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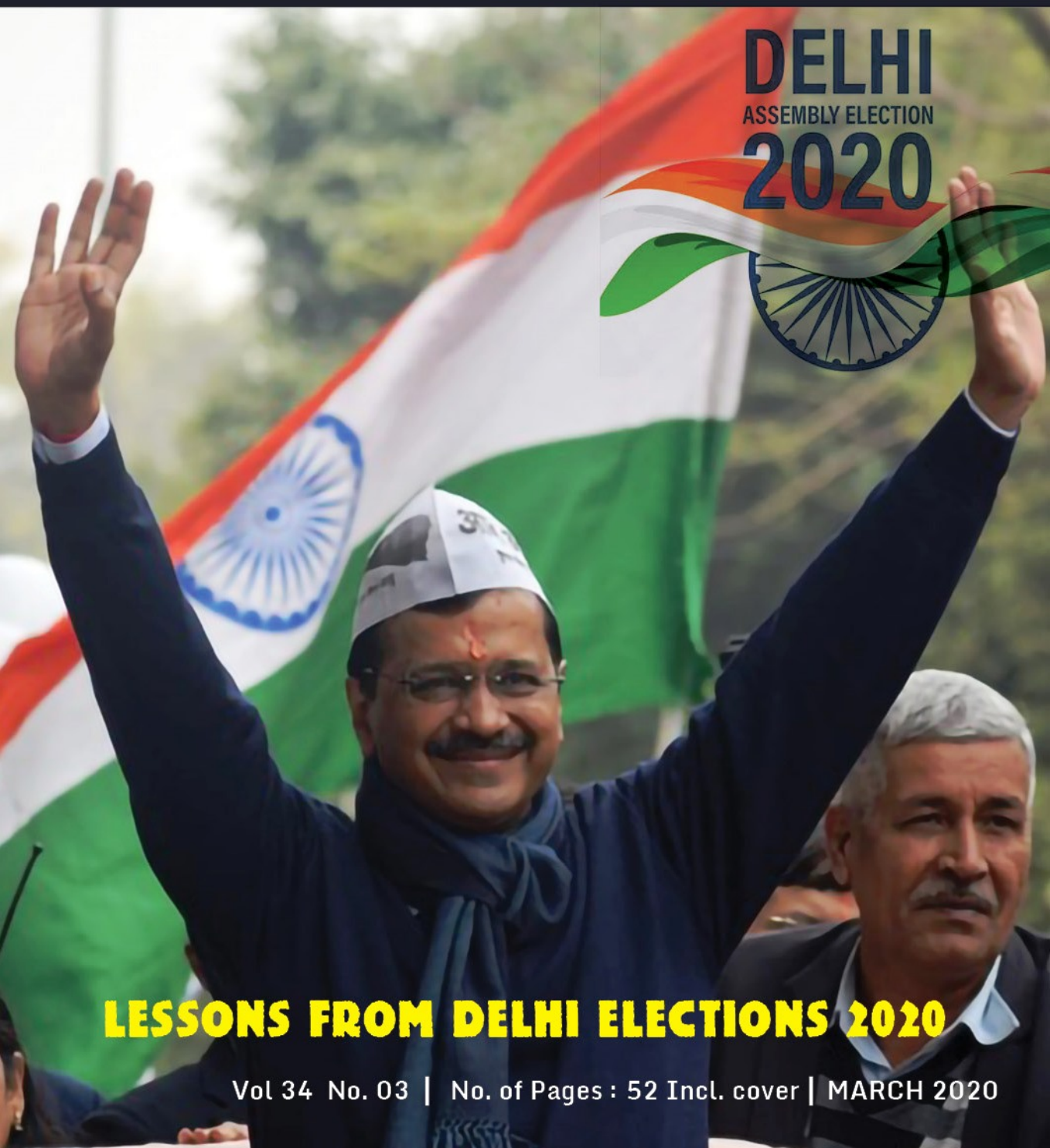

LESSONS FROM DELHI ELECTIONS 2020

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LESSONS FROM DELHI ELECTIONS 2020

The outcome of the Delhi election shows a positive vote for the AAP and people's rejection of politics of hatred and polarization. BJP could not cross the single-digit mark in the 70-member Assembly let alone break its 22-year-old curse in the national capital calls for introspection. Delhi results are a wake-up call for the leadership ahead of Assembly elections in States like Bihar and West Bengal.

Seen as a verdict on the campaign Home Minister Amit Shah led from the front, Delhi results hold several messages for the saffron leadership. It is quite natural that results will be read as the first verdict of the Narendra Modi-led NDA's controversial decision—amending the Citizenship Act, which Shah spearheaded in its 2.0 avataar. The statement, which came amid the nationwide face-off over amended Citizenship and the onging sit-in protests against it at Delhi's Shaheen Bagh that the BJP made centerpiece of its campaign in Delhi, was read in many ways, including that opposing BJP does not essentially mean opposing Hindus. In fact, this is also the biggest lesson the BJP can draw from the "polarising" campaign it ran to win Delhi. The party has to accept that it can no longer rely on Prime Minister Modi to win state elections. Delhi's reiteration of this comes after two crucial assembly elections—Jharkhand, which it lost late last year to the Congress, and Haryana, where it barely scrapped through in elections held in October.

For Shah, whose election campaigns are intense "do-or-die" situations and who had been the "face" of Delhi elections instead of their usual star campaigner—Prime Minister Narendra Modi—BJP's loss in the elections would mean that the party would now have to rethink its hatred and "polarising strategy".

The bottom line is that AAP's sweeping victory in Delhi primarily rides on the work that the party has done in the past five years. And although this was the first election that the BJP fought under the leadership of their new chief JP Nadda, it was, by most measures, Shah who was the party's chief election strategist. So what were the takeaways for the BJP these elections?

First was the need for a chief ministerial candidate. BJP went into the elections with no chief minister face, even when AAP had molded its entire election around Chief Minister Arvind Kejriwal. When there are no credible local alternative leadership is available, people tend to vote for the available strong man. The lesson for BJP here is that the party must groom regional or local leaders so voters would know their chief minister candidate in advance before elections.

Another problem perhaps was the lack of focus on local issues. These elections also show that voters make a clear distinction between national and assembly elections, and that national issues do not make much impact at the local level.

Another issue that the party needs to understand is that negative campaigns tend to backfire. Polarisation is a double-edged sword. The BJP's strategy led to counter-polarization of Muslim votes, which worked to AAP's advantage. By contrast, Kejriwal ran a positive campaign, taking no position on CAA, instead focusing on development.

It is important to keep in mind that people will reward good work, irrespective of religion, caste or creed. The party also needs to groom local/regional leaders who can connect and take the narrative to masses.❐

From *Caveat Emptor* to *Caveat Venditor* : Consumer Rights under the Consumer Protection Act, 2019

Shalu Nigam*

Introduction

In the times, when the capitalism is creating a havoc and neo liberal economy has adversely affected the society while dismantling the rights of citizens as workers and consumers, the new consumer protection law seemingly strengthens the rights of consumers. In the evolving world of digital economy, many avenues are being created for electronic transactions when the consumers are being exploited in new ways. The law needs to keep pace with the changing socio-economic environment. In this context, seemingly, moving a step forward from the contract law principle of `Let the Buyer Beware' (*caveat emptor*) to Let the Seller Beware' (*caveat venditor*) the Consumer Protection Act, 2019 (Act No. 35 of 2019) theoretically has ushered a reform in the field of consumer rights by introducing the concept of transparency in transactions and making the sellers and endorsers accountable for the products they are selling or endorsing.

...the contract law principle of `Let the Buyer Beware' (caveat emptor) to Let the Seller Beware' (caveat venditor) the Consumer Protection Act, 2019 (Act No. 35 of 2019) theoretically has ushered a reform in the field of consumer rights by introducing the concept of transparency in transactions and making the sellers and endorsers accountable for the products they are selling or endorsing.

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This law introduced the concept of product liability whereby manufacturers and sellers of products are made responsible to compensate for any harm caused to consumer because of defective product. The law also elaborates on the definition of `unfair contracts' to protect consumers. This essay briefly examines the provisions of this new law which has repealed and replaced the Consumer Protection Act, 1986 and suggests that the law should be implemented in its true spirit to pave a new way for democratic environment where citizens as consumers could be protected from exploitation in the free market economy.

Capitalism Kills

In the era of corporate insatiability, businesses are using manipulative tactics to forcefully occupy natural resources at the lowest price or at subsidized rates but also are harming climate and destroying environment in worst possible manner[1]. Unchecked and unregulated market economy is thwarting society and fostering injustice. Deregulation of health, safety and environment protections has become a norm in the laissez faire market economy where competition to earn profits is harming environment. Besides, it is the rights of workers and consumers that suffer the major setback. The governments world over are taking steps to dilute the labour rights movement whereas the rights of the consumers, being an unorganized group, are further pushed back in the chaotic avaricious world where digital marketing, e-transactions, electronic purchases, misleading advertisements, false endorsing of the product, all are creating havoc.

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`Make In India' has Neglected Workers Rights

The era of liberalization, privatization and globalization introduced in India since 1991 has changed the ways market has been operating to adversely affect not only the economy but also the people's rights as workers, consumers and citizens. The government of India launched the `Make in India' campaign in 2014 to encourage foreign and local companies to invest and manufacture their products while making the country as a top destination for FDI (Foreign Direct Investments)[2]. The object is job creation and skill enhancement. However, in the process, labour regulations are dismantled and worker protection laws are rolled back[3]. It was argued that changing the `restrictive' labour law regime would enhance business and expand industrial output, however, this made adverse impact on those 90 percent workforce in the unorganized sector[4]. The economic crisis further escalated with the collapse of manufacturing sector recently[5]. The situation today is the worker's rights are being compromised to pave the way for the big businesses and that is resulting in deepening inequalities making rich richer and poor poorer.

Too much Focus on Profit is Anti-consumer

Anti-consumer growth of market economy is also adversely affecting the health of consumers and compromising the safety of the society through deceptive false advertisements, unsafe, hazardous and spurious products, deceptive packaging, adulterated products, energy wasting, pollution causing harmful designs of appliances, overselling insurance, credit and over emphasis on unwanted products such as fairness creams or weight loss equipment. The safety of food items is compromised by using low quality products or harmful chemicals while conceding the health of citizens. Instead of publicizing reliable consumer information about the safety of products or services or durable, efficient, effective or economic alternatives, much resources are wasted in persuading consumers to buy what seller want to sell. Nevertheless, amidst all this chaos, there is a positive sign that the consumer law in India has been changed to strengthen the regime of protecting the rights of consumers.

Adam Smith observed that "the end of all production is consumption; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer".

Consumer is the King

Adam Smith observed that "the end of all production is consumption; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer". Therefore, consumer plays a significant role in the economy. The health, safety and rights of consumers becomes important in this economic context where producers produce because the consumers consume. Distributive justice is essential for the success of any economy and for a democratic society.

However, unfettered corporate greed has led to a system where businesses are dominating by manipulation. In such a situation, making big corporate businesses accountable for their action becomes important. Consumerism is not only an individual pursuit to obtain better quality product as minimal cost or at competitive price but it is also a responsibility of the citizen and the state to build better economy and society. The policy of corporate responsibility reminds corporates their obligations towards consumers and is no different than providing the safety for citizens while building a better democratic society. It is the onus of the big businesses to provide a product that is not only safe and healthy but also is of appropriate standard and quality and in doing so they ought to take care of the worker's rights and the climate justice. The economy has to be people-centered and not business or profit-centered. Interests of workers, consumers and society as a whole, need to be protected while taking care of environment.

The Amendments in the Law

The Consumer Protection Act of 1986 was enacted in India with the purpose

of protecting the basic rights of consumers and to regulate market places. Based on the principle of *caveat emptor* (Latin phrase for let the buyer beware), it empowered consumers to use law as a tool to negotiate for his or her rights against the powerful big business lobby consisting of manufacturers, sellers, service providers and others. It lays onus on the consumer to exercise his or her rights and take legal action against the manufacturers and providers, in case of exploitation. This law became outdated with the change in the market place such as introduction of e-transactions and is revamped with the introduction of new law.

With the advent of new technology in the digital era when the consumer has choices to exercise variety of options, the need to protect consumer from new forms of exploitation has also increased. Misleading advertisements and products are continuously being pushed by businesses in the market. The Act of 2019[6] is a step forward in catering to consumer concerns by providing remedies to detriment exploitative practices by specifically emphasizing on the concept of product liability though earlier it has been customarily addressed by the common law. The law enacted in 2019 broadly defines consumer to include person who buys a product or avails services online thus reducing the probability of consumer getting cheated because of anonymity in the online transaction.

The Act of 2019 put the onus on the manufacturers, sellers and endorsers of the product to be cautious while offering products or rendering services. The key features of this new law are exclusive definition and provision of product liability, establishment of Central Consumer Protection Authority with the power of initiating class action and enforcing the recall, refund and return of the product. The law penalizes the sellers, manufacturers and the endorsers of the product for faulty misleading advertisements and provides a comprehensive framework for dealing with unfair contracts.

Based on the principle of *caveat emptor* (Latin phrase for let the buyer beware), it empowered consumers to use law as a tool to negotiate for his or her rights against the powerful big business lobby consisting of manufacturers, sellers, service providers and others. It lays onus on the consumer to exercise his or her rights and take legal action against the manufacturers and providers, in case of exploitation.

The Act prohibits the endorser from making any endorsement of product if the product is faulty. So, a celebrity, film actor or a cricket star who may be idolized by common people while endorsing a product has to exercise due diligence while endorsing a product. The penalty of misleading advertisement is set to imprisonment extendable to two years and fine extendable to Rs 10 lakh.The endorser therefore has to exercise due diligence before making any claims made while advertising the product. This new law also defines the term `unfair contract' broadly to ensure that the dominant party is unable to coerce its way into profiting

unfairly by exploiting the situation. For selling spurious goods, the seller and manufacturers could be held criminally liable and could be imprisoned for seven years with fine.

This new law has also introduced the concept of product liability and widened the scope of the term `product seller' to include e-commerce platforms such as Amazon, Flipkart, Snapdeal etc., rather than merely considering them as `platforms' or `aggregators'. Manufacturer is held liable even when s/he proves that s/he was not negligent of fraudulent in making express warranty of the product. It is proposed that platforms as mentioned above are bound to disclose seller's details such as their addresses, website, e-mails, and other conditions related to refund, exchange, terms of contract, and warranty on their websites to enhance transparency.

The penalty of misleading advertisement is set to imprisonment extendable to two years and fine extendable to Rs 10 lakh. The endorser therefore has to exercise due diligence before making any claims made while advertising the product.

The law enables the consumer to file the complaint at place where s/he resides or works instead of current practice of filing it at the place of registered office of the business. The provision of video conferencing in district commissions has also been introduced besides e-filing of the complaints. The provision of mediation has also been introduced and the commission is also empowered to avail services of an expert. The law makes businesses to be consumer driven and to take extra precautions against unfair trade practices and unethical business practices.

Future Challenges

Though too much control and powers have been vested with the Central Consumer Protection Authority without proposing adequate administrative safeguards, yet there is a hope that it may be implemented in a manner to protect interests of consumers. The initiative to make product manufacturers and sellers is laudable, yet there is a need to rethink the manner in which practically the consumer rights will be implemented. The rules under this law are much awaited and it is hoped that many of vague areas left undefined in the main Act will be clarified.

Conclusion

To succeed against the corporate greed, it is essential that state must enact stringent legislation and more so, it must show zeal and political will to act against big businesses who are manipulating and dominating the economy while protecting the rights of consumers. While enacting this law, seemingly a step has been taken to protect the rights of the consumers, however, similar zeal must be shown while implementing this law. Citizens friendly legal system is essential to foster a strong democracy. Also, social change is not possible unless consumers as citizens actively educate, organize, agitate and bargain for their rights and participate in strengthening the democratic society by demanding safer products, better workplaces, inclusive cities, healthy communities and a clean environment.

Consumer autonomy is essential to create a market system beneficial to all and to curtail corporate abuse in the marketplace. This law envisages the provisions to protect consumers in the digital era and is a positive step to reform consumer law, however, considering the experiences of implementing the current law, it is essential that budget must be allocated and vacancies in the forums be filled on timely basis. Regulating market is essential besides making corporate sector accountable to protect the interest of vulnerable sections including consumers and workers in the current socio-economic environment.❐

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PETITION UNDER THE DOMESTIC VIOLENCE ACT CAN BE FILED IN A COURT WHERE THE PERSON AGGRIEVED PERMANENTLY OR TEMPORARILY RESIDES

The Hon'ble Supreme Court of India, in the case of Shyamlal Devda Vs. Parimala bearing Criminal Appeal No. 141of 2020 decided on 22nd January 2020 has observed that since the respondent wife is residing with her parents within the territorial limits of Metropolitan Magistrate, Bengaluru, so in view of section 27(1) (a) of the Protection of women from domestic violence Act 2005 Bengaluru Court has the jurisdiction to entertain the complaint and take cognizance of the offence

SUPREME COURT

Brief facts of the Case:-

The marriage of respondent-wife and appellant No.14-Manoj Kumar was solemnized on 01.05.2006, as per Hindu rites and customs in Rajasthan. After marriage, the respondent was residing with appellant No.14 in her matrimonial house at Chennai along with appellants No.1 and 2 who are the parents of the appellant No.14. In April, 2014, appellant No.14 and respondent-wife went to Bengaluru from Chennai to attend respondent's sister's wedding. After the said wedding, the respondent expressed her desire to remain at Bengaluru for some time; which was acceded to by appellant No.14 with the understanding that the respondent would stay in her parent's house for short time. According to the appellants, the respondent thereafter refused to join her matrimonial home or cohabit with appellant No.14. Appellant No.14 filed O.P. No.11355 of 2015 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights before the Family Court, Chennai. Thereafter, respondent claiming herself to be a victim of domestic violence seeking protection order

under Section 18 and residence order under Section 19 and monetary relief under Section 20 of the Act filed Crl. Misc. No.53 of 2015 before the Court of Metropolitan Magistrate at Bengaluru against her husband-appellant No.14, her in-laws-appellant Nos.1 and 2 and other relatives of her husband who are in Chennai, Rajasthan and also in Gujarat. The learned Magistrate, Bengaluru vide order dated 16.04.2015 issued notice to the appellants by holding that the Court has the jurisdiction to entertain the petition filed by the respondent under Section 27 of the Domestic Violence Act.

Aggrieved by the issuance of summons in Crl. Misc. No.53 of 2015, the appellants have filed a petition under Section 482 Cr.P.C. before the High Court seeking quashing of the entire proceedings in Crl. Misc. No.53 of 2015 on the file of the MMTC-VI at Bengaluru. Vide the impugned judgment, the High Court dismissed the petition by holding that in the complaint filed by the respondent, various instances of domestic violence at different places viz. Chennai, Rajasthan and Gujarat are narrated by the respondent and therefore, the complaint filed in Bengaluru is maintainable under Section 27 of the Domestic Violence Act. Being aggrieved, the appellants have preferred this appeal.

The learned counsel appearing for the appellants contended that neither the marriage of the parties was solemnized at Bengaluru nor the matrimonial house was at Bengaluru and therefore, the Magistrate Court at Bengaluru has no jurisdiction to entertain the petition filed under the Domestic Violence Act. Learned counsel submitted that vague allegations have been leveled against the family members of the husband which are not at all substantiated. Learned counsel further submitted that with a view to harass the family members of her husband, the respondent has arraigned all the family members of her husband including those who are residents in the State of Rajasthan, Gujarat and other relatives in Chennai and the complaint is an abuse of the process of the Court.

The learned counsel appearing for the respondent has contended that by virtue of Section 27 of the Domestic Violence Act, the place where the complainant permanently or temporarily resides or carries on business, Court has the jurisdiction to entertain the complaint and grant protection order and other orders under the Domestic Violence Act. It was submitted that the respondent is currently residing within the territorial limit of the Metropolitan Magistrate of Bengaluru City and that the High Court rightly held that the Metropolitan Magistrate at Bengaluru has

the jurisdiction to entertain the complaint. There are several instances of domestic violence against the husband-appellant No.14 and other relatives particularly, appellant Nos.1 and 2-father-in-law and mother-in-law who have been harassing the respondent who have taken away respondent's jewellery and insisting upon her to buy properties. The learned counsel submitted that the High Court rightly refused to quash the order of taking cognizance.

In the present case, the respondent has made allegations of domestic violence against fourteen appellants. Appellant No.14 is the husband and appellants No.1 and 2 are the parents-in-law of the respondent. All other appellants are relatives of parents-in-law of the respondent. There are no specific allegations as to how other relatives of appellant No.14 have caused the acts of domestic violence. It is also not known as to how other relatives who are residents of Gujarat and Rajasthan can be held responsible for award of monetary relief to the respondent. The High Court was not right in saying that there was prima facie case against the other appellants No.3 to 13. Since there are no specific allegations against appellants No.3 to 13, the criminal case of domestic violence against them cannot be continued and is liable to be quashed.

Insofar as the jurisdiction of the Bengaluru Court, as pointed out by the High Court, Section 27 of the Protection of Women from Domestic Violence Act, 2005 covers the situation.

A plain reading of the above provision makes it clear that the petition under the Domestic Violence Act can be filed in a court where the "person aggrieved" permanently or temporarily resides or carries on business or is employed. In the present case, the respondent is residing with her parents within the territorial limits of Metropolitan Magistrate Court, Bengaluru. In view of Section 27(1) (a) of the Act, the Metropolitan Magistrate Court, Bengaluru has the jurisdiction to entertain the complaint and take cognizance of the offence. There is no merit in the contention raising objection as to the jurisdiction of the Metropolitan Magistrate Court at Bengaluru. In the result, Crl. Misc. No.53 of 2015 filed against the appellants No.3 to 13 is quashed and this appeal is partly allowed. The learned VI Additional Metropolitan Magistrate at Bengaluru shall proceed with Crl. Misc. No.53 of 2015 against appellants No.1, 2 and 14 and dispose the same in accordance with law. ❑❑

You have the right to your own ideas and opinions, to make your own decisions, and to have things go your way at times. Stand up for those rights.

– Beverly Engel

WHILE HOLDING THE INQUIRY UNDER SECTION 202 Cr.P.C., THE MAGISTRATE IS REQUIRED TO TAKE A BROAD VIEW AND SEE WHETHER A PRIMA FACIE CASE EXISTS.

The Hon'ble Supreme Court of India, in the case of *Govind Prasad Kejriwal V. State of Bihar & Anr.* bearing Criminal Appeal No. 168 of 2020 decided on 31st January 2020 while quashing the criminal proceedings initiated against the accused, has held that such proceedings is an abuse of process of law and the Court is required to consider whether a prima facie case is made out or not and whether the criminal proceedings initiated an abuse of process of law or the court or not.

SUPREME COURT

Brief Facts of the Case: -

That the private respondent herein Gopal Prasad son of Shri Shyam S. Prasad, brother of one Ramesh Kumar – a partner of a firm called Kejriwal Films filed the criminal complaint being Complaint Case No.464 of 2001 in the Court of Additional Chief Judicial Magistrate, Barh against the appellant herein for the offences under Sections 379, 323, 504, 506, 406, 452, 147, 148/34 IPC.

The said complaint was filed on 19.12.2001. From the record it appears that prior thereto, a written report was lodged by the appellant herein - Govind Prasad Kejriwal, against Ramesh Kumar and others for the offence under Section 379 IPC. After the investigation, the I.O. filed the chargesheet against all the four accused persons including the complainant herein and even Ramesh Kumar for the offence under Section 379 IPC. That the Learned Trial Court has taken cognizance against all the accused persons including Original private respondent herein – original complainant under Section 379 IPC. That the said trial is pending. That the complaint filed by the private respondent – original complainant herein - Gopal Prasad being Complaint No.464 of 2001 came to be dismissed by the Learned Judicial Magistrate vide order dated 14.02.2003. The original complainant filed the Revision Application

before the Learned Additional Sessions Judge, Barh. Vide order dated 01.12.2004, the Learned Sessions Judge, Barh allowed the said revision application and set aside the order passed by the Learned Magistrate dated 14.02.2003 and remanded the case back to the Learned Magistrate for further inquiry and to pass fresh order in accordance with law. That pursuant to the remand order, the complainant deposed one witness in support of his case. Thereafter the Learned Magistrate vide order dated 25.07.2005 had taken cognizance against the appellant herein under Sections 323, 341 and 379 IPC, against the order passed by the Learned Magistrate taking cognizance under Sections 323, 341, 379 IPC, the appellant herein preferred quashing petition before the High Court being Criminal Miscellaneous Application No.34168 of 2005. That vide order dated 16.05.2006, the High Court declined to interfere, however observed that the appellant is at liberty to move the Learned Lower Court. That thereafter brother of the original complainant – Ramesh Kumar filed a title suit against the appellant and the partnership firm for dissolution of the partnership and rendition of accounts. That the said suit came to be dismissed, against which the First Appeal was preferred by the said Ramesh Kumar which came to be dismissed as withdrawn vide order dated 17.01.2011. That thereafter the appellant filed an application for discharge. Learned Magistrate vide order dated 04.08.2011 rejected the prayer of the appellant for discharge. That thereafter the appellant filed an application before the High Court for quashing of order dated 04.08.2011 passed by the Learned Judicial Magistrate rejecting the discharge application. Vide impugned Judgment and order the High Court has dismissed the said application and has refused to discharge the appellant and has refused to quash the criminal proceedings. Hence, the original accused has preferred the present appeal.

The learned Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has materially erred in not considering the facts and circumstances of the case and even considering the averments and the allegations in the complaint as they are, they do not constitute any offence against the appellant that too for the offences under Sections 323, 341, 379 IPC. It is further submitted by Learned Advocate that the High Court has not appreciated the fact that the complainant has tried to convert a civil dispute into criminal, which is nothing but an abuse of process of law and the Court. Making the above submissions it is prayed to allow the present appeal and consequently discharge

the appellant by quashing and setting aside the order passed by the Learned Magistrate as well as the High Court.

It is vehemently submitted by the Learned Advocate appearing on behalf of the original complainant that at the time of inquiry under Section 202 Cr.P.C. and at the time of taking cognizance, the Trial Court is required to hold a limited inquiry to satisfy itself whether there is any prima facie case. It is further submitted that in any case, the allegations are for the offence under Section 323 IPC also and the case is made out against the accused for the offence under Section 323 IPC also. It is further submitted that in fact earlier the Learned Sessions Court set aside the order passed by the Learned Magistrate dismissing the complaint and remanded the matter to the Learned Magistrate. It is submitted thereafter on remand and after holding necessary inquiry the Learned Trial Court has taken the cognizance against the accused. It is submitted therefore that no interference of this Court is called for in exercise of powers under Article 136 of the Constitution of India more particularly when both, the Learned Trial Court and the High Court has refused to discharge the accused. It is submitted that whatever the submissions are made on behalf of the accused are his defenses, which are required to be considered at the time of the trial. Making the above submissions it is prayed to dismiss the present appeal.

We have perused and considered the allegations made in the complaint as well as the order passed by the learned Trial Court taking cognizance against the accused. At the outset, it is required to be noted that summons have been issued against the accused for the offences under Sections 323, 341 and 379 of the IPC. Having heard the learned counsel appearing for the respective parties and even considering/taking the allegations in the complaint as they are, we are of the opinion that initiation of criminal proceedings against the accused is nothing but an abuse of process of law and the Court. A purely civil dispute is tried to be given a colour of criminal dispute. In view of the reasons stated hereinabove, the present Appeal succeeds. The order passed by the Learned Magistrate taking cognizance against the accused and issuing the summons against the accused for the offences under Sections 341, 323 and 379 of the IPC and also the impugned Judgment and order passed by the High Court are hereby quashed and set aside. The impugned criminal proceedings initiated against the accused arising out of the Criminal Complaint No.464 of 2001 are hereby quashed and set aside.❑❑

MOTOR ACCIDENT CLAIMS COURT MUST AWARD JUST COMPENSATION AND IF IT IS MORE THAN THE AMOUNT CLAIMED, THAT MUST BE AWARDED ESPECIALLY WHERE THE CLAIMANT IS A MINOR

The Hon'ble Supreme Court of India, in the case of Kajal Vs. Jagdish Chand & Ors. bearing Criminal Appeal No. 735 of 2020 decided on 5th February 2020 while enhancing the compensation in a case of motor accident involving a minor has reiterated various guidelines with respect to grant of compensation to protect the rights of the minors, claimants who are under some disability, widows, and illiterate persons who may be deprived of the compensation paid to them in lump sum by unscrupulous elements. The claims Tribunal should, in the case of minors, order the compensation awarded to be invested in long term fixed deposits at least till the date of the minor attaining majority.

-SUPREME COURT

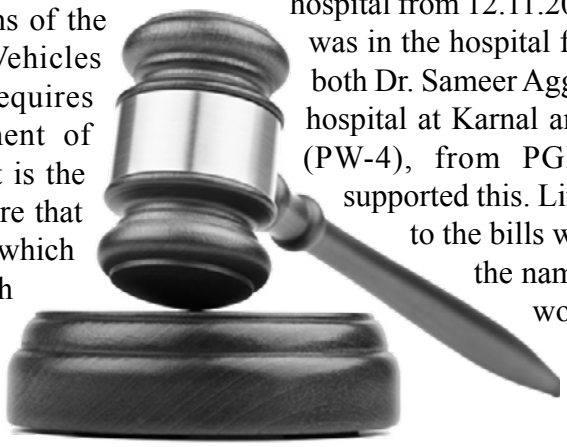
Brief Facts of the case:

Kajal was a bright young girl. She used to attend school, play with her friends and lead a normal life like any other child. Unfortunately, on 18 th October, 2007, while Kajal was travelling on a tractor with her parents, the tractor was hit by a truck which was driven rashly. In the said accident, Kajal suffered serious injuries resulting in damage to her brain. This has had very serious consequences on her. She was examined at the Post Graduate Institute of Medical Education and Research, Chandigarh for assessment of her disability. According to the said report, because of head injury Kajal is left with a very low I.Q. and severe weakness in all her four limbs, suffers from severe hysteria and severe urinary incontinence. Her disability has been assessed as 100%.

Dr. Chhabra (PW-4), who was one of the members of the Board which issued the disability certificate stated that as per the assessment, her I.Q. is less than 20% of a child of her age and her social age is only of a 9 month old child. This means that Kajal

while lying on the bed will grow up to be an adult with all the physical and biological attributes which a woman would get on attaining adulthood, including menstruation etc., but her mind will remain of a 9 month old child. Basically, she will not understand what is happening all around her.

How does one assess compensation in such a case? No amount of money can compensate this child for the injuries suffered by her. She can never be put back in the same position. However, compensation has to be determined in terms of the provisions of Motor Vehicles Act, 1988. The Act requires determination of payment of just compensation and it is the duty of the court to ensure that she is paid compensation which is just. Kajal through her father filed a claim petition, under the Act. The Motor Accident Claims Tribunal awarded Rs.11,08,501/- and held that since there was violation of the terms of policy the insurance company would pay the amount but would be entitled to recover the same from the owner. The High Court enhanced the award amount to Rs.25,78,501/.



Aggrieved by the award the claimant is before this Court. The High Court under the two heads of medical treatment and transport has awarded Rs.1,88,501/-. Out of this an amount of Rs.1,38,501/- is the actual expense incurred on the treatment of Kajal. One must remember that amongst people who are not Government employees and belong to the poorer strata of society, bills are not retained. Some of the bills have been excluded by the courts below only on the ground that the name of the patient is not written on the bill. There is no dispute with regard to the long period of treatment and hospitalisation of this young girl. Immediately after the accident on 18.10.2007, she was admitted at a hospital in Karnal. From there, she was referred to the PGI, Chandigarh, where she remained admitted from 21.10.2007 till 12.11.2007 and, thereafter, she was again admitted in the hospital from 12.11.2007 till 08.12.2007. She was in the hospital for almost 51 days, and both Dr. Sameer Aggarwal (PW-3) from the hospital at Karnal and Dr. Rajesh Chhabra (PW-4), from PGI, Chandigarh, have supported this. Limiting the amount only to the bills which have been paid in the name of the claimant only, would not be reasonable. Therefore, the amount payable for actual medical expenses is increased from Rs.1,38,501/- to Rs.2,00,000/-. The amount awarded for transportation at Rs.50,000/- is reasonable. Therefore, under this head we award Rs.2,50,000/-.

Loss of earnings

"Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs.15,000/- per annum can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs.15,000/- per

annum. Each case has to be decided on its own evidence but taking notional income to be Rs.15,000/- per annum is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs.4846/- per month. In our opinion this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs.6784.40/- per month, i.e., 81,412.80 per annum. Applying the multiplier of 18 it works out to Rs.14,65,430.40, which is rounded off to Rs.14,66,000/-

Though the claimant would have been entitled to separate attendant charges for the period during which she was hospitalized, we are refraining from awarding the same because we are going to award her attendant charges for life. At the same time, we are clearly of the view that the tort-feasor cannot take benefit of the gratuitous service rendered by the family members. When this small girl was taken to PGI, Chandigarh, or was in her village, 2-3 family members must have accompanied her. Even if we are not paying them the attendant charges they must be paid for loss of their wages and the amount they would have spent in hospital for food etc. These family members left their work in the village to attend to this little girl in the hospital at Karnal or Chandigarh. In the hospital the claimant would have had at least two attendants, and taking the cost of each at Rs.500/- per day for 51 days, we award her Rs.51,000/-."

Attendant charges

The attendant charges have been awarded by the High Court @ Rs.2,500/- per month for 44 years, which works out to Rs.13,20,000/-. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and

thus results in award of 'just compensation' within the meaning of the Act.

This Court has reaffirmed the multiplier method in various cases like Municipal Corporation of Delhi v. Subhagwati and Ors. 1966 ACJ 57, U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. (1996) 4 SCC 362, Sandeep Khanduja v. Atul Dande and Ors. (2017) 3 SCC 351. This Court has also recognised that Schedule II of the Act can be used as a guide for the multiplier to be applied in each case. Keeping the claimant's age in mind, the multiplier in this case should be 18 as opposed to 44 taken by the High Court.

Having held so, "we are clearly of the view that the basic amount taken for determining attendant charges is very much on the lower side. We must remember that this little girl is severely suffering from incontinence meaning that she does not have control over her bodily functions like passing urine and faeces. As she grows older, she will not be able to handle her periods. She requires an attendant virtually 24 hours a day. She requires an attendant who though may not be medically trained but must be capable of handling a child who is bed ridden. She would require an attendant who would ensure that she does not suffer from bed sores. The claimant has placed before us a notification of the State of Haryana of the year 2010, wherein the wages for skilled labourer is Rs.4846/- per month. We, therefore, assess the cost of one attendant at Rs.5,000/- and she will require two attendants which works out to Rs.10,000/- per month, which comes to Rs.1,20,000/- per annum, and using the multiplier of 18 it works out to Rs.21,60,000/- for attendant charges for her entire life. This takes care of all the pecuniary damages".

Pain, Suffering and Loss of Amenities

Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs.3,00,000/-. In Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Ors. 2013 (10) SCALE 668, this Court while dealing with the issue of award under this head held that it should be at least Rs.6,00,000/-, if the disability is more than 90%. As far as the present case is concerned, in addition to the 100% physical disability the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine month old child. This is a case where departure has to be made from the normal rule and the pain and suffering suffered by this child is such that no amount of compensation can compensate.

One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. While awarding this amount we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bed-ridden for life. Her mental age will be that of a nine month old child. Effectively, while her body

grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9 month old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs.15,00,000/-.

Loss of marriage prospects

The Tribunal has awarded Rs.3,00,000/- for loss of marriage prospects. We see no reason to interfere with this finding.

Future medical treatment

The claimant has been awarded only Rs.2,00,000/- under this head. This amount is a pittance. Keeping in view the nature of her injuries and the fact that she is bed-ridden this child is bound to suffer from a lot of medical problems. True it is that there is no evidence in this regard but there can hardly be such evidence. She may require special mattress which will have to be changed frequently. In future as this girl grows, she may face many other medical issues because of the injuries suffered in the accident. Keeping in view her young age and assuming she would live another 50-60 years, it would not be unjust to award her Rs.5,00,000/- for future medical expenses.

How the compensation should be invested?

The tribunal while awarding the compensation had stated that the amount payable to the share of Kajal would be kept in a Fixed Deposit till she attains the age of 18 years. The High Court while enhancing the amount of compensation has directed that the enhanced amount be paid to the appellant within 45 days. This is totally contrary to the guidelines laid down by this Court in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Ors. (1994) 2 SCC 176, wherein it has been held clearly that the amount payable to the minors should not be normally released. These guidelines protect the rights of the minors, claimants who are under some disability and also widows and illiterate person who may be deprived of the compensation paid to them in lump sum by unscrupulous elements. These victims may not be able to invest their monies properly and in such cases the MACT as well the High courts must ensure that investments are made in nationalised banks to get a high rate of interest. The interest in most cases is sufficient to cover the monthly expenses. In special cases, for reasons to be given in writing, the MACT or the trial court may release such amount as is required. We reiterate these guidelines and direct that they should be followed by all the tribunals and High Courts to ensure that the money of the victims is not frittered away.

Interest

The High Court enhanced the amount of compensation by Rs.14,70,000/- and awarded interest @ 7.5% per annum but directed that the interest of 7.5% shall be paid only from the date of filing of the appeal.

This is also incorrect. We are constrained to observe that the High Court was not right in awarding interest on the enhanced amount only from the date of filing of the appeal.

Normally interest should be granted from the date of filing of the petition and if in appeal enhancement is made the interest should again be from the date of filing of the petition. It is only if the appeal is filed after an inordinate delay by the claimants, or the decision of the case has been delayed on account of negligence of the claimant, in such exceptional cases the interest may be awarded from a later date. However, while doing so, the tribunals/High Courts must give reasons why interest is not being paid from the date of filing of the petition. Therefore, we direct that the entire amount of compensation including the amount enhanced by us shall carry an interest of 7.5% per annum from the date of filing of the claim petition till payment/ deposit of the amount.

Relief

"In view of the above, we award a sum of Rs.62,27,000/- to the claimant.

This amount shall carry an interest @7.5% p.a. from the date of filing of the claim petition till payment/deposit of the amount. Obviously, the insurance company shall be entitled to adjust the amount already paid. Further, the insurance company shall also be entitled to recover the amount from the owner in terms of the award of the MACT, which has not been challenged either before the High Court or us.

We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in motor accident claim petitions, the Court must award just compensation and, in case, the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor.

The insurance company shall deposit the enhanced amount before the MACT in terms of the judgment after deducting the amount already paid by the insurance company within a period of 3 months from today. The MACT shall keep the entire amount in a fixed deposit in a nationalised bank, for a period of 5 years, giving highest rate of interest. The interest payable on this amount shall be released on quarterly basis to the father of the child. This amount shall be spent for paying the attendants and for the care of the child alone. Even after 5 years since this child for all intents and purpose shall remain a person under a disability, the MACT shall keep renewing the amount on these terms. We, however, further direct that in case the parents or the guardian moves an application for release of some amount to meet some special medical expenses, then MACT may consider release of the same. The appeal is disposed of in the aforesaid terms."❑❑

What is Article 131 of the Constitution of India?

[Live Law- 19 January 2020]

Article 131 of the Constitution, a rarely used provision, was in the news last week with two unusual suits filed by the Governments of Kerala and Chhattisgarh, challenging two central legislations. The State of Kerala challenged the Citizens Amendment Act (CAA) by invoking the Original jurisdiction mentioned under Article 131 of the Constitution. The State of Chhattisgarh filed a suit the next against NIA Act.

These respective progresses happened in the Supreme Court cannot be dubbed as an unprecedented event. In several other instances multiple states had invoked Article 131 in challenging a Central Statute. But it is equally notable that the number of suits under Article 131 in comparison with the utilization of other Constitutional remedies are much lesser in number. According to Durga Das Basu, an eminent jurist, the central reason for this imbalance is the excessive dependence of the states upon the Union. He further adds that , "Whatever disputes that may have arisen directly between the Union and the States must have been settled by negotiation and agreement. Even in matters arising between two states , the advice and intervention of the Union usually settle the difference."

THE CRUX AND CONTENT OF ARTICLE 131

The very subject nature of the Article 131 is itself an Original and exclusive jurisdiction of the Supreme Court. Here, the eminence of the words 'Original' and 'Exclusive' is very much significant to note. It means that Court has the power and authority to address, hear and rule a decision in the initial instance. The exclusivity factor of the jurisdiction provides an exceptional and particular power to the Court to hear and decide the matter than any other Courts. The construction of the provision laid under Article 131 is provided below as:

131. Original Jurisdiction of the Supreme Court.- Subject to the Provisions of this Constitution, the Supreme Court shall, to the exclusion of any other Court, have original Jurisdiction in any dispute-

(a) between the Government of India and one or more states; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or (c) between two or more States,

If and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

[Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which , having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.]

Apart from Article 131, through the Constitution (Forty-second Amendment) Act of 1976 a definite provision, i.e., 131-A, to deal with the Exclusive Jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central Laws was inserted. But the same was later repealed by the Constitution (Forty-third Amendment) Act, 1977. The wisdom and rationale behind the creation of Article 131 is deeply rooted in the credible anticipation that being a country which is governed by a constitution constructed on a federal or a quasi-federal governance structure, the risk of a dispute between the Central Government and one or multiple states, or between two or more states is prophetic in nature. In the actuality of such a scenario, the character and capacity of the forum that decides the dispute must be foremost and well defined. According to the framers of the Constitution, the Supreme Court being the towering judicial institution of the country, will serve the said purpose.

For the exercise of the original jurisdiction under Article 131, there must be certain requisites and condition need to be satisfied. If a private individual is bringing up a case against the Government of India, the appropriate forum to approach in the first instance is the court under the local limits. And the same party can approach the Apex Court in the form of an appeal, if it satisfies the conditions laid under the respective law.

The landmark observation made in the case between the State of Bihar and the Union of India, (1970) 1 SCC 67, justifies the same proposition. The Court observed that the dispute between the State of Bihar and the Hindustan Steel Limited, a company registered under the Companies Act of 1956 never attracts the Original Jurisdiction under Article 131. The Court's reasoning was that, the party Hindustan Steel Limited can never be considered as a 'state'.

One of the indispensable requirements needed for the invoking of Article 131 is that, there must be an Inter-state dispute. And the category of the dispute as laid under Article 131 is that, the dispute must be between the Government of India and one or more States; or between the Government of India and any State or Sates on one side and one or more other states; or between two or more States.

In Tashi Delek Gaming Solutions Ltd v. State of Karnataka, (2006)1 SCC 442, the court took an identical stand. In that instant case the court denied accepting the jurisdiction under Article 131 for the reason that the state approached the Court along with an agent to whom an alternative remedy was available in the form of Writ remedies.

The Rajasthan Dissolution Case *(State of Rajasthan v. Union of India,* (1977) 3 SCC 592) contributed some clarity to the interpretation of Article 131. The court in that decision clarified the actual substance of Article 131(a), "the dispute between the Government of India and one or more states". The court remarked that the idea of

dispute mentioned under Article 131 (a) is not the variance of opinions of the offices of the Central Government and the State Governments. Instead, the predominant motive of the provision is to bring room for the conclusion of disputes associated with the question of law or facts on which the existence or extent of a legal right depends. The subject matter of the dispute must never be a political one.

In *State of Karnataka v. Union of India* (AIR 1978 SC 68), the court had decided on a similar situation, where the pertinence of Article 131 was debated. The question debated was regarding the rights of the State government,when the central Government notified the engagement of an enquiry commission on the charges of corruption against the Chief Minster and other Ministers. The majority opinion of the bench in the respective case was in favour of the maintainability of the Suit filed under Article 131.

For the safe utilization of the law laid under Article 131, the appointees of the subject matter is also crucial. The flamboyant jurist Salmond had defined the legal right as an interest recognized and protected by a rule of legal justice and the disobedience of the same would invite the conduct of a legal wrong. The question (both law or facts) on the transgression of any of the legal rights must reside as a reason for the invoking of Article 131. In the State of Karnataka case (supra) it was also held that, the dispute must involve the declaration or a manifestation of a legal right of the Government of India or a State. It is not even necessary that the said legal right must hold the nature of a constitutional right. All that is needy is that it must be in the form of a legal right.

THE ELEMENT OF "CAUSE OF ACTION"

Equally for lawyers and laymen, the fundamental conception that they bear regarding the nature and purpose of a suit is almost identical. Though there lacks a structural definition regarding the suit, everyone is aware of the characteristics of a Suit. Though the term "Suit" is being widely used for the purpose of Article 131, the same cannot be equalised with a Suit of Civil nature. The term "Suit" used here is in generic sense. The facets like "Cause of actions" and other allied requirements for the enunciation of a suit is non-existent under Article 131. The working of the provision will be solely depends on the essence and type of the dispute brought before the Court. Also the modus of adjudication is also dissimilar

to that of the Ordinary Courts of laws. The holistic adjudication of matter linked with strict rules of procedures are not the guiding light here instead as observed in the *State of Bihar v. Union of India* (AIR 1970 SC 1446), that the party who hold the grievance can directly approach the Supreme Court with the aid of a full statement of the relevant facts and praying for the declaration of rights against other disputants. Once this process is over, the function of the Supreme Court as per Article 131 will conclude. Also the Supreme Court can decide to the refer the matter for mediation for the purpose of settlement even without entering into the merits of the Case.(State of H.P v. Union of India, (2010) 15 SCC 107).

In State of Karnataka v. Union of India (AIR 1978 SC 68), the court had decided on a similar situation, where the pertinence of Article 131 was debated. The question debated was regarding the rights of the State government ,when the central Government notified the engagement of an enquiry commission on the charges of corruption against the Chief Minster and other Ministers.

THE EXECUTION OF THE SUIT UNDER ARTICLE 131

As mentioned earlier the functionality of Article 131 cannot be equated with a normal Civil remedy confined under the Civil Procedure Code. The modus operand is completely dissimilar. It was observed in State of Haryana v. State of Punjab ((2004) 12 SCC 673) that, "a decree passed under Article 131 has to be complied with and it cannot be contented that the execution of the decree could not be implemented on the ground that there could be violence if the same is implemented. Such a stand would be contrary to Article 144 which will result in Article 131 becoming a dead letter.

It is the Constitutional duty of those in power to create an appropriate political climate to ensure respect for the Constitutional processes and not ignore the binding decisions only to gain political mileage." The language and the law portrayed under Article 131 is silent about the procedures involved in the conduct of the Suit and regarding the prerequisites. The Process of 'Execution' in a Suit is a preponderant part which brings justice to the litigant who wins. Article 131 neither prescribes nor mandates any procedure that portrays the the execution of a decree. Also in Article 131 the possibility of filing an appeal against the decision is almost unrealistic. So there exist no scope for any review as well.

THE EXCEPTIONS UNDER ARTICLE 131.

Though the Supreme Court enjoys exclusive jurisdiction under Article 131, in certain matters the said exclusivity is compromised. The jurisdiction under Article 131 does not extent to the dispute arising out of any treaty, agreement, covenant, engagement, sand or other similar instruments in which India entered before the commencement of the Constitution, which continues in operation after the commencement of the Constitution. If such dispute arises, it is the exclusive domain of the executive to interpret such documents. The matters that are referred to the Finance Commission

(Article 280) and the accommodation and adjustments of expenses and other related financial engagements between the Central Government and the States (Article 290) are all excluded from the purview of Article 131. In State of Haryana v. State of Punjab (AIR 2002 SC 685) it was observed that the dispute regarding an agreement between two states for the construction of water canals are not a considerable matter under Article 131.

THE SCOPE OF ARTICLE 131

The legal status of Article 131 is clear and settled and the applicability and scope in the present scenario attracts some sureness. The Suit filed by both the states can be considered as a bold move regardless of any preconceptions. The 2014 two -Judge bench decision in the case of *State of Jharkhand v.State of Bihar* consisting of Justices J.Chalameshwar and S.A. Bobde decided in favour of the notion that Article 131 is a credible tool to test the Constitutionality of a Statute. But in the later stage this question was referred to a higher bench headed by Justice N.V.Rmanan and the matter is still pending.

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POWER TO INVALIDATE A LEGALISATION UNDER ARTICLE 131

The original jurisdiction under Article 131 also possess power to invalidate a statute. The same has been settled by the Supreme Court in the landmark Mullaperiyar Case (State of *Tamil Nadu v.State of Kerala)*. On a suit filed by the State of Tamil Nadu under Article 131 of the Constitution challenging Kerala Irrigation and Water Conservation (Amendment) Act, 2006 a legislation passed by the Kerala legislature. The Supreme Court held that the 2006 Kerala legislation is unconstitutional and ultra vires in its application to, and effect on, the Mullaperiyar dam. The Court opined that, "A Suit filed in Original Jurisdiction of this Court is not governed by the procedure prescribed in Civil Procedure Code save and except the procedure which has been expressly made applicable by the Supreme Court rules." The Apex Court in the Mullaperiyar Case ruled authoritatively that the Suit filed by the state of Tamil Nadu is maintainable under Article 131 of the Constitution. The Court commented that : "There is yet another facet that in federal disputes, the legislature (Parliament and State legislature) cannot be judge in their own cause in the case of any dispute with another state.

The rule of law which is basic feature of the Constitution forbids the Union and the States from deciding, by law, a dispute between two states or between the Union and one or are States. If this was permitted under the Constitution, the Union and the States which have any dispute between them *inter se* would enact law enabling its claim or right against the other and that would lead to contradictory and irreconcilable laws. The Constitution makers in order to obviate any likelihood of contradiction and irreconcilable law being enacted has provided for independent adjudication of federal disputes, Article 131 of the Constitution confers original jurisdiction upon this Court in relation to the disputes." ❐❐

NRC would impact all religions, won't allow it: Uddhav Thack

Times of India – February 5, 2020

Maharashtra chief minister Uddhav Thackeray has said there was no need to fear the Citizenship Amendment Act, but asserted his government will not allow the proposed National Register of Citizens to be implemented as it would "impact people of all religions". Throwing out Bangladeshi and Pakistani migrants out of the country was an old demand of the Shiv Sena, the chief minister said in the third and concluding part of his interview to party mouthpiece 'Saamana'. "I can confidentially say the Citizenship Amendment Act (CAA) is not meant to throw Indian citizens out of the country. But, the National Register of Citizens (NRC) is going to impact Hindus as well," the Sena president said. India has the right to know the number of minorities from neighboring nations who applied for Indian citizenship after being persecuted in their home countries, he said. "When they come here, will they get homes under the 'Pradhan Mantri Awas Yojana'? What about employment and education of their children? All these issues are important and we have the right to know," he said in the interview to Saamana's executive editor and Sena MP Sanjay Raut.

"As chief minister, I should know where will these people be relocated in my state. Our own people don't have adequate housing. Will these people go to Delhi, Bengaluru or Kashmir, since Article 370 is now scrapped?" he wondered. Several Kashmiri Pandit families are staying like refugees in their own country. The CAA is not to throw citizens out of the country, Thackeray said. "However, the NRC will impact Hindus and Muslims and the state government will not allow it to be implemented," he asserted. Under the NRC, all citizens will have to prove their citizenship. In Assam, 19 lakh people could not prove their citizenship. Of these, 14 lakh are Hindus, Thackeray claimed. In a veiled attack on his cousin and MNS chief Raj Thackeray, who will lead a rally in support of the CAA and NRC in Mumbai on February 9, the chief minister said the NRC is not yet a reality and there is no need for a 'morcha' in support of or against it.

"If the NRC is enforced, those who are supporting it will also be affected," he said. Under the NRC, even Hindus will have to prove their citizenship. "I will not allow the law to be enacted. Whether I am chief minister or not, I will not allow injustice to anybody," he said. The chief minister also took a veiled dig at the Centre's decision to give the Padma Shri award to Pakistani-origin musician Adnan Sami. "A migrant is a migrant. You can't honour him with the Padma award. Throwing out illegal migrants was the stand of (late Shiv Sena supremo) Balasaheb Thackeray," he said without naming anyone.❐❐

Online video classes: A boon for medical aspirants from rural India

Times of India-February 9, 2020

Nineteen-year-old Nchumthung Patton from Nagaland's Wokha district, a tiny speck on the map of the country's northeastern region, almost gave up his dream of becoming a doctor when he could not clear the all India medical entrance examination. The teenager, who hails from a farming family and has seven siblings, had prepared for the ambitious test for one year on his own as his parents could not afford to send him to a city for medical coaching. Patton is now preparing for the entrance exam again but this time through online classes that have eliminated the need for coaching centres in his village and many other rural parts of the country.

Several major platforms such as NEETprep, BYJU's, ICA Edu skills and Youth4works have started offering online programmes for medical aspirants that prepare students for entrance exams through video streaming. Patton has enrolled with NEETP rep and was provided with all study material a pen drive and course work via email at a much lesser price than what enrolling in a coaching Centre in a city would cost. According to online education providers, the concept of online video programmes for medical entrance has replaced brick-and-mortar classrooms with virtual classes and given multiple benefits to students especially in rural areas. Kapil Gupta, CEO and co-founder of NEETP rep, who started the platform in 2016 along with his co-founders from IIT-Mumbai and IIM-Ahmedabad, said a classroom programme for a year at a well-known coaching institute for NEET preparation would cost approximately Rs 1-1.5 lakh per annum and additional expenses worth around Rs 2 lakh for accommodation and food if the student is not a city dweller. The amount charged by NEETP rep for its video classes for medical entrance is only Rs 25,000 per year, he said. Every year approximately 15 lakh students, including around 8 lakh from tier II and III cities, register for the NEET exam to secure admissions in medical colleges including the reputed All India Institute of Medical Sciences (AIIMS) as per their rankings. Mrinal Mohit, chief operating officer of BYJU's, told PTI, "The biggest benefit of integrating technology in education is that it makes learning highly personalized. With digital learning, students can learn at their own pace, in their own style and focus on strengthening their conceptual understanding instead of playing 'catch up' with rest of their batch".

He said digital learning also gives students uninterrupted access to the best teachers from around the world, irrespective of their geography. Rachit Jain, CEO & Founder of Youth4Work, said, "Online classes are less expensive than conventional

classes as students only have to pay for course material and not the admission fees that coaching institutes charge for operational costs". Citing a survey by KPMG and Google, Manoj Kumar Jha, Director of GS Score, said the market for online education is expected to rise magnificently -- up to USD 1.96 billion by 2021 from from USD 247 million in 2016. Having expanded to almost every zone of India, NEETPrep currently has students in far flung areas such as in Nagaland, Mizoram, Andaman and Nicobar and Lakshadweep islands. So is the case with BYJU's and ICA Edu. According to Narendra Shyamsukha, founder-chairman, ICA Edu Skills, surveys have found that nearly 5.8 million people enrol in online college courses, with 28 per cent of all college students enrolling in at least one online course every year. Rana Akoijam from Manipur had come to Delhi in 2018 for medical coaching but had to return soon due to financial crunch. In 2019 he got admission for MBBS thanks to enrolling in online entrance preparation classes. "With the help of online classes, I could sit in the comfort of my home and get tutored by the country's top faculties. Without wasting my time in commuting to coaching classes, I could spend more time focusing on studying," he said. Industry experts too believe that online video classes are a game changer for aspirants from rural parts.

Prof M C Misra, Former Director AIIMS, New Delhi, and now president of Mahatma Gandhi University of Medical Sciences and Technology in Rajasthan, has observed the drastic change in medical education and says online education could be highly effective. "Such tele-video education could be very effective, particularly if there is a two-way communication and students are able to ask and clarify their doubts," he told PTI. His view was endorsed by Girish Tyagi, president of the Delhi Medical Council who said there was a time when practically every medical aspirant went for conventional coaching, but the constant pressure to study more made students put their physical and mental health at stake. "But the time has changed and Internet has tremendous reach and speed. Video coaching has come as a blessing for aspirants living in remote areas," he said.❑❑

Supreme Court Upholds Constitutional Validity of SC/ST Amendment Act

News 18.com – February 10, 2020

The Supreme Court on Monday upheld the constitutional validity of the SC/ ST Amendment Act, 2018, and said a court can grant anticipatory bail only in cases where a prima facie case is not made out.

A bench headed by Justice Arun Mishra said a preliminary inquiry is not essential before lodging an FIR under the act and the approval of senior police officials is not needed. Justice Ravindra Bhat, the other member of the bench, said in a concurring verdict that every citizen needs to treat fellow citizens equally and foster the concept of fraternity.

Justice Bhat said a court can quash the FIR if a prima facie case is not made out under the SC/ST Act and the liberal use of anticipatory bail will defeat the intention of Parliament. The top court's verdict came on a

batch of PILs challenging the validity of the SC/ST Amendment Act of 2018, which was brought to nullify the effect of the apex court's 2018 ruling, which had diluted the provisions of the stringent Act.❑❑

FIR against Former NRC Official after Updated Citizenship Data Disappears from Website

News 18.com – February 13, 2020

Hours after Assam's updated citizenship data disappeared from the website 'nrcassam.nic.in', an FIR was filed against a former NRC official for allegedly failing to submit the password to the sensitive document before quitting her job. Talking to PTI on Thursday, NRC state coordinator Hitesh Dev Sarma said the complaint against former NRC project officer was filed under Official Secrets Act in Paltan Bazar police station here, as she "did not provide the password to the document, despite written reminders". "She failed to surrender the password even after tendering her resignation on November 11 last year. She was a contractual employee and no longer authorised to hold the password, after quitting her job. An FIR has been filed against the former NRC project officer on Wednesday for violating the Official Secrets Act," he said. Sarma also stated that the NRC office had written to her on several occasions for submitting the password, but did not get any response. "We knew (she had resigned) and, therefore, sent several letters to her for handing over the password. But as she did not respond all these months, we filed a complaint against her yesterday for violating the Official Secrets Act. "We must know if she has tampered with the sensitive information, after resigning," he added. The NRC state coordinator, however, refuted allegations of "malafide intent" involved in the matter. "...this (cloud service provided by IT major Wipro) was not renewed by the earlier coordinator. So, the data went offline from December 15 last year. I assumed charge only on December 24," Sarma, who had gone on leave for a weeks after being appointed as the NRC state coordinator, clarified. He also said that the state coordination committee had discussed the issue in its meeting on January 30 and wrote to Wipro during the first week of February.

"Once Wipro makes the data live, it will be available to the public. We hope that people will be able to access it in the next 2-3 days," Sarma claimed.

Reacting to the development, Wipro had said: "The IT Services Contract was not renewed by the authorities upon its expiry in October, 2019. However, as a gesture of goodwill, the company continued to pay the hosting service fee until January-end, 2020." In another FIR filed with state criminal investigation department on Wednesday, NGO Assam Public Works (APW) alleged

that former NRC Assam coordinator Prateek Hajela tampered with the final NRC list - published on August 31, 2019. APW member Rajib Deka, in his complaint, accused Hajela of disobeying orders and directions of the Supreme Court, forgery of public register and committed offences under cyber laws for altering or changing public records by misusing his powers and position. The NGO also said that after publication of the final list, several social networks and sections of the media had reported anomalies, insisting that many 'doubtful' persons were able to insert their names in the final list.

The Centre on Wednesday asserted that NRC data in Assam was safe even though some technical issues have been detected, which would be resolved soon. Senior journalist-cum-RTI activist Saket Gokhale had sent an application to the NIC, the IT wing of the government, seeking a copy of the contract with Wipro. "The Assam NRC data suddenly vanishing from the website (& the lack of data security) is incredibly shady. I've filed an RTI with the NIC specifically asking about details of the contract with Wipro, name of the cloud service provider, & all contracts signed for hosting this," he tweeted, while attaching a copy of the RTI application. Leader of the Opposition in Assam Assembly and Congress leader Debabrata Saikia has also written to the Registrar General of India, requesting him to look into the fiasco urgently. "It is a mystery as to why the online data should vanish all of a sudden, especially as the process to file appeals was yet to begin, all because of the go-slow attitude adopted by the NRC Authority. There is, therefore, ample scope to suspect that disappearance of online data is a malafide act," he had insisted.❑❑

No Fundamental Right to Reservation, Rules SC, Says Courts Too Can't Order State to Provide Quota

News 18.com – February 08, 2020

There is no fundamental right to claim reservation in public jobs and no court can order a state government to provide for reservation to SC/STs, the Supreme Court has ruled. In a significant judgment, the top court has ruled that it is within absolute discretion of a state government to decide whether or not to provide for reservation or reservation in promotions, and that there is no obligation on the states to mandatorily do so. It clarified that a state government is bound to collect data regarding inadequacy of representation of Scheduled Castes and Scheduled Tribes in Government services when it wants to provide reservation but otherwise.

"The State Government is not bound to make reservations. There is no fundamental right which inheres in an individual to claim reservation in promotions. No mandamus can be issued by the Court directing the State Government to provide reservations," held

a bench of Justices L Nageswara Rao and Hemant Gupta on Friday, as it relied upon a body of Supreme Court judgments on this subject. The court said provisions in Article 16 for providing reservation in favour of SC/STs are enabling provisions, vesting a discretion on the state government. But a state government cannot be directed to provide reservations for appointment in public posts, said the bench, adding "the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matters of promotions". However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing inadequacy of representation of that class in public services since such statistics will have to be placed before a court when a challenge is laid to the reservation policies, according to the bench.

It further said the inadequacy of representation of SC/STs is a matter within the subjective satisfaction of the State, subject to limited scope of judicial scrutiny because "it is for the State Government to decide whether reservations are required in the matter of appointment and promotions to public posts". About the collection of relevant data regarding representation of SC/STs in public jobs, the apex court underlined that the collection of such data is a pre-requisite for providing reservations, and is not required when the State Government decided not to provide reservations. "Not being bound to provide reservations in promotions, the State is not required to justify its decision on the basis of quantifiable data, showing that there is adequate representation of members of the Scheduled Castes and Schedules Tribes in State services. Even if the under-representation of Scheduled Castes and Schedules Tribes in public services is brought to the notice of this Court, no mandamus can be issued by this Court to the State Government to provide reservation," further held the bench.

The bench made these important declarations while dealing with a bunch of cases relating to reservations to SCs and STs in promotions in the posts of Assistant Engineer (Civil) in Public Works Department, Government of Uttarakhand. While the Uttarakhand government decided not to give reservations, the High Court directed the state to first collect quantifiable data regarding representation of SCs/STs and then take a call. Another direction was issued that all future vacancies that are to be filled up by promotion in the posts of assistant engineer, should only be from the members of SCs and STs. The bench held both the directions to be unjustifiable in light of the law laid down by the top court and set them aside.❐❐

The democratic state can sometimes abuse its power as much as those who seek to destroy it abuse fundamental rights and democratic practices.

David Blunkett

THE ANTI-MARITIME PIRACY BILL, 2019

A BILL

to make special provisions for repression of piracy on high seas and to provide for punishment for the offence of piracy and for matters connected therewith or incidental thereto.

WHEREAS India is a party to the United Nations Convention on the Law of the Sea adopted by the United Nations on the 10th December, 1982 and has ratified the same on the 29th June, 1995;

AND WHEREAS the aforesaid Convention, among other things, states that all States shall co-operate to the fullest possible extent in the repression of piracy on high seas or any other place outside the jurisdiction of any State;

AND WHEREAS it is considered necessary to implement the provisions relating to piracy contained in the aforesaid Convention.

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

1.Short title, commencement And application.-

(1) This Act may be called the Anti-Maritime Piracy Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) The provisions of this Act shall apply to all parts of the sea adjacent to and beyond the limits of Exclusive Economic Zone of India.

2. Definitions.-

(1) In this Act, unless the context otherwise requires,—

(a)"Code" means the Code of Criminal Procedure, 1973;

(b)"Convention" means the United Nations Convention on the Law of the Sea, 1982;

(c) "Convention State" means a State party to the United Nations Convention on the Law of the Sea, 1982;

(d) "Designated Court" means a Court of Session specified as such under section 8;

(e) "notification" means a notification published in the Official Gazette;

(f) "piracy" means—

(i) any illegal act of violence or detention or any act of depredation committed for private ends by the crew or any passenger of private ship or a private aircraft and directed—

(A) on the high seas against another ship or aircraft or against person or property on board such ship or aircraft;

(B) against a ship, aircraft, person or property in a place outside the jurisdiction of India;

(ii) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts, making it a pirate ship or aircraft;

(iii) any act of inciting or of intentionally facilitating an act described in sub-clause (i) or sub-clause (ii); or

(iv) any act which is deemed piratical under the international law including customary international law;

(g) "pirate ship or aircraft" means a ship or aircraft which—

(i) is intended by the person in dominant control to be used for the purposes of committing any of the acts referred to in sub-clauses (i) to (iv) of clause (f); or

(ii) has been used to commit any such act, referred to in sub-clause (i) of this clause, so long as it remains under the control of the person guilty of that act.

(h) "stateless person" means a person who is not considered as a national by any country by virtue of its laws.

(2) The words and expressions used in this Act and not defined but defined in the Indian Penal Code, the Code or the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, shall have the meanings respectively assigned to them in such Code or the Act.

(3) Any reference in this Act to a law which is not in force in any area, shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

3. Punishment for piracy.-

Whoever commits any act of piracy, shall be punished—

(i) with imprisonment for life; or

(ii) with death, if such person in committing the act of piracy causes death or an attempt thereof, and in addition shall also be subject to restitution or forfeiture of property involved in the commission of such offence.

4. Punishment for attempt to commit piracy, etc.-

Whoever attempts to commit the offence of piracy or aids or abets or counsels or procures for the commission of such offence shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

5. Punishment for organising, directing others to participate in an act of piracy.-

Whoever participates or organises or directs other person to participate in an act of

The Anti-Maritime Piracy Bill, 2019 was introduced in Lok Sabha by the Ministry of External Affairs, Dr. Subhrahmanyam Jaishankar, on December 9, 2019. The Bill provides for prevention of maritime piracy and prosecution of persons for such piracy related crimes.

The Bill will apply to all parts of the sea adjacent to and beyond the limits of the Exclusive Economic Zone of India. Exclusive Economic Zone refers to the area of sea to which India has exclusive rights for economic activities.

piracy shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

6. Conferment of power of arrest, investigation, etc.-

Notwithstanding anything contained in the Code, the Central Government may, for the purposes of this Act, by notification, confer the powers of arrest, investigation and prosecution of any person exercisable by a police officer under the Code on any of its Gazetted officer or such officer of a State Government.

7. Arrest and seizure of property.-

(1) On the high seas, or in any other place outside the jurisdiction of India, a pirate ship or aircraft, or any ship or aircraft taken for piracy and under the control of pirates may be seized and the persons on board may be arrested and the property on board may be liable to be seized.

(2) A seizure on account of piracy under sub-section (1) may be carried out only by warships or military aircraft of the Indian Navy or the ships or aircraft of the Indian Coast Guard or other ships or aircraft clearly marked and identifiable as being on Government service and authorised for such purpose.

8. Designated Court.-

For the purposes of providing speedy trial of offences under this Act, the Central Government shall, after consulting the Chief Justice of the concerned High Court, by notification, specify—

(i) one or more Courts of Sessions in a State, to be the Designated Court for the purposes of this Act; and

(ii) the territorial jurisdiction of each such court.

9. Jurisdiction of Designated Court.-

(1) The Designated Court shall have jurisdiction to try an offence punishable under this Act where such offence

is committed—

(i) by a person who is apprehended by, or is in the custody of, the Indian Navy or the Indian Coast Guard, regardless of the nationality or citizenship of such person;

(ii) by a person who is a citizen of India or a resident foreign national in India or any stateless person:

Provided that where such offence is committed on board a foreign flag ship, such court shall not have jurisdiction to try such offence unless the law enforcement agency or the public authority of the port or place, where the ship is located, has been requested to intervene by the concerned State whose flag the ship is entitled to fly or by the owner of the ship or its master or any other person on board the ship:

Provided further that nothing in this sub-section shall apply to a warship or its auxiliary ship or a Government owned ship employed for non-commercial service and is under the control of Government authorities at the time of commission of the offence of piracy.

(2) Notwithstanding anything contained in any other law for the time being in force, the Designated Court shall have the jurisdiction to try a proclaimed offender in absentia.

10. Trial of offences by Designated Court.-

(1) Notwithstanding anything contained in the Code,—

(a) all offences under this Act shall be tried by the Designated Court notified as such under sub-section (1) of section 8;

(b) where a person accused of, or suspected of, the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody, as he thinks fit, for a period not exceeding fifteen days in the whole, where such Magistrate is a Judicial Magistrate, and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers—

(i) at the time when such person is forwarded to him under this sub-section; or

(ii) at any time before the expiry of the period of detention authorised by him, that the detention of such person is not necessary, he shall order such person to be forwarded to the Designated Court having jurisdiction.

(2) The Designated Court may exercise, in relation to the person forwarded to him under clause (b) of sub-section (1), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code, in relation to an accused person in such case who has been forwarded to him under that section.

(3) A Designated Court may, upon a perusal of a complaint made by an officer of the Central Government or the State Government, as the case may be, authorised in this behalf,

take cognizance of that offence without the accused being committed to it for trial.

(4) While trying an offence under this Act, a Designated Court may also try an offence under any other law, other than an offence under this Act, with which the accused may be charged at the same trial under the Code.

(5) Notwithstanding anything contained in the Code, a Designated Court shall, as far as practicable, hold the trial on a day-to-day basis.

11. Presumption.

Where a person is accused of having committed an offence punishable under this Act and, if,—

(a) the arms, ammunitions, explosives and other equipments are recovered from the possession of the accused, and there are reasonable grounds to believe that such arms, ammunitions, explosives or other equipments of similar nature were used or intended to be used in the commission of the offence;

(b) there is evidence of use of force, threat of force or any other form of intimidation caused to the crew or passengers of the ship in connection with the commission of the offence; or

(c) there is evidence of an intended threat of using bombs, arms, firearms, explosives or committing any form of violence against the crew, passengers or cargo of a ship,

then, the Designated Court shall presume, unless the contrary is proved, that the accused person had committed such offence.

12. Provisions as to bail.-

(1) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding grant of bail under section 439 of the Code.

13. Application of Code in proceedings before Designated Court.-

Save as otherwise provided in this Act, the provisions of the Code shall apply to the proceedings before a Designated Court and the person conducting a prosecution before a Designated Court shall be deemed to be a Public Prosecutor appointed under the said Code.

14. Provision as to extradition.-

(1) The offenses under this Act shall be deemed to have been included as extraditable offenses and provided for in all extradition treaties made by India with Convention State and which extend to and are binding on India on the date of commencement of this Act.

(2) In the absence of a bilateral extradition treaty, the offences under this Act shall be extraditable offences between India and other Convention State on the basis of reciprocity.

(3) For the purposes of application of the provisions of the Extradition Act, 1962 to the offences under this Act, any ship registered in a Convention State shall, at any time while that ship is plying, be deemed to be within the jurisdiction of that Convention State whether or not it is for the time being also within the jurisdiction of any other State.

15. Protection of action taken in good faith.-

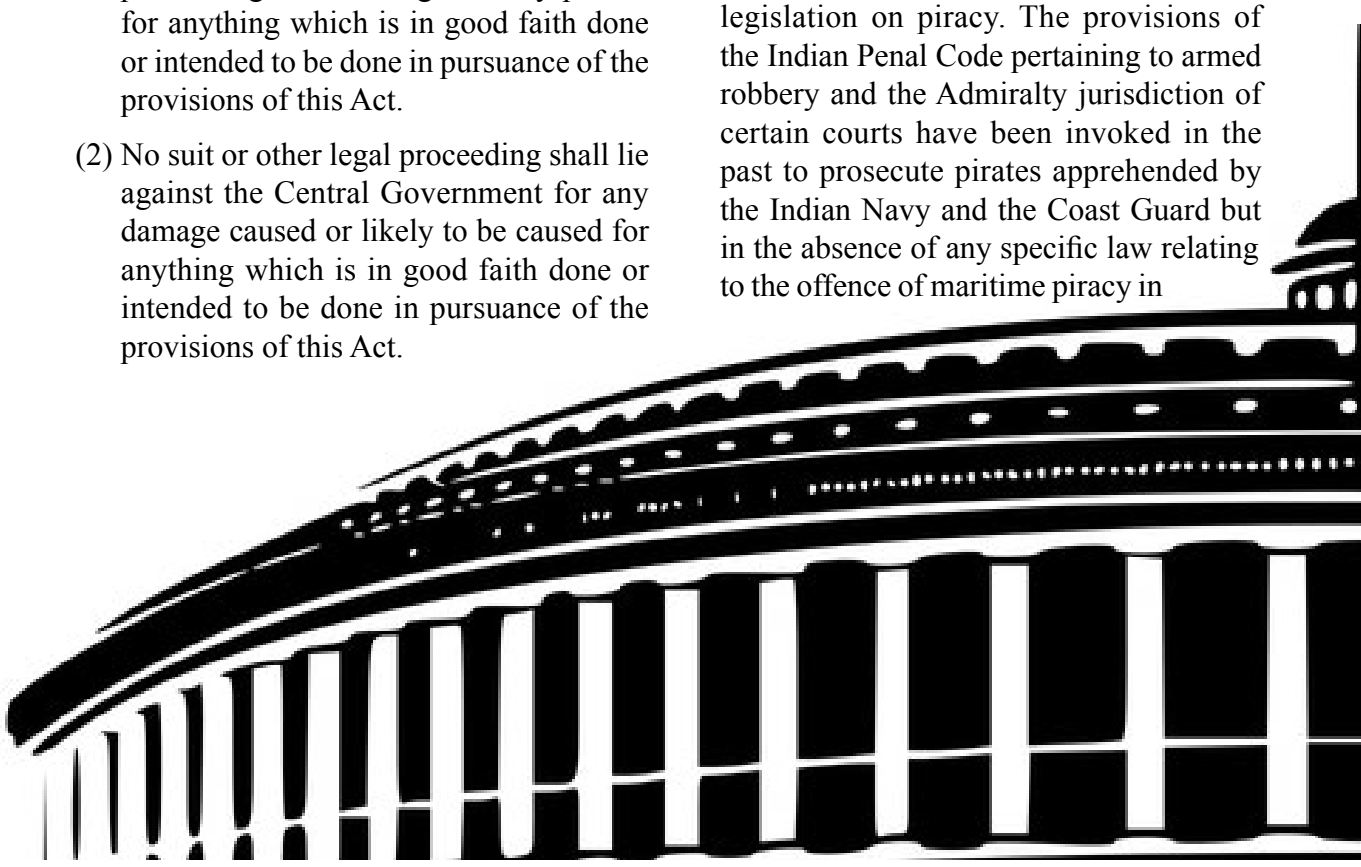
(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

(2) No suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

In today's times, the menace of piracy is growing. The Gulf of Aden, which separates Somalia and Yemen and connects the Arabian Sea to the Red Sea and through the Suez Canal to the Mediterranean Sea, has seen a major spurt in attacks by pirates operating from Somalia since 2008. This route is used by about 2000 ships each month for trade between Asia and Europe and East coast of Africa. With the enhanced naval presence in the Gulf of Aden, pirates shifted their area of operations eastwards and southwards. This led to a flurry of piracy incidents towards the western coast of India as well.

2. India does not have a separate domestic legislation on piracy. The provisions of the Indian Penal Code pertaining to armed robbery and the Admiralty jurisdiction of certain courts have been invoked in the past to prosecute pirates apprehended by the Indian Navy and the Coast Guard but in the absence of any specific law relating to the offence of maritime piracy in



India, problems are being faced in ensuring effective prosecution of the pirates.

3. Given the increasing incidences of piracy, including within India's Exclusive Economic Zone, and the increasing number of pirates apprehended by the Indian Naval forces, the need is felt for a comprehensive domestic legislation on piracy, which is an outcome to the commitment made by India by signing the United Nations Convention on the Law of the Sea (UNCLOS) in the year 1982 and ratified in the year 1995.

4. In view of the above, it has been decided to bring about a domestic anti-piracy legislation for the prosecution of persons for piracy-related crimes and to promote the safety and security of India's maritime trade including the safety of our vessels and crew members.

5. Accordingly, the Anti-Maritime Piracy Bill, 2019, inter alia, provides for the following.

(a) to make the provisions of the proposed legislation applicable to all parts of the sea adjacent to and beyond the limits of Exclusive Economic Zone of India;

(b) to make the act of piracy on high seas as an offence punishable with imprisonment for life or with death;

(c) to provide for punishment for attempt to commit offence of piracy or being an accessory to the commission of offence;

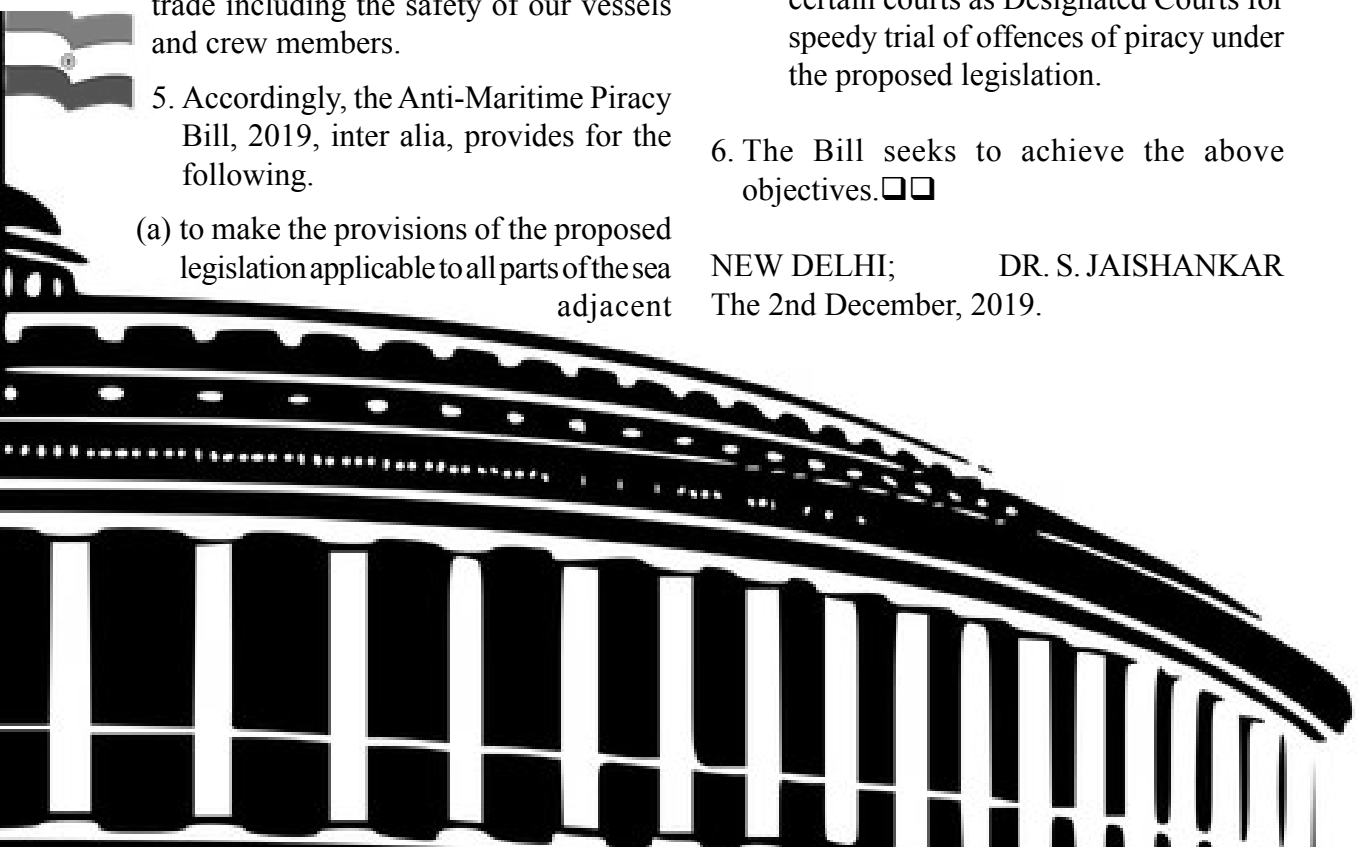
(d) to provide for presumption of guilt in case certain conditions are satisfied;

(e) to make the offence extraditable;

(f) to enable the Central Government, in consultation with the Chief Justice of the concerned High Court, to specify certain courts as Designated Courts for speedy trial of offences of piracy under the proposed legislation.

6. The Bill seeks to achieve the above objectives.❑❑

NEW DELHI; DR. S. JAISHANKAR
The 2nd December, 2019.



RELIGION NEUTRAL CITIZENSHIP: A Foundational Pillar of Indian Constitutionalism

Dr. M.P.Raju, Advocate

Our founding mothers and fathers had the prescience that the citizenship issue would be a key determinant of the very identity of our Constitution. They had thus categorically and unequivocally provided that the concept of Indian citizenship should be religion-neutral. They were very clear on this even while leaving to the future Parliament the power to frame appropriate laws for citizenship. They never wanted the issue of citizenship to become the Achilles heel for the Constitution of India. However, to keep citizenship religion-neutral was not an easy task for them.

The framers have put into part two of the Constitution the provisions governing citizenship. It consists of Articles 5 to 11. It includes the provisions for granting of citizenship to non-citizens. Of course the power to regulate the right of citizenship by law has been granted to the Parliament. This power was not to be derogated by these provisions already put in place. But this power is not expected to be exercised contrary to the core values of the constitution or in violation of the constitutional limitations as applicable to the Parliament, Judiciary or Executive.

The recent amendments to the citizenship law has brought into focus this issue of granting citizenship based on the religion of the applicant and on his/her belonging to the select three nations. The new provisions seek to grant citizenship to persons belonging to select religions including the majority Hindu religion of India while not including those belonging to other religions most notably Islam, Atheist or non-religious Communities, Bahais, Brahmo-samajis, Kabirpanthis etc, which are minority religions or denominations (Panth) of India. Moreover, this alleged mercy or humaneness is limited to those who have entered India before December 31, 2014. Required period of stay is reduced to 5 years whereas a period of 11 years is required for others. In addition to this the illegal migrants from these select categories entered before December 31, 2014 will not be treated as illegal migrants anymore. These provisions are quite contrary to what our founding mothers and fathers would have approved of. They also destroy the very core of the Constitution of India and disfigure beyond repair its morality and basic features. The only benefit is that the BJP led government has publicly admitted and declared that the term Hindu stands for one of the religious communities and not for any so called 'way of life' different from religions.

Citizenship the solidification of National Sovereignty

Since sovereignty is derived from the people of India, it resides in the fraternity of the nationals. This national fraternity has to assure the dignity of the individuals

both national and otherwise. It may have to assure the dignity of even non-human beings to the relevant extent. At the same time this sovereign fraternity has to assure the unity and integrity of the nation. Thus the principle and even the procedure to share with or induct any individual or group into this sovereignty as national fraternity goes to the core of the Indian constitutionalism. In this sharing of sovereignty through citizenship we had rejected any role of religion even remote or indirect. Moreover, the principle on which a non-citizen is granted citizenship has a direct impact on our citizenship and also on the very sovereignty of India.

Objectives Resolution and granting of Citizenship as sharing of sovereignty

When the draft of the Objectives resolution was presented on 13th December, 1946 and when it was unanimously and uniquely passed on 22nd January, 1947, we were clear on the principle of sovereignty deriving from the individuals who were to be the nationals and who had been in different groups. This resolution had this major declaration:

> "This Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent Sovereign Republic and to draw up for her future governance a Constitution:
>
> …..
>
> (4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; …"

Objective resolution was a solemn declaration of the dignity of the individuals as a core value which would be assured by our fraternities. With their dignity assured, these individuals in their national fraternity constituted "the people", as evident from the declaration that the sovereignty and "all power and authority" were "derived from the people". This value of individual dignity was reiterated in the guarantees of "equality" and "freedom" which are the twin dimensions of the dignity of the individual.

The objectives resolution was also a celebration of the value of fraternity which takes in its fold all fraternities, but most importantly the national brotherhood, while upholding the fraternities of different "territories" of British India and all "other territories as are willing to be constituted into the Independent Sovereign India…" as also the fraternities of "minorities, backward and tribal areas, and depressed and other backward classes" asserting at the same time the welfare of the larger fraternity of "mankind". Thus religion or any of the prohibited grounds could not have any role even remotely in the matter of citizenship constituting this national sovereignty of fraternity.

Citizenship as the fraternity of 'We the People" to be religion-neutral.

The Drafting Committee had while drafting the Preamble correctly summarized the contents of the objectives resolution as "to promote fraternity assuring the dignity of the individual and the unity of the nation."

When we resolved in the name of "We the People of India" we were declaring the fraternity of the citizenry asserting the sovereignty of these individuals rejecting the criteria of religion, culture or community.

We had specifically resolved not to bring in God or religion into the realm of our citizenship or fraternal sovereignty. Shri H.V.

Kamath had moved an amendment to the Preamble to the effect that it was in the name of God we the people were giving ourselves the constitution. This amendment had sought the substitution of the word "her" for "its" before the word 'citizens' as being more apt for the motherland. Kamath's proposed amendment was for the substitution of the following in the Preamble:

"In the name of God,

We, the People of India …. secure to all her citizens …. to ourselves this Constitution."

Shri V.I. Muniswamy Pillay (Madras: General) strongly supported the amendment proposed by Kamath. Mr Tirumala Rao (Madras: General), Pandit Hirday Nath Kunzru and Shri Rohini Kumar Chaudhari objected to the amendment. Shri Tirumala Rao wished Mr Kamath to withdraw his amendment and not subject God to vote of Assembly as it would not be fair to themselves and the nation. Dr Ambedkar also wished Mr Kamath to withdraw the amendment.

Smt. Purnima Banerji (United Provinces: General). "Mr. President, I would beg of you to see that the matter of God is not made the subject of discussion between a majority and a minority. It is most embarrassing. To most of us, believers and non-believers, it will be difficult to affirm or deny God. … I appeal to Mr. Kamath not to put us to the embarrassment of having to vote upon God."

But Mr Kamath did not withdraw and pressed for a division. His amendment was put to vote by show of hands in the Assembly. 41 voted for the motion and 68 voted against and the amendment was negatived. [CAD, vol, X, p. 442]

Prof Shibban Lal Saksena moved an amendment to the Preamble to bring in the name of God and also Mahatma Gandhi into the Preamble but was persuaded to withdraw it.

Parameshwar, The Supreme Being was sought to be brought in by an amendment by Pandit Govind Malaviya. The main portion of Pandit Malaviya's amendment was to substitute 'We the People of India' with the following words:

'By the grace of Parameshwar, the Supreme Being, Lord of the Universe (called by different names by different peoples of the world).

From whom emanates all that is good and wise, and who is the Prime Source of all Authority,

We the People of Bharata (India),

Humbly acknowledging our devotion to Him,

And gratefully remembering our great leader Mahatma Mohandas Karamchand Gandhi and the innumerable sons and daughters of this land who have laboured, struggled and suffered for our freedom. And, This amendment was disallowed in view of the decision of the Assembly on Kamath's amendment. [CAD, vol, X, p. 445-446]

Thus the Assemble was clear that the citizenship, or the sovereignty of we the people of India, ought to be religion-neutral. To bring in the concept of religion even if indirectly is contrary to the very spirit and soul of the Constitution.

Drafting of the Citizenship Provisions of the Constitution of India

On 10th August 1949, while proposing the final draft of Articles 5, 5-A, 5-AA, 5-B,

5-C and 6 with a number of amendments, Dr B.R. Ambedkar, had admitted that the provisions dealing with citizenship have given to the Drafting Committee such a headache than any other article of the Constitution. [CAD, Volume IX, p. 347]. "I do not know how many drafts were prepared and how many were destroyed as being inadequate to, cover all the cases which it was thought necessary and desirable to cover." (ibid)

Shri Jawahar Lal Nehru on 12/08/1949 while speaking on the draft provisions relating to the citizenship and supporting the draft by Dr BR Ambedkar had observed, "All the articles relating to citizenship have probably received far more thought and consideration during the last few months than any other article contained in this Constitution."

On 12/8/1949, Shri Alladi Krishnaswami Ayyar (Madras : General), while supporting the articles as placed by Dr. Ambedkar and also the amendments moved by Shri Gopalaswami Ayyangar and Shri T.T. Krishnamachari, had said: "We are plighted to the principles of a secular State. We may make a distinction between people who have voluntarily and deliberately chosen another country as their home and those who want to retain their connection with this country. But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another sect of persons, having regard to our commitments and the formulation of our policy on various occasions." [CAD, Volume IX, p. 404]

On the religion neutral principle of citizenship and especially on the provision to allow both Hindus and Muslims to come from Pakistan and take up citizenship in this country, there have interesting speeches in the Assembly. For example,

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support the articles moved by Dr. Ambedkar; and I want especially to accord my hearty approval to the proviso moved by Shri T.T. Krishnamachari and accepted by Dr. Ambedkar now and which has been incorporated in the articles moved by Dr. Ambedkar. This article and especially that proviso is a tribute to the memory of the great Mahatma who worked for the establishment of good relations between Hindus and Muslims. Sir, the proviso invites all the Muslims who left this country, to come back and settle in this country, except those who are agent provocateurs, spies, fifth columnists and adventurers. I wish, the proviso had been more wide. I wish all the people of Pakistan should be invited to come and stay in this country, if they so like. And why do I say so? I am not an idealist. I say this because we are wedded to this principle, to this doctrine, to this ideal. Long before Mahatma Gandhi came into politics, centuries before recorded history. Hindus and Muslims in this country were one. We were talking, during the time of Mahatma Gandhi that we are blood-brothers. May I know if after partition, these blood-brothers have become strangers and aliens? Sir, it has been an artificial partition. I think that the mischief of partition should not be allowed to spread beyond the legal fact of partition. I stand for common citizenship of all the peoples of Asia, and as a preliminary step, I want that the establishment of a common citizenship between India and Pakistan is of vital importance for the peace and progress of Asia as a whole.

Sir, the proviso has been attacked by

Shri Jaspat Roy Kapoor on the ground that it will provide an opportunity for spies and adventurers to come to this country. But my view is that Muslims of this country are as loyal to the State as Hindus. On the other hand, I agree with the statement made by the Prime Minister at a different place that the security of India today is menaced not by Muslims but by Hindus. [CAD, Volume IX, p. 404-405]

On 12/8/1949, …

Mr. President: I will put the amendments to the vote in the order in which they were moved by the various speakers and if any honourable Member wishes to withdraw any amendment, he may express his desire to that effect. I will first take up the amendments moved by Dr. Deshmukh.

The question is:

"That in amendment No. 1 above, for the proposed article 5, the following be substituted:-

'5 (i) Every person residing in India—

a. who is born of Indian parents; or
b. who is naturalized under the law of naturalization; and
i. every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides shall be entitled to be a citizen of India".

The amendment was negatived.

Dr. P.S. Deshmukh: I beg leave to withdraw amendments Nos. 29, 116, 118 and 119.

Amendments Nos. 29, 116, 118 and 119 were, by leave of the Assembly, withdrawn. [CAD, Volume IX, p. 424-425]

Fundamental duty of national brotherhood

The constitutional value and ideal of fraternity not only tolerates but also encourages national fraternity – the fraternity of citizens. National fraternity includes fraternity of citizens within it. Because all citizens are nationals, where as all nationals need not be citizens. Thus in addition to our resolve to promote the value of fraternity, we have a fundamental duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities. Moreover, the ideal of composite culture is a test in granting citizenship.

Citizenship to be categorically religion neutral

Whom we exclude and deny is more important than whom we include or welcome as citizens. The criteria of new citizenship is important for the already citizens. It determines the width and depth of the citizenship they have and the basic feature of their citizenship, for example whether their citizenship and nationhood is secular or sectarian, exclusive or inclusive, republican or non-republican, composite or cultural. Our nationalism and patriotism cannot allow us to rest assured that after all our citizenships are not being taken away.

The selective and religion-centric citizenisation of illegal migrants, refugees would also show that our national ethos has been becoming less and less humane and human-rights friendly. These beneficiaries need not be refugees, and the law does not speak of religious or any other persecution even though the homily about the aims of the amendment refer to persecution on the ground of religion in the select countries or fear of it which might have been a reason for illegal

migration.

The hypocrisy and anti-human-rights bent are clear from the fact that India has not signed the U.N. Refugee Convention yet. The people who decided to have these amendments on the false pretext of humaneness, never bothered about this violation of human rights regime. The care and concern for the persecuted minorities of other nations ought to have compelled us to go through the route of refugee convention and the related treaty obligations and remedies. Tears about the violations of Nehru-Liaquat treaty also would not have remained crocodile tears. Above all we need to remind ourselves that the Partition of India was not on religious lines. It is Pakistan which went on religious lines. India was not constituted on religious lines. It was formed as a secular country.

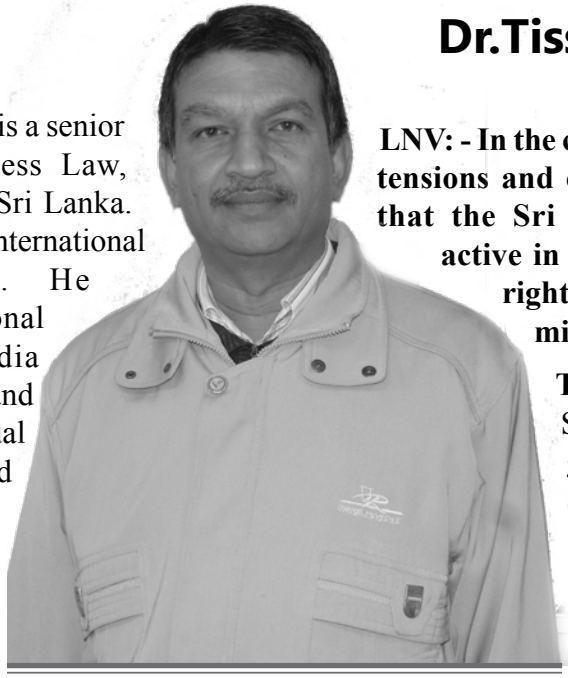
Efficacious Remedy for Such Violation of the very Soul of the Constitution?

Our founding mothers and fathers had anticipated the need of such remedies beyond the usual remedies including judicial ones which 'we the people of India' need to resort to efficaciously. We had fought successfully against the British regime which had both legal and constitutional backing but was morally wrong. We had the experience of fighting legally enforced National Emergency which had judicial blessings and approval with it. We know that the Supreme Court may be final in adjudication but not infallible constitutionally. Similarly, Supreme Court itself repeats often that in policy matters the people should not look up to it. Our framers were aware of the fact that the Constitution cannot always be left to what the courts say about it or interpret it. Almost at the threshold of our Republic, the sovereign people of India had to realize that social democracy and economic democracy both may have to be saved from the Supreme Court. The very first amendment of the Constitution was such an exercise to protect the core of the Constitution from the constitutional ignorance of the Supreme Court. Reservation for backward classes and distributive justice for the poor are examples to this. Many other amendments also were of the same purpose.

'We the People of India' are the real defenders of the soul of the Constitution. Ordinarily we exercise our sovereignty through Judiciary to correct the vagaries of the Legislature and the Executive. We also exercise it through the constituent power of the Legislature by constitutional amendments to correct the waywardness of the Judiciary. There have been instances when the very constituent power of the Legislature goes astray and the Judiciary becomes non-effective or non-sensitive, then the people have to exercise their sovereignty through constitutionally permissible means. One such means is to prepare the ground to exercise the constituent power through the next Parliament even before the completion of the ordinary term. Then there are the fundamental rights like the freedom of speech and expression, right to assemble, right to form associations and unions, etc. to be exercised in order to keep our constitutional core intact. Our Constitution also assures us of the international and treaty remedies. Above all, our sovereignty springs from our moral sovereignty as Dr S Radhakrishnan had rightly reminded us and Gandhiji has taught us in practice.❐❐❐

YOUNG LAWYERS MUST BE HONEST, JUST AND FAIR

Dr.Tissa Hemaratne



Dr. Tissa Hemaratne is a senior lecturer in Business Law, University of Ruhuna, Sri Lanka. He is also an expert in International Humanitarian Law. He graduated from National Law School of India University, Bengaluru and did his PhD in Intellectual Property Law and E-commerce from the University of London. He was in Delhi to deliver a lecture on the Disability Act in Sri Lanka during the International Consultation on Human Rights of Persons with Disabilities. Our three interns - Ms. Sneha, Ms. Anitta and Ms. Glorina, students of five year LL.B programme from St. Joseph's College of Law, Bangalore, who have been helping Centre for Human Rights and Law (CHRL) in the organizing of the International Consultation on Human Rights of Persons with Disabilities found some time with Dr. Tissa Hemaratne (TH) and interviewed him on behalf of *Legal News and Views* (LNV). An excerpt from the interview is given below: -

LNV: - In the circumstances of ethnic tensions and conflicts do you think that the Sri Lankan Judiciary is active in protecting the human rights especially that of the minorities?

T H:- The Article 12 of Sri Lankan Constitution guarantees Right to Equality which reads as "All persons are equal before the law and are entitled to the equal protection of law" and at the same time Article 12(2) says that "No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds". Therefore, in Sri Lanka all Tamils, Muslims, Sinhalese, Burghers and Chettis are treated equally. While comparing Sri Lankan constitution with Indian constitution, we don't have casteism. We have not dealt with any of the scheduled tribes or schedule castes in our constitution. While considering the disabled persons, 3% of the Government job is reserved for them.

Considering the concept of minorities, even though our constitution guarantees equality, Article 12(3) says that government can pass laws in order to protect women, children or disabled persons. Therefore judiciary can decide on this article to eliminate discrimination.

LNV:-. What are the major Human Rights Challenges in Sri Lanka?

T H:- Till 1978, we did not have that much cases on fundamental rights because, people were not aware of their rights. Since 1978, with the establishment of 2nd Republican Constitution, everyone, including the police are aware of Human Rights matters. Our constitution has not recognized Right to Life when compared to the Article 21of the Indian Constitution. But in several cases the judges of Sri Lanka have given the judgment telling that Right to life is impliedly included in the Constitution. For example, there was one case where a film Director had to produce a film based on war, but one of the ministers banned the film. In this case the director filed a suit saying that this is my profession and if you are going to ban this film what will I do. The court held that Right to life is impliedly included in the Fundamental Rights Chapter.

Now Human Rights education is given in all levels. Still there are problems like; the application of International Human Rights Conventions to domestic laws is generally based on two theories. Dualism and monism theory. In monism theory, when you become a party to an international treaty, that treaty will became a part of your domestic law automatically. Sri Lanka belongs to the other category, which is Dualism. In this theory, even though you are a party to an international treaty that will not become a domestic law unless you pass a domestic law by your legislature. So we are not bound by the provisions of any of those treaties. This was clearly described by the Supreme court in Bullankkulla's and Singharasa's case.

Another important concern about the human rights that exists in Sri Lanka is that the Tamil wives are restricted to transfer their property without the written consent of their husbands. We cannot challenge this because at the time of promulgating our Constitution, Article 16(1) says that all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this chapter. In case of adultery which is a provision for divorce, for women, the single act of adultery is enough. But in case of men, it is a ground for divorce only when there is adultery with cruelty.

LNV: -. What are your views on enforced disappearances?

T H: - While considering the case of enforced disappearances the question arises whether it is done by the Government or LTTE. If we are going to target the government, it is not fair. I have seen thousands of bodies of innocent people and in fact there are hundreds of disappeared people. It is a very problematic area to discuss because of its application and also because there is no evidence for who is responsible for this.

LNV: - We hope you are aware of Constitutional Amendment Act, 2019 in India. What is your opinion about it and do you think that it will affect the Indian Sri Lankan relationship?

T H: - I think that is not a good sign by simply discriminating people on the basis of religion.

After all we have to think as humans not as Hindus, not as Muslims, not as Buddhists. In one sense, we are affected because; being a close neighbor we are excluded. When we think about CAA in Sri Lanka, there is not much impact as the people in Sri Lanka are not concerned about these or maybe it can be because of the lack of information. Well Mr. Modi and Mr. Rajapaska had met very recently and had discussions but these are not out for the public.

LNV: - The issue of Sri Lankan Tamil Refugees in Tamil Nadu is a part of the ongoing debate on Constitutional Amendment Act, 2019, since the law only covers the illegal migrants belonging to 6 non-Muslim minority religious groups from Pakistan, Bangladesh and Afghanistan. Would you like to comment on this?

T H: - The problem is that the Sri Lankan Tamil Refugees in Tamil Nadu had sorted their refugee status during the war. But now there is no war and they have chosen to remain there as refugees only. The question is that "Are they going to continue as refugees?"Well they can come back to Sri Lanka and settle there. But the Tamils are not interested in coming back. According to my knowledge, one of the many reasons is the lack of English schools in Sri Lanka, as they are concerned about their children's better education.

LNV: - Why the Government is hesitant to provide English education?

T H: -In Sri Lanka, when Bandaranaike became the Prime minister, he abolished all English schools. After that there was English as a subject in schools, but there were no English medium schools. It was only after 2000 that the English medium schools were established. But now the main concern is the lack of well-trained English teachers. The scenario is changing day by day. The Government is trying to do many things and now we have at least one English medium school in every province. The government is considering this but as of now there is no atmosphere to learn English. I think after ten years there will be more opportunities and provisions to get English education.

LNV: - Can you please comment on the general education system Sri Lanka?

T H: - There is free education from grade 1 to degree. You will be given two uniforms during your school time and all printed materials will be free. Besides we also provide free health. For university students the government will provide Rs.5000 as pocket money. I am also an outcome of free education.

LNV: - How effective is the legal education in Sri Lanka?

T H: - Earlier, the legal education was provided only for students who are from elite families, but now it is open to all. We have three universities in Sri Lanka namely, University of Colombo, University of Peradeniya and University of Jaffna offering legal education. Students can get entry through general examination. Education is managed and controlled by the Central Government. Interested people can also go to Open University by paying one third of the fees. There are also law colleges controlled by Council of Legal Education. The problem is that even though you obtain a Law degree, in order to practice as a lawyer you have to pass one examination and practice under a senior lawyer. Then only you can take the oath. The best thing is that you can practice in any

language like Sinhala, Tamil or English. But in Supreme Court and Court Of Appeal it is only English.

LNV: - Can you please comment on the provisions for Right to Information in Sri Lanka?

T H: - The 19th amendment included the Right to Information as a Fundamental Right. According to this amendment, the government asked every minister to appoint Information Officer. Every institution, even universities have to appoint an Information Officer who is responsible for providing information to those who seek for it.Anyone can have access to the information of public nature. There are some restrictions for this regarding the information related to security matters. If this right is violated, you can go to the Courts.

LNV: - Message to young Advocates.

T H: - Firstly, be honest, to yourself and to your clients, because eventually you will have to leave the world and what matters more at the time, when you take your last breath, is what you have done for the society, for your nation or for the entire universe and are you really satisfied. In Sri Lanka we have some lawyers, who, as a policy, don't deal with divorce cases. So being a teacher, a lecturer and a human being, I would like to urge to the young legal professionals to be fair and just. ❐

TEST YOUR KNOWLEDGE

1. Which entry in the seventh schedule deals with foreign affairs?

A. Entry 10, Union List
B. Entry 8, State list
C. Entry 14, Concurrent list
D. Entry 10, Concurrent List

2. Which Act was passed by the Parliament of Britian to give Independence to India?

A. Government of India Act
B. Cession of India Act
C. Bharat Independence Act
D. Indian Independence Act

3. What is a legal tender in India, Nepal and Bhutan?

A. Indian Rupee
B. 100 Rupees
C. Nepalese Rupee
D. Bhutanese Ngultrum

4. Which were the first three High Courts set up by the British in India?

A. Allahabad, Delhi, Calcutta
B. Allahabad, Bombay, Madras
C. Bombay, Madras, Calcutta
D. Delhi, Calcutta, Bombay

5. Who among the following appointed the Governor of the states in India?

A. The Prime Minister
B. The Parliament
C. The Chief Ministers
D. The President

6. Who is empowered to declare National Emergency?

A. Prime Minister of India
B. President of India
C. Governors of State
D. Parliament

7. Which of the following is called 'Mini Constitution'?
A. Government of India Act, 1935
B. 42nd Constitutional Amendment
C. 44th constitutional amendment
D. Government of India Act, 1919

8. Which of the following is not matched correctly?
A. Right to Equality: Article 14-18
B. Rights against exploitation: Article 20-22
C. Right to Religious Freedom: Article 25-28
D. Right to Cultural and Education freedom: Article 29-30

9. Which of the following is not matched correctly?
A. Part I: Union and its Territories
B. Part II: Citizenship
C. Part III: Directive Principle and State Policy
D. Part VI: State Governments

10. What is not taken from British Constitution in the Constitution of India?
A. Parliamentary rule B. Single citizenship
C. Fundamental Rights D. Cabinet System

11. How many Emergencies are there in the Indian Constitution?
A. 1 B. 2 C. 3 D. 4

12. What is not taken from British Constitution in the Constitution of India?
A. Parliamentary rule
B. Single citizenship
C. Fundamental Rights
D. Cabinet System

13. Sovereignty of India is rooted in?
A. Indian Parliament B. President
C. Prime Minister D. People of India

14. The Constitution of India was fully prepared?
A. 26 November, 1949 B. 11 February, 1948
C. 26 January 1950 D. None of these

15. Social equality means -
A. Lack of suppression
B. Lack of opportunities
C. Lack of discrimination
D. Absence of asymmetry

16. In which part of the Indian Constitution is it clearly declared that India is a secular state?
A. Fundamental Rights
B. Preamble to the Constitution
C. Directive Principles of State Policy
D. 9th Schedule of the Constitution

17. By which amendment of the Indian Constitution, two words 'socialist' and 'secular' were added to the preamble
A. 28th B. 40th
C. 42nd D. 52nd

18. According to the preamble of the Indian Constitution, the supreme power of the governance of India is vested in
A. Public B. Voter
C. President D. Parliament

19. The Indian Constitution is approved by
A. Constituent Assembly
B. By the Parliament of India
C. First elected government
D. By the people of India

20. According to the Preamble of the Constitution, what kind of nation is India?
A. Secular Nation B. Hindu nation
C. Hindu-Muslim Nation D. None of these

Answers

1. A	2.D	3.A	4.C	5.D
6.B	7.B	8.B	9.C	10.C
11.C	12.C	13.D	14.A	15.C
16.B	17.C	18.A	19.D	20.A

LEGAL TERMS & MAXIMS

Annul	: To make void or cancel. For example, voiding an invalid marriage.
Bail forfeiture	: Bail that is kept by the court as a result of not following a court order.
Care order	: An order by a court instructing the local authority to care for a child.
De facto	: In act or in reality.
Easement	: A right to use someone else's land, such as a right of way.
Feu	: A lease which lasts forever.
Hypothecation	: A person giving a bank authority to sell goods which have been pledged to the bank as security for a loan.
Ibidem (Ibid)	: In the same place.
Judgement roll	: A record of the judgement with the supporting papers, costs and fees.
Know-how	: The expertise in an organization which may be protected by as patent.
Legacy	: A gift left to someone in a will, but not including land.
Moot	: An issue already resolved or not necessary to be decided.
Notice of petition	: Written notice of a petitioner that a hearing will be held in a court to determine the relief requested in an attached petitioner; cover sheet of a petition.
Overt act	: An open act showing the intent to commit a crime.
Parole	: Supervised release of a prisoner before the expiration of his or her sentence.
Quasi-judicial	: Authority or discretion vested in an officer whose acts partake of a judicial character.
Ratification	: The confirmation or adoption of a previous act done either by the party himself or by another.
Sine Die	: Without a date, as in an action being adjourned sine die.
Testate	: One who has died leaving a will or one who has made a will.
Undue influence	: Whatever destroys free will and causes a person to do something he would not do if left to himself.
Vesting order	: A way the High Court transfers land without the need for a conveyance.
With impunity	: Without risk of punishment.

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