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WHY ARE MIGRANT LABOURERS NOT PROTECTED UNDER ARTICLE 14 AND 21?




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WHY ARE MIGRANT LABOURERS NOT PROTECTED UNDER ARTICLE 14 AND 21?

Tens of thousands of daily-wage migrant workers suddenly found themselves without jobs when the Prime Minister announced a lockdown on 24 March 2020 with a mere four hour margin. Overnight, the cities they had helped build and run seemed to have turned their backs on them, the trains and buses which should have carried them home suspended. So with the looming fear of hunger, men, women and children were forced to begin arduous journeys back to their villages - cycling or hitching rides on tuk-tuks, Lorries, water tankers, in the belly of concrete mixers and milk vans. For many, walking was the only option. Some travelled for a few hundred kilometres, while others covered more than a thousand to go home. They weren't always alone - some had young children and others had pregnant wives, and the life they had built for themselves packed into their ragtag bags.

Was it not the duty of a democratically elected government to make arrangements for the safe return of the migrant labourers to their homes before the lockdown? Sadly, the vocabulary used in the address of the PM never had any remote sensitivity to the plight of these migrant workers. He had asked the people to come out to their balconies to clap, ring bells, beat the plates and light the lamps to honour the caregivers. He seemed to address the people with a balcony in their homes. Here are a group of people who did not even have home and therefore they did not matter for his government.

During the lockdown period, the government of UP had sent a fleet of busses to fetch over 9000 students belonging to Uttar Pradesh, who are stranded in Kota Rajasthan. They had gone there for coaching. The migrant labourers are not given the same privilege. It is good that the state should bring back or evacuate the stranded students or citizens. But it disturbs, when large contingent of poorest migrant labourers and their small kids are made to walk 1000s of kilometres in the name of lockdown policy. Is it not a gross discrimination and breach of equal treatment in a situation of equal threat to life? Why top political leaders of important political parties are silent on this? Is it because the migrants are poor and downtrodden and their desire and voice has no meaning for India? Is it because students are relatively richer, related to politicians, bureaucrats, well to do and belong to the middle class and hence more equal and more dear than the migrants?

It seems the migrants, being work force, would be needed to kick start the economy. So they are needed by the nation to remain where they are against their "choice ". If a migrant worker wants to go home and not to work, can he be compelled to work? Many workers are women with children. They wish to be with their families in their hamlet amongst their kindred. Moreover, this is the harvest season, a time when migrant workers go home to do harvesting and engage in agriculture labour.

What is the difference between the children of these God forsaken and the Kota children? Only poverty. Doesn't the poor have equality before law and equal protection of laws in our country? Don't the migrant labourers have the fundamental rights of equality, life and liberty under Articles 14 and 21 of the Constitution?

Vividly imagining the life of migrant workers

*Rajeev Bhargava**
Source: The Hindu, April 22, 2020
(Emphasis is added)

A regime of social policy must be installed to meet the basic needs of all citizens at all times – not only during pandemics.

The current pandemic has forced us to think about the plight of workers in our country. While the virus has demonstrated the enormous value of health workers, it has also enhanced public awareness of the pivotal role of migrant workers in our economy. We have been compelled to realise that between 100 million to 125 million people leave their villages, families and homes to find work far away wherever they can find it; their invisible hands harvest the crops and feed us, clean streets, run factories, build roads, and construct our houses.

**Rajeev Bhargava is Professor, Centre for the Study of Developing Societies, Delhi*

The trek back home

Living away from home is never easy. A home is not made of brick and mortar, certainly not tin or planks of wood. It is where one finds comfort, nurtures relationships, and raises a family. It gives sanctuary from daily struggles. An extension of one's identity, it provides us a sense of belonging. A place of tranquillity and serenity, it is where one longs to be when not there. This can only be where one's family, friends and community reside, not an inhospitable, overcrowded room with strangers. Not surprisingly, hungry migrant workers were determined to trudge hundreds of kilometres to reach "home" in their village. I believe many would have preferred to do so even if they were fed by their employers or the State, which clearly they were not. Surely, they were entirely justified in asking why Indians stranded abroad were flown back in special planes or middle-class students brought back to their hometowns from coaching centres in Kota, Rajasthan, but no such arrangements were made for them? Why this differential treatment? Are they not citizens of the same country? Are they any less Indian?

The current plight of migrant workers during the lockdown should become an occasion to reflect on their abysmal condition in "normal" times. Many "contractual labourers" rarely see a written contract. A minimum, regular wage per month is legally required but seldom paid. Many do not receive wages for months, and at the end of the season when they are finally paid it is often less than what was agreed. There is a lack of transparency in accounting — excessive, arbitrary and unexpected deductions from final payments are common.

Lack of regular wages means that workers either borrow from employers or from local money lenders. This renders them even more financially vulnerable because of indebtedness. Quite often they work long hours, between 10 and 13 hours a day, live in tents or makeshift shanties without access to potable water, toilets, and electricity. I doubt if they are ever fully protected from the elements. Many of them do not have a kitchen and are forced to eat from local street vendors who live in similar conditions. Under such dire working and living circumstances, is it a surprise that under an unexpected lockdown they all wish to return to their original homes? The Prime Minister recently spoke of the need for empathy and compassion during

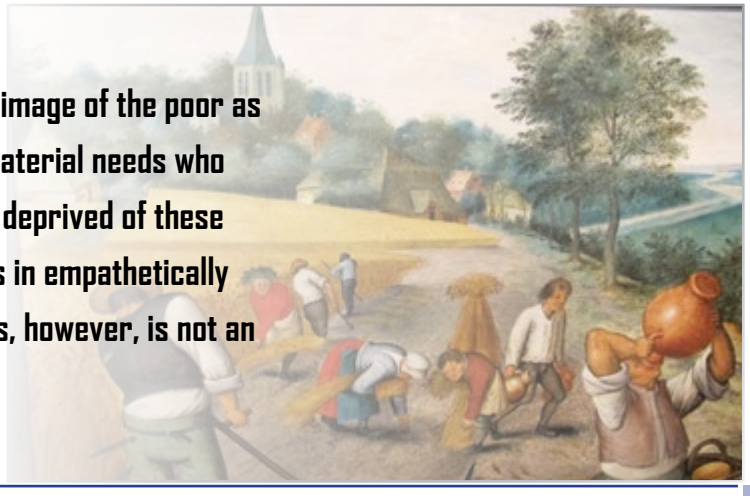
pandemics. These are admirable moral virtues, always necessary, not just in emergencies. But ultimately, individual virtues are insufficient to deal with social malaise. For it is not feelings of individuals but enduring collective sentiment crystallised around a stable course of action by public agencies that really matter. Effective public policies are indispensable. Gurudwaras and non-governmental organisations may complement its efforts to feed the hungry, but it remains the prime duty of the state to do so.

Work, home and dignity

In short, a regime of social policy, pivotal for a minimal welfare state must be installed to address the basic needs of all Indian citizens, not only during pandemics but for all times, to meet any contingency. Socioeconomic rights, including the right to work, have long been part of our Directive Principles of State Policy. By enacting the Mahatma Gandhi National Rural Employment Guarantee Act law in 2005, the Indian Parliament had set in motion a process that makes a specific and significant welfare provision constitutive of the very idea of citizenship. To be a citizen of a polity is to be entitled to an opportunity to work. Now, manual work in extremely hot conditions on parched terrain is an energy-draining, back-breaking chore, not quite a source of self-realisation central to the emancipatory vision of Gandhi, Hegel or Marx. And yet, even such paid manual labour is a far cry from receiving charity. Under democratic norms of equality, living on charity is demeaning and lowers self-esteem. There is a sense in which any voluntary work, no matter how arduous, quietly uplifts and enhances dignity and basic self-respect — a point gracefully underscored by a group of painters (migrant labour) in Palsana, Sikar in Rajasthan, when they chose to give a fresh coat of paint to an entire school building in return for the shelter provided to them during lockdown.

Work is one among many sources of satisfaction and self-respect. Our Directive Principles focus on others — proper housing, for instance. It is time the state took these seriously. While no state can build a home — which needs personal care and must be our own handiwork — the right to housing can certainly be guaranteed for it is implicit in the article

I believe the best of us carry the image of the poor as labouring creatures with basic material needs who beget children. They suffer when deprived of these material needs. Our humanity lies in empathetically acknowledging this suffering. This, however, is not an image that we have of ourselves.



enjoining the state to provide a decent standard of living.

Multiple deprivations

However, such social policies will not be forthcoming unless we, who make these policies, stopped viewing the poor as sub-human. This is a controversial statement and requires some explanation. I believe the best of us carry the image of the poor as labouring creatures with basic material needs who beget children. They suffer when deprived of these material needs. Our humanity lies in empathetically acknowledging this suffering. This, however, is not an image that we have of ourselves. We have more complex social, cultural, political and even spiritual needs. We need quality time with our children, and leisure for ourselves; companionship and friendship, a flourishing social life; music, literature, art, poetry; time to fulfil our obligations in the public domain. And of course, we need our privacy, hours of solitude, space for self-reflection. Our suffering too is different: we have anxieties and phobias, inner turmoil, loss of a sense of self.

Assuming these profound differences between them and us, it does not cross our minds that the poor have multiple deprivations — not only material but social, cultural, familial, spiritual. When did a policymaker ever worry about the quality of family or spiritual life among the poor? Or whether they have time for their children or for leisure? Or how impoverished they might be because of their inability to adequately self-reflect.

I do not wish to make the absurd demand that our state policies be designed to care for all these non-material needs. My point is that unless policymakers have the same conception of the poor as they have of themselves — persons with rich, varied and complex needs — they will not realise the grave consequences of the material deprivations endured by the poor or show the urgency to remove them. In short, policymakers need to realise that they deal with complete human beings. Unless they are able to vividly imagine the poor as fully human they will never design proper policies to address even their material needs. Alas, this will not happen unless policymakers feel their pain — literature and cinema can help here — and there is real, continuing contact between the two.●

Many "contractual labourers" rarely see a written contract. A minimum, regular wage per month is legally required but seldom paid. Many do not receive wages for months, and at the end of the season when they are finally paid it is often less than what was agreed. There is a lack of transparency in accounting — excessive, arbitrary and unexpected deductions from final payments are common.

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Dealing with CORONAVIRUS No Place for Blind Faith

PROF RAM PUNIYANI*

The World today is gripped with the pandemic of Coronavirus. While it began from China, currently it has gripped various countries; India is also facing the problem of mammoth proportions. Many steps are being taken, and many more are need of the hour.

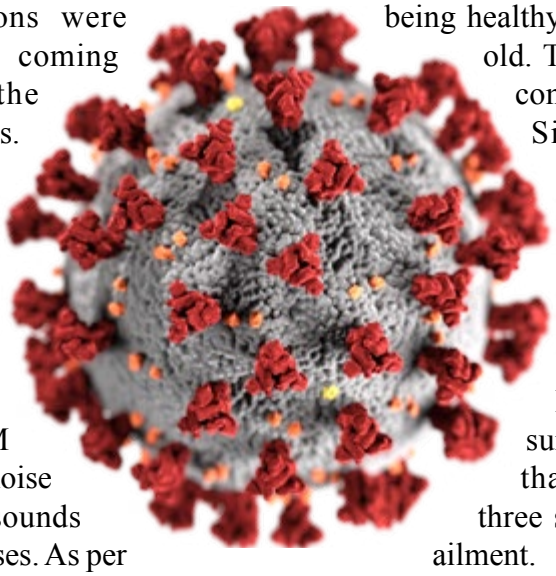
Apart from other things, what will make the battle against this threat to global-Indian health more difficult is the parallel promotion of faith based practices by the ruling dispensation and its myriad associates for whom, ancient Indian practices had all ingredients to deal with the human calamities. Two disturbing examples need to be deliberated to understand the intensity of the blind practices, which have become running undercurrent of our social life in recent times.

It is not too long ago that the actions of faith-based political ideology led to the murders of the likes of Dr. Narendra Dabholkar, Govind Pansare and M.M. Kalburgi. They were fighting against the practitioners and

* *Ram Puniyani is an eminent author, activist and former professor of IIT Mumbai. The views expressed in this article are personal*

promoters of blind faith. These sections have got encouragement with the rise of sectarian nationalism.

On March 22, 2020, the Prime Minister Narendra Modi had given a call for a day-long Janata curfew and to come to balconies to clap, to beat the thalis, utensils to appreciate the work being done by the health professionals. While the gesture to thank the work of health professional was well called for, it took another turn at places.



Many processions were organized with people coming together, violating the physical distancing norms. They were blowing conch, beating utensils and doing clapping etc. The reason for this was not far to seek. The Maharashtra BJP leader Shaina N.C. in her tweet, while appreciating the PM for this call of making noise said that this making sounds will kill the bacteria/viruses. As per her, this highly re-tweeted statement drew from Puranas, state that beating of shells, blowing of conch kills bacteria and viruses. WhatsApp messages were also flooding the social media with similar messages.

The second disturbing thing was the actions of Swami Chakrapani Maharaj, who had organised Gomutra (Cow urine) Party, where cow urine was distributed and many consumed it with the understanding that this will help prevent/cure the Coronavirus. Another BJP leader also organised similar programme, in which one of the person drinking cow urine fell sick. Not to be left behind another BJP worthy MLA from Assam, Suman Haripriya elaborated the virtues of cow dung.

It is not surprising that most of the Gomutra, Cow dung promotions came from those associated with the BJP ideology. Cow urine has been in news more during last couple of decades since the BJP led NDA came to power in 1998. One of the close associates of Mr. Modi Shankar Bhai Vegad from Gujarat claims that cow urine is the secret of his being healthy despite being 76 years old. The peak of such claims comes with Sadhvi Pragya Singh Thakur, current BJP MP from Bhopal and an accused in Malegaon terror blast, who claimed that her breast cancer got cured due to the cow urine. Mercifully her treating surgeon told us the truth that he had performed three surgeries on her for her ailment.

How do we believe or reject the claims of cow urine being the magic potion treating every conceivable disorder? While this question has been looming in the air, the ruling Government is allotting huge funds for so called research on cow urine, Panchgavya (a mixture of cow dung, cow urine, milk, curd and ghee) etc. The central research agencies are calling for research on cow products, including the specificities' of Indian cow!

In medical science the introduction of a medicine are backed up by biochemical studies, pre clinical trials, (Double blind trials with placebos) and post introduction

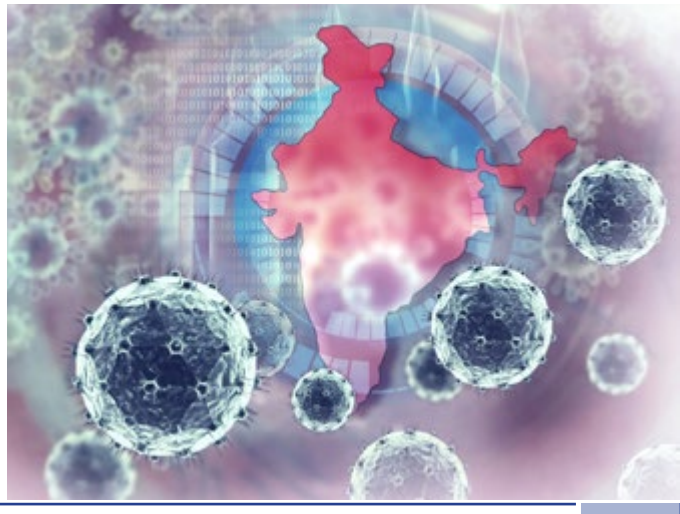
evaluations. In case of these cow products what is guiding these actions is pure faith, manufactured through various processes. As far as cow urine is concerned we know that like the urine of other animals, it's a combination of discarded substances from the body. It has over 90% water; it has Urea, creatinine, sulphates, phosphates etc. There are no clinical studies to back up the claims. It is purely from ideological perspective that some elements are imposing-propagating the worth of cow urine.

It is part of the whole project of Hindu nationalism, which wants to impose the ancient values of birth based hierarchy of caste and gender on the society. On parallels track it wants to state that ancient India had already achieved the acme of achievements in all areas of science and technology, be it Pushpak Viman, plastic surgery, bio technology, television and internet.

This is part of the overall political agenda where in the name of Golden past faith based understandings are being presented with reverence. It is the attempt to adorn the superiority of Hindu traditional values. In matters of cow, on one hand the cowbeef campaign led to the phenomenon of lynchings and on the other the cow products are being promoted. This promotion has also led to the commercial exploitation of cow urine in different products of Baba Ramdev's Patanjali products and others.

The very concept of fighting the pandemic of the proportion of Corona does require massive efforts on the part of the Government and the society. In India the rising impact of Hindu Nationalism, being spearhead by RSS has spread the understandings which are totally against science and reason. RSS to pursue its agenda has set up Vigyan Bharati, which puts forwards the extracts from Puranas etc. as science. Further to this in Nagpur a Go Vigyan Anusandhan Kendra has also been established to propagate these understandings which are neither logical nor can stand the scrutiny of scientific methods.

The propagation of such things will retard the process of progress and is already posing obstacles to dealing with the pandemic as irrational things have been drilled into the understanding of the section of society. The ruling authorities have to come forward and undo these detrimental practices.●



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No migrant should be denied the opportunity to return to home State due to incapacity to pay for transport

Karnataka HC

The Karnataka High Court on 12th May 2020 in Writ Petition No. 6435/2020 asserted that no migrant person should be deprived of an opportunity to go back to his own State due to his incapacity to pay for the transport. Highlighting this, the order passed by Chief Justice Abhay Sreeniwas Oka and Justice B V Nagarathna reads as follows, "Prima facie, it appears to us that considering the constitutional rights of the migrant workers, no one should be deprived of an opportunity to go back to his own State only for the reason that he has no capacity to pay for the transport. The reason is that inability to pay is due to loss of livelihood."

Keeping this in mind, the Court has directed the Central Government through the Ministry of Railways to look into this issue, especially given that the Home Secretary of the Government of India had addressed all the Chief Secretaries on May 11, directing that the State Governments should cooperate with the Central Government for running more number of "Shramik" special trains so that the traveling of the migrant workers is facilitated at a faster rate.

The Court went on to say, "The State Government and the Central Government, during this difficult time, must appreciate the major contribution made by the migrant

the State Governments should cooperate with the Central Government for running more number of "Shramik" special trains so that the traveling of the migrant workers is facilitated at a faster rate.

workers in a large number of public projects as well as private projects which have contributed to the improvement of the infrastructure in all the States and the improvement of economy. At a time when the migrant workers who have made such a huge contribution are facing distress, both the Central and State Government must come forward to help them to ensure that at the earliest, they return back to their home States."

With these observations in the issue, the Court directed the State Government to immediately convene a meeting of with Trade Unions, Employers' Associations and NGOs in the State to ascertain whether any contribution can come from the Employers' Association, Trade Unions and NGOs which can, in turn, be used for bearing the train fares for migrant workers who are not in a position to pay for the same.

"Prima facie, it appears to us that considering the constitutional rights of the migrant workers, no one should be deprived of an opportunity to go back to his own State only for the reason that he has no capacity to pay for the transport. The reason is that inability to pay is due to loss of livelihood."

While the State Government had told the Court that migrant workers in Karnataka will be permitted to travel back to their home States, the Court noted that there are still a large number of migrant workers who are found on highways, making an endeavor to walk up to their respective States.

The Bench opined that one reason for this is that the assurance of the State Government that every migrant worker will be allowed to go back to his home State has not reached the migrant workers.

The Court proceeded to observe that once a policy decision is taken by the State Government that all the migrant workers will be permitted to return to their respective States by the special trains, that assurance of the State Government must reach the migrant workers, who have applied for permission to travel.

In this regard, the Court has ordered the State Government to ensure that this policy is communicated to every such migrant worker intending to go back to their respective states. The Bench added,

"The State Government must take the help of all the Trade Unions and Non Governmental Organisations (for short 'NGOs') who are working in the field to ensure that the assurance of the State reaches the migrant workers who have already registered with the State Government."

Besides this, the Division Bench passed the following set of directions:

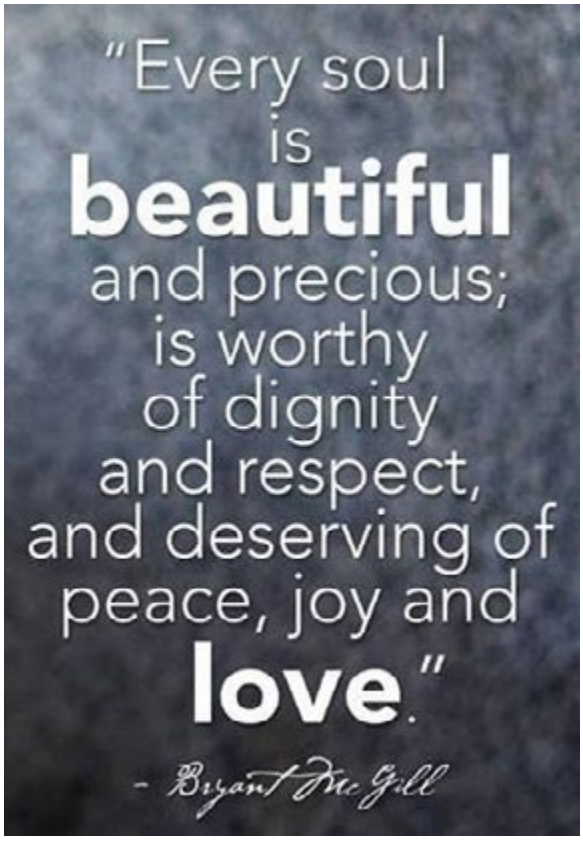
- The State Government must work out a time schedule for facilitating transport of these migrant workers to their respective States;
- The State Government should ensure that a broad time schedule is communicated to the migrant workers.
- The State Government must place on record the details of the special trains so far arranged from various places in the State of Karnataka and the special trains which are scheduled to run in near future.
- Considering the delay involved in making available the traveling facilities to the migrant workers, the State Government must ensure that as long as the migrant

workers remain in Karnataka, the supply of ration/food to them is uninterrupted.

- The State will have to also address the issue of the facilities extended to the migrant workers who are from the State of Karnataka and who are working in other States.
- With respect to the requests received by the State of Karnataka, the steps taken for repatriation of those migrant workers to return to Karnataka etc., shall be also placed on record.

The matter has been next posted on May 18, 2020 for hearing on merits. ●

"The State Government and the Central Government, during this difficult time, must appreciate the major contribution made by the migrant workers in a large number of public projects as well as private projects which have contributed to the improvement of the infrastructure in all the States and the improvement of economy. At a time when the migrant workers who have made such a huge contribution are facing distress, both the Central and State Government must come forward to help them to ensure that at the earliest, they return back to their home States."



Answers of Legal Quiz

1. B	2. C	3. B
4. B	5. D	6. B
7. C	8. B	9. C
10. B	11. A	12.A

Recital of Azan by Muezzin from Minarets of Mosques amid Lockdown without Microphones is permitted

Allahabad HC

"No one has got the right to make other persons captive listeners."

The Allahabad High Court in a Public Interest Litigation No. 570 of 2020 (Afzal Ansari and others Vs. State of U P and others) on 15-05-2020 held that recital of Azan is an integral part of the Islamic religion and allowed the Muezzins of various mosques in the state to recite the Azan, even amid lockdown. However, the court has made strict observations against the use of microphones for the same. "Azan is certainly an essential and integral part of Islam but use of microphone and loud-speakers is not an essential and an integral part thereof. …Azan can be recited by Muezzin from minarets of the Mosques by human voice without using any amplifying device and such recitation cannot be hindered with under the pretext of violation of the Guidelines issued by the State, to contain the pandemic- Covid19," the bench of Justices Shashi Kant Gupta and Ajit Kumar has held.

The observation has been made in a batch of PILs and letter petitions led before the High Court against alleged orders restricting recital of Azan during the lockdown. The Petitioners, had sought permission to recite Azan through "Muezzin", by using sound amplifying devices.

Petitioners' Arguments

The primary contention raised by the Petitioners was that restrictions imposed by the administration for recital of Azan were wholly "arbitrary and unconstitutional". "Ban on Azan through sound

amplifying device is violative of fundamental right as provided under Article 25 of the Constitution of India, as reciting Azan is an essential religious practice," the Petitioners had contended.

It was submitted that pronouncement of Azan is "not a congressional practice" but is simply an act of recitation by a single individual, calling the believer to offer Namaz at their homes and therefore the same does not violate any of the conditions of the prevailing lockdown. It was further submitted in most of the cases Azan is given by a person who is the caretaker of the Mosque and is ordinarily residing in the Mosque. In other cases, the person assigned the duty of reciting Azan in the Mosque is the closest available person who can recite Azan. Therefore, in both the cases there is no occasion of violation of the lockdown norms by an individual who is reciting Azan in the Mosque.

Senior Advocate Salman Khurshid had also informed the court that the local police and the administration had pasted "unsigned notices" on the entrances of several mosques in Farrukhabad, and all attempts made to seek redressal from the District Administration had been futile.

State's Arguments

The State on the other hand contended that Azan is a call for congregation to offer prayers at the Mosque and is therefore in violation of the Guidelines for containing the pandemic. "Right contained under Article 25 of the Constitution of India is subject to public order, morality, health and Part III of the Constitution of India," it was argued. The allegations of pasting unsigned notices were denied by the Government by submitting the mosques were, voluntarily, not pronouncing Azan since March 24, 2020 and thus, there was no occasion to issue any restraint order or direction.

> The use of microphone is a practice developed by someone and not by the Prophet or his main disciples, and which was not there in the past, and that the microphone is of recent origin and accordingly it could not be said that the use of microphone and loudspeaker is essential and integral part of the Azan,"

The Government had also contended that recital of Azan was contrary to Rule 5 of the Noise Pollution (Regulation and Control) Rules, 2000 which states that a loud speaker or a public address system shall not be used except after obtaining written permission from the authority.

Findings

The court rendered its judgment by answering two questions:

(1) Whether any order prohibiting or restricting the recitation of Azan, through sound amplifying devices, is violative of the Article 25 of the Constitution?

Taking cue from the Apex Court's judgment in Church of God (Full Gospel) in India v. KKR Majestic, {(2000) 7 SCC 282}, the

court held recital of Azan is an integral part of Islam, subject to reasonable restrictions. In the said case, the Supreme Court had held, "No religion or religious sect can claim that the use of loudspeakers or similar instruments for prayers or for worship or for celebrating religious festivals is an essential part of the religion which is protected under Article 25. We hold that there is no fundamental right to use loudspeakers or similar instruments under Article 19(1) (a) of the Constitution. On the contrary, the use of such instruments contrary to the Noise Pollution Rules will be a violation of fundamental rights of citizens under Article 21 of the Constitution as well as fundamental right of citizens of not being forced to listen something which they do not desire to listen."

"Azan is certainly an essential and integral part of Islam but use of microphone and loud-speakers is not an essential and an integral part thereof. ...Azan can be recited by Muezzin from minarets of the Mosques by human voice without using any amplifying device and such recitation cannot be hindered with under the pretext of violation of the Guidelines issued by the State, to contain the pandemic- Covid19,"

In this backdrop the High Court held,

"Azan may be an essential and integral part of Islam but recitation of Azan through loud-speakers or other sound amplifying devices cannot be said to be an integral part of the religion warranting protection of the fundamental right enshrined under Article 25 of the Constitution of India, which is even otherwise subject to public order, morality or health and to other provisions of part III of the Constitution of India. Thus, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require since it amounts to taking away the fundamental right of other persons." A similar finding was also rendered by the Calcutta High Court while deciding the issue of using sound amplifying devices for the purposes of reciting Azan, in the case of *Moulana Mufti Syed Mohammed Noorur Rehman Barkati & Ors. v. State of West Bengal & Ors.,* (MANU/WB/0211/1998).

The division bench then went on to note that microphones did not exist at the time of Prophet Muhammad and rather, was a gift of the technological age. Thus it was held that the practice of reciting Azan through microphones was not an essential thing. "It will be not out of place to mention that in the past, during old days when the loudspeaker was not invented, Azan used to be given by human voice. The use of microphone is a practice developed by someone and not by the Prophet or his main disciples, and which was not there in the past, and that the microphone is of recent origin and accordingly it could not be said that the use of microphone and loudspeaker is essential and integral part of the Azan," the court held.

Further, it was held that loudspeakers

cannot be used except with requisite permission of the authorities as per the Noise Pollution Rules. It observed, "In the present case, there is no averment in the writ petition that any permission has been sought by the concerned persons to recite the Azan through loudspeakers or any public address system. Therefore, until and unless there is a license/ permission from the authorities concerned under the Noise Pollution Rules, under no circumstances, Azan can be recited through any sound amplifying devices. In case Azan is being recited through aforesaid means, it will be violative of provisions contained under the Noise Pollution Rules and strict action is liable to be taken against the persons violating such Rules, in accordance with law."

(2) Whether the recital of Azan by Muezzin/ authorized person violates any of the orders issued by the Government for containment of Covid 19 crisis?

Answering in the negative, the court held that the Government had not been able to explain as to how the recitation of Azan merely through human voice can be violative of any provision of law or any guidelines issued in view of Covid-19 pandemic. It concurred with the submission made by the Petitioners that recitation by a single individual cannot breach the lockdown measures. "We fail to understand as to how the recital of Azan by a single person in the mosque i.e. Muezzin/Imaam or any other authorised person, through human voice without using any amplifying device, asking the Muslims to offer prayer and that too without inviting them to the mosque, can be violative of any guidelines. Merely reciting of Azan from the mosque through human voice does not cause any health hazards to any person of the society," the court held.

It thus directed that Azan can be recited by Muezzin from minarets of the Mosques by human voice, without using any amplifying device. The court also directed the administration not to cause hindrance in the same on the pretext of the Guidelines to contain the pandemic . ●

"We fail to understand as to how the recital of Azan by a single person in the mosque i.e. Muezzin/Imaam or any other authorised person, through human voice without using any amplifying device, asking the Muslims to offer prayer and that too without inviting them to the mosque, can be violative of any guidelines.

Explained: How Section 144 CrPC works.

[Sourcve: Indian Express- December. 20/2019]

What is Section 144?

Section 144 CrPC, a law retained from the colonial era, empowers a district magistrate, a sub-divisional magistrate or any other executive magistrate specially empowered by the state government in this behalf to issue orders to prevent and address urgent cases of apprehended danger or nuisance.

The magistrate has to pass a written order which may be directed against a

particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area. In emergency cases, the magistrate can pass these orders without prior notice to the individual against whom the order is directed.

What powers does the administration have under the provision?

The magistrate can direct any person to abstain from a certain act or to take a certain order with respect to certain property in his possession or under his management. This usually includes restrictions on movement, carrying arms and from assembling unlawfully. It is generally believed that assembly of three or more people is prohibited under Section 144.

However, it can be used to restrict even a single individual. Such an order is passed when the magistrate considers that it is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray.

However, no order passed under Section 144 can remain in force for more than two months from the date of the order, unless the state government considers it necessary. Even then, the total period cannot extend to more than six months.

No order passed under Section 144 can remain in force for more than two months from the date of the order, unless the state government considers it necessary. Even then, the total period cannot extend to more than six months.

Why is the use of power under Section 144 criticised so often?

The criticism is that it is too broad and the words of the section are wide enough to give absolute power to a magistrate that may be exercised unjustifiably. The immediate remedy against such an order is a revision application to the magistrate himself. An aggrieved individual can approach the High Court by filing a writ petition if his fundamental rights are at stake. However, fears exist that before the High Court intervenes, the rights could already have been infringed. Imposition of Section 144 to an entire state, as in UP, has also drawn criticism since the security situation differs from area to area.

How have courts ruled on Section 144?

In Re: Ardeshir Phirozshaw … vs Unknown (1939), a British judge of the Bombay High Court censured the Chief Presidency Magistrate in Bombay for passing an illegal order under Section 144: "A Magistrate acting under Section 144 may no doubt restrict liberty. But he should only do so if the facts clearly make such restriction necessary in the public interest, and he should not impose any restriction which goes beyond the requirements of the case." The judge criticised application of power under Section 144 for two

months, "not only to the particular riot, but to any past riots and any future riots which may take place within the next two months are strong measures and; require cogent facts to justify them".

The first major challenge to the law was made in 1961 in Babulal Parate vs State of Maharashtra and Others. A five-judge Bench of the Supreme Court refused to strike down the law, saying it is "not correct to say that the remedy of a person aggrieved by an order under the section was illusory".

It was challenged again by Dr Ram Manohar Lohiya in 1967 and was once again rejected, with the court saying "no democracy can exist if 'public order' is freely allowed to be disturbed by a section of the citizens".

In another challenge in 1970 *(Madhu Limaye vs Sub-Divisional Magistrate)*, a seven-judge Bench headed by then Chief Justice of India M Hidayatullah said the power of a magistrate under Section 144 "is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny". The court, however, upheld the constitutionality of the law. It ruled that the restrictions imposed through Section 144 cannot be held to be violative of the right to freedom of speech and expression, which is a fundamental right because it falls under the "reasonable restrictions" under Article 19(2) of the Constitution. The fact that the "law may be abused" is no reason to strike it down, the court said.

"Occasions may arise when it is not possible to distinguish between those whose conduct must be controlled and those whose conduct is clear. A general order may be necessary when the number of persons is so large that the distinction between them and the general public cannot be made," the court said, justifying blanket prohibitory orders passed under Section 144.

In 2012, the Supreme Court came down heavily on the government for imposing Section 144 against a sleeping crowd in Ramlila Maidan. "Such a provision can be used only in grave circumstances for maintenance of public peace. The efficacy of the provision is to prevent some harmful occurrence immediately. Therefore, the emergency must be sudden and the consequences sufficiently grave," the court said.

Does Section 144 provide for communications blockades too?

The rules for suspending telecommunication services, which include voice, mobile internet, SMS, landline, fixed broadband, etc, are the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. These Rules derive their powers from the Indian Telegraph Act of 1885, Section 5(2) of which talks about interception of messages in the "interests of the sovereignty and integrity of India".

However, shutdowns in India are not always under the rules laid down, which come with safeguards and procedures. Section 144 CrPC has often been used to clamp down on telecommunication services and order Internet shutdowns.

In Sambhal, UP, Internet services were suspended by the District Magistrate under Section 144. In West Bengal on June 20, 2019, mobile internet, cable services, broadband were shut down by the District

Magistrate in North 24-Parganas under Section 144 over communal tensions.

Under what provisions were telecom services interrupted in parts of Delhi?

Recently in Delhi, the Deputy Commissioner of Police, Special Cell, issued an order to the nodal officers of telecom operators including Airtel, Reliance Jio etc to interrupt services in specific areas.

"No specific legal reason has been cited for this. Police cannot issue these directions because they are not the proper authorities to permit internet shutdown. In Delhi's case since it is a Union Territory, it would have to be authorised by the Home Ministry itself," Apar Gupta, Executive Director at Internet Freedom Foundation told The Indian Express.

Under the 2017 Rules, directions to "suspend the telecom services shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of India or by the Secretary to the State Government in-charge of the Home Department in the case of a State Government (hereinafter referred to as the competent authority)…"

The Rules also say that in case the confirmation does not come from a competent authority, the orders shall cease to exist within a period of 24 hours. Clear reasons for such orders need to be given in written, and need to be forwarded to a Review Committee by the next working day. ●

[Source: Live Law-December 29,2019]

Explained : What is Inner Line Permit (ILP)?

When the Citizenship (Amendment) Act 2019 came out, it exempted the areas coming under Inner Line Permit (ILP) as well as tribal areas of Assam, Meghalaya and Tripura (as included in the sixth schedule).

The sixth schedule of the Constitution of India provides for the administration of tribal areas in the states of Assam, Tripura, Meghalaya as well as Mizoram to safeguard the rights of tribal population in these states.

The Inner Line Permit was established by the British government

under the Bengal Eastern Frontier Regulation, 1873 to safeguard tribals of eastern part of Bengal. This 1873 regulation is also known as ILR or ILP. The Scheduled District Act, 1874 was enforced in hill districts without ILR where ILP was not extended. Subsequently, the whole area was brought under ILR. The entire tribal dominated backward districts declared as Scheduled districts by the Scheduled Districts Act, 1874. A new term was included in the Government of India Act, 1935., i.e., "excluded area", which covered most backward tribal areas under the direct rule of Government having no representation in provincial legislation.

Under Section 2 of the regulation of 1873, the ILP was only applicable to the three North Eastern States such as, Mizoram, Arunachal Pradesh and Nagaland. The President of India, Ram NathKovind signed the order extending ILP to Manipur, which became the fourth state where the ILP regime is applicable. The Inner Line Permit (ILP) regime is now being used to protect such areas from the purview of Citizenship (Amendment) Act, 2019.

ILP is a permission granted to person who is non-tribal and wants to enter the tribal areas for tourism or any other purpose. He can stay only by the terms and conditions of the permit guaranteed to him and only for the period specified in the permit given to him. Though this procedure started way back in the British era, it is still being continued. These tribal areas which was severely under developed, was in need of a system of administration that would allow the tribal areas become developed while protecting them from exploitation of people from plain areas and preserving their distinct social customs.

Inner Line Permit (ILP) is a document similar to visa, issued by the Government of India to an Indian citizen for a limited time.

The Meghalaya cabinet has approved a resolution on 17.12.2019 to bring the state under the Inner Line Permit (under the Bengal Eastern Frontier Regulation, 1873). People of Meghalaya have been demanding an enactment law similar to ILP inorder to protect the interests of the indigenous population of the state. Assam and Sikkim has also applied for the enactment of ILP for the same.

What is Inner Line Permit (ILP)?

Inner Line Permit (ILP) is a document similar to visa, issued by the Government of India to an Indian citizen for a limited time. The ILP was introduced by the British Government in the Bengal East Frontier Regulations, 1873, in the states of Arunachal Pradesh, Nagaland, Mizoram and Manipur (fourth state in India that recently came under ILP).

It was introduced so as to stop the outsiders from plundering the wealth in these states.

In 1950, this rule was changed by the Government of India and said that ILP is a system to protect the indigenous population of these states.

This permit allows Indian citizens to go and live in any State protected under ILP for a specific period of time.

Any person is entitled to renew his permit every six months if he is not a native in these states despite the fact that he/she is a long-term resident.

This permit also regulates the movement to certain areas located near the international borders of India.

Who Issues ILP?

The permit is issued by the concerned states coming under the protection of ILP.

The ILP is issued either by applying online or directly from the government office.

The ILP has details such as travel dates and the specific areas that the holder is likely to travel in the concerned state.

This permit allows Indian citizens to go and live in any State protected under ILP for a specific period of time.

Arunachal Pradesh - The ILP is issued by the secretary (political) of the Government of Arunachal Pradesh. The permit is required for entering the said state through any of the check gates across the interstate border with Assam or Nagaland. An ILP for temporary visitors is valid for 7 days and can be extended.

Mizoram - The permit is issued by the Government of Mizoram which is required for entering the state through any of the check gate across the inter-state borders. The permit issued to visitors is valid for 7 days and can be extended for another 15 days, which can even be extended to one month in exceptional circumstances. The ILP can also be procured for 6 months known as 'regular ILP', with the sponsorship of a local resident or government department and can also be renewed twice for another 6 months.

Nagaland - The permit is issued by the Government of Nagaland.

In 2014, the ILP was removed in Ladakh and later implemented again from 2017. The Ladakh Inner Line Permits are available online from the official website of LehLadakhadministration. The ILP is valid for a maximum of 14 days. There is no limit on the number of times to visit a place within the valid period as long as there is necessary permits.

Foreigners need a Protected Area Permit (PAP) to visit tourist places which are different from Inner Line Permits needed by domestic tourists. ●

Ordinance promulgated to give effect to extension of time limits under Taxation and Benami acts

[The Economics Times – April 01, 2020]

The government issued an ordinance recently to bring into effect compliance relief measures for taxpayers in the wake of Covid 19 that were announced by the finance ministry. The ordinance also allowed for 100% exemption of donations made to PM Cares fund, set up to aid containment and relief efforts against the virus outbreak.

"In order to give effect to relief measures relating to statutory and regulatory compliance matters across sectors in view of COVID-19 outbreak, the government has brought in an Ordinance on March 31, which provides for extension of various time limits under the Taxation and Benami Acts," the finance ministry said in a statement. Extension of several time limits related to direct and indirect tax filings have been extended to June 30, so has the date for passing of order or issuance of notice by tax authorities under various direct taxes and Benami Law.

"Donation made up to June 30 to the PM CARES Fund shall be eligible for 100% deduction under section 80G of the IT Act from income of FY 2019-20," the government clarified, adding that the limit on deduction of 10% of gross income shall also not be applicable for such donations. Further, individuals and corporates paying concessional tax on income of FY 2020-21 under new regime can make donation to PM Cares Fund till June 30, and can claim deduction under section 80G against income of FY 2019-20. "(Taxpayer) shall also not lose his eligibility to pay tax in concessional taxation regime for income of FY 2020-21," the government clarified.

Direct tax relaxations

The government clarified that taxpayers can make investments or payments in LIC, Public Provident Fund and National Savings Certificates under Section 80C, mediclaim under Section 80D and donations under 80G till June 30, for claiming deductions for FY 2019-20. Also, investment, construction or purchase made up to June 30, shall be eligible for claiming deduction from capital gains under sections 54 to 54GB of the IT Act, arising in FY 2019-20. The last date of filing of original as well as revised income-tax returns for the FY 2018-19 has been extended till June 30, 2020. Aadhaar-PAN linking last date has been pushed to June 30, from March 31. The date for commencement of operation for the SEZ units for claiming deduction under deduction 10AA of the IT Act has also been extended to June 30, for the units which received necessary approval by March 31, 2020. ●

Expand list of essentials to include laptops, routers to facilitate work from home: Nasscom to govt

[The Economics Times – April 20, 2020]

Industry body Nasscom has urged the government to expand the list of essential items to include products like laptops and routers to facilitate work from home amid the lockdown. Four days after allowing e-commerce firms to also deliver non-essential items such as electronic goods and readymade garments, the government recently said non-essential items will continue to be prohibited during the lockdown period till May 3. "With most of us working/learning from home, access to basic equipment is absolutely critical. Urge government to consider basic requirements like office chairs, routers, laptops/desktops etc as essentials for ecommerce deliveries," Nasscom said in a tweet. Nasscom had suggested IT companies that they bring back employees on work premises in a phased manner, starting with 15-20 per cent of workforce, even as the guidelines issued by the Home Ministry had allowed IT and IT-enabled services to operate with up to 50 per cent strength. A significant number of people in IT-BPM companies have been working from home to ensure business continuity. Nasscom President Debjani Ghosh had also, on Sunday, tweeted that the decision could have been "better thought through". "This could have been better thought through.. a lot of the eCommerce have invested in planning for the 20th. And most don't have deep pockets to handle these kinds of reversal in decisions. The focus, I feel, should have been on ensuring adequate safety protocols," she had said.

Under the first phase of the nationwide lockdown between March 24-April 14, the government had only allowed delivery of essential goods through e-commerce platforms. On April 16, the Ministry of Home Affairs issued fresh guidelines for the current lockdown, allowing all e-commerce deliveries and movement of trucks, followed by some states such as Maharashtra, Odisha and Rajasthan also issuing similar notifications. However, on Sunday, the home ministry issued an order saying the following clause -- "E-commerce companies. Vehicles used by ecommerce operators will be allowed to ply with necessary permissions" -- is excluded from the guidelines issued. The government's U-turn on home delivery of non-essential items will leave consumers disappointed, the world's largest online retailer Amazon had said, even as the decision was welcomed by local kirana store body CAIT that had called it the "most pragmatic". Stating that it will continue to follow the guidelines and deliver essential products, Amazin India had expressed hope that "this situation is rectified soon so that the urgent need of consumers is met and that there is revival of economic activity".●

Workers say they don't want to wait in shelters till they get a train or be quarantined once they get home

The Hindu- May 10, 2020

It may have abated for a while but the exodus of migrant workers from across the National Capital Region on Day 69 of the national lockdown is not only still going on but is seemingly underlined by more desperation than before.

A week after the Ministry of Home Affairs (MHA) allowed the movement of stranded individuals, especially migrant workers, to their home States on interState buses or special trains, visuals and news of others like them had renewed their hope before they realised there is more than one catch.

For groups of on-foot migrant workers, the possibly endless wait for more passengers headed their way on one hand and the certainty of two weeks' quarantine on the other side of their journey in lieu merely of "free travel" arrangements by governments, they complain, is too steep a price to pay.

Even facing and contending with police batons on the way did not matter, they said, as long as they were able to inch as close to home as possible. "It is better if they just put us in jail and be done with it," complained Om Prakash, a resident of Faizabad who undertook a nine-hour journey, mostly on foot, from Ballabhgarh in Haryana before landing up below the Yamuna Expressway.

"The police have told us that they will take us to a shelter camp where we will be required to stay till the administration is able to find more people headed along our route. Some of our relatives who have recently been able to make it home have told me that we will need to stay in quarantine for 14 days in a school outside the village. Are we supposed to spend our lives waiting?" he demanded.

One from a group of nine former factory workers from Ballabhgarh and Faridabad headed to their hometowns in Lucknow, Agra and Faizabad among others, Mr. Prakash said he and the others began their journey from Haryana at 3 a.m. on Saturday.

Prem Kumar, who was employed as a security guard at a wardrobe manufacturing unit, said the first installment of the national lockdown was announced on the eve of his first day at work. "The supervisor took care of us for as long as possible; for over two months. Then we thought we would try and make our way home. We tried to register ourselves on the U.P. government's online portal but couldn't. So we decided to start walking and get as close as we could on our own," he said.

Seeing the group of nine from Uttar Pradesh waiting below the elevated highway encouraged close to two dozen people from Bihar, mainly construction workers, to position themselves on the other side of the street from them.

After a four-hour-long wait for food and arrangements for travel which they had hoped for, however, the gradually swelling number of migrant workers could only procure disappointment before setting out on foot for their destinations hundreds, and in the cases of some over a thousand, kilometres away.

"Did you hear about what happened in Nanded? The workers who were run over by the train? Why were they not on that train instead of below it? I am even ready for that kind of death if it happens near home. At least people will remember and talk about me. That will not happen if I stay here," said Prabhas Kumar, a construction worker who wanted to travel to Saharsa in Bihar.

"We don't need special trains; even tractors will do. If not tractors, just let us walk. We just want to go home," he said.●

Online classes abound in Covid-19 lockdown, human contact missed

Times of India- May 8, 2020

Amid Covid-19-disrupted academic year, cancelled classes and examinations, students across India are using every technological tool available to pursue studies. Some of the popular tech tools, enabling online learning through audio and video links, include Zoom, Skype, Whatsapp, Cisco Webex and Microsoft Teams. "We, humans, have never experienced anything like this. I am sure most of us were not prepared for such a situation. It's a first of its kind experience," Payal, an English teacher at an international school here, told IANS. From school pupils to civil services aspirants to doctoral students, all are engaging in this online learning, happening across the spectrum of education institutions. And the scale is mind-boggling. With over 14,000 educators powering students to prepare for more than 60 kinds of examinations, online learning platform Unacademy is offering over 1,500 live classes a day.

On March 12, Unacademy, set up by former IAS officer Roman Saini, announced that it would offer 20,000 free live classes to students during the lockdown. "Live classes on Unacademy platform ensure that education is not obstructed amid the coronavirus pandemic. These classes are available across examinations, like UPSC, banking and railways," an Unacademy spokesperson told IANS. According to Unacademy, the effort is aimed at promoting the indefatigable spirit of learners and encouraging students' determination to crack their examinations. English teaching app ELSA has associated with 40-50 schools to engage students through their principals to be in touch with the language.

UX Reactor, an online training platform with offices in Hyderabad and California, is catering to the needs of UX designers, teaching visual communication, user research, wire framing and prototyping and information architecture. "After the coronavirus outbreak,

we are seeing a decent rise -- about 150 per cent -- in traffic every week, as more people are looking for opportunities to up skill and reskill during the lockdown," Prasad Kantamneni, co-founder, UX Reactor, told IANS. Byju's, Olive board, Vidyakul, School of Meaningful Experience, School guru Eduserve, Canadian International School, including fashion designing institutions, like JD Institute of Fashion Technology South, are offering online learning solutions to bypass the lockdown. Despite the audio and video features the tech tools are offering, most people are of the view that no technology can ever replace the classroom setting and the human to human contact in real. "My personal experience with online learning has its ups and downs. One positive feature is the mute button, which helps dissolve all the background noise and allows one to listen more clearly. This can't be done in a normal classroom setting," said Aryan Jain, 11th standard student of Greenwood High International School.

Despite the advances in technology, Jain said multiple disconnections would take place in an online class, forcing students to say 'Ma'am you are not audible'. "As online platforms try to provide interactive class sessions, the proximity with students is missed. Personally, I like the fun group study sessions with friends as they help us share ideas effectively and create an emotional ties between us children that will last a lifetime," said a student. Corroborating Jain, Payal said holding the attention of all online students was not easy due to lack of physical monitoring. Transitioning from Zoom to Microsoft Teams, Payal teaches 10-25 students per online session. "Sometimes when students are asked questions and they don't know answers, they log out of the session. Students tend to choose the classes they want to be a part of. We have little control over it," said Payal. She said in school such mischievous action would not be possible. With the Covid-19 lockdown uncertainties, it remains to be seen how long online learning will replace the real classroom teaching.●

THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2020

A

BILL

further to amend the Medical Termination of Pregnancy Act, 1971.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India asfollows:—

1. Short title and commencement.--

(1) This Act may be called the Medical Termination of Pregnancy (Amendment) Act, 2020.

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

2. Amendment of section 2.--

In the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as theprincipal Act), in section 2,—

(i) after clause (a), the following clause shall be inserted, namely:—

'(aa) "Medical Board" means the Medical Board constituted undersub-section (2C) of section 3 of the Act;';

(ii) after clause (d), the following clause shall be inserted, namely:—

'(e) "termination of pregnancy" means a procedure to terminate apregnancy by using medical or surgical methods.'.

3. Amendment of section 3.-

In section 3 of the principal Act, for sub-section (2), the following sub-sectionsshall be substituted, namely:—

"(2) Subject to the provisions of sub-section (4), a pregnancy may be terminatedby a registered medical practitioner,—

(a) where the length of the pregnancy does not exceed twenty weeks, ifsuch medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but doesnot exceed twenty-four weeks in case of such category of woman as may beprescribed by rules made under this Act, if not less than two registered medicalpractitioners are, of the opinion, formed in good faith, that—

(i) the continuance of the pregnancy would

involve a risk to the life ofthe pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would sufferfrom any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), where any pregnancyoccurs as a result of failure of any device or method used by any woman or herpartner for the purpose of limiting the number of children or preventingpregnancy, the anguish caused by such pregnancy may be presumed toconstitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—For the purposes of clauses (a) and (b), where anypregnancy is alleged by the pregnant woman to have been caused by rape, theanguish caused by the pregnancy shall be presumed to constitute a graveinjury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion isrequired for termination of pregnancy at different gestational age shall be suchas may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of thepregnancy shall not apply to the termination of pregnancy by the medicalpractitioner where such termination is necessitated by the diagnosis of any ofthe substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be,shall, by notification in the Official Gazette, constitute a Board to be calleda Medical Board for the purposes of this Act to exercise such powers andfunctions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) aGynaecologist;

(b) aPaediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the OfficialGazette by the State Government or Union territory, as the case may be.".

4. Insertion of newsection 5A.-

After section 5 of the principal Act, the following section shall be inserted,namely:—

"5A.Protection ofprivacy of awoman.--(1) No registered medical practitioner shall reveal the name and otherparticulars of a woman whose pregnancy has been terminated under this Act exceptto a person

authorised by any law for the time being in force.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishablewith imprisonment which may extend to one year, or with fine, or with both.".

5. Amendmentof section 6.-

In section 6 of the principal Act, in sub-section (2), after clause (a), the followingclauses shall be inserted, namely:—

"(aa) the category of woman under clause (b) of sub-section (2) ofsection 3;

(ab) the norms for the registered medical practitioner whose opinion is requiredfor termination of pregnancy at different gestational age undersub-section (2A) of section 3;

(ac) the powers and functions of the Medical Board undersub-section (2C) of section 3.".

STATEMENT OF OBJECTS AND REASONS

The Medical Termination of Pregnancy Act, 1971 (34 of 1971) was enacted to providefor the termination of certain pregnancies by registered medical practitioners and for mattersconnected therewith or incidental thereto. The said Act recognised the importance of safe,affordable, accessible abortion services to women who need to terminate pregnancy undercertain specified conditions.

2. With the passage of time and advancement of medical technology for safe abortion,there is a scope for increasing upper gestational limit for terminating pregnancies especiallyfor vulnerable women and for pregnancies with substantial

The Medical Termination of Pregnancy (Amendment) Bill, 2020 was introduced in Lok Sabha by the Minister of Health and Family Welfare, Dr. Harsh Vardhan on March 2, 2020. The Bill amends the Medical Termination of Pregnancy Act, 1971 which provides for the termination of certain pregnancies by registered medical practitioners.

foetal anomalies detected late inpregnancy. Further, there is also a need for increasing access of women to legal and safeabortion service in order to reduce maternal mortality and morbidity caused by unsafe abortionand its complications. Considering the need and demand for increased gestational limitunder certain specified conditions and to ensure safety and well-being of women, it isproposed to amend the said Act. Besides this, several Writ Petitions have been filed beforethe Supreme Court and various High Courts seeking permission for aborting pregnancies atgestational age beyond the present permissible limit on the grounds of foetal abnormalitiesor pregnancies due to sexual violence faced by women.

3. Accordingly, the Medical Termination of Pregnancy (Amendment) Bill, 2020,inter alia, provides for,—

(a) requirement of opinion of one registered medical practitioner for termination ofpregnancy up to twenty weeks of gestation;

(b) requirement of opinion of two registered medical practitioners for termination ofpregnancy of twenty to twenty-four weeks of gestation;

(c) enhancing the upper gestation limit from twenty to twenty-four weeks for suchcategory of woman as may be prescribed by rules in this behalf;

(d) non applicability of the provisions relating to the length of pregnancy in caseswhere the termination of pregnancy is necessitated by the diagnosis of any of the substantialfoetal abnormalities diagnosed by a Medical Board;

(e) protection of privacy of a woman whose pregnancy has been terminated.

4. The proposed Bill is a step towards safety and well-being of women and will enlargethe ambit and access of women to safe and legal abortion without compromising on safetyand quality of care. The proposal will also ensure dignity, autonomy, confidentiality andjustice for women who need to terminate pregnancy.

5. The Bill seeks to achieve the above objects.

NEW DELHI;

DR. HARSH VARDHAN

The 14th February,2020.

The greatest destroyer of peace is abortion because if a mother can kill her own child, what is left for me to kill you and you to kill me? There is nothing between.

– Mother Teresa

THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020

NO. 2 OF 2020

The time limits for compliance or completion of certain actions under the specified laws, falling during the period March 20, 2020 to June 29, 2020, have been extended. The time limit to complete or comply with such actions has been extended to June 30, 2020, or such other date after June 30, 2020 which the central government may notify.

Promulagted by the President in the Seventy-first year of the Republic of India.

An Ordinance to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto.

WHEREAS, in view of the spread of pandemic COVID-19 across many countries of the world including India, causing immense loss to the lives of people, it has become imperative to relax certain provisions, including extension of time limit, in the taxation and other laws;

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist

which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (I) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

CHAPTER 1
PRELIMINARY

1. Short title and commencement.-

(1) This Ordinance may be called the Taxation and other Laws (Relaxation of certain Provisions) Ordinance, 2020.

(2) Save as otherwise provided, it shall come into force at once.

2. Definitions.-

(a) In this Ordinance, unless the context otherwise requires,-

(a) "specified Act" means-

(i) the Wealth-tax Act, 1957'

` (ii) the Income-tax Act, 1961;

(iii)the Prohibition of Benami Property Transaction Act, 1988;

(iv) Chapter VII of the Finance (No. 2) Act, 2004;

(v) Chapter VII of the Finance Act, 2013;

(vi) the Blank Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;

(vii) Chapter VIII of the Finance Act, 2016; or

(viii) the Direct Tax Vivad se Viswas Act, 2020;

(b) "notification" means the notification published in the Official Gazette.

(2) The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act, 1944 the Customs Act, 1962, the Customs Tariff Act, 1975 or the Finance Act, 1944 , as the case may be, shall have the meaning respectively assigned to them in that Act.

CHAPTER II
RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

3. Relaxation of certain provisions of specified Act.-

(1) Where, anytime limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, be notification, specify in this behalf, for the completion or compliance of such action as-

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Specified Act; or

(b) filing of any appeal, reply or application or furnishing of any report, document, under the provisions of the Specified Act; or

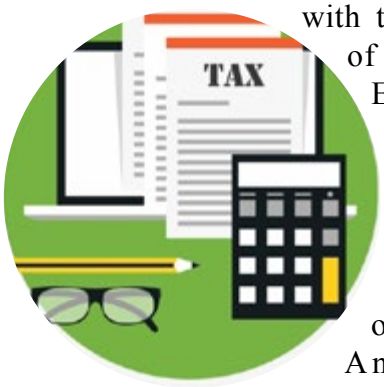
(c)in case where the specified Act is the Income-Tax Act, 1961,-

(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purpose of claming any deduction, exemption or allowance under the provisions contained in-

(1)Section 54 to 54 GB or under any provisions of Chapter VI-A under the heading "B,- Deduction in respect of certain payment" thereof, or

(2) such other provisions of that Act, subject to fulfillment of such conditions, as the Central Government may, be notification, specify, or

(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zaones Act, 2005 , has been issued on or before the 31st day of March, 2020.



And where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf;

Provided that the Central Government may specify different dates for completion or compliance of different actions.

Provided further that such action shall not include payment of any amount as is referred to in sub-section (2).

(2) Where any due date has been specified in, or prescribed or notified under, the specified Act for payment of any amount towards tax or levy, by whatever name called, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, and such amount hs not been paid within such date, but has been paid on or before the 30th day of June, 2020, or such other date after the 30th day of June, 2020 as the Central Government may, by notification, specify in this behalf, then, notwithstanding anything contained in the specified Act,-

(a) the rate of interest payable, if any, in respect of such amount for the period of delay shall not exceed three-fourth percent, for every month or part thereof,

(b)no penalty shall be levied and no prosecution shall ne sanctioned in respect of such amount for the period of delay.

Explanation- For the purposes of this sub-section, "the period of delay" means the period between the due date and the date on which the amount has been paid.

CHAPTER III
AMENDMENT TO THE INCOME- TAX ACT, 1961

4. In the Income-tax Act, 1961, with effect from the 1st day of April, 2020,-

(i) in section 10, in clause (23C), in sub-clause (i), after the word "Fund" the words and brackets "or the Prime Minister's Citizen Assistance and Relief in Emergency situations Fund (PM CARES FUND)" shall be inserted;

(ii) in section 80G, in sub-section (2) in clause (a), in sub-clause (iiia), after the word "Fund", the ords and brackets "or the

Prime Minsiter's Citizen Assistance and Relief in Emergency situations Fund (PM CARES FUND)" shall be inserted.

CHAPTER IV
AMENDMENT TO THE DIRECT TAX VIVAD SE VISHWAS ACT

5. Amendment of section 3 of Act 3 of 2020.-

In section 3 of the Direct Tax vivid se Vishwas Act, 2020,-

(a) In third column, in the heading, for the figures, letters and words "31st day of March, 2020" the figures, letters and words "30th day of June, 2020" shall be substituted;

(b) In fourth column, in the heading, for the figures letters and words "1st day of April, 2020" the figures, letters and words "1st day of July, 2020" shall be substituted.

CHAPTER V
RELAXATION OF TIME LIMIT UNDER CERTAIN INDIRECT TAX LAWS

6. Relaxation of time limit under Central Excise Act, 1944, Customs Act 1962, Customs Tariff Act, 1975 and Finance Act, 1994.-

Notwithstanding anything contained in the Central Excise Act, 1944, the Customs Act, 1962 (except sections 30, 30A, 41, 41A, 46 and 47) the Customs Tariff Act, 1975 or Chapter V of the Finance Act, 1994, as it stood prior to its omission vide section 173 of the Central Goods and Service Tax Act, 2017 with effect from the 1st day of July 2017, the time limit it specified in, or prescribed or notified under, the said Acts which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may be notification specify for the completion or compliance of such action as-

(a) Completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or

(b) Filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called,

Shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30th day of June, 2020 or such other date after the 30th day of June, 2020 as the Central Government may, by notification specify in this behalf.

Provided the Central Government may specify different dates fhas not been made within such time, stand extended to the 30th day of June, 2020 or such other date after the 30th day of June, 2020 as the Central Government may, by notification specify in this behalf.

Provided the Central Government may specify different dates for completion or compliance of different action under clause (a) or clause (b).

Payment of any tax, made after the due date (due between March 20, 2020 and June 29, 2020), but before June 30, 2020 (or any further date specified by the government), will not be liable for prosecution or penalty.

CHAPTER VI
AMENDMENT TO THE FINANCE ACT (NO. 2), 2019

7. Amendment of section 127 of Act 23 of 2019.-

In section 127 of the Finance Act (No 2) 2019,-

In sub-section (1), for the words "within a period of sity days from the dat2019.-

In section 127 of the Finance Act (No 2) 2019,-

(i) In sub-section (1), for the words "within a period of sixty days from the date of receipt of the said declaration" , the words, figures and letters "on or before the 31st day of May, 2020" shall be substituted;

(ii) In sub-section (2) for the words "within thirty days of the date receipt of the declaration", the words figures and letters "on or before the 1st day of May, 2020" shall be substituted;

(iii) In sub-section (4) for the words "within a period of sixty days from the date of receipt of the declaration", the words figures and letters "on or before the 31st day of May 2020" shall be substituted;

(iv) In sub-section (5) for the words "within a period of thirty days from the date of issue of such statement", the words figures and letters "on or before the 30th day of June, 2020 shall be substituted.

CHAPTER VII
AMENDMENT TO THE CENTRAL GOODS AND SERVICE TAX ACT, 2017

8. Insertion of new section 168A in Act 12 of 2017.-

After section 168 of the Central Goods and Services Tax Act, 2017, the following section shall be inserted, namel:-

Power of Government to extend time limit in special circumstances.-

'168A. (1) Notwithstanding anything contained in this Act, the Government may, on the recomnedation of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue noticiation under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

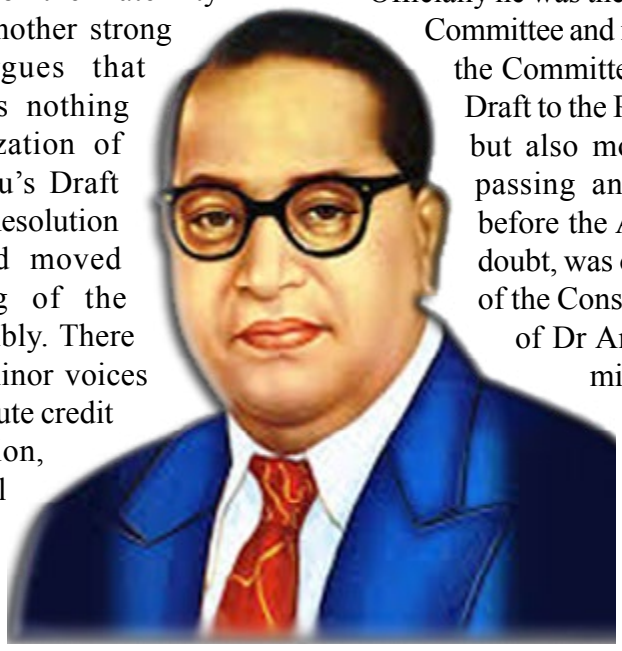
Explanation- For the purposes of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementing of any of the provision of this Act.●

RAM NATH KOVIND
President

WAS AMBEDKAR THE AUTHOR OF PREAMBLE?

Dr M. P. Raju, Advocate

Who can be credited with being the author or architect of the Preamble of the Indian constitution? Some writers claim that Babasaheb Bhimrao Ambedkar was the real author of the Preamble of the Indian Constitution. They refer not only to the role of Ambedkar as the Chairman of the Drafting Committee but also to his specific contributions in finalizing the text including the incorporation of the fraternity clause. There is another strong lobby which argues that the Preamble was nothing but the summarization of Jawahar Lal Nehru's Draft of the Objectives Resolution which Nehru had moved at the beginning of the Constituent Assembly. There have been other minor voices attempting to attribute credit to Irish Constitution, the constitutional advisor B.N. Rao, specific members of the Assembly who moved or got rejected amendments to the Daft Preamble. However, today the debate mainly hovers around the two, Ambedkar and Nehru.



Those who press for the authorship by Dr Ambedkar rely on the active role of Ambedkar as the Chairman of the Drafting Committee. He is generally acclaimed as one of the top architects of the whole Constitution. Officially he was the Chairman of the drafting Committee and it was he who on behalf of the Committee not only presented the Draft to the President of the Assembly but also moved the provisions for passing and even defended them before the Assembly. Ambedkar, no doubt, was one of the chief architects of the Constitution. After the demise of Dr Ambedkar, the then prime minister Jawahar Lal Nehru had given an obituary speech in the Parliament on 6 December 1956. In it Nehru had stated, "He is often spoken as one of the architects

of our Constitution. There is no doubt that no one took greater care and trouble over Constitution-making than Dr. Ambedkar."

Architect or a 'Hack'?

However there have been a few disputes with regard to Ambedkar's authorship of the Constitution. Apart from his speech in the Constituent Assembly apportioning the credit of drafting to several others, there has been a strong allegation of his disowning the Constitution by referring his subsequent speech in the Parliament. There is a serious allegation that Ambedkar had disowned the Constitution and had himself declared in the Parliament that he was used by the ruling class represented through the Congress as a 'hack' and that he should be the first person to burn it out.

The relevant statements of Ambedkar are found in the speech of Ambedkar dated 2nd September 1953 in the Parliament (Council of States) during the discussion on Andhra State Bill, 1953. The object of the bill was to create a new state in the South on linguistic lines. In the speech of Ambedkar, he initially gives a few comments attacking the government on its delay in forming Andhra as a separate linguistic state and also the government's vacillating stand on the desiredness of linguistic states. His general comments end with rejecting the argument that linguistic states are a danger to the unity of India. One point to be noticed is that even in the general comments Ambedkar was dealing with some of the drawbacks in the Constitution of India itself like the non-inclusion of Andhra in the schedule which Ambedkar had to leave in the dark due to the non-response from the Prime Minister and Home Minister. Then he spoke about the necessity of providing for certain provisions for the protection of the minorities including the Scheduled castes and linguistic minorities in the new state as also in other states. Referring to the fact despite reservations the Scheduled castes continue to be landless labourers, Ambedkar wanted to know "whether the reservation, which was blissfully granted to us by the Congress Party for ten years, is going to disappear."

To this one member then intervened and challenged Ambedkar, "You accepted it." Tit for tat, Ambedkar gave the answer, "Yes, what else can one do; if you can't get puri, you must get roti."

Then he continued with his argument for providing protection to minorities against communalism of the majority. He suggested more remedies which are not in the Constitution to protect minority communities against the community being in office practicing communalism.

Ambedkar knew that absence of these provisions would be attributed to him as his failure as the maker of the Constitution as already raised against him. Ambedkar went on:

"People always keep on saying to me: 'Oh, you are the maker of the Constitution'. My answer is I was a hack. What I was asked to do, I did much against my will."

A member, Shri P. Sundarayya retorted: "Why did you serve your masters then like that?"

To this there was a lot of commotion and the Chairman had to call for order repeatedly.

Thereafter Ambedkar explained that we had inherited certain flawed ideas of democracy on account of our hatred for

the British. He said, "That is the kind of conception about democracy which we have developed in this country."

Immediately came the allegation he had apprehended. Shri M.S. Ranawat representing Rajasthan challenged him: "But you defended it."

Ambedkar gave him back: "We lawyers defend many things.(Interruption). You should listen seriously to what I am saying, because this is an important problem." He further went on explaining the need to give system more democratic depth and introduction of such provisions for the protection of minorities as are available in the Constitution of Canada. Then he posed a question to the Home Minister Dr K.N. Katju, whether such a provision has made Canadian Constitution undemocratic.

To this Dr Katju rertorted: "My answer is that you had drafted this Constitution."

Ambedkar replied to this stating, "You want to accuse me for your blemishes?"

The Chairman had to intervene: "He has said that he defended the present constitution because it was the majority decision. Get along."

Ambedkar continued arguing for amending the Constitution incorporating the provisions like Canadian Constitution and English Constitution wherein provisions for protecting minority communities and taking into consideration the sentiments of smaller communities. Pointing to the lack of similar provisions in our Constitution, Ambedkar went on:

"Sir, my friends tell me that I have made the Constitution. But I am quite prepared to say that I shall be the first person to burn it out. I do not want it. It does not suit anybody. But whatever that may be, if our people want to carry on, they must not forget that there are majorities and there are minorities, and they simply cannot ignore the minorities by saying, 'Oh, no. To recognize you is to harm democracy.' I should say that the greatest harm will come by injuring the minorities."

After this speech, Ambedkar again spoke in the Council of States on 18th September 1953 during the discussion on Estate Duty Bill. Though he was supporting the bill, he pointed out some issues relating to the bill and expressed his pain on not getting the Hindu Code passed.

On 19th March 1955 Ambedkar explained in the Rajya Sabha his so called denouncement of the Constitution. Ambedkar was speaking in the Rajya Sabha on CONSTITUTION (FOURTH AMENDMENT) BILL, 1954. He explained his dissatisfaction with the original Article 31 which had provided for the right to property. He said,

"… Article 31, with which we are dealing now in this amending Bill, is an article for which I, and the Drafting Committee, can take no responsibility whatsoever. We do not

take any responsibility for that. That is not our draft. The result was that the Congress Party, at the time when Article 31 was being framed, was so divided within itself that we did not know what to do, what to put and what not to put. There were three sections in the Congress party. One section was led by Sardar Vallabhbhai Patel, who stood for full compensation, full compensation in the sense in which full compensation is enacted in our Land Acquisition Act, namely, market price plus 15 per cent solatium. That was his point of view. Our Prime Minister was against compensation. Our friend, Mr. Pant, who is here now—and I am glad to see him here—had conceived his Zamindari Abolition Bill before the Constitution was being actually framed. He wanted a very safe delivery for his baby. So he had his own proposition. There was thus this tripartite struggle, and we left the matter to them to decide in any way they liked. And they merely embodied what their decision was in article 31. This Article 31, in my judgement, is a very ugly thing, something which I do not like to look at. If I may say so, and I say it with a certain amount of pride about the Constitution which has been given to this country is a wonderful

document. It has been said so not by myself, but by many people, many other students of the Constitution. It is the simplest and the easiest. Many, many publishers have written to me asking me to write a commentary on the Constitution, promising a good sum. But I have always told them that to write a commentary on this Constitution is to admit that the Constitution is a bad one and an un-understandable one. It is not so. Anyone who can follow English can understand the Constitution. No commentary is necessary." (BAWS vol 15, p.948)

Dr. Anup Singh (Punjab): Last time when you spoke, you said that you would burn the Constitution.

Dr. B. R. Ambedkar: Do you want a reply to that? I would give it to you right here.

My friend says that the last time when I spoke, I said that I wanted to burn the Constitution. Well, in a hurry I did not explain the reason. Now that my friend has given me the opportunity, I think I shall give the reason. The reason is this: We built a temple for a god to come in and reside, but before the god could be installed, if the devil had taken possession of it, what else could we do except destroy the temple? We did not intend that it should be occupied by the Asuras. We intended it to be occupied by the devas. That is the reason why I said I would rather like to burn it.

Shri B. K. P. Sinha (Bihar): Destroy the devil rather than the temple.

Dr. B. R. Ambedkar: You cannot do it. We have not got the strength. If you will read the Brahmana, the Sathapatha Brahmana, you will see that the gods have always been defeated by the Asuras, and that the Asuras had the Amrit with them which the gods had to take away in order to survive in the battle.

Now, Sir, I am being interrupted ……..

Mr. Chairman: You are being drawn into ……..

Dr. B. R. Ambedkar : …….. into all sorts of things into which I do not wish to enter.

I was saying that Article 31 was an article for which we were not responsible. Even then, we have made that article as elastic as we possibly could in the matter of compensation…" (BAWS vol 15, pp. 948-949)

Dr Ambedkar had not any time taken total credit for the drafting of the Constitution, not even for the Preamble. On 25 November 1949 in his concluding remarks in the Constituent Assembly he liberally apportioned the credit of the drafting to many others including the members of the drafting committee and even to the constitutional advisor, B.N.Rao.

Ambedkar's Own Claim as Reframing of the Objectives Resolution

With regard to the authorship of the preamble he has gone on record that it was nothing but the objectives resolution with a few drafting changes.

On 10th February 1948 the Drafting Committee decided to add to the Preamble a footnote as follows:

"The Committee has followed the Objectives Resolution in drafting the Preamble. In the opinion of the Committee, the Preamble as drafted will not preclude the Union of India from remaining within the Commonwealth if the Constituent Assembly so decides."

In a letter forwarding the Draft Constitution prepared by the Drafting Committee of February 21, 1948, Dr Ambedkar as the Chairman observed in respect to the Preamble:

"… The Committee has added a clause about fraternity in the Preamble although it does not occur in the Objectives Resolution. The Committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new Constitution should be emphasized by special mention in the Preamble.

In other respects the Committee has tried to embody in the Preamble the spirit and, as far as possible, the language of the Objectives Resolution."

It was the consistent view of Dr Ambedkar and other members of the drafting committee that the preamble was a redrafting of the objectives solution with the required changes only.

Content Different from Ambedkar's Ideas on Preamble

With regard to question whether the content of the Preamble was as per the ideas and views Dr Ambedkar had been holding and wanting to be incorporated into it. We have his views recorded in response to the draft of objectives resolution and also the draft of the Preamble which he had framed in his own draft even before the forming of the Drafting Committee. Let us see how much these two resemble the Preamble to the Constitution.

On 17 December 1946 Dr Ambedkar spoke on the Objectives resolution. Though he had broadly supported the resolution he had some differing views on the contents of it especially the lack of a declaration as to the socialistic character of the future constitution. He also had supported Dr Jayakar's request

for postponement waiting for the decision of the Muslim League to join or not. With regard to the content of the resolution which subsequently became the preamble he had said,

"Mr. Chairman, … These paragraphs set out the objectives of the future constitution of this country. I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this Resolution, although non-controversial, is to my mind very disappointing. I should have expected him to go much further than he has done in that part of the Resolution. As a student of history, I should have preferred this part of the Resolution not being embodied in it at all. When one reads that part of the Resolution, it reminds one of the Declaration of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 450 years, the Declaration of the Rights of Man and the principles which are embodied in it has become part and parcel of our mental makeup. I say they have become not only the part and parcel of the mental make-up of modern man in every civilized part of the world, but also in our own country which is so orthodox, so archaic in its thought and its social structure, hardly anyone can be found to deny its validity. To repeat it now as the Resolution does is, to say the least, pure pedantry. These principles have become the silent immaculate premise of our outlook. It is, therefore, unnecessary to proclaim as forming a part of our creed. The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula, that no man's life, liberty and property shall be taken without the due process of law, finds no place in the Resolution. These fundamental set out are made subject to law and morality. Obviously what is law, what is morality will be determined by the Executive of the-day and when the Executive may take, one view another Executive may take another view and we do not know what exactly would be the position with regard to fundamental rights, if this matter is left to the Executive of the day. Sir, there are here certain provisions which speak of justice, economic, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the Mover of the Resolution, I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalization of industry and nationalization of land, I do not understand how it could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions,

the Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject where it is with the observations I have made."

After the passing of the resolution but before the actual drafting of the Constitution did not start, Dr Ambedkar had prepared and circulated on 15/3/1947 a Memorandum titled States and Minorities: What are their rights, and How to secure them in the Constitution of Free India' which had a Preamble. Dr Ambedkar submitted on this Preamble to the Advisory Committee on Fundamental Rights, Minorities, etc., of the Constituent Assembly. According to Ambedkar this Preamble was giving shape and form to the Objectives Resolution. It was as follows:

"We, the people of the territories of British India distributed into administrative units called Provinces and Centrally Administered Areas and of the territories of the Indian States with a view to form a more perfect union of these territories do ordain that the Provinces and the Centrally Administered Areas (to be hereinafter designated as States) and the Indian States shall be joined together into a Body Politic for Legislative, Executive and Administrative purposes under the style , The United States of India and the Union so formed shall be indissoluble and that with a view:

(1)To secure the blessings both of self-government and good government throughout the United States of India to ourselves and to our posterity,

(2)To maintain the right of every subject to life, liberty and pursuit of happiness and to free speech and free exercise of religion,

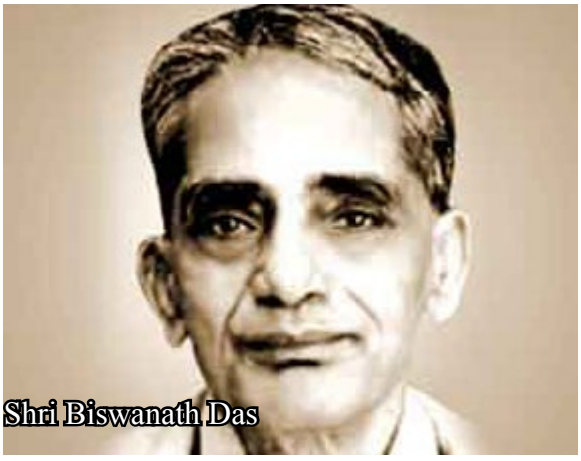
(3)To remove social, political and economic inequality by providing better opportunities to the submerged classes,

(4)To make it possible for every subject to enjoy freedom from want and freedom from fear, and

(5)To provide against internal disorder and external aggression, establish this Constitution for the United States f India."

Thus it would be clear that the preamble substantially was the objectives resolution itself with the required changes. The ideas earlier desired and floated by Dr Ambedkar also could not find place in the final draft of the Preamble. However there are people who try to argue that Dr Ambedkar introduced his pet terms and concepts like Fraternity into the preamble.

The draft Constitution came up for consideration before Constituent Assembly on 4 November 1948. On 5 November 1948, Shri Biswanath Das (Orissa) in his speech strongly opposed the amended draft Preamble as it deviated from the Objectives Resolution. However, Pandit Thakur Das Bhargava (East Punjab: General) in his speech on 6 November 1948 expressed his gratitude to Dr Ambedkar


Shri Biswanath Das

having added the word 'fraternity' to the Preamble.

To clarify the position that the Objectives Resolution which had been passed by the Constituent Assembly could be modified so as to suit the requirement of the Constitution they were making, Jawahar Lal Nehru speaking on the motion regarding the Draft Constitution on 8 November 1948 expressed the view that the objective of constituting India as an 'Independent Sovereign Democratic Republic' should be adhered to and later on the question of India's relationship with the UK and Commonwealth could be decided.

In spite of the clarification made by Nehru Shri Vishwambar Dayal Tripahi (U.P. General) on 9 November1948 voiced his resentment to the Drafting Committee making changes in the manner pointed out by Shri Biswanath Das. Replying to him Syed Muhammad Saadullah (Assam: Muslim) a member of the drafting Committee observed on 9 November 1948 as follows:

"The yard stick to measure the contents of the Draft Constitution is really the Objectives Resolution that was accepted by this House universally when it was moved by our learned Prime Minister. That Objectives Resolution contained only eight Articles, the last of which need not find a place in a Constitution. Let anyone here say that we have not conformed to the principles that are enunciated by that Objectives Resolution. We cannot say that those eight Articles form our Constitution: they gave us the barest skeleton. The Drafting Committee was charged with the duty of filling in the canvas and producing a complete picture of what the Constitution should be. At the time of moving that Objectives Resolution our popular Prime Minister said that this is an expression of our dream, this is the target of our aspirations and that it is nothing but a 'Declaration'. A declaration in such bold terms cannot form a Constitution. Therefore, the Assembly, at the instance of Government – for the Resolution was moved by the then Chief Whip of the Government party - decided that the actual framing of the Constitution should be left in the hands of the Committee."

Thus there was no doubt that the drafting committee had the freedom to introduce the needed changes into the preamble but it remained true to the spirit and to a great extent to the words of the objectives resolution. However, it would be interesting to examine the correctness of the view attributing the authorship of the Preamble to Nehru. Further it needs some scrutiny into the claim regarding the singular contribution of Dr. Ambedkar in introducing the concepts like fraternity into the preamble. ●

1. The Indian Indepedence Act, 1947 came into effect on

A. 14 August 1947
B. 18 July 1947
C. 26 January 1947
D. None of these

2. The President's rule under Article 356 remains valid in the State for the maximum period of

A. Two years
B. Three years
C. Six Months
D. Three Months

3. The powers of the President of India are

A. Beyond the Constitution
B. In Accordance with the Constitution
C. In Accordance with the Parliament
D. None of the Above

4. The Comptroller and Auditor-General (CAG) is appointed by

A. The President
B. The Prime minister
C. The speaker of the Lok Sabha
D. The Council of Ministers

5. The Minimum gap permissible between two sessions of Parliament is

A. 4 months
B. 6 months
C. 100 days
D. 90 days

6. To whom the Speaker of Lok Sabha has to address his resignation letter?

A. Chief Justice of India
B. Deputy speaker of Lok Sabha
C. The Prime Ministers
D. The President

7. Which is the largest committee of Parliament of India?

A. Public Accounts committee
B. Business advisory committee
C. Estimates committee
D. Joint parliamentary committee

8. 118th Constitutional Amendment Bill, 2012 resolved to

A. Amendment of first scheduled to Constitution
B. Insert a new Article 371-J
C. Right to information Act
D. None of the above

9. Who introduce the dual government system in Bengal?

A. Warren Hastimes
B. Sir John
C. Robert Clive
D. Sir Alured Clarke

10. Who was the first chief Justice of Independent India?

A. Justice M. Hidayatullah
B. Justice H.J. Kania
C. Justice A.N. Ray
D. None of the above

11. Sexual intercourse by a man with his wife, who is below 18 years of age, is

A. Rape
B. No offence
C. Intercourse with own wife is not rape
D. Wrong Answers

12. The first law minister of India was

A. Dr. Ambedkar.
B. Sardar ValavBhai Patel
C. Shanti Bhusan
D. Mahatma Gandhi

Answers on Page - 12

Home, I long for thee...

I am mobile (migrant), but not rootless
My heart, where my home is
In the midst of forsaken land
Home so dear, I long for thee...

Where I do not belong, I stand alone
Longing for a helping hand to hold
In the midst of death and dying
Home so dear, I long for thee...

Eyes overflowing with tears, to return
To be near the loved ones, who are in fear
In the midst of angst and anguish
Home so dear, I long for thee...

I am locked out and abandoned
Like thousands all around, cry aloud
In the midst of hunger and thirst
Home so dear, I long for thee...

Load on my head now, is all that I have
But shoulders are strong enough to till the soil
In the midst of city, no longer can I be trapped
Home so dear, I long for thee...

Miles away and a long way to go
I walk in the wilderness, lost and forlorn
In the midst of heat and dust
Home so dear, I long for thee...

Do not blow off the lamp tonight
though late, you are very much in sight
In the midst of darkness and despair
Home so dear, I long for thee...

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LEGAL TERMS & MAXIMS

Abandonment	- giving up a legal right.
Bankrupt	- someone who has had a bankruptcy order.
Canon law	- the name for the rules used for running a Christian church.
Decree	- an order by a court.
Euthanasia	- killing someone to end their suffering.
Feme covert	- a woman who is married.
Guilty	- a court's verdict that the person charged with a crime committed it.
Hearsay evidence	- evidence given in court of something said to the witness by another person.
Indict	- using legal means, to officially accuse someone of committing an offence.
Judgment	- a decision by a court.
Lawsuit	- a claim made in a court of law.
Malfeasance	- an unlawful act.
Next of kin	-a person's closest blood relatives.
Obligation	- a legal duty to do something.
Pane	- the list of people who have been summoned for jury service.
Queen's evidence	- evidence for the prosecution given by someone who is also accused of the crime being tried.
Rack rent	- the full market value rent of a property.
Sentence	- the penalty the court imposes on someone found guilty of an offence.
Trustee	- a person who holds property and looks after it on behalf of someone else.
Usury	- Charging a higher interest rate or higher fees than the law allows.
Vendee	- a person who buys something.

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