consumer Protection Act, 2019

- Consumer Protection Councils
- Central Consumer Protection Authority(CCPA)
- Simplified Dispute Resolution Process
- Mediation
- Product Liability
- Rules on e-commerce and direct selling
- Penalty for adulteration of products/spurious goods

Key Points of New Consumer Protection Act 2019 :-

1. Consumer Protection Authority

The New Act proposes the establishment of a regulatory authority known as the Central Consumer Protection Authority (CCPA), with wide powers of enforcement. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations. The CCPA has been granted wide powers to take suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses and file class action suits, if a consumer complaint affects more than 1 (one) individual.

2. Pecuniary Jurisdiction

The word Pecuniary means amount, CDSR will have the following Jurisdiction according to the price of goods or services related to which a complaint is made :-

1. District Level – Upto Rs 1 Crore
2. State Level – From Rs 1 Crore to 10 Crores
3. National Level – Above Rs 10 Crores

3. Product Liability

A manufacturer or product service provider or product seller to be responsible to compensate for injury or damage caused by defective product or deficiency in services



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

- Basis for product liability action –
- Manufacturing defect
- Design defect
- Deviation from manufacturing specifications
- Not conforming to express warranty
- Failing to contain adequate instructions for correct use of Service provided-faulty, .

4. Contracts

An unfair contract shall mean a contract between manufacturer/trader/service provider and a consumer which causes harm to the consumer or significant change in the rights of the consumer. One of such examples can be unilateral termination of the contract without any prior information. For the same purpose a complaint can, be filed in the State Commission up to 10 Crore INR and in National Commission above 10 Crore INR.

5. Unfair Trading Practices

One of the biggest improvement is that new act has broaden the definition of unfair trading practices. New act tells that customer's private data such should not be disclosed to any other person or organization without disclosure from the customer.

6. E-Commerce and false advertisement

The definition of "consumer" under the new Act i.e. 2019 Act includes the consumers who make purchases through e-commerce platform. The earlier Act did not include the consumers who buy products online and this lacuna has been filled by the 2019 Act. There is a separate provision for endorsement of goods and services, which are normally endorsed by the celebrities are covered under the provision of false and misleading advertisement. The onus on the celebrities is additional to the liability placed on the manufacturers and service providers. Mis-leading advertisement shall also mean deliberately hiding important information. CCPA which shall be discussed later also regulates false and mis-leading advertisement.

7. Simplified Dispute Resolution Process

- Deemed admissibility after 21 days of filing
- Empowerment of Consumer Commissions to enforce their orders
- State Commission & District Commission can now review their own orders
- Appeals only on question of law after second stage
- Ease of approaching Consumer Commissions

8. Provision for Alternate Dispute Resolution

The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them.

With the New Act all set to become the law, gone are the days, where the 'consumer was asked to beware'. A consumer is now the one who assumes to be treated like a King. Hence, it is important for consumer driven businesses (such as, retail, e-commerce) to be mindful of the changes in the legal landscape and have robust policies dealing with consumer redressal in place. Consumer driven businesses must also strive to take extra precautions against unfair trade practices and unethical business practices.

9. Punishment for Misleading Advertisement

The New Act has come up with the punishments for the misleading advertisements which is 2 Years Imprisonment and Fine up to Rs 10 Lakhs and for subsequent offence 5 Years imprisonment and up to Rs 50 Lakh fine.

CONCLUSION:

Finally the new Act touches on many aspects such as Mediation and E-commerce which was unaware in 1986. Government has taken consumers seriously. If we look at the new consumer protection act then we can see that many new terms have been added to law. Government is taking online frauds seriously. Certainly 2019 Act is a positive step towards reformation, development and enhancing consumer rights. Socio-economic developments are taking place every year and we can expect new amendments to 2019 act as well.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in principal@bmscl.ac.in admission@bmscl.ac.in library@bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

BIBLIOGRAPHY

I. BOOKS

1. The Consumer Protection Act, 2019- Bare Act, Asia Law House, Hyderabad
2. Barowalia J. N. Commentary on the Consumer Protection Act, 6th Ed., Delhi: Universal Law Publishing Co'. Pvt. Ltd., 2008.
3. Dr. S.C Tripathi, the Consumer Protection Act, Central Law Publication
4. Agarwal V. K. Consumer Protection Law and Practice, 5th Ed., New Delhi: B.L.H. Publishers' Distributors Pvt. Ltd. 2009.
5. Reddy G. B., Law of Consumer Protection, 4th Ed. Hyderabad: Gogia Law Agency, 2009.
6. Singh Avtar, Law of Consumer Protection: Principles and Practice, 4th Ed. Lucknow: Eastern Book Co., 2009.

II. ARTICLES

1. Consumer Protection Act, 2019 by Vivek Sable, Symbiosis International University.
2. Mudgil H.K. "Consumer Laws after Independence In India", AIR 2005 SC (J) 252.
3. Singh Gurjeet, The Law of Consumer Protection in India: Justice within Reach, New Delhi: Deep and Deep Publications

WEBSITES

1. <http://egazette.nic.in/WriteReadData/2019/210422.pdf>
2. http://legislative.gov.in/sites/default/files/A1986-68_0.pdf
3. www.google.co.in



CONSUMER PROTECTION (E-COMMERCE RULES), 2020 – A CRITICAL ANALYSIS

Dr. Roopa S

LL.M, Ph.D, Assistant Professor, B.M.S College of Law, Bangalore

ABSTRACT

The world has moved towards e-commerce owing to internet access, ease in operating computing devices, cheaper pricing on online portals, shopping patterns, wide variety of goods and services and changing mindsets of consumers has significantly increased e-commerce. E-commerce has gained momentum especially during covid-19 encompassing a wide range of goods and services. The raging Covid-19 pandemic has compelled the individuals and businesses to resort to online transactions. The compulsory imposition of social-distancing norms and the necessity of contact-free buying and selling have resulted in enormous popularity of on-line platforms for business. E-commerce platforms allow for internet-enabled trade in unprecedented ways. Owing to the enormous reach of e-commerce, it has provided a collaborative platform for consumers and traders. Consumers get to choose wide range of goods and services across the world from anywhere at any time. However, due to lack of transparency, accountability and absence of grievance redressal mechanism the consumers have become vulnerable as they are subjected to various unfair trade practices. The Central Government has laid down Consumer Protection (E-Commerce) Rules, 2020 to impose liabilities and duties on sellers and market entities in order to better protect the interests of consumers on online platforms. It provides a regulatory framework to regulate marketing, sale and purchase of goods and services online. Duties and liabilities are imposed on all e-commerce entities and sellers. However the Rules are in the stage of infancy and proper guidelines would clarify the grey areas. The clarifications and removal of ambiguities in the Rules would lead to robust growth of e-commerce in India.

Keywords: E-Commerce, Consumer, Seller, Marketplace Entity

1. INTRODUCTION

In the age of internet, India has over 500 million people who use internet.¹ The wide internet access, ease in operating computing devices, cheaper pricing on online portals, paucity of time and availability of surplus income has significantly increased the share of e-commerce in total retail market. The rapid popularity and acceptance of e-commerce has brought a paradigm shift in the realm of marketing and trading in India. The market study on E-commerce published by Competition Commission of India in January 2020 has highlighted upward trend in revenue growth of the sector from USD 39 billion in 2017 to USD 120 billion in 2020, making India one of the fastest growing e-markets in the world. Beginning with mere surfing of internet to online shopping and making online payments, consumers fall prey to scams, frauds, false and misleading advertisements and unfair trade practices. However the advent of e-commerce has posed new challenges such as legal validity of e-contracts, jurisdictional issues to resolve disputes, privacy concerns and pricing regulations. Due to enormous growth of e-commerce, it was quintessential for the government to revamp the archaic Consumer Protection Act of 1986 by introducing the E-Commerce rules to meet the needs of consumers. A vibrant and effective regulatory mechanism was crucial for the success of e-commerce in India. Hence the Central Government notified² Consumer Protection (E-Commerce) Rules, 2020³. Although rules are in existence, enforcement and implementation suffers in the Indian scenario. The legal and regulatory challenges are acting as hindrance to the growth of e-commerce in India. It would be disastrous if the regulatory haze and maze brings this vibrant business to halt. At this juncture, an attempt is made to understand the meaning of e-commerce along with the enforcement and regulatory provisions in Consumer Protection (E-Commerce) Rules. It is important to critically analyze the existing legal provisions by pointing out the lacunae and make necessary

¹ Sandhya Keelery, 'Number of Internet Users in India, 2015-23', Statista (July 7, 2020) available at <https://www.statista.com/statistics/255146/number-of-internet-users-in-india> (accessed on 19/10/2020 at 7.01 pm)

² According to S. 101(2) (zg) of Consumer Protection Act, 2019, the Central Government is conferred with the power to make rules. Accordingly, Ministry of Consumer Affairs, Food and Public Distribution notified Consumer Protection (E-Commerce) Rules 2020 on 23rd July, 2020.

³ Preliminary Draft of the Rules was released in November 2019 and consultation from various stakeholders was invited by December 2019. The present version of rules is an upgraded version of 2019 Draft Rules which replaced Electronic Guidelines for Consumer Protection, 2019



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : www.bmscl.ac.in





International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

suggestions for a better legal and regulatory framework to ensure consumer-friendly e-commerce environment in India.

II. Meaning of E-Commerce

E-commerce is a new way of conducting business over networks which use non-proprietary protocols that are established through an open standard-setting process such as the internet.¹

United Nations Commission of International Trade Law on E-commerce refers to E-commerce as transactions carried out by means of electronic data interchange and other means of electronic communication, which involve the use of alternatives to paper-based methods of communication and storage of information.²

World Trade Organization Programme on E-commerce defined E-commerce as production, distribution, marketing, sale or delivery of goods and services by electronic means.³

Department of Industrial Policy and Promotion in its Guidelines for FDI on E-commerce provided that "E-commerce is buying and selling of goods and services including digital products over digital and electronic network."⁴

III. Salient Features of the Consumer Protection (E-Commerce) Rules, 2020

The E-commerce Rules are applicable to e-commerce entities. 'E-commerce entities are any person who owns, operates, or manages a digital or electronic facility or platform (i.e., an online interface in the form of any software including a website or mobile applications) for electronic commerce. It is to be noted that it does not include sellers offering their goods or services on e-commerce platforms. The e-commerce entities are generally categorized into two models:

- Inventory E-Commerce entity- These entities own the inventory of goods and services and sell them directly to consumers. They include single-brand retailers such as Nike, Reebok, or multi-channel single-brand retailers such as Urban Ladder.
- Marketplace E-Commerce entity- These entities provide information technology on a digital or electronic network to facilitate transactions between buyers and sellers. Amazon, Snapdeal and Flipkart are some of the examples for the same.⁵

The following are the highlights of the Consumer Protection E-Commerce Rules, 2020:

a) Scope and Applicability⁶

The E-commerce rules are applicable to all kinds of goods and services sold over digital or electronic network including digital products to consumers in India. It extends to all models of e-commerce, including marketplace e-commerce entities and inventory e-commerce entities. It covers all e-commerce retail, including multi-channel single brand retailers and single brand retailers and single brand retailers in single and multiple formats such as single brand retailers who use multiple distribution channels such as offline retail stores in addition to e-commerce. It extends to all apps/websites which offer any good or service for sale to consumers in India. It also applies to offshore apps/websites that systematically offer goods or services in India.⁷

¹ Definition is given by Organization for Economic Co-operation and Development.

² Didar Singh, 'Electronic Commerce: Issues of Policy and Strategy for India', Working Paper No. 86 (September, 2002) Indian council for Research on International Economic Relations, available at www.icrier.org/pdf (visited on 14/09/2020 at 4.30 pm)

³ Jonathan Hill, *Cross Border Consumer Contracts*, Oxford University Press

⁴ Norbert Reich, *Consumerism and Citizenship in the Information Society*, Thomas Wilhelmson, Salla Tuominen & Heil Tuomola (ed.) The Hague/London/Boston: Kluwer Law International

⁵ Sumit Kumar Gupta, 'Consumer Protection (E-Commerce) Rules, 2020: An Analysis', available at indiacorplaw.in > 2020/08 > consumer-protection-e-co (visited on 1/10/2020 at 9.00 pm)

⁶ Rule 2 of Consumer Protection(E-Commerce) Rules, 2020

⁷ Krimal Malhotra and Anshu Nayyar, 'Flipping the Cart: Consumer Protection (E-Commerce) Rules, 2020' available at www.nlujlawreview.in > flipping-the-cart-consumer-pr (visited on 3/10/2020 at 3.00 pm)



b) Presence in India

According to E-commerce Rules, the e-commerce entity should either be a company incorporated in India under Companies Act, 1956 or a foreign company incorporated outside India but having place of business in India, including through electronic mode as per the provisions of Companies Act, 2013. It also extends to the office, branch or agency outside India owned or controlled by a person resident in India as per the provisions of Foreign Exchange Management Act, 1999. The E-Commerce entities should appoint an Indian resident as a nodal officer as a person of contact to ensure compliance with CPA, 2019.¹ This ensures effective regulation of foreign entities.²

c) Implications on B2C and B2B entities

The consumer purchases are governed by both CPA, 2019 and E-Commerce Rules, 2020. According to CPA, 2019, 'consumer' is a person who buys goods or services for consideration but excludes a person who purchases for 'commercial purposes'. However, if goods or services are availed for earning livelihood or self-employment, they are not regarded as consumers. Therefore, the CPA and E-Commerce Rules do not typically apply to purchases made by companies for their commercial operations. Hence, sole partnerships and entrepreneurs are not excluded from the definition of consumer. If any customer purchases goods and services on a purely B2B platform for self-employment, they shall be considered as 'consumers' and the B2B platform would be liable under the E-Commerce Rules to the extent of such a sale.³

d) Duties and Liabilities of E-Commerce Entities⁴

- i. Every E-commerce entity shall provide details about the sellers including identity, geographical address, contact details and complete information about the business identity and types of products.
- ii. In case of imported goods for sale, the e-commerce entity shall mention the name and details of the importer from whom goods are purchased. This helps to trace those selling spurious goods.
- iii. The marketplace e-commerce entity shall take reasonable efforts to maintain a record of relevant information relating to identification of all sellers who have repeatedly offered goods or services but have been disabled or removed according to Copyright, Trade Marks and Information Technology Acts.⁵

e) Liabilities of Marketplace Entities⁶

Apart from the general duties, the Rules impose specific requirements on marketplace entities:

- i. Reiterate that the intermediaries exercise due diligence.
- ii. Ensure that description of goods and services are accurate and correspond to the features expressed by the seller in the undertaking.
- iii. Describe differential treatment given to goods, services or sellers of same category. This may include options available for a seller to offer sponsored advertisements on the platform.
- iv. To take reasonable efforts to maintain a record of sellers who had repeatedly offered goods or services that have been removed or disabled by the platform due to violation of IP or IT laws.⁷

¹ Legality Simplified, 'New Rules for E-commerce Companies in India', available at taxguru.in/corporate-law/e-commerce-rules-consum (visited on 9/10/2020 at 7.55 pm)

² Similar provisions are made in Data Protection Bill, 2019 wherein regulatory and enforcement provisions extend to foreign entities.

³ Trilegal, 'Consumer Protection (E-Commerce) Rules, 2020 - India', available at www.mondaq.com/india/consumer-protection-e-co (visited on 30/10/2020 at 6.15 pm)

⁴ Rule 4 of Consumer Protection(E-Commerce) Rules, 2020

⁵ Priya Rao, 'Legal Provisions For Protection From Purchasing Spurious Goods Through E-Commerce Under The Consumer Protection Act, 2019 And Consumer Protection (E-Commerce) Rules, 2020', K&S Partners, www.legal500.com/developments/thought-leadership, (accessed on 31/09/2020)

⁶ Rule 5 of Consumer Protection (E-Commerce) Rules, 2020

⁷ Dr. Gargai Rajvanshi, 'Consumer Protection (E-Commerce) Rules, 2020 : An Analysis', ICSI, available at www.icsi.edu/media/webmodules/Consumer_Protection, (visited on 30/10/2020 at 7.30 pm)



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

The E-commerce entities are also supposed to provide certain information so that the consumers can make informed decisions such as:

- i. The details provided by sellers to marketplace entities should be displayed on the platform.
- ii. The information relating to available payment methods, return, refund, exchange, delivery, shipment and grievance redressal mechanism.
- iii. Any aggregated ranking or feedback about the seller of goods along with parameters to determine such a ranking and relative importance.

These provisions are also applicable to inventory entities.

f) Duties of Sellers using Marketplace Entities¹

The sellers should provide information to market entity regarding seller entity, price including break-up price and other relevant details such as country of origin, guarantees and also information about importer, manufacturer and mode of delivery. There should be an express pre-written undertaking given by the seller to the inventory e-commerce entities expressing the terms of contractual relationship with the entity and the same should be displayed for users. The undertaking should also mention that the features, images and descriptions are accurate and authentic. They shall appoint a grievance redressal officer and refrain from resorting to unfair trade practices.²

They should not post fake or misleading reviews, or represent themselves as customers of their own products and shall not adopt any such unfair trade practices. Provisions should be made for refund or taking back of defective, deficient and false goods or services. If the goods or services do not match with the correspondent item on an e-commerce platform or that the delivery got delayed, then the goods or services may be rejected and refund may be claimed. They should not indulge in misleading advertisements as the products and services should correspond with what is displayed and promised. The E-Commerce entities shall not discriminate between consumers of same class and refrain from making arbitrary classifications so as to affect their rights under CPA.³

g) Measures against Unfair Trade Practices

Lack of transparency and accountability in e-businesses has placed consumers in a weak bargaining position and also are subjected to unfair trade practices. The Rules prevent the e-commerce entities from selling counterfeit and pirated goods. The E-commerce entities shall ensure that consumer should express consent and cannot be implied in an automatic manner such as pre-ticked boxes. The goods and services purchased or promised to be purchased shall not be withdrawn or the production shall not be stopped.⁴ The cancellation fee shall be borne by both seller as well as e-commerce entity. The price specified shall not be manipulated to gain unreasonable or unjustified⁵ profits.⁶

h) Grievance Redressal Mechanism

In e-commerce there is no face to face transaction between consumer and e-tailer. To provide quick relief, every digital commerce platform should set up grievance redressal mechanism headed by nodal grievance officer or an alternative senior officer. Every consumer complaint shall be issued a ticket number so that the consumer can himself track the status of the complaint. The grievance must be acknowledged within 48 hours of the receipt

¹ Rule 6 of Consumer Protection(E-Commerce) Rules, 2020

² Trilegal, 'Consumer Protection (E-Commerce) Rules, 2020 – India', available at www.mondaq.com/india/consumer-protection-e-co (visited on 30/10/2020 at 6.15 pm)

³ Soumyarendra Barik, 'New Draft Consumer Protection Rules for E-Commerce require Platforms to show Country of Origin and explain how Product Listings work', available at www.medianama.com/2020/07/223-consumer-prot/ (visited on 30/10/2020 at 4.00 pm)

⁴ Rule 5 (3), 'The Consumer Protection (E-Commerce) Rules, 2020

⁵ Rule 4 (11)(a), 'The Consumer Protection (E-Commerce) Rules, 2020

⁶ Tanveer Kaur, 'Highlights of the Consumer Protection (E-Commerce) Rules, 2020', Metacept – InfoTech and IPR, accessible at <https://metacept.com/highlights-of-the-consumer-protection-e-commerce-rules-2020/> (visited on 3/10/2020 at 4.15 pm)



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

and must be resolved within one month of receipt of it. The e-commerce entities shall make best efforts to participate in the national Consumer Helpline, for quick resolution of consumer complaints.¹

IV. Critical Evaluation of Consumer Protection (E-Commerce) Rules, 2020

An analysis of the Rules clearly point towards certain grey areas. They are:

1. Country of origin- According to the E-commerce Rules, the seller offering goods or service through a marketplace e-commerce entity should mandatorily provide information about 'country of origin' and the same shall be displayed on the platform or website. But the Rules have not provided any guidance to determine the country of origin. Moreover it is not made applicable uniformly as the inventory-based e-commerce entities are excluded. It may mean that where seller is the e-commerce entity or an e-commerce entity which is not market place, the consumer do not get an opportunity to know the country of origin at pre-purchase stage to make an informed decision.
2. Prohibition of price manipulation- E-commerce entities are prohibited from manipulating price of goods or services offered on its platform in such a manner as to gain 'unreasonable profit' by imposing on consumers 'unjustified price' having regard to prevailing market conditions and essential nature of good or service among other things. The provision would serve better the interests the consumers if proper guidelines are laid down as to what may be construed as 'unreasonable profit' and 'unjustified price'. For instance several e-commerce entities use algorithms to determine price based on various factors. Whether the profits arising out of such pricing mechanisms can be considered as unreasonable is debatable. For instance the ride-hailing apps such as Uber or Ola use 'price surging' based on demand at particular time and place. Although, it is data-driven, still it gives scope to the consumers to challenge the e-commerce entities for such price modifications. The e-commerce entities should justify their algorithm-based pricing actions by internal compliance and price justification. Another consequence of this provision is that it may result in discrepancy in the regulation of same products across different distribution channels. As it would mean that offline is governed by free market but online shall be subject to strict pricing restrictions and thus impedes the growth of e-commerce.

Data-driven pricing may also become an issue when it is used to provide offers or discounts to specific classes of consumers. There is no clarity as to what is the 'reasonable basis' for such classification. It leads to uncertainty when algorithms are used to target specific categories of customers or customize the offers.

3. Disclosure of contractual information- Any seller offering goods or services through a marketplace e-commerce entity and inventory e-commerce entity must disclose all contractual information required to be disclosed by law to the e-commerce entity which must then be displayed on website on platform. There is no clarity as to what kind of contract is being referred to. Whether it is the contract between seller and marketplace e-commerce entity and what kind of contract in case of inventory-based e-commerce entity since the seller is the e-commerce entity itself.
4. Timeline for compliance- The E-commerce Rules are effective from July 23, 2020 and no grace period is given for compliance especially for the off-shore e-commerce companies that systematically offer goods and services to consumers in India. Generally, when regulations bring under their purview new categories of regulated entities, a grace period for compliance is usually provided to ensure the businesses manage their affairs and comply with the norms. The off-shore e-commerce entities would have to incorporate a company in India and appoint nodal officers but they may be regarded as non-compliant from day one of the notification of E-commerce Rules.²
5. Both e-tailers and sellers should appoint grievance officers to address any complaints. This would prove to be an additional burden on small sellers. It would be a difficult challenge. It may far exceed the benefit of selling online.
6. The Confederation of All India Traders (CAIT) protested against allowing 49% foreign stake in the inventory model of e-commerce firms. They accused e-commerce firms of violating norms by offering

¹ Rule 4 (5), 'Consumer Protection (E-Commerce) Rules, 2020'

² Kaushalya Venkataraman, 'Consumer Protection in Indian Ecommerce: 5 Grey Areas Which Needs Government's Attention', Chandhiok & Mahajan Advocates & Solicitors, available at trak.in/Business (visited on 7/10/2020 at 11.30 pm)



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

deep discounts and directly selling goods to customers. Mandatory provision of storing data in India was opposed by companies like Amazon and Facebook.¹

7. Most of the entities are run as limited liability partnerships and other business forms. The mandatory requirement that all e-commerce entities in India should be run as a company may cause significant disruptions in the market.
8. Subjecting the prohibition on price manipulation by e-commerce entities to 'market considerations' creates an ambiguity in its enforcement. Most of the e-commerce entities such as Zomato, Swiggy, Ola and Uber may conveniently justify hike in prices on the grounds of market demands.
9. The consumer redressal authorities are further burdened to assess the market conditions. It leads to jurisdictional conflict between Competition Commission of India and consumer redressal authorities.
10. There is a need to prohibit promotional reviews and ratings from unverified purchasers. Unfortunately the rules only prohibit e-commerce entities and sellers from posting such reviews themselves. However, it does not provide for regulation of paid reviews and instances where sellers incentivize consumers in exchange for paid reviews. There is no mechanism to prevent fraudulent reviews and ratings by the sellers as well as their affiliates.²
11. The application and implementation of these rules raises an important question as to the ultra vires nature of provision, since it is applicable to e-commerce entities situated outside India if having business within India.
12. Certain obligations extend to those operating on platforms even though they do not fall within the ambit of consumer and seller.
13. There is no clarity as to whether the rules apply to business to business platforms or kinds of digital product offerings that are covered under the rules.
14. There are many marketplace entities providing add-on services such as warehousing, logistics, order fulfillment, payment collection so on and so forth. The concept of 'product seller' under CPA, 2019 includes entities that market, prepare, maintain or place a product for commercial purpose and provide necessary services for the same. Such entities may be held liable for violating the rights of consumers. However, the Rules are silent on the add-on services being provided by marketplace entities and the consequence is that they are classified as product sellers for the purpose of product liability claims. However, this is counter-intuitive to their classification as intermediaries in the sale process. The same need to be clarified.³
15. The rules do not provide for consumer data protection or storage of confidential information, especially for e-commerce entities operating as payment aggregators.
16. The enforceability of the provisions of the rules to the foreign businesses also remain to be clarified given that handling a dispute involving a foreign entity may have territorial and jurisdictional constraints.

V. CONCLUSION

The analysis of various provisions of the Rules nevertheless point out that it is a path-breaking legislation which regulates the previously unchecked practices of e-commerce entities and also secures consumer interest in the digital economy. The E-Commerce Rules provides a level-playing field to sellers, enhance protection to consumers and also enable healthy growth of e-commerce sector in India. The extent of information that the sellers, marketplace and inventory entities are supposed to disclose would definitely afford better protection to

¹ Rahul Choudhury, 'India's national policy framework on e-commerce: Issues and Challenges'

available at www.researchgate.net › publication › 328926438_India's (visited on 10/10/2020 at 7.15 pm)

² Krimul Malhotra and Anshu Nayyar, 'Flipping the Cart: Consumer Protection (E-Commerce) Rules', NLUJ Law Review, Journal and Blog, ISSN2326-5320 available at www.nlujlawreview.in › flipping-the-cart-consumer-pr (visited on 5/10/2020 at 9.00 pm)

³ Arun Prabhu et.al., 'Consumer Protection E-Commerce Rules: Need for More Clarity', available at corporate.cyrilamarchandblogs.com, (visited on 7/10/2020 at 9.00 pm)

⁴ *Supra* 15



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-JOURNAL : editor@bmscl.ac.in ANDROID : www.bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

consumers. E-Commerce if properly regulated would increase competitiveness and efficiency in e-tailing and thus act as a major instrument for ensuring sustainable economic growth in future. The E-commerce Rules prove to be effective if sufficient steps are taken to clarify the provisions and lay down guidelines. A pre-defined procedure for resolving disputes would provide more lucidness. Thus if the necessary changes are incorporated, it would lead to a robust and vigorous e-commerce business in India.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : www.bmscl.ac.in





ROLE OF THE CENTRAL CONSUMER PROTECTION AUTHORITY IN PROTECTING THE CONSUMER RIGHTS

Dr. Sathish K S

Assistant Professor, BMS College of Law, Basavanagudi, Bengaluru

INTRODUCTION

The Consumer Protection Act, 1986 was enacted to address the grievances of the consumer and to protect their interests. However, the three-decade-old legislation failed to keep pace with the developments in the market and digital technology in the Country. Further there was no regulatory body to control or keep a check on violation of the rights of consumers. Finally keeping in mind the fast changing new-age economy, e-commerce platforms etc., the 33 years old Consumer Protection Act 1986 has been replaced by Consumer Protection Act, 2019¹. The Act has retained some old provisions but also shows the gleam of some new perceptions. The Ministry of Law and Justice has meticulously framed the Consumer Protection Act, 2019 covering all the possibilities of defaults that may arise in the new epoch.

The Consumer Protection Act, 2019 passed to address e-commerce and online trade challenges, product liability, and safety and dispensing consumer justice in alternative dispute redressal mechanism. The amending law had a seminal bearing on the medical profession and health care system as apparent from the express verbiage exclusion of healthcare from the purview of 'service'. The new Consumer Protection Act, 2019 establishes a Central Consumer Protection Authority² which acts as a regulatory body to "promote, protect, enforce consumer rights as a class." A clear shift from Caveat emptor (let the buyer be aware) to Caveat venditor (let the seller be aware) can be seen in the new provisions as the unfair trade practices and fraud done by the seller will now be penalized. The latest Act also makes provisions for punishment regarding unfair trade practices and misleading advertisements and many more changes which keep the rights of the consumer up to date with the contemporary changes in the market.

CPA 2019 aims to strengthen consumer interests and establish regulatory authority for timely and effective administration and settlement of consumers' disputes. Again, to provide a more robust grievance redressal mechanism for protecting and enforcing consumer rights. This article aims to provide insight into new provisions, analyze the nature, extent, and impact of new provisions and include a comparative overview of some of the main provisions of CPA 2019 vis-à-vis CPA 1986. Further, to discuss the role of Central Consumer Protection Authority to protect and promote the rights of Consumer.

Historical Development of the Act

After independence, several laws were enacted in India to protect innocent consumers from unfair and restrictive trade practices like a false and misleading description about the nature and quality of the goods, exaggerated statements about their power and potency, false weights and measurements and obstruction of capital and resources into the stream of production. The Acts which were enacted in independent India are

- The Drug (Control) Act, 1950
- The Industries (Development and Regulation) Act, 1951
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- The Prevention of Food Adulteration Act, 1954
- The Essential Commodities Act, 1955
- The Trade and Merchandise Marks Act, 1958
- The Monopolies and Restrictive Trade Practices Act, 1969
- The Cigarettes (Regulation of Production, Distribution, and Supply) Act, 1975
- The Standards of Weights and Measures Act, 1976

¹ Received the assent of the President on 9-8-2019, published in the Gazette of the India Ext, Pt. II, S. 1, Dated 9-8-2019.

² Section 2 (4) "Central Authority" means the Central Consumer Protection Authority established under Section 10;



- The Prevention of Black Marketing and Maintenance of Supplies of Essential
- Commodities Act, 1980
- The Standards of Weights and Measures (Enforcement) Act, 1985
- The Bureau of Indian Standards Act, 1986

But all these Acts were not as successful as they were expected to be and that is why to provide for better protection of the interests of consumers and to save them from the evils of unfair trade practices, Consumer Protection Act, 1986 was enacted by Indian Government¹. The Consumer Protection Act 1986 underwent a series of amendments in 1991, 1993 and 2002. These amendments widened the scope of the authority given to consumer courts. Due to the spurt of digitalization, the 1986 Act possessed certain challenges and needed immediate attention. In this context, the Law Commission of India had recommended that a separate law be enacted and presented a draft Bill in relation to unfair contract terms. In 2018, a Bill to amend the 1986 Act was introduced to enable consumers to file online complaints. However, the Bill lapsed in Rajya Sabha after dissolution of Lok Sabha. The Consumer Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan on July 8, 2019 and it was passed by the Lok Sabha on July 30, 2019 and Rajya Sabha on August 6, 2019. The bill received assent from the President on 9th August, and was notified in the Gazette of India on the same date. The Act came into effect by 20 July 2020, while certain other provisions of the Act came into effect from 24 July 2020.

Changes made by the New Act of 2019

The new consumer protection Act brought significant changes keeping in view the modern e-commerce, unfair trade commerce and misleading advertisements. The Act provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority to protect, promote and enforce the consumer rights. It also envisages provisions for product liability action on account of harm caused to consumers due to defective product². Again, provision of Mediation as an alternative Dispute Resolution Mechanism has also been provided³. Further, the Act provides for several provisions aimed at simplifying the consumer dispute adjudicative process of the Consumer Disputes Redressal Commissions. An attempt is made in this paper to analyses the comparison between the Acts of 1986 and 2019.

Comparison Between Consumer Protection Act, 1986 and Consumer Protection Act, 2019		
Points	1986 Act	2019 Act
Definition of 'Consumer'	Narrow definition of "Consumer" has been given	definition of "Consumer" has been broadened
Unfair Trade Practices	Narrower in scope. Only 6 types of practices were covered	Broader in scope, added three new practices
Product Liability	There was no provision for product liability	Contain provisions for Product liability
Unfair Contracts	There was no provision for Unfair Contracts	Contain provisions for Product liability
E-commerce and direct selling	There was no provision for Ecommerce	Contains specific provisions for Ecommerce and direct selling
Mediation	There was no provision for ADRS mechanism	Contain provisions for Mediation
Pecuniary limits	Lower pecuniary limits of District	Higher pecuniary limits of District

¹ 15th April, 1987, vide notification No. S.O. 390(E), dated 15th April, 1987 in respect of Chapters I, II and IV, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

^{1*} July, 1987, vide notification No. S.O. 568(E), dated 10th June, 1987 in respect of Chapter III, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

² Section 2 (10), "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly;

³ Commencing from section 74 to 81 of the Consumer Protection Act, 2019 provides provisions for settlement of Disputes by way of Mediation.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : DURGABAI@BMSCL.AC.IN, ANANDKUMAR@BMSCL.AC.IN, ANANDKUMAR@BMSCL.AC.IN

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

	Forum - up to 20 Lakhs; State Commission - 20 Lakhs to 1 Crore; and National Commission - above 1 Crore	Commission - up to 1 Crore; State Commission - 1 Crore to 10 Crores; and National Commission - above 10 Crores
Consumer Protection Councils	Role of CPCs was to promote and protect the rights of consumers	Role of CPCs is to Act as advisory bodies for the promotion and protection of consumer rights
Selection of members to Consumer Commissions	Different Committees were prescribed for different Commissions	There is no provision for selection Committees. Central Government has the power to appoint the members
Regulator	No regulator was in existence	A regulator by the name of Central Consumer Protection Authority shall be established
Penalties	A person failing to comply with the orders of Commission could face imprisonment between one month and three years or fine between Rs 2,000 to Rs 10,000, or both	A person failing to comply with the orders of Commission can face imprisonment up to three years, or a fine not less than Rs 25,000 extendable to Rs One Lakh, or both
Online Transactions	Online Transactions and Teleshopping were previously not mentioned.	All merchandise and enterprises bought/benefited through all methods of exchanges for which thought was paid are incorporated.
Composition of Commissions	<i>District Commission:</i> Headed by current or former District Judge and two members. <i>State Commission:</i> Headed by a current or former High Court Judge and at least two members. <i>National Commission:</i> Headed by a current or former Supreme Court Judge and at least four members.	<i>District Commission:</i> Headed by a president and at least two members. <i>State Commission:</i> Headed by a president and at least four members. <i>National Commission:</i> Headed by a president and at least four members.
Limitation Period for filing Appeal	The limitation period for filing an Appeal to State Commission is 30 days.	The New Act has increased the limitation period from 30 days to 45 days.

Rights of Consumer under the C.P. Act 2019

Under the 1986 Act, the rights of the consumers were only found as a passing reference under the objects of the Consumer Protection Councils. However, the New Act has defined six specific consumer's rights under Section 2(9). Those rights are as follows

1. **Right to Safety:** Right to be protected against the marketing of goods and services which are hazardous to life and property.
2. **Right to be informed:** Right to be informed of the quality, quantity, potency, purity, standard and price of goods or services.
3. **Right to choose:** Right to access a variety of goods and services at a competitive price.
4. **Right to be heard:** Right to be represented in various forums formed to consider the consumer's welfare.
5. **Right to consumer education:** the right to acquire the knowledge and skill to be an informed consumer throughout life.
6. **Right to grievance redressal:** right to seek redressal against unfair or restrictive trade practices.

Central Consumer Protection Authority

The Act, provides for the establishment of 'Central Consumer Protection Authority' (CCPA) to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of the public and consumers and to promote and enforce the rights of consumers as a class. In exercise of powers conferred by Section 10 of the Act, the Central Government issued notification in the official gazette on 24 July 2020 for the establishment of CCPA as a body corporate having perpetual



succession and a common seal. It has the power, subject to the provisions of the Act and the rules and regulations made there under, to acquire, hold and dispose of property and it shall by the said name enter into contract, sue and be sued. The Central Authority would consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government¹. The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi and it shall have regional and other offices in any other place in India as the Central Government may decide². The Central Government may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority³. But, Central Government is yet to notify the rules relating to these factors.

The Central Government shall regulate the procedure for transaction of its business and allocation of its business amongst the Chief Commissioners or Commissioners as may be specified in the regulations. The Chief Commissioner shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Central Authority. The Chief Commissioner may delegate his powers to the Commissioners or other officers in the headquarters or in regional offices. In exercise of the powers conferred by sub-section (1) and clause (b) of subsection (2) of section 104 read with sub-section (1) of Section 14 of the Consumer Protection Act, 2019 the Central Authority with the previous approval of the Central Government notified Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2020⁴.

The Central Authority shall have an investigation wing of its own⁵. It will be headed by the Director General. The Central Government may appoint Director General or such number of Additional Director General, Director, Joint Director, Deputy Director and Assistant Director. The inquiries or investigations made by the investigation wing shall be submitted to the Central Authority within such time and in such manner. Further, The District Collector, on receipt of a complaint or on a reference made to him by the Central Authority, inquire into or investigate complaints regarding violation of rights of consumers within his jurisdiction and to submit a report to the Central Authority⁶.

A complaint relating to violation of consumers rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode to any one of the authorities namely District Collector, Commissioner of Central Authority or regional offices of the Central Authority⁷. The Central Authority may, on receipt of any information or complaint or directions from the Central Government or of its own motion, conduct a preliminary enquiry as to whether there exists a prima facie case of violation of consumers' rights or any unfair trade practice or any false misleading advertisement, by any person, which is prejudicial to the interests of public and consumers it shall cause investigation to be made by Director General or District Collector. If such matter is to be dealt with by a Regulator established under any other law for the time being in force, the Central Authority may refer such matters to the concerned Regulator along with its report. For the purposes of investigation, the Central Authority or the Director General or the District Collector may call upon the person against whom the complaint is made and also direct him to produce any document or record in his possession.

For the purpose of investigation the investigating authority is having power to enter at reasonable time into any such premises and search for any document or record or article and seizure such document or record or article. It can make a note or an inventory of such record and if it require it may order any person to produce any

¹ The Consumer Protection Act, 2019, Section 10 (2)

² *Ibid*, Section 10 (3)

³ *Supra* note 6, Section 11

⁴ The Consumer Protection Act, 2019, Section 15.

⁵ F. No. 1-1/2020-CCPA.—In exercise of the powers conferred by sub-section (1) and clause (b) of subsection (2) of section 104 read with sub-section (1) of section 14 of the Consumer Protection Act, 2019 (35 of 2019), the Central Consumer Protection Authority, with the previous approval of the Central Government, makes the The Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2020, on 13th August 2020,

⁶ *Ibid*, Section 16

⁷ *Ibid*, Section 17



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

record, register or other document or article. If the Central Authority is satisfied that there is sufficient evidence to show violation of consumer rights or unfair trade practice, it may pass an order for

- 1) Recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;
- 2) Reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and
- 3) Discontinuation of practices which are unfair and prejudicial to consumers' interest.

But, such order should be made after giving the concerned person a reasonable opportunity of being heard. Further, if the Central Authority is satisfied that any advertisement is false or misleading, it may by order, issue directions to the concerned trade or manufacturer or endorser or advertiser or publisher to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in the order. The Central Authority may impose penalties in respect of such false or misleading advertisements, by a manufacturer or an endorser which may extend to ₹ 10 lakhs. If the contravention is repeated the penalty may be imposed up to ₹ 50 lakhs¹.

The Central Authority may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to 1 year. For subsequent contravention the prohibition may be extended to 3 years. No endorser shall be liable to penalty if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or services being endorsed by him. If any person is found to publish, or is a party to the publication of a misleading advertisement, the Central Authority may impose penalty on such person which may extend to ₹ 10 lakhs. No person shall be liable for penalty if he proves that he had published or arranged for the publication of such advertisement in ordinary course of his business. No such defence shall be available if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement. A person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of thirty days from the date of receipt of such order.

Functions of Central Authority

As per Section 18, The Central Authority shall:

- (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under the Act;
- (b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
- (c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of the Act or the rules or regulations made there under;
- (d) Ensure that no person takes part in the publication of any advertisement which is false or misleading.

Powers of Central Consumer Protection Authority

The Central Authority enjoys sweeping and wide-ranging powers under the Act and can discharge functions which are regulatory, investigative or adjudicatory in nature². These include the power to:

- (a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government;
- (b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under the Act;
- (c) intervene in any proceedings before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
- (d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;

¹ The Consumer Protection Act, 2019, Section 89

² *Ibid*, Section 18(2)



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

- (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
- (f) undertake and promote research in the field of consumer rights;
- (g) spread and promote awareness on consumer rights;
- (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
- (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;
- (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- (k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;
- (l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

Central Authority has been conferred power under section 35(1)(d) to file a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Commission. The directions of the authority are mandatory if any person fails to comply those directions shall be punished by the competent court with imprisonment for a term which may extend to 6 months or with fine which may extend to 20 lakh rupees or with both. Section 104 empowers the Central Authority to make regulations consistent with this Act, for the purpose of giving effect to the provisions of this Act, with the previous approval of the Central Government.

CONCLUSION

The new phase in Consumer Rights has begun in India with the passing of Consumer Protection Act, 2019 and repealing the Consumer Protection Act, 1986 making the Consumer more powerful than before. As is evident, CPA 2019 has made several changes to the erstwhile CPA 1986. CPA 2019 has widened the reach of consumer protection regime in India. The changes made vide CPA 2019 seem to further empower consumers by leveraging responsibilities not only on their counterparts, i.e., the sellers, manufacturers, service providers, but also the endorsers of such products. The establishment of Central Consumer Protection Authority as a regulatory body to "promote, protect, enforce consumer rights as a class and empowering it to conduct investigations into violations of consumer rights and institute complaints / prosecution, order recall of unsafe goods and services, order discontinuance of unfair trade practices and misleading advertisements, impose penalties on manufacturers/endorsers/publishers of misleading advertisements keeps the rights of the consumer up to date with the contemporary changes in the market.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : bmscl@yahoo.in WEBSITE : www.bmscl.ac.in





IMPACT OF PANDEMIC ON SUPPLY OF ESSENTIAL COMMODITIES

Gurvinder Kaur

Assistant Professor, BMS College of Law, Bangalore

ABSTRACT

The object of this paper is to study what happened during the time of COVID-19 and how the population of the country struggled for all its basic needs and also for essential commodities. The challenges faced by the migrant workers and daily wage labourers are also looked by this paper. This paper also shows that how each sector faced crisis starting from losses it suffered and also the supply shocks it faced. This paper also focuses on how our defence sector suffered because of the pandemic. The policies made by the government which acted as the cushion for surviving of many sectors. The major challenge was faced by the health sector because in spite of so many deaths of the health care workers it still worked to serve the people of the nation.

Keywords: essential commodities, people, sectors, COVID- 19, government.

On January 17, 2020, the Ministry of Health and Family Welfare acknowledged the emergence of a new corona virus (COVID-19) that was spreading across China.¹ On March 11, 2020, the World Health Organisation declared the COVID-19 disease to be a global pandemic. As of November 12, 2020, there are 8,683,916 confirmed cases of COVID-19 in India.² Of these, 128,121 patients have died.

The pandemic have affected the entire food system. Border closures, trade restrictions and confinement measures have prevented farmers from accessing markets, including for buying inputs and selling their produce, and agricultural workers from harvesting crops, thus disrupting domestic and international food supply chains and reducing access to healthy, safe and diverse diets. As breadwinners lose jobs, fall ill and die, the food security and nutrition of millions of women and men are under threat, with those in low-income countries, particularly the most marginalized populations, which include small-scale farmers and indigenous peoples, being hardest hit.

Millions of agricultural workers – waged and self-employed – while feeding the world faced high levels of working poverty, malnutrition and poor health, and suffer from a lack of safety and labour protection as well as other types of abuse. Migrant agricultural workers are particularly vulnerable, because they face risks in their transport, working and living conditions and struggle to access support measures put in place by governments. In the COVID-19 food security, public health, and employment and labour issues, in particular workers' health and safety is major challenge.

INSIGHT ON ESSENTIAL COMMODITIES ACT OF 1955

Essential commodities are those commodities which centre notifies as essential commodities for the purpose of Essential commodities Act of 1955. This act is applicable to whole of India including Jammu and Kashmir³ as it comes under the basic amenity which every individual must be entitled to. The Act empowers the central government to control the production, supply, distribution, trade, and commerce in certain commodities. The Act empowers the central government to designate certain commodities such as food items, fertilizers, and petroleum products as essential commodities. The central government may regulate or prohibit the production, supply, distribution, trade, and commerce of such essential commodities. This pandemic which moved the whole world also forced our country to bring in certain changes in this Act so that it can beat the heat of the pandemic and that is the reason why there was an ordinance promulgated on June 5, 2020. The Ordinance provides that the central government may regulate the supply of certain food items including cereals, pulses, potato, onions, edible oilseeds, and oils, only under extraordinary circumstances. These include: (i) war, (ii) famine, (iii) extraordinary price rise and (iv) natural calamity of grave nature. So this is one of the big impact of the pandemic on the Essential commodities. This ordinance also led to a stop on hoarding which was creating an

¹ Novel coronavirus outbreak in China, Ministry of Health and Family Welfare, January 17, 2020, <https://www.mohfw.gov.in/pdf/TraveladvisorytotravelersvisitingChina17012020.pdf>.

² Ministry of Health and Family Welfare website <https://www.mohfw.gov.in/index.html>.

³ Extended to Goa, Daman and Diu and Kashmir with modification by Regulation 12 of 1962, section 3 and Schedule, to Dadra and Nagar Haveli by Regulation 6 of 1963, section 3 and Schedule I and to Lakshadweep and Amindivi Islands by Regulation 8 of 1965, section 3 and Schedule, to the State of Sikkim vide S.O. 28(E), dated 7th January, 1976 (w.e.f. 7-1-1976)



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

artificial hoarding. The provisions of the Ordinance regarding the regulation of food items and the imposition of stock limits will not apply to any government order relating to the Public Distribution System or the Targeted Public Distribution System. Under these systems, food grains are distributed by the government to the eligible persons at subsidised prices. The Ordinance provides that any stock limit will not apply to a processor or value chain participant of agricultural produce if stock held by such person is less than the: (i) overall ceiling of installed capacity of processing, or (ii) demand for export in case of an exporter. A value chain participant means a person engaged in production, or in value addition at any stage of processing, packaging, storage, transport, and distribution of agricultural produce. So we can see that there were lot of changes which were brought to this Act in order to meet the supply chain deficit.

THE IMPACT OF SUPPLY ON DIFFERENT SECTORS OF ECONOMY

The shortage of food supply have hit every individual in all the sectors starting from the small vendors till big businessman. This pandemic affected workers of **unorganised sector** mostly who are daily wagers or those working in Micro, Small and Medium Enterprises (MSMEs) and left them jobless, and rapidly increased the unemployment rate, left no alternate income source.¹ **Agriculture** is considered the backbone of the Indian economy. As Inter-state transportation services have shut down, farmers are unable to sell their crops in the market. They are incurring huge losses and forced to throw out their crops. They don't have any other source of income. The **poultry sector** which is the fastest-growing subsector of the Indian economy has also incurred huge losses due to social media where misinformation has been spread by correlating the infection of COVID-19 with the consumption of meat and poultry products. The nationwide lockdown will tremendously affect the operations of the **E-commerce industry**² especially at a time when there is a huge demand for home delivery of goods. This pandemic forced the Government to boost edtech sector. COVID-19 has changed the way of learning in the long term. **Higher education** has also got affected as universities and colleges are shut down, most higher education institutions are not equipped with digital technology. There will be a delay in the admission process, as most of the entrance exams are scheduled around April and May. Despite online education, platforms helped students in learning but if this could continue then there can be seen drastic unemployment in the education sector. The revenue of the **tourism sector**³ got down due to a strict ban on both domestic and international flights. Even many tourists got themselves cancelled. Meetings, conferences and major international events got cancelled like mobile world congress, Olympic, Wimbledon, Cannes international film festival and Face book F8 which lead to huge losses. The **labour sector** under the **MGNREGA**, 2005 are worst impacted as they are not provided jobs due to lockdown, most of the labour sectors are associated with the construction companies and daily wage earners. Travel restrictions and quarantines affecting hundreds of millions of people have left Indian factories short of labour and parts, just-in-time supply chains and triggering sales warnings across technology, automotive, consumer goods, pharmaceutical and other industries. Lack of medical investment and healthcare infrastructure are the biggest challenge for an effective response in India in a battle against the novel pandemic. Amid the rising cases lack of **healthcare** facilities like shortage of beds, lack of protection equipment. According to a survey conducted by Local Circles, which included responses from over 17,000 individuals located in over 211 districts of the country, only 4 percent patients who needed an ICU bed were able to find one by going through the routine process while 78 percent are forced to use connections, clout to secure an ICU bed.

IMPACT OF COVID-19 ON SUPPLY OF ESSENTIAL DEFENCE ITEMS

The COVID-19 impacted the supply chains and production/manufacturing facilities of defence companies. As they have to depend on different components on different sources located in affected countries. This led to a decrease in demand for defence equipment. The current scenario is not even good for business development as we know that many high-value procurement programmes were finalised during defence shows which are now cancelled. Military exercises, which expose foreign equipment and their capabilities to the prospective buyer also affected business development as many countries like the USA, UK have cancelled travel plans, deployments and exercise for troops. Even the assembled equipment which are ready for dispatch are also held up due to the lockdown of airspace. Due to non-dispatchment on time their sales value will substantially reduce

¹ <https://www.statista.com/statistics/574151/global-automotive-industry-revenue/>
<https://www.makeinindia.com/sector/automobiles>

² Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, GoI, Fact Sheet on FDI

³ Source: <https://economictimes.indiatimes.com/news/economy/indicators/indias-tourism-sector-may-lose-rs-5-lakh-cr-4-5-cr-jobs-could-be-cut-due-to-covid-19/articleshow/74968781.cms?from=mdr>



which in turn will affect the balance sheet of the manufacturing companies. COVID-19 has taught a lesson to defence industry that they need to explore the different aspects of risk planning. They need to shift themselves toward technological platforms or start using an unmanned system

IMPACT OF COVID-19 ON THE INDIAN ECONOMY

India is a developing economy, it is stated as an economy is passing through demand depression and high unemployment and it has also slowed down the supply-side, accelerating the slowdown further and jeopardising the economic wellbeing of millions.

The quarterly GDP growth has consistently fallen since Q4 of FY18. There is a deviation in Q4 of FY19 because the National Statistical Office (NSO) revised its data on February 28, 2020, drastically cutting down growth rates in the first three-quarters of FY19 (from 8% to 7.1% for Quarter I; from 7% to 6.2% in Quarter 2 and 6.6% to 5.6% in Quarter 3. Orders on Swiggy and Zomato have dropped 60 per cent amid the pandemic. Maharashtra, Uttar Pradesh, Bihar, Tamil Nadu, and Madhya Pradesh have the highest number of registered MSMEs, a study by the AIMO estimated that about a quarter of over 75 million is facing closure if the closure goes beyond four weeks and if the lockdown still extends the situation would worsen affecting the employment of 114 million people affecting the GDP. Consumer goods, garments, logistics are facing a sharp drop in the business and the MSMEs engaged in the service sector are still operating, however, is likely to isolate due to plunging liquidity constrains and purchasing capacity. **GDP Contracted** in the first quarter of the fiscal year 2021 India's Gross Domestic Product collapsed by 23.9 percent amid the corona virus lockdown. The pandemic has led to an unprecedented shutdown of business, industries and services. From manufacturing to real estate, hospitality to mining, has been impacted as the economy records its sharpest drop in 41 years. The pandemic has wreaked havoc on the **job landscape** in India. According to the Centre for Monitoring Indian Economy (CMIE) about 21 million salaries employees lost their jobs during April-August. There were 86 million salaried jobs in India during 2019-20. In August 2020, the count was down to 65 million after 3.3 million jobs were gone in the particular month, mostly among the industrial workers and white collar workers, as per the CMIE. According to an analysis by Scroll, during the first two months of the lockdown, India's **vulnerable section** lost incomes amounting to as much as Rs 4 lakh crores or nearly 2 percent of the country's annual GDP. Indian travel and tourism industry is one of the worst-impacted sectors by the corona virus pandemic. According to the Confederation of Indian Industry (CII) and hospitality consulting firm Hotelivate. Tour operators, including both online and offline as well as inbound and outbound lost \$4.77 billion. The entire value chain linked to **Travel & Tourism**¹ is likely to lose around 5 lakh crores or US \$65.57 billion, with the organized sector alone likely to lose US \$25 billion. Currently hotels are seeing an 80 percent- 85 percent erosion in revenue streams. The hospitality industry, including branded and unbranded hotels, will incur a revenue loss of \$19.31 billion, as per the CII-Hotelivate research. The **metro** incurred huge revenue loss. On September 17, Union Housing and Urban Affairs Minister Hardeep Singh Puri told Lok Sabha that the Delhi, Bangalore, Lucknow, Chennai and Kochi Metro Rail Corporation reported a combined loss of almost Rs 2,000 crores while the services were suspended during the lockdown. Amid the corona virus crisis **Railways** had suspended all passenger services from March till May 3. During a web conference on July 28, Railway Board chairman VK Yadav said that the Indian Railways expects to incur revenue loss of up to Rs 35,000 from passenger train segment during the FY21 due to a fallout of train travel following the restriction to prevent the spread of COVID-19. Livelihoods of street vendors which depend on being in public places have been hit hard by the unprecedented lockdown. With the absence of people during the lockdown, the city's **vendors** lost their source of income. Many were unable to feed their families, which led to starvation and deprivation. Even after the lockdown restrictions were lifted, many street vendors reported a drastic decrease in income as compared to the times before the pandemic outbreak.

MEASURES TAKEN BY INDIAN GOVERNMENT TO EASE THE SITUATION.

Movement restrictions

21-day lockdown in the country

The Ministry of Home Affairs announced a 21-day lockdown to contain the spread of COVID-19 from March 25, 2020 to April 14, 2020.² During the lockdown, all establishments, other than those providing essential goods and services, and those involved in agricultural operations, have been closed. Essential goods include

¹ <https://www.businesstoday.in/current/economy-politics/modi-govt-5-trillion-gdp-target-by-2025-simply-out-of-questionsays-former-rbi-governor-c-rangarajan/story/390818.html>

² <https://mha.gov.in/sites/default/files/ndma%20order%20copy.pdf>



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

items such as food, medicine, and electricity. Essential services include banking services, telecommunications, and pharmaceuticals. Transportation of all goods (essential or non-essential) will remain functional.^{1 2 3}

All state/UT governments have been directed to: (i) arrange for shelter and food for the needy, including migrant workers, (ii) quarantine migrant workers for at least 14 days, (iii) direct employers to pay wages during the lockdown, and (iv) ensure landlords do not demand rent from workers and students for one month.⁴

Financial aid

Pradhan Mantri Garib Kalyan Yojana to provide relief against COVID-19

On March 26, the Finance Minister announced a relief package of 1.7 lakh crore rupees under the Pradhan Mantri Garib Kalyan Yojana for the poor.⁵ Key features of the package are:¹⁰⁶

- Insurance cover of Rs 50 lakh will be provided to health workers (such as doctors, nurses, paramedics and ASHA workers) who are treating patients of COVID-19.^[12]
- Five kilograms of wheat or rice and one kilogram of preferred pulses will be provided for free every month to poor families for the next three months.
- Women account holders under the Pradhan Mantri Jan Dhan Yojana will get Rs 500 per month between April and June, and poor families will be given three free gas cylinders over the next three months.

Extension and relaxation in payment of taxes

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 was promulgated on March 31, 2020.¹⁰ The Ordinance provides certain relaxations, such as extension of time limits and waivers of penalties, in relation to specified laws. These include the Income Tax Act, 1961 (IT Act), some Finance Acts, and the Prohibition of Benami Property Transactions Act, 1988. Key provisions under the Ordinance include:

- **Extension of time limits:** The Ordinance extends the time limits (for the period between March 20, 2020 to June 29, 2020) for compliance of certain actions such as: (i) issuing notifications, completing proceedings, and passing orders by authorities and tribunals, (ii) filing of appeals, replies, and applications, and furnishing documents, and (iii) making any investment or payment for claiming deductions or allowances under the IT Act.
- **Interest and penalty:** Payment of any tax, made before June 30, 2020 (or any further date specified by the government), will not be liable for prosecution or penalty. Also, the rate of interest payable for the delay in payment will not exceed 0.75% per month.
- **Donations to PM CARES Fund:** Donations made by a person to the PM CARES Fund will be eligible for 100% tax deduction.
- **GST compliances:** The central government may notify extension to time limits for various compliances under the Central Goods and Services Tax Act, 2017.

Measures by RBI to address the financial stress caused by COVID-19

The Reserve Bank of India (RBI) also announced several measures to address the stress in the economy caused by COVID-19.⁷ Key measures are detailed below:

¹ <https://mha.gov.in/sites/default/files/MHAOrder%20copy.pdf>

² <https://mha.gov.in/sites/default/files/Guidelines.pdf>

³ https://mha.gov.in/sites/default/files/PR_ConsolidatedGuidelinesofMHA_28032020.pdf.

⁴ <https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%202029.03.2020.pdf>.

⁵ "Finance Minister announces Rs 1.70 Lakh Crore relief package under Pradhan Mantri Garib Kalyan Yojana for the poor to help them fight the battle against Corona Virus", Press Information Bureau, Ministry of Finance, March 26, 2020.

⁶ <https://dea.gov.in/sites/default/files/India%20economic%20policy%20response%20on%20%20COVID%2019%20Fiscal%20and%20Monetary%20as%20on%2027032020.pdf>

⁷ <https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR2129F5E23A447E0F4A00955429716C53F5A2.PDF>.

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=49582.



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

- **Cutting Policy Rates:** The repo rate (the rate at which RBI lends money to banks) was reduced from 5.15% to 4.4%. The reverse repo rate (the rate at which RBI borrows money from banks) was reduced from 4.9% to 4.0%.
- **Liquidity management:** Measures are being taken to expand liquidity in the market to ensure that financial markets and institutions can function normally. These measures include the reduction of the Cash Reserve Ratio (CRR) for all banks from 4% to 3% till March 26, 2021. CRR is the amount of liquid cash that banks have to maintain with the RBI, as a percentage of their total deposits. These steps are expected to inject total liquidity of Rs 3.74 lakh crore.
- **Relief to borrowers in repayment of loans:** All banks and financial institutions (including NBFCs) are permitted to grant a moratorium of three months on payment of all term loan instalments (including agricultural, retail and crop loans) and interest on working capital loans (such as overdraft facilities), which are due between March 1, 2020 and May 31, 2020.

Short term credit to states

The Reserve Bank of India (RBI) has constituted an Advisory Committee to review the Ways and Means Advances (WMA) limits for states and UTs. WMA limits refer to temporary loans given by the RBI to state governments. Until the Committee submits its final recommendations, the WMA limit has been increased by 30% from the existing limit, for all states and UTs. The revised limits will be in force between April 1 and September 30, 2020.¹

PM CARES Fund

The central government has set up a national fund to deal with emergencies like the COVID-19 pandemic. The public charitable trust known as the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) will provide relief to those affected by COVID-19. The trust is chaired by the Prime Minister and includes members such as the Defence Minister, Home Minister, and Finance Minister.²

Donations made by a person to the PM CARES Fund are 100% tax deductible.³ Non-residents can also contribute to the Fund through foreign inward remittances.⁴

Health measures

COVID-19 testing

Currently, government facilities are offering free of cost diagnosis to all individuals with COVID-19 symptoms.⁵ Further, the government has approved certain private laboratories to test individuals for COVID-19. The cost of screening in private labs may not exceed Rs 4,500.^[21] As of April 7, there are 136 government testing centres for analysing samples of COVID-19 and 3 additional collection centres.⁶ Further, there were 59 private labs offering testing in 12 states. These states are Delhi, Maharashtra, Kerala, West Bengal, Uttar Pradesh, Telangana, Tamil Nadu, Odisha, Karnataka, Haryana, Uttarakhand and Gujarat.⁷

The Ministry of Health and Family Welfare has also laid down guidelines for those who may be tested at these laboratories. These include: (i) symptomatic contacts of those who have tested positive for COVID-19, and (ii) symptomatic persons with a travel history to COVID-19 affected countries, (iii) symptomatic healthcare workers, and (iv) persons with severe respiratory diseases.²¹

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11835>.

¹ <https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR2167BA409AC37FA8460497BA0C9B283E5DD9.PDF>.

² <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1608851>.

³ <http://www.egazette.nic.in/WriteReadData/2020/218979.pdf>.

⁴ <https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NOT2087A69F5158C174585A46C69B78BD96DBD.PDF>.

⁵ <https://www.mohfw.gov.in/pdf/LabTestingAdvisory.pdf>.

<https://www.mohfw.gov.in/pdf/NotificationofICMguidelinesforCOVID19testinginprivatelaboratoriesIndia.pdf>

⁶ https://icmr.nic.in/sites/default/files/upload_documents/Govt_Labs_functional_for_COVID19_testing_05042020.pdf.

⁷ https://icmr.nic.in/sites/default/files/upload_documents/Private_Labs_06042020.pdf.



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

Containment plan for large outbreaks

The Ministry of Health and Family Welfare has created a plan to contain the spread of the COVID-19 disease. Some of the measures suggested in the plan include:¹

- **Geographic quarantine:** This strategy requires the restriction of movement of people to and from a defined geographic area where there is a large outbreak.
- **Cluster Containment:** This strategy will contain the disease within a defined geographic area by early detection of cases. Cluster containment will include geographic quarantine, social distancing, testing all suspected cases, and awareness amongst the public.

Restrictions on export of medicines and medical equipment

The central government placed restrictions on the export of certain medical equipment and medication so as to ensure its availability in India. For example, the export of ventilators, surgical masks, diagnostic kits, and medications such as paracetamol and hydroxychloroquine is restricted.²

Travel restrictions

Domestic and international travel banned; issue of visas suspended

Civil Aviation: All passenger domestic air travel within the country is banned from March 24 till April 14, 2020.³ All international commercial passenger travel has been banned till April 14, 2020 (cargo and certain other flights are exempted).⁴ All existing visas issued to nationals of any country except those issued to diplomats, officials, UN/international organisations, employment and project visas are suspended from March 13 till April 15, 2020.⁵

Railways: Indian Railways suspended all passenger trains till April 14, 2020.⁶ Transportation of essential commodities will continue.⁷ Railways has also made parcel vans available for quick transportation for e-commerce companies and other customers including state governments to transport certain goods. These include medical supplies, medical equipment, food, etc. in small parcel sizes.⁸

¹ <https://www.mohfw.gov.in/pdf/3ContainmentPlanforLargeOutbreaksofCOVID19Final.pdf>

² <http://egazette.nic.in/WriteReadData/2020/218857.pdf>

<http://egazette.nic.in/WriteReadData/2020/216551.pdf>

https://prsindia.org/files/covid19/notifications/1492.IND_Export_Restriction_Hydroxychloroquine_Apr_4.pdf

https://prsindia.org/files/covid19/notifications/1491.IND_Export_Restriction_Diagnostic_Kits_Apr_4.pdf

³ <https://www.civilaviation.gov.in/sites/default/files/Revised-%20COVID-19%20-%20Order%20under%20Section%208B.pdf>

<https://dgca.gov.in/digigov-portal/Upload?flag=iframeAttachView&attachId=130618666>

⁴ <https://dgca.gov.in/digigov-portal/Upload?flag=iframeAttachView&attachId=130618625>

⁵ <https://dgca.gov.in/digigov-portal/Upload?flag=iframeAttachView&attachId=130617742>

⁶ "Ministry of Railways extends Cancellation of Passenger Train Services till 2400 hrs of 14th April, 2020", Press Information Bureau, Ministry of Railways, March 25, 2020.

⁷ "Transportation of essential commodities to various parts of the country by Indian Railways continues at full speed", Press Information Bureau, Ministry of Railways, March 30, 2020.

⁸ "Indian Railways to run Special Parcel Trains for carriage of essential items in small parcel sizes during the complete lockdown in fight against COVID-19", Press Information Bureau, Ministry of Railways, March 29, 2020.



WHAT THE FUTURE HOLDS FOR THE INDIAN CONSUMERS POST THE CORONAPOCALYPSE?

Rachana RL

Assistant Professor, BMS College of Law, Bangalore

When we welcomed the New Year 2020, full of things that had never been and be hopeful for what the future holds, little did we know that we would all have to blend into a new way of life under quarantine. The outbreak of the Novel Coronavirus muddled people's life like never before and brought it to a grinding halt. The new normal being, schools and colleges shut, employees working remotely, people staying indoors masked, businesses padlocked, transport sector combating challenges daily, restricted mobilization and over 25 million jobs at risk, especially those in the informal sectors, has impelled the people to unforeseen financial crunch. The International Labor Organization (ILO) describes it as "the worst global crisis since World War II". All this while countries continue to grapple with the pandemic and contain its spread.

In the wake of safeguarding public health, various businesses including food industry, hospitality, retail industry, banks, transport, recreation and entertainment have been disrupted, leaving both businesses and consumers in a state of uncertainty. This had a grave impact on the availability of essential commodities. The survey conducted by Deccan Herald in association with the Department of Consumer Affairs, Government of India to check the availability/non-availability of essential goods showed about 35% consumers were unable to find essentials via local retailers and the percentage increased to 50% in case of 'e-commerce' apps¹. Varying lockdown extensions by different States in the country added to the misery of shortage of essential commodities. This article would mainly assess the impact of COVID-19 outbreak on supply of essential commodities, consumer behavior in times of the virus outbreak that affected their purchasing power and the entry of e-commerce with digital economy while centralizing consumer safety and protection.

The falling incomes due to layoffs, closures and furloughs coupled with low optimism of the economy have persuaded the Indian consumers and consumers around the world to spend more on essential commodities like groceries, sanitizers and household supplies rather than on ego goods. The first lockdown in India wrapped anxiety and fear among people, leading to herding and hoarding of groceries, staples and hygiene products. The pandemic triggered some unusual change in the purchasing behavior. Consumer frenzy broke out leaving empty shelves at supermarkets in an attempt to stockpile indispensable goods which deprived the others of the same. The panic shopping videos that went viral also exposed the callous attitude of various people. However, Consumers have made lasting changes to what they eat, how they live, work and shop. About 85 % of the Indians have shifted to a healthy diet, purchasing personal hygiene products and are focusing on limiting food waste². People having to work from home with no domestic help and most restaurants either shut or with no food delivery, the lockdown had turned many into masterchefs in quarantine. Brands have become incompetent in retaining the trust of consumers as they have become more conscious in terms of cost, quality and safety. Companies would now have to tailor and refresh their brand promises. On the other hand, Small retailers or kiranas and local sources have seen a sharp increase in sales as more and more consumers are buying from them.

India is regarded as the world's largest food basket. Ironically, India ranks 102 among 117 countries in the Global Hunger Index as a large chunk of its population is food-deprived, hungry, and malnourished³. The course of the COVID-19 has disrupted both global and local food system. The hasty nationwide lockdown further shook the fragile and fragmented food system and supply chain leading to severe labor shortage, lack of cooling and storage facility, stalling of import and export of food, increase in food prices, closure of roads, air cargo and port operations hampering the movement of food across the country and facilitating food insecurity that amplified the vulnerabilities of the farmers and consumers, especially India's poor and hungry.

¹ Athrady Ajith, 'Coronavirus lockdown: Consumers still facing essential commodities shortage', DHNS, Apr 12, 2020.

² PTI, 'Covid-19 likely to alter consumer behaviour permanently: Survey', ET, Aug. 11, 2020.

³ Tortajada Andrea and Tortajada Cecilia, 'How COVID-19 worsens hunger in India, the world's largest food basket', The Conversation (Nov. 13, 2020, 9:41 AM), <https://theconversation.com/how-covid-19-worsens-hunger-in-india-the-worlds-largest-food-basket-142300>.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAILS : director@bmscl.ac.in admission@bmscl.ac.in library@bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

The pandemic has also thrown light on the brutal reality of income inequality in the nation that directly affects the purchasing power. While half of the population was hoarding essential commodities, the other half, mostly in informal sectors that account to 90% of labor force was hoarded by poverty and hunger and was hit by another layer of precarity without the prospect of a steady income, let alone save for unforeseen contingencies. Access to food, shelter, water, healthcare, sanitization, transportation was entirely compromised during the lockdown that increased the plight of the tired, weary migrant workers walking back to their native homes with their children and family. Some walked on the streets, some on highways and the others on railway tracks that resulted in a train running over 16 workers in Maharashtra, while the Government watched. Well, they say, while there is life, there is hope. The apocalypse also saw civil society mobilization of various individuals, organizations and relief camps that came out to alleviate the situation by providing basic meals and necessities to thousands. "Atmanirbhar Bharat" may have become the mantra for everyone today but how will a country be self-reliant or self-sufficient unless these structural problems are not addressed?

Another primary victim of the virus has been the transportation sector. From airlines to rickshaw pullers, all have been economically affected. The demand for passenger transport has fallen sharply. Apart from dear once being stranded in far off places, the movement of people and goods also benefit consumers, governments and industries. Indian Railways is one of the highest contributors to the GDP as well as employment in India. Airports and railways are imperative for economic development of a country. In the initial days of lockdown, consumers had trouble getting refunds for the tickets booked. But recently, the apex court approved the recommendation of the Director-General of Civil Aviation regarding full refund of passenger flight tickets that were cancelled due to the lockdown¹. Similarly, refund rules have been relaxed by Indian Railways. Furthermore, public transports like buses, autos, metros and other private transport businesses have been deeply hit since mass mobilization had come to a halt. Oil exporting countries experienced a double blow as the global oil prices dropped. On the bright side, it may have created opportunity for transition towards a low-carbon, more resilient and diversified economic future that would also positively impact the consumers. Surprisingly, oil prices in India have skyrocketed due to the excise duty as the tax revenues took a beating. Basically, the Government captured the oil price drop without passing the benefits to its consumers. Anywho, with the lockdown being lifted, movement of passengers has resumed and there is a need for proper ramping up of the transport system. Airports, railways, metros and other transport sectors have been taking the necessary precautions to safeguard the health of their passengers.

Nevertheless, Banks that come under essential services remained open, albeit with some restrictions to ensure safety. In an attempt to tackle the COVID induced distress, Banks tried to reach out to their customers to know if they want to opt for EMI moratorium announced by the Reserve Bank of India. It should not be assumed as a waiver of loan, but as a grace period that gave only a momentary relief to consumers. Momentary because, the interest for the unpaid amount for two installments will be added to the outstanding loan increasing the EMI and extending the loan tenure and non-payment of credit loans will bloat up once credit card bill. It was advisable for consumers to go for this deferment plan only in case of a dire need. Banks also carried out only essential services like withdrawals, cash deposits, cheque clearances etc. Consumers were largely encouraged to use electronic or digital banking system like UPI, NEFT, IMPS from home and avoid bank visits². Only selective branches were open, bank timings were revised, staff was cut down and along with limited number of customers, masks and sanitizers were made mandatory.

The standardized lockdown rules across the nation, social distancing, growing hesitation of the consumers to go out to shop and accelerated digital payments over traditional cash tilted the country towards e-commerce. Consumers had to chop and change from supermarkets, shops and malls to online portals to purchase products, ranging from branded goods to basic commodities. Food, pharma products, electronic appliances and groceries have seen a meteoric rise online. It is hard to fathom, how much change the virus has ignited. Hitherto, millennials and Gen Z have led the digital revolution but COVID-19 has contrived FTUs (First time users) as well as old shoppers to embrace e-commerce and digital economy at a much faster rate and would persist to do so even after the pandemic. This has put the retailers at a pivotal crossroad and can severely limit their customer pool if they fail to offer a variety of digital payment methods and incorporate a more sophisticated technology. People being stuck in their homes could lead to "revenge buying" and will cause people to throng shops post the pandemic.

¹ Prakash Satya, 'SC accepts DGCA scheme for refund for air tickets booked during lockdown', TNS, Oct. 01, 2020.

² Dethe Amol, 'How are your Banks working during the Coronavirus outbreak?', ETBFSI, Mar. 23, 2020.



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

E-commerce has been dominated by top 5 cities in India, with Karnataka, Maharashtra and Delhi making up to 65% of the consumer demands. According to Unicommerce report, India has seen massive online sales events since June - from Flipkart's Independence Day sale to Myntra's End of Seasons sale and Amazon Great Indian Festival sale, that has helped boost online orders. Flipkart alone reported 45% growth in monthly active customers and has ostensibly surpassed 1.5 billion visits per month¹. However, E-commerce marketplaces have faced a few challenges like catering to the demand with less workforce, ensuring fast and safe delivery, shipment to fulfillment centers and controlling product returns. The digital transformation of kiranas and retailers selling essential goods online and the inflow of online shopping that delivers everything to the doorstep, consumers would opt for e-commerce as the time saving power is here to stay.

Plato's Republic states, "Necessity is the mother of all invention". In today's world, that is infected with the virus, it is the insecurity of others that steers invention. Digital revolution requires advertisements in such emergencies to be cautious and responsible while promoting a product as they are crucial in creating awareness about the preventive measures in relation to public health. Advertisers today have tried to blatantly wring their products through misleading and false claims relating to Covid-19. Recently, clothing companies like Zodiac and Van Heusen have concocted claims that their clothing is Covid-19 resistant and Anti-bacterial, along with various other homoeopathic and Ayurvedic drug makers like Patanjali marketing its unapproved drug - Coronil through misleading advertisements. In these challenging times, when the world is waiting for a cure, the governments must be vigilant in scouting and calling out such deceptive advertisements.

In India, the exploitation of manufacturers is a common phenomenon as a large part of the population is still poor, illiterate and ignorant. Ergo, protection of the Consumers became the need of the hour that resulted in the enactment of the Consumer Protection Act, 1986 that provided redress to a consumer in case of deficiency in service or defect in the product purchased and provider to compensate the aggrieved consumers in case of their negligence. On 20th July, 2020, the Indian Ministry of Consumer Affairs, Food and Public Administration enacted the new Consumer Protection Act, 2019 that buttressed the statement "Consumer is the real king of the market". The new Act replaced the erstwhile Consumer Protection Act, 1986 in entirety. Both these Acts are juxtaposed in terms of Product Liability. Product liability can be traced back to the common law concept of 'caveat venditor', which simply means "let the seller beware" and "caveat emptor", which means "let the buyer be aware"². The CPA 2019 is imperative to promote, protect and enforce the consumer rights especially in the post-covid era.

To capitalize from the "Plandemic", plaintiffs' attorneys are filing product liability lawsuits against manufacturers, suppliers, distributors and sellers for product claims related to:

- Products that falsely claim to protect against COVID-19
- Food supplements that allegedly treat, boost immunity or cure Covid-19 and its symptoms
- Hand sanitizers, protective gears or mask that misrepresent protection against the virus
- Testing kits that detect the virus inaccurately
- Delivery of Packages or devices that are contaminated
- Failing to warn the exposure to COVID-19 in a manufacturing or distribution unit
- Drugs and vaccines related to the virus that are perfidious

Former USA President Donald Trump on March 27, 2020 signed the Coronavirus Aid, Relief and Economic Security (CARES) Act that extended the protection provided in the Public Readiness and Emergency Preparedness (PREP) Act to individuals and consumers by granting additional liability protection to businesses

¹ Dash Sanchita, 'India's e-commerce is now even bigger than pre-COVID', BUSINESS INSIDER (Nov. 13, 2020, 6:24 PM), <https://www.businessinsider.in/business/ecommerce/news/indias-e-commerce-is-now-even-better-than-before-smaller-cities-add-to-the-bounty-while-metros-continue-to-lead/articleshow/77655199.cms>.

² Ghosh Anindya and Chandra Nabarun, 'India: Product Liability Law in India: An Evolution', MONDAQ (Nov. 14, 2020, 9:10 PM), <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974270/product-liability-law-in-india-an-evolution>.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

that produce and distribute critically required respiratory protective equipments¹. Product liability provision provided by The CPA 2019, paves way for the consumers, healthcare workers and governmental entities to begin an onslaught of mass tort lawsuits and class action against companies.

CPA 2019 provides six rights to the consumers - to be protected from unfair trade practices, to have goods at competitive prices, to be protected from hazardous goods, to be informed about the quality, quantity, price, potency and standard of the goods and services etc. The new Act also establishes the Central Consumer Protection Authority (CCPA) that regulates cases related to violation of consumer rights, unfair trading practices and can also issue safety notices and reimburse purchase price. The CPA 1986 had no provisions for establishing a CCPA or regulating e-Commerce platforms. Under CPA 2019, every e-commerce entity is required to provide necessary information regarding the delivery, shipment, return, refund, warranty, exchange, mode of payment, security of payment, country of origin etc for all its products that will enable the consumers to make an informed decision. The e-commerce companies have to acknowledge the consumer complaints within 48 hours and redress the complaint within one month². But to make the rules of prevention of unfair trade practices by e-commerce companies more sufficient and effective, we need the consumers to be responsive, moral, action oriented and transparent while claiming their rights.

The Advertising Standards Council of India (ASCI) is a self-regulatory and non-government organization that ensures all advertisements adhere to just and legal practices. ASCI recommended and stated that the advertisers have to be mindful while creating advertisements pertaining to their claims of curing the virus and substantiate their claims by clinical or technical support approved by health authorities like WHO, AYUSH, DCGI, ICMR, MoHFW etc³. Currently, ASCI can only make recommendations and cannot compel the advertisers to remove advertisement or grant compensation or interim relief. However, The Central Consumer Protection Authority has been empowered to impose penalties on the endorsers for misleading advertisements up to two years imprisonment and repeated offenders may attract up to five years imprisonment and a fine of Rs 50 lakh. The government of India via AYUSH ministry has reprimanded Patanjali for advertising an unapproved drug, yet no legal action has been taken against the firm. To curb the exploitation of the anxiety of the consumers living in the pandemic, the Parliament has taken cognizance of similar misleading advertisements. The consumers can lodge complaints with the Ministry of Consumer Affairs against endorsers that cajole them into buying products and create a scare amongst general public that could potentially trigger health risks.

To protect the interest of the framers and investors and also ensure the availability of essential commodities to consumers, the Parliament passed the controversial Essential Commodities (Amendment) Bill on 15th September 2020 to replace ordinances promulgated on 5th June 2020⁴. The Modi government claimed to liberalize agricultural trade, provide better price realization to farmers and usher farm reforms by curbing inflation and has tried to justify the Bill by stating that the main objective is to help the poor people to afford essentials and prevent black marketing of essential commodities. The Act also seeks to control the supply, production and distribution of certain commodities through government intervention. It also aims to remove the fear of private investors of excessive regulatory interference, that distorts entry of private players into agricultural markets. While it may help pull in investments, the market and price would also be dominated by big corporate and capitalists, that would eventually weaken the negotiating power of the farmers and consumers. Aside above, the control orders and prevention of hoarding has been found to be ineffective in controlling prices of essential commodities. Many things are left vague, like the stock limit, price triggers etc. The Act declared the inclusion of masks, hand sanitizers as essential commodities while removing primary food items such as, pulses, oilseeds, cereals, onions, potatoes etc from the list of essential commodities and such foods can be

¹ Price Joseph, 'What Product Liability claims can we expect to see as a Result of Covid-19?', FAEGRE DRINKER (Nov. 15, 2020, 6:30 PM), <https://www.faegredrinker.com/en/insights/publications/2020/6/what-product-liability-claims-can-we-expect-to-see-as-a-result-of-covid19>.

² Professor Dr. M.M. Goel, 'Relevance of Consumer Protection Act, 2019 in Post covid Era', SAMAJ WEEKLY (Nov. 16, 2020, 11:20 AM), <https://www.samajweekly.com/relevance-of-consumer-protection-act-2019-in-post-covid-era/>.

³ Brand Wagon, 'ASCI announces Covid-19 advertising advisory', FINANCIAL EXPRESS (Nov. 16, 2020, 01:20 PM), <https://www.financialexpress.com/brandwagon/asci-announces-covid-19-advertising-advisory/2110091/>.

⁴ Sharma Harikishan, 'Redefining essential items: Why it was needed, and who it will impact', THE INDIAN EXPRESS, Sep. 26, 2020.



B.M.S. COLLEGE OF LAW

(Estd.: 1963)

Affiliated to Karnataka State Law University and Approved by Bar Council of India
Bull Temple Road, Basavanagudi, Bengaluru - 560 019.
Phone : 080-26679336, 26602430
E-mail : bmscl@yahoo.in Website : www.bmscl.ac.in

E-MAIL : director@bmscl.ac.in ADDRESS : 1st FLOOR, 1ST CROSS, 1ST STAGE, 1ST CROSS, 1ST STAGE, 1ST CROSS, 1ST STAGE

International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

regulated in 'extraordinary circumstances' like war, famine, natural calamity and 'extraordinary price' rise that are all subjective and may result in interpretational disputes.

Around 18th century and during the Industrial Revolution, commercial and economic activities were governed by the principle-Laissez Faire, which meant the minimal interference of the State. This doctrine was based on Individualistic theory of absolute economic freedom to individuals and the assumption that a consumer possessed capacity and skill while making purchases or commercial transactions. The economic account of the nineteenth century divulges that there was a conflict between the consumers and sellers. With the view to make profit, producers, manufacturers and sellers monopolized the goods produced, dictated the terms and exploited the buyers in the era of individualism leading to the rise of capitalism. Consequently, this led to the concentration of wealth in the hands of the few, who dominated the economic market and cost the consumers their freedom to choose and capacity to bargain.

Nonetheless, in the latter half of the 19th century, with societies advancing, there was a boost in industrial development and production. Various legal, social and political philosophers like Sir John Stuart Mills, Jeremy Bentham etc. campaigned for the protection of the consumers against the unscrupulous manufacturers and traders and emphasized on regulative measures by the State¹. Bentham's Utilitarianism and other Social, economic and political philosophies like Marxism and Communism was a blow to capitalism. The doctrine of laissez faire withered away gradually and paved way to a socialistic society which aimed at the welfare of the people and protection of Consumer Rights came to be recognized as the socio-legal responsibility of the State.

However, there has been an unprecedented growth in capitalism and consumerism due to the rise in market activities, ameliorating living standards of human life and craze for luxuries and comfort. Accordingly, consumer disputes have risen and the State needs to be more observant and take necessary measures to protect its consumers, especially in the wake of the pandemic that has left them more vulnerable than ever. In the 14th century, the peasants revolt after the plague saw off feudalism, will capitalism meet the same fate after the pandemic or will we be forced to espouse a new model of capitalism and consumerism? Well, we have to wait and see.

¹ Dr. N.V. Paranjape, 'Law of Torts: Consumer Protection Law and Compensation under other Statutory Laws', 458-459 (4TH ed. 2019).



PATIENTS' RIGHTS DURING THE PANDEMIC: A CRITICAL ANALYSIS

Ramya

Assistant Professor, B.M.S College of Law

ABSTRACT

Consumer Rights, Consumerism and related jurisprudence is presently in boom. When all the deficiencies in goods and services are viewed from the perspective of Consumer Rights, it is important to know about the Patients' Rights in case of medical negligence vis-à-vis the need for the medical professionals to work freely and fairly and also the issues regarding the same under the Indian Legal system.

Keywords: Consumer Rights, Patients' Rights, Medical Negligence, Consumer Protection Act.

1. INTRODUCTION

The growing awareness regarding patients' rights in Indian society has created a spurt in increased litigations relating to medical profession, proving the liability of doctors and the Redressal claimed for the suffering caused due to medical negligence. The Pandemic which has taken the physical and mental health of the world by a toll has had its impact on the Consumer Jurisprudence as well. Lack of laws on Pandemic/Epidemic, or the existing laws being outdated has added to the chaotic situation.

This paper throws light on the issues faced by Patients owing to the Pandemic and the contradiction between the rights of the patients with the need for the Doctors to work freely and fairly. The paper is divided into five units. While the first unit gives a brief introduction of the topic, the second unit deals with the definition of consumer and the rights associated with him, the third unit looks into the concept of medical negligence, the notion of reasonable care being associated with the medical profession, the lack of knowledge pertaining to the cure of Covid-19, the trial and error method incorporated by Researchers and Practitioners, the forth unit deals with issues being faced by doctors and other healthcare workers, and the fifth unit comes with the conclusion and suggestions with respect to the same.

1.1. The Pandemic

A Global Health crisis and the greatest challenge the World has faced since World War two. Spanning several countries and affecting the population in large numbers, a Pandemic can be called as a disease outbreak. The situation would worsen especially if such a disease is contagious. The Pandemic is however much more than a mere health crisis; it is an unprecedented socio-economic crisis. It has the potential to create devastating social, economic and political effects that will leave deep and longstanding scars.

This has made people fearful, anxious and sometimes they have found it difficult to access emergency treatment. India has a combination of government and private healthcare facilities. This has led to restlessness, irritation and sometimes despair when trying to find medical help. As a consequence of this, people have shown their frustration by verbally abusing and threatening to physically assault doctors and other healthcare workers.

2. Consumer

Under the Consumer Protection Act, 2019 'consumer' is defined as a person who buys any goods and hires or avails of any service for consideration but does not include a person who obtains goods for resale or goods or service for any commercial purpose.¹ Off late there is massive private investment in the sphere of health care system and patients who avail health services for consideration are very much bought under the purview of the Act.² Medical Negligence happens to be the cause for which the rights of the patients' are claimed to be enforced.

Under the very Legislation along with a generalized context of Patients' rights there come a bunch of relative rights such as right to safety, right to information, right to choice, right to be heard or right to representation, right to seek Redressal and right to consumer education.³

¹ Section 2(7) of The Consumer Protection Act, 2019. (Act 35 of 2019)

² *Indian Medical Association v. V. P. Shantha (IMA Case)*, 1996 AIR 550

³ Section 2(8) of The Consumer Protection Act, 2019. (Act 35 of 2019)



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

2.1. Right to Health

Apart from being a mere statutory right, right to health is a recognised right under the most fruitful provision of the Constitution of India¹ which also gives it an additional boost by making it one of the most important rights under the Indian Legal system.²

3. Medical negligence

Having conferred recognition to the above rights, most of the legal systems have had a spike in cases relating to medical negligence. The term negligence is defined as the absence or lack of care that a reasonable person should have taken in the circumstances of the case. It is now settled that a medical practitioner will bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care.³

Lack of knowledge pertaining to the novel SARS COV-19 coronavirus and its treatment, Medical practitioners and pharmaceutical researchers used the trial and error phenomenon against the deadly disease. The drugs prescribed to subside Malaria, Ebola and the Auto Immune Deficiency Syndrome (AIDS) were used to treat the novel virus, but the efforts were in vain, not much could be done about the same.⁴ While the above mentioned drugs could merely subside the symptoms, they failed in bringing the outbreak of the disease to a permanent halt. Research to come up with a vaccine is ongoing. The easy accessibility of information to laymen through the Internet as well as the other forms of media worsened the situation, mere rumours and stipulations galore across the Globe. While the patients and their families tried to enforce their right to health seeking medical help and at times even failing to avail the same, this medical emergency lead to many other issues among which people attacking the medical professionals and related social workers for ineffective treatment or unavailability of adequate infrastructure.

4. Medical practitioners – the target

Doctors and healthcare workers who are responding to a global health crisis, trying to protect individuals, families and communities in adverse situations with stretched resources, shortage of personal protective equipment (PPE) and other equipments have found themselves as unexpected targets in the fight against the Covid-19. There have been several reported incidences of such violence against them during this time in India. Although the exact number of such cases cannot be determined, there are various glaring examples. The violence against the doctors and other medical personnel is an attribute of ignorance and fear, which is amplified by the pandemic. The type of attacks has ranged from verbal abuse, verbal threats or aggressive gestures in majority of cases.⁵ There have also been serious reports of manhandling.⁶

5. Conclusion & Suggestions

The jurisprudence of 'right' has its strings attached to the Natural Law School. The concept of 'right' has evolved and developed over a period of time. From mere recognition of the same to the enforcement; right has received utmost priority. It has emerged towards bringing all positives to the people in need including the patients but the same should never prove to be mighty towards a section of society which works for the safety and health of people. There is a need to strike a delicate balance between the rights of the patients vis-à-vis the need for the Doctors to dispense their duties freely and fairly. The following suggestions may be incorporated to achieve the same.

5.1. Better communication

A better and timely communication with the aggrieved patients and their family members is the key to avoid violence and untoward incidences. Due to shortage of time and to maintain social distancing norms, often the verbal and direct communication between doctors and patients is lacking during this pandemic. It leaves the patient and the family unsatisfied. The hospitals should take up the responsibility of designating counsellors or social workers to coordinate with them on a regular basis to allay any fears

¹ Article 21, The Constitution of India; Article 47, The Constitution of India

² *Vincent v. Union of India*, 1983 4 SCC 598

³ *Bolam's Test*

⁴ Hydroxychloroquine, Ivermectin, Favipiravir

⁵ Violence mars COVID-19 doctor-victim's burial, editorial, Times of India, 20 Mar 2020

⁶ Kapoor M C. Violence against the medical profession; *Anaesthesiol Clin Pharmacol* 2017; 33:145-147



5.2. Role of media

The print, the digital as well as the social media has a significant role in the spread of information in India and are known to sensationalise stories about medical negligence and malpractice. While the media platforms can play a positive role in the current pandemic situation collaborating with Government agencies to provide an effective information campaign to educate the public about the diagnosis, spread, containment and prevention strategies against the novel Coronavirus.

5.3. Government Strategy

The rising violence against doctors and healthcare workers has been a matter of concern for the Government of India and thus it has issued an Ordinance that makes violence against healthcare workers a non-bailable offence, punishable by up to 7 years' imprisonment. The Ordinance – an amendment to the Epidemics Diseases Act, 1897; seeks to protect doctors, nurses and paramedic and community health workers from harassment or physical injury, has been introduced following an upsurge of violence against healthcare workers since the pandemic. It has been welcomed by all quarters to rein in violence and punish the wrongdoers. It is acting as a deterring source. However, currently it is an amendment of the epidemic statute and it is unclear how the regulation will be applied once the pandemic has resolved.¹

5.4. Role of education and better primary healthcare

Education of the masses and better access to primary healthcare services is vital to reduce violence against doctors and healthcare workers. Time has to identify effective ways and means to improve and strengthen public health education and practice. This is necessary not only to educate the population but also to support the Medical practitioners in carrying out their fight against this global health crisis. For a sustainable protection of the healthcare workers, the current Ordinance needs to be further extended and incorporated into existing laws in the form of a strict, permanent legislation that is strictly enforced. It would improve the safety of the very individuals who carry out their duties fearlessly for the benefit of sick patients, either during a health crisis such as the current pandemic or during traditional times.²

¹ Hegde A. Violence in hospitals three steps towards mending doctor-patient relationships. <https://scroll.in/pulse/837572/violence-in-hospitals-three-steps-towards-mending-doctor-patient-relationship>, Accessed 02 Nov, 2020)

² Kartikeyan P Iyengar, Vijay Kumar Jain; 'Current situation with doctors and healthcare workers during COVID-19 pandemic in India', Poast Graduate Medical Journal (Statistics from Almetrics)



UNFAIR TRADE PRACTICE DURING COVID-19 PANDEMIC - AN EXTRACT

Dr. Veerabhadraiah C and Umesalma

Associate Professor and Student, Law, B.M.S. College of Law, Bull Temple Road, Basavanagudi, Bangalore, Karnataka, India

ABSTRACT

17 November 2019 when COVID-19 emerged in Wuhan city of China an emergency exists. China instructed the citizens of other country nationals to go to their respective nations to avoid the unnecessary spreading of the diseases. The people accordingly moved to their respective countries and carried the COVID-19. This disease spread across the globe. It is a question of survival for everybody and started to give wrong information to the concerned authorities who control this spread.

Later they focused on everybody to curb the spread by making them live in an isolation and with treatment. People have suffered a lot for their food and money. Subsequently, the nation declared lockdown by using its power as laid down in the disaster management of 2005 many business entrepreneurs took this as an opportunity to make money and started to cheat the public in different methods which are called unfair trade practices.

The Central Consumer Protection Authority established to supervise and monitor and also take controlling measures and to give fair chance for the customer, the possible areas of unfair trade practices are worth to mention here are Over Riding on customers, falsely showing products, False / Hired endorsements, Guarantee, and assurance, Suppress the information, Hiding the hidden prices of the products, provoking information's.

Keywords: Unfair Trade Practices, Central Consumer Protection Authority (CCPA), Types of Unfair Trade Practices, False/Hired Endorsements, Guarantee and Assurance, Provoking information's, Malls, Refund Guarantee, COVID-19 & Consumer Protection Act, 1986 which is amended in 2019 and 2020.

INTRODUCTION

Many times, consumers will be duped on certain occasions. And the aggravated consumer hits back with his full force. The government has observed these unfair trade practices and to give a permanent solution and hence established consumer rights by commissioning the Section 2(1) r of the Consumer Protection Act, 1986 which is amended in 2019 and 2020. Consumers wish to purchase many times not only online but also physically by going into malls or markets where commodities are available of their choice.

On some occasions, some malls say that you can purchase certain commodities at Rs. 1.00 per kg and only 1 kg will be given per person. This type of advertisement attracts the customers and he will enter the mall. Later he will be informed that other terms and conditions which are written in the small letter which is not visible in naked eyes for seniors and color blind people and defective eye persons. If and only if the purchases Rs. 799.00 worth he is entitled to purchase Rs. 1.00 item otherwise he is not entitled. The customer must observe all the information before he purchases the commodity.

To make good practice in the trade for the business entrepreneur and also to the customer and any violation on either side leads litigations then you shall approach an advocate who is an expert in dealing the cases of unfair trade practices with the help of Consumer Protection Act, 1986. We come across issues like misrepresentation of funds, quality, and quantity, and color, time of delivery, designs measurements, misrepresenting advertisements, and inappropriate endorsements etc.

Nowadays everybody in their schedules and they will never read the instructions which are written in very small letters which is very difficult to read and further they do not have time and patience to go through in detail also. In hurry, they will purchase the commodities and reach the house where they will check and found discrepancies. This will happen mainly because of tricky methods that the businessmen apply and the consumer will be cheated and many books were written on the subject which is as follows.

DEFINITION

1. **Sara Devi:** Defines "Unfair Trade practice as the transaction with an intention to Beguiling, Deceitful, false misleading specious to its customers" written in her book titled "Fair and Unfair Trade Practices" published and printed in SARA Printers and Publishers in France 2016 in pages 2, 8 and 9.
2. **Sharanya Mathaji:** Defines unfair trade practice as the seller sell his goods to the customer who later found that seller was cheater, cunning, slick, foxy Printed and published in Prasant Tarafdar Printers and



Publishers at North Paragana, West Bengal book titled as "Fair or Unfair Trades" 4th Edition Page No 1 in the year 1985.

3. **Vishwanath K:** Defines Unfair Trade Practice as "Misleading the people in price, and other information's taking advantage of the customer's innocence" in his book titled "Fraudulent Practices in Business" Printed and Published at Saraswathi Printers and Publishers 2017, 7th Edition 30th page.
4. **Shakila Banu:** Defines Unfair Trade Practices as "misleading advertisement to dispose of the goods to the customers with fake endorsements for profit" for example, Atiya Banu states that the products are excellent in the testimony of Afiya Banu which is not true and Mansoor Ahmed says the product is not good and this information will be removed from the endorsements itself. In the book titles "Fake Endorsement in Trades" published by Guljar Bhanu and Printed at Bashir Ahmed Printers in Itanagar, Arunachal Pradesh 1st Edition year 2005 and reprinted in 2012 Page No. 9 and 14 - Page No. 5 and 31.

The Central Consumer Protection Authority (CCPA) established by passing the bill in the parliament as an executive agency to protect the interest of the consumers beguiling arising from unfair trade practices the agency can intervention when necessary to prevent misleading and to initiate and enforce the laws against false trade practices and by the consumer to recall, refund and return of products. Here consumers will be given a revelatory chance to open and honest information to share the rational decisions about the goods and services they purchase. The agency keeping in mind determines and think to overcome and improve the way to deal with customers.

Normally everybody wants to the free-from disputes or litigation straightforward transactions. By chance if you are accused of an unfair trade practice in a civil action, the plaintiffs do not have to prove your intentions, they only need to show that the practice itself was unfair or dishonest. The consumer or the customers normally be involving in some common mistakes that lead to accusations of unfair trade practices - and how those can help to do avoid those mistakes with the following seven (7) illustrations.

1. Over Riding on customers
2. Falsely showing products
3. False/Hired endorsements
4. Guarantee and assurance of refund to dissatisfied customers with the time limit
5. Suppress the information
6. Hiding the hidden prices of the products
7. Provoking information's

1. Over Riding on customers

The language is the barrier to understand clearly about the products the rural area individuals who aren't fluent in the link language English and Senior citizens are targeted particularly as vulnerable consumers. Many of them have fallen prey to false claims made by the fraud. The delusory persons have been creating intense pressuring tactics while you aren't necessarily trying to mislead potential purchasers, customers should always use their best judgment and common sense be as clear as possible and cheaters do not answer any questions might have asked by the customers.

2. Falsely representing products

If you are a customer before purchasing online ask for product descriptions and understand clearly other information's terms and conditions. And to be very careful about the words they use for example they may stick to new arrivals. How long it will be a new product normally more than 6 months is not a new item. The term "Cotton Fabrics" means it shall be 100 percent cotton or only 10 percent cotton you shall know otherwise case may be land up in court. Here honesty is very important.

Another for the word cotton fabrics has no meaning to this context. Ayurveda Doctor from Mysore told the media that he has found new medicine for COVID-19 and also started issuing the medicine and many customers have purchased the same and with no effect, many people died even after consuming the medicines. And at the same time, they made huge money for their pocket.

3. False/Hired endorsements

Certain organizations will be hired to indicate false endorsements such as the product is excellent. If it is food products say that prepared by pure ghee sweets in the Venkateshwara Sweetmeat stall they use to say that it is



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

prepared by Pure Gee Mysore pak and later it is found that they used animal fat instead of pure gee. The customer went to court and after a complete investigation, it is found that they used animal fat instead of pure gee and instructed to close the unit itself.

Later after complete rectification now again opened and it is very difficult for them to gain the confidence of the public once again. Due to the false endorsements, it is happening like this. And correct endorsement is very much essential. On many occasions, the endorsement will be displayed without the notice of the endorsee. It means the endorsee has told anything about the product even then they will display this is also a false endorsement.

4. Guarantee and assurance of refund to dissatisfied customers with the time limit

Some organizations offer a guarantee of satisfaction of the customers and in case of customer feels dissatisfied completely for some reason about the product which they purchased the organization who gives an advertisement has to refund the complete amount to the customers apply to the product of promises of guarantee and assurance this is fair trade practice for some reason by guileful persons money will not be refunded which leads unfair trade practice.

Case 1: 1 scissor and 4 knives were purchased at a cost of Rs. 399.00 from amazon online product seller but received knives 4 in number in good condition and scissor 1 in number is not in good condition and it is a partially defective material there is no replacement facility or return possibility from ILKAL and when a customer contacted to the Amazon they agreed to refund the said amount in their account within 3 days. And offering to retain the good knives with the customer only this type of honesty leads free from unfair trade practices or say a fair-trade practice. This is a partial defect item. This illustrates to us that the ingredients, quality, and effectiveness is important before selection and purchase and to receive an offer like this.

Case 2: Everybody wants to play a different role in their life for achievement. If you get a frugal comfort without working hard on that and that too in a small period who will miss this opportunity? If you listen to Hypnosis audios your life will be manifested and you can achieve what you want by transforming your mind. There will a 6th sense which is already programmed in your brain for deficit financial resources and hence you are in a shortage of money. You have to reprogram this brain to attain finance in abundance through an online offer.

Further trying for the product, you are not losing anything since it has 60 days guarantee it means you have to make payment and experience the same through MP3 audio there are 4 types of audios and each type contains two parts viz., Part A and Part B first you have to listen Part A it will run for 50 minutes and Part B will run for 45 minutes condition is that at least 4 times you have to listen both the audios and the further condition is that first type of audio you have to listen for one week and go to 2nd type of audio that also to be tuned for one week, similarly all the four audios is to listen in 4 weeks by that time you will be transformed completely. You have to remember the purchase order number and amount and also the product name.

Here CLICK BANK stands guarantee and payment will be received by an online process through credit card or debit card money will be under the control of CLICK BANK and it will be transferred to the vendors. During the process, if the customer forgets or lost the details refund is impossible. And many times, he will forget the date of purchase also then after completing 60 days guarantee period lapses and he is not at all eligible to claim.

Shri Venkateshwara (name of the person) has purchased this hypnosis series at the cost of Indian Rs. 2,359.98 product name is Amazing You Order No. HZSIRNZM the amount was deducted from the Yes Bank Account and debited with the details as PCA2200818903: 3710620008649: 59: Click Bank*com at 08:09 PM on 10th October 2020 accordingly click bank has sent an email communication for the receipt of the said amount also.

Shri Venkateshwara was waited for 50 days for a life change unfortunately no improvement in his life. As per the guarantee of assurance asked for the refund to click bank, they contacted the vendors a series of reasons and conversation made from both sides of customer and vendors. The vendor unable to satisfy the customer and the hence dissatisfied customer asked to refund the amount paid. And within 5 working days click bank remitted the complete amount and the customer is still having his product which he has received on email and it cannot be refunded whereas physical objects have to be returned. This is a fair-trade practice. In case of all his efforts unable to receive the refunds, it is an unfair trade practice.

5. Suppress the information

Suppress information is a criminal affair as per passport office and police verifications. Consider the case of medicines the packets are to be disclosed with price, weight, date of manufacture, batch number, and best before use date, and place of manufacture, marketed by name. In case of the last date is over for the "best before use



date" product somehow or the other the seller will remove the date of manufacture and best before use dates and dispose of the medicines so that he will not incur any loss.

At the same time, the customer who consumes may hurt his health. This is an unfair trade practice. During the period of COVID-19, the material availability is difficult and hence the customer has left with no option he will purchase the items and consume the same.

6. Hiding the hidden prices of the products

Research Scholars have to publish at least 2 articles in some universities and 3 articles in some other university it is depending on the type and practice made in the manuals. After due payment and copy write submitting the same will be published at the agreed cost there afterward they ask for courier charges for dispatch this is an additional expenditure they will charge Rs. 1,000.00 extra as a courier charge they say that during COVID-19 pandemic we are taking the risk to dispatch with sanitization, double packing cooling period of the consignments and they give a lot of excuses. This is also an unfair trade practice.

It is essential to buy the thermal scan, sanitization, masks, face cover shield to monitor themselves concerning COVID-19. As the availability of the material is in scarce demand is more and supply is less. The prices charged by the sellers are beyond one imagination. It is more than 5 times the original prices. The ordinary protected COVID-19 kit is available at Rs. 1,000.00 but hospitals are charging nearly Rs. 10,000.00.

The COVID-19 patients have to be isolated from the public otherwise corona spread to everybody and during this period many authorities have hired beds per day basis at an estimated cost of Rs. 800.00 per day per person and needed several thousands of beds and hence they made a lot of money from this. Unnecessary medicines, even though they do not use ventilators they say we used ventilators.

The same ventilator might have used for several patients and made money each time. In another instance, the hospital authorities will ask the patients to purchase the items from the pharmacy and after purchase, unused items will be returned to the pharmacy and made money for the account purpose, they say that the items are all consumed.

Even though the patient died they give artificial shaking instruments and from the far of a distance to the relatives of the patient and after 3 days they say sorry we could not do anything despite our best efforts he is not responded for our medicines. For your kind information till this day of writing articles nobody found the suitable medicine for COVID-19 in the entire world how these doctors are making bill 15 lack, and above from one person.

And imagine how many patients in Karnataka as per today's 03.12.2020 statistics in Karnataka alone COVID-19 infected patients rose to 8,87, 6667 one doctor COVID-19 warrier in the USA made 1.87 billion US\$ and he was arrested and ceased his assets when the opportunity arises cunning people make use and make money they are not bothered about the society and the poor only rich people can afford to pay their demands and middle-income group and salaried people not get any benefits from the government or they have sufficient funds to spend rich have sufficient funds and poor people will be supported by the government.

7. Provoking information's

During the period of COVID-19 if anybody says anything it will be heard by the public and fall into their traps. For example, COVID-19 protection one book they offered at the cost of US\$ 57. Further, they said only a few copies are left for the purchase of your tray before it exhausts. How these emails send information will be exhausted or check if it is still available these Willy people create an emergency and due to this provoking information's people will buy at an extra cost. Similarly, Readers Digest also gives provoking information's towards sweepstakes.

Case 3: One Mariam Color Laboratory was assigned a job to manufacture an electronic neon signboard with rotation features and includes a motor with AC/DC connection at an estimated cost of Rs. 35,000.00. By M/s Indian Telephone Industries Limited with clear instructions and specifications that goods to be supplied at the exhibition ground at Indian Institute of Science, Bangalore scheduled to be held from 26 to 30 September 2020 and the material have to be supplied on or before 25th September 2020.

The Mariam color laboratory has not supplied even on the day of the inauguration of the exhibition. When it is asked, he told that the material has moved from here by goods vehicles just 15 minutes back and it will reach within half an hour. One hour is completed, two hours are completed and 4 hours are completed but the material has not reached the scheduled place of exhibition.



International Journal of Advance and Innovative Research

Volume 7, Issue 4 (II) October - December 2020

ISSN 2394 - 7780

Afterward once again contacted over the phone then he said that while in transit vehicle meets with an accident and the materials were broken and hence, I am redoing. He has taken an advance of Rs. 25,000.00 at the time of the job order with specifications. The terms and conditions indicating that he has to supply before the inauguration of the exhibition at least 4 hours in advance to set up the same.

One of the representatives from the organization went to the Mariam color lab and found that he has not yet started the work and all his statements were false and fraudulent. He has created the organization by giving false promises. With his unfair trade practice, the organization has incurred heavy loss and loss of reputation in the society and got the brand name that government officials are always lazy and they will get their salary why they bother about the image of the organization.

If somebody commits some mistakes and misleading others have to be blamed for the same for not monitoring the problems properly. This is a clear case of unfair trade practice.

CONCLUSION

Especially in India, it is very difficult to see the fair-trade practice except few and hence the customer is to be extra careful to follow the above said 7 information's before the purchase of the product. Withholding information is just as bad as using overtly inappropriate or Willy information. Therefore check the price of the product or services before accept.

Certain times by omission of information might influence the customer's decision to make a purchase and hence seller uses unfair trade practice. If you find any unfair trade practice and you become the victim of the unfair trade practice always you can approach the Central Consumer Protection Authority (CCPA) for justifications.

Always the Consumer Protection Act, 1986 will help the deceptive personnel. To prevent always get educated in this matter and save yourself the time and expenses of litigations.

ENDNOTES

1. **Sara Devi:** "Fair and Unfair Trade Practices" published and printed in SARA Printers and Publishers in France 2016 in pages 2, 8 and 9.
2. **Sharanya Mathaji:** "Fair or Unfair Trades" Printed and published in Prasant Tarafdar Printers and Publishers at North Paragana, West Bengal, 4th Edition Page No 1 in the year 1985.
3. **Vishwanath K:** "Fraudulent Practices in Business" Printed and Published at Saraswathi Printers and Publishers 2017, 7th Edition 30th page.
4. **Shakila Banu:** "Fake Endorsement in Trades" published by Guljar Bhanu and Printed at Bashir Ahmed Printers in Itanagar, Arunachal Pradesh 1st Edition year 2005 and reprinted in 2012 Page No. 9 and 14 - Page No. 5 and 31.
5. **C B Memoria, S V Gankar,** Personnel Management Text and Cases, Himalaya Publishing House, Bangalore, 28th Edition, Page No 840 - 850.
6. Newspapers Vijaya Karnataka, Vijaya Vani, Udayavani, Kannada Prabha, Hosa Diganta, Samyuktha Karnataka, Prajavani, Deccan Herald, Indian Express, The Hindu, The Time of India & Business Line.
7. Cases extracted from Consumer Court
8. Direct interaction with a customer who suffered from unfair trade practices
9. Information from the Central Consumer Protection Authority (CCPA)
10. Consumer Protection Act, 1986 which is amended in 2019 and 2020