ISSN 2277–5323

LEGAL NEWS & VIEWS

An Integrated Social Initiatives Publication

Combating COVID-19 on a War - Footing

Vol 34 No. 04 | No. of Pages : 52 Incl. cover | APRIL 2020

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LEGAL NEWS & VIEWS

VOL.34 NO.04 APRIL 2020

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Subscription Rates

	Ordinary	Registered
1 Year	Rs. 350	Rs.560
2 Years	Rs. 690	Rs. 1100
Life membership	Rs. 8000	N.A.
Single Copy	Rs. 30	Rs. 50

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Legal News & Views is dispatched every 26th of advance month. Those who do not receive copies in time should write to the circulation manager within two (2) months of the date of dispatch after that free replacement copies may not be available.

Combating COVID–19 on a War-Footing

The World Health Organisation (WHO) on March 11 said that according to its assessment, COVID-19 can be characterised as a pandemic. Pandemic is not a word to use lightly or carelessly. "It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death," said WHO Director-General Tedros Adhanom Ghebreyesus. WHO noted with concern that 1,18,000 positive cases have been reported globally in 114 countries and more than 90% of cases are in just four countries. Dr. Ghebreyesus said 81 countries had not reported any COVID-19 cases, and 57 countries had reported 10 cases or less. "We cannot say this loudly enough, or clearly enough, or often enough: all countries can still change the course of this pandemic," he said.

The Union Ministry of Road Transport and Highways issued an advisory to reduce the spread of the virus and noted that all necessary steps may be undertaken in public transport vehicles to ensure sanitation of seats, handles and bars. The hygiene and sanitation may be stepped up at all the bus terminals and the display of public health massages may be ensured on public transport vehicles.

In the wake of the COVID – 19 outbreak, the Prime Minister of India addressed the nation on 19th March at 08.00 PM. Prime Minister Modi urged every Indian to resolve to fight against the Covid-19 and exhibit restraint by practicing social distancing and avoiding hoarding. In his 30 minute speech, PM Narendra Modi assured the nation that the supply of essential services will not be hampered while the country fights the disease. He also urged people with a relatively better financial situation to be kind and humane towards their employees or domestic help during the time of crisis. Every Indian should exercise resolve and restraint and social distancing is very important for all of us and do not go for panic buying. The Prime Minister called for a 'Janta Curfew' on 22nd of March. He asked all the offices to make provisions for working from home as much as possible.

Kerala has launched a 'break the chain' campaign to fend off the Covid-19 spread. State Health Minister K K Shailaja officially declared the 'break the chain' campaign to sensitise the public about the mandatory need for keeping personal hygiene to prevent the spread of the virus. Shailaja said that the government has so far been able to contain the spread because of early surveillance and people's support. We need to evolve personal hygiene as a healthy habit and wash our hands and face after coming into public contact. This can help break the chain of virus infection. Following this example, India must cut the transmission chain of the virus to save its health system from collapse.

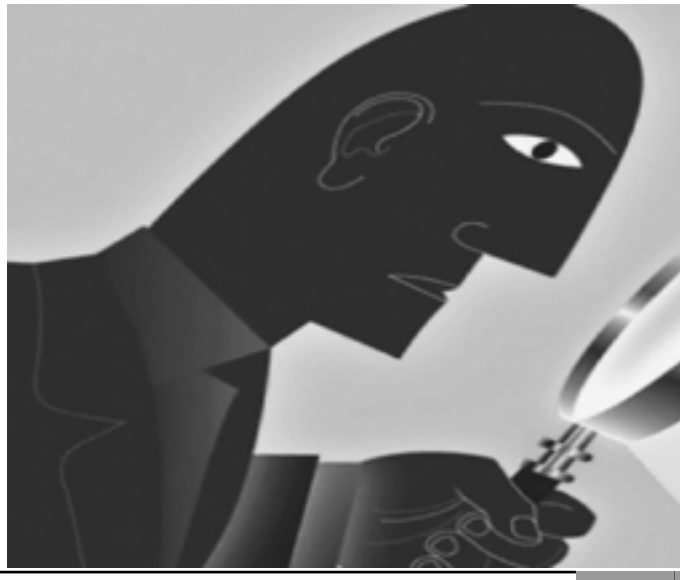
It is not an ordinary disease. All of us – rich or poor, rulers or ruled, young or old - need to combat it on a war footing. Preparedness is the first step. This means keeping personal hygiene, social distancing, and a possible self-quarantine. One day of 'Janta Curfew' and thanking the health personal by clapping will not be enough for this combat on war-footing. Central and State governments need to think of the sustenance and protection of the most vulnerable people of our country. The most vulnerable are the poor, homeless and the labourers of our country who will not be able to work from their homes. The state has a responsibility to ensure their basic needs during this crisis period by announcing that their basic needs will be taken care of by the state so that they also will be able to keep the social distancing and personal hygiene. Will our governments be willing to fulfil this responsibility?❐❐

Right to Privacy Versus UP Government's 'Name and Shame' Posters

Dr. Ahmed Raza*

The Uttar Pradesh government's directive towards putting up the hoardings at Lucknow displaying the names, photographs and residential addresses of the 53 accused of anti-Constitutional Amendment Act (CAA) protesters triggered outrage of possible invasion of right to privacy and liberty as Indian Constitution prevails on the basis that, the suspect is innocent until proven guilty in a court of law. Though, the Allahabad High Court quickly acted for ensuring the rule of law in the Uttar Pradesh by directing the administration to remove banners immediately reminding them to restrain from any undemocratic action in the future as it violated Article 21 of the Constitution of India. The disapproval of the Allahabad High court order by the Uttar Pradesh government by approaching the Supreme Court reflects the growing egotism, bitterness and insensitivities towards individual privacy and liberty in the state. Although, the Supreme Court, however, denied to stay the Allahabad High Court judgement ordering removal of these posters as pleaded by Uttar Pradesh government, citing a precedent set by the court in its 1994 judgement in *R Rajagopal vs State of Tamil Nadu* on the issue of privacy contending that people who resort to violence and point guns during protest cannot claim right to privacy.

The Uttar Pradesh government has tarnished its image since December 2019 on account of chief minister's proclamation against the anti-CAA protesters as revenge



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by initiating a hasty and procedural-lapses decision in order to summon notices for recovering the public property losses occurred during the violence. Displaying identities along with photographs of the accused publicly by the Uttar Pradesh government amounts to be a direct invasion of individual right to privacy and liberty enshrined in the Indian Constitution. The piece of writing, here, pointed out towards possible invasions of the fundamental right of the accused persons and also signifies the importance of right to privacy by substantiating legal, constitutional and international provisions.

Legal clarities between accused and convicted persons

An accused person has every right like other citizens of the India except his curtailment of personal liberty in conformity with the laws. The government cannot violate the privacy of the accused on a mere presumption of an offence. An accused person deserves to be presumed innocent until his guilt is proved, hence, all constitutional rights and privileges

are conferred to the accused including right to privacy. The rights to privacy of the accused person are of much concern today as it turned out to be a fundamental right after the landmark judgement of Supreme Court in 2017. Hence, government needs to be highly heedful and cautious during the investigation process of an offence before initiating any action against the accused. Displaying the names and shames of anti-CAA protesters by Uttar Pradesh government has been an open invasion of right to privacy of the accused persons as underlined by the Allahabad High Court and the Supreme Court.

Status of right to privacy under the Indian constitution

Privacy happens to be an undisputed right of an individual meticulously associated with his or her life. Though, the Constitution of India specifically doesn't grant any right to privacy as such like other fundamental rights, but it leaves a gray-area for a wider interpretation of the Article 21 of the Indian Constitution, which states that "no person shall be deprived of his life or personal liberty except according to procedure established by law". In 1962, the first time the issue of right to privacy as a fundamental right under Article 21 of the constitution reached the Supreme Court in the case of *Kharak Singh v. State of UP* where the Court equated privacy to personal liberty by affirming privacy is a part of right to the protection of life and personal liberty. Over the time, the right to privacy has been highly debated as the court has on various occasions held that the fundamental rights as enshrined in our Constitution are not absolute and is limited by certain factors as it may come in conflict with the investigation of

police in several aspects. The latest historic judgement of the Supreme Court evolved in 2017 in *K.S. Puttaswamy vs Union of India* declaring privacy to be an integral component of fundamental right subjects to the satisfaction of certain tests and benchmarks, which clarifies that like other fundamental rights, right to privacy is not an absolute right. From this perspective, displaying publicly the identities along-with photographs of the 53 accused persons could not be considered as a basis for police investigation, as many of the accused were granted bail by the Allahabad High Court. Therefore, such kind of directives quantifies to be a state's invasion of right to privacy with malafide intention.

Privacy as a human right under International Conventions

Ensuring right to privacy of an individual always remains a challenge to the political system of a nation as privacy sometimes may hamper the investigative process. It always happens to be a debatable and introspective concern for the elected government. Hence, the right to privacy has also been recognized as a right guaranteed under the Universal Declarations of Human Rights (UDHR) 1948. Article 12 of UDHR states that "No one shall be subjected to arbitrary interference with his privacy, everyone has a right to the protection of the law against such interference or attacks." The wider interpretations of the Article 12 of UDHR totally fit into the periphery of an individual's right to privacy along with the certain limitations set by the government following the principle of procedure established by law. Likewise, an individual's privacy also has been accepted as a civil and political right under the provision of Article 17 of the International Covenant on Civil and Political Rights (ICCPR) which states that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and everyone has the right to the protection of the law against such interference or attacks. A landmark judgement of 2017 by Supreme Court of India affirming right to privacy as a fundamental right under Article 21 of the Indian Constitution has been

correlated with the above two provisions of privacy enriched in UDHR and ICCPR to which India is a signatory State Party. Hence, administrative orders of the Uttar Pradesh government towards pasting the banners of the 53 accused with the purposes of recovering the public property losses may not be legally justified as Indian government has a long history of following the international treaties, conventions and commitments.

Immaturities and unprofessionalism of UP government

The law of the land presumes that the accused person remains innocent until the prosecution proves its case. On the one hand, a large number of videos and CCTV footages of the incidents kept on moving around TV, social media, mobile etc. On the other hand, the Uttar Pradesh government acted round the clock in order to initiate actions against the anti-CAA protesters with the purposes of recovering public property damages from 53 accused persons by displaying publicly their identities along with photographs without delving deeper into the issue of the privacy of an individual. Displaying the names and photographs of the accused applying section 5 of the Identification of Prisoners Act, 1920 appeared as immature and un-professionalism on the part of the district administration as a scientific inquiry of the evidences becomes mandated before initiating the names and shames modus operandi for recovering the losses to public properties during the unrest. Therefore, such directives of the Uttar Pradesh government deem to be treated as an invasion of right to privacy and full of politically motivated decisions.

Although the issues of violation of right to privacy and liberty on account of displaying the identities of the 53 accused of rioting during anti-CAA protest in December 2019 is sub-judice before the Supreme Court which has already denied to stay the Allahabad High court order for immediate removal of banners. Though, voicing any public opinion must be avoided till the final verdict. But the Uttar Pradesh government's directives towards such types of executive orders tempted a number of questions on the legalities and procedural aspects of the right to privacy as reputation of an accused person may be affected due to public display particularly in criminal trials.❐

SEXUAL HARASSMENT AT WORK PLACE AMOUNTS TO AN AFFRONT TO THE FUNDAMENTAL RIGHTS OF WOMEN

Supreme Court

Holding that Sexual harassment of women at workplace is an affront to the fundamental rights of a woman, the Hon'ble Supreme Court of India on 25th February 2020 in Civil Appeal bearing No. 1809/2020 arising out of SLP (C) No. 11985 /2019 *(Punjab and Sind Bank & Ors vs. Mrs. Durgesh Kuwar)* upheld the judgment of the Indore Bench of the High Court of Madhya Pradesh that quashed the transfer of the woman bank employee. The case involves the intersection of service law with fundamental constitutional precepts about the dignity of a woman at her workplace.

BRIEF FACTS OF THE CASE

Initially, the respondent was appointed as a Probationary Officer of the Punjab and Sind Bank, the first appellant and thereafter she was promoted to the post of Chief Manager in Scale IV. Further, the competent authority of the bank had also decided to continue her at the branch in Indore upon promotion. However, the respondent was transferred from the Branch Office at Indore to the Branch Office at Sarsawa in the district of Jabalpur. In her representation to the appropriate authorities requesting to retain her at Indore, the respondent also submitted that during the course of the previous two years, she had, as a Branch Manager, inquired into the concentration of accounts

maintained by liquor contractors at the branch and had detected grave irregularities which were hazardous to the interest of the bank. Moreover, the respondent also made a specific allegation against the Zonal Manager who according to her used to her at late hours at home to discuss business which was not of urgent nature. However, in response to her representations, the respondent was informed that her transfer was in accordance with administrative and service exigencies and that she should join the place of posting immediately.

Sexual harassment at the workplace is an affront to the fundamental rights of a woman to equality under Articles 14 and 15 and her right to live with dignity under Article 21 of the Constitution as well as her right to practice any profession or to carry on any occupation, trade or business.

Subsequently, the respondent challenged the said transfer on the ground that her reports about irregularities and corruption at her branch and her complaints against an officer who sexually harassed her led to her transfer. The High Court of Madhya Pradesh was pleased to allow the writ petition and quashed the transfer order. Hence the appeal before the Hon'ble Supreme Court.

MAJOR SUBMISSIONS BY THE APPELLANTS

While assailing the order of the High Court, the appellant justified the transfer of the respondent on the ground that she was in Indore for many years and that the appellant was willing to accommodate the respondent at a Scale IV branch in Bhopal. Vehemently denying the allegations of sexual harassment, it was further contented on behalf of the appellants that the Internal Complaints Committee of the bank had, upon enquiring into the allegations which were levelled by the respondent had found no substance in those allegations in its report. Therefore it was also submitted by the appellants that upon the receipt of the complaint of the respondent, the bank had carried out a vigilance and special audit. On these grounds, it was urged that the settled principle of restraint in matters of judicial review, where transfer is an exigency of service, must apply in the facts of this case as well.

MAJOR SUBMISSIONS BY THE RESPONDENT

All the submissions of the appellants were controverted on behalf of the respondent. With regard to the denial of sexual harassment meted out to the respondent, it was submitted that since the respondent was not satisfied with the enquiry which was conducted by the Internal Complaints Committee of the Bank, the respondent had moved a complaint before the LCC in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 whereby the LCC came to the conclusion that the charges of sexual harassment had been established. It was also, *inter alia*, argued that the manner in which the order of transfer was effected close on the heels of the allegations of corruption levelled by the respondent would indicate a clear case of malafides.

DECISION

While considering the submissions of the appellant, the Hon'ble Supreme Court at the outset noted the following principles to be adopted while examining the validity of transfer order;

"An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be malafide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere."

The Court also took note of the fact that the respondent also made several communications to the authorities drawing their attention to the serious irregularities and corruption and the same raised serious issues. The Court also noted that the respondent had also raised allegations specifically of sexual

harassment against the Zonal Manager. In this context the Hon'ble Supreme Court made the following observations;

The Act was enacted to provide protection against sexual harassment of women at workplace as well as for the prevention and redressal of complaints of sexual harassment. Sexual harassment at workplace is an affront to the fundamental rights of a woman to equality under Articles 14 and 15 and her right to live with dignity under Article 21 of the Constitution as well as her right to practice any profession or to carry on any occupation, trade or business. The Court further observed that clause (c) of Section 4(2) indicates that one member of the ICC has to be drawn from amongst a non-governmental organization or association committed to the cause of women or a person familiar with issues relating to sexual harassment. The purpose of having such a member is to ensure the presence of an independent person who can aid, advice and assist the Committee. It obviates an institutional bias.

The Hon'ble Court further held that "there can be no manner of doubt that the respondent has been victimized. Her reports of irregularities in the Branch met with a reprisal. She was transferred out and sent to a branch which was expected to be occupied by a Scale I officer. This is symptomatic of a carrot and stick policy adopted to suborn the dignity of a woman who is aggrieved by unfair treatment at her workplace. The law cannot countenance this. The order of transfer was an act of unfair treatment and is vitiated by malafides."

While affirming the decision of the High Court, the Court directed the appellants to repost the respondent at the Indore Branch and also held that the respondent would be entitled to costs quantified at Rs 50,000/-.❐❐

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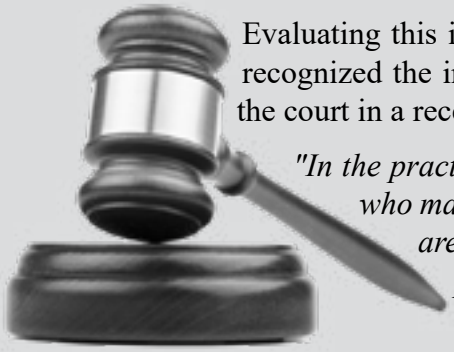
What is the Law on Proxy Counsel?

Proxy counsels, appearing on behalf of the filing counsel, often find themselves in an identity crisis, as the words "proxy counsel" find no mention in the Advocates Act, 1961. The Advocates Act or any of the Court Rules do not expressly authorize an advocate to represent a party without a duly executed vakaltnama.

In 2014, a three-judge bench of the Supreme Court had in clear terms observed that neither a party nor any advocate was entitled to appoint a proxy counsel and waste the time of the court. In a simple cheque bounce case titled Sanjay Kumar v. State of Bihar & Anr., SLP (Crl.) No. 9967/2011, where the Advocate-on-Record who had filed the Vakalatnama failed to formally nominate a counsel to appear on his behalf and sent a proxy counsel instead, the court said,

"...any "Arzi", "Farzi", half-baked lawyer under the label of "proxy counsel", a phrase not traceable under the Advocates Act, 1961 or under the Supreme Court Rules, 1966 etc., cannot be allowed to abuse and misuse the process of the court."

Reaffirming this view in *Surendra Mohan Arora v. HDFC Bank Ltd. & Ors.,* CA No. 4891/2014, the Apex Court reiterated that proxy counsels did not have the authority to appear before the courts and hence the National Commission was right in specifically mentioning in its Cause List that no proxy counsel would be allowed to make submissions before it.



Evaluating this issue from a different angle however, the Delhi High Court recognized the importance of encouraging junior counsels to appear before the court in a recent Judgment as follows;

"In the practice of law, courts have a duty to encourage junior counsels who may not have filed vakalatnamas and ought to hear them if they are ready to assist the court. They cannot be simply treated as proxy counsels, as such a treatment, is not only discouraging

to such junior advocates but also creates delays in the dispensation of justice. When junior counsels appearing before the court are prepared and are ready to assist, they ought to be heard and effective orders can be passed. Filing counsel or the counsel in whose favour the client has given the vakalatnama ought to encourage junior advocates and counsels to make submissions and argue matters."

Citing a word of caution however she said that filing counsels should personally appear for certain important orders such as withdrawal of suit, etc.

"There are some orders such as withdrawal of a suit, recordal of settlement in a suit, etc., which essentially require the filing counsel to be present. Except in such situations, court proceedings can continue with the appearance of junior counsels so long as they have the necessary express/ implied permission to make submissions from their seniors."

Further stating that the term "Proxy Counsel" ought to be used only when the counsels, who appear, are not able to assist the Court in the matter or are merely seeking an adjournment, the court said,

"When junior counsels working in the chambers of filing counsels appear and assist the court, instead of describing them as "proxy counsels" alternative terminology such as "_____, Advocate appearing for Ld. Counsel for the Plaintiff/Defendant" can be adopted. Only in case a junior or other counsel who is completely unrelated and/or unprepared in the case, the terminology of "proxy counsel" can to be used. This would also enable junior counsels to ensure that they are not merely taking passovers and adjournments but also get prepared in the matters and are ready to make submissions."

Whilst the above ruling has no effect on the law pronounced by the Apex Court, it does indicate that the courts may, in the best interest of junior counsels, allow them to appear and argue. ❐❐

[Source: Live Law, 08/09/2019]

The Procedure Laid Down by the National Commission for Women for Dealing with Complaints of NRI's

The National Commission for Women under section 9(2) of the National Commission for Women Act, 1990 (20 of 1990) has formulated "The National Commission for Women (Procedure) Regulations, 2016". This procedure is laid down for appropriate and effective handling of complaints registered in the NRI Cell of the Commission as per the provisions of Section 10(4) of the National Commission for Women Act, 1990, which is as follows:-

All complaints submitted before the NRI Cell of the Commission shall disclose a complete picture of the matter leading to the complaint. The Commission may seek further information/affidavit as may be considered necessary in the matter if it deems so. All communications/complaints in writing (by whatsoever mode they are received) addressed to the Commission, its Chairperson, Members or other officers of the Commission, either by name or designation, will be received by the NRI Cell, who will then enter the complaints in the online complaints registration system containing particulars such as, the name, address and other relevant details of the complainant, victim, and respondent. If the complaint is sent by post, the acknowledgment shall be sent to the complainant within three days of the registration of the complaint, Complainants registering online will receive an acknowledgment immediately in their emails.

On receipt of the complaint, a file will be created as per the file number provided in the online logins along with a Note sheet of the brief gist of the complaint. Simultaneously, in cases where no details have been provided for, e-mails or phone calls shall be made. The file would then be forwarded to the Counsellor for opinion.

Submitted complaints are processed, subject to such special or general orders of the Chairperson, all complaints shall be initially dealt with by Members of the Commission. However, the Chairperson may have regard to the importance of the matter, place the case / complaint requiring a detailed inquiry before two or more members or a Committee appointed in this behalf or set up an Inquiry Committee for the said purpose. The commission if deems

so may seek particulars or information from any person or authority. The proceedings shall be informed to the complainant accordingly.

Any complaint directly received by Chairperson, Members or other officers of the Commission, either by name or designation, shall be received by the NRI Cell, who shall process the same as per the provisions provided. Matter not related to cross country marriage if registered in the NRI Cell within the mandate of the Commission, shall be transferred to the appropriate section of the Commission for appropriate action. If on consideration of the complaint, the complaint is not found to be as per mandate, it shall be so recorded and send to the Deputy Secretary/ Joint Secretary for closure.

Once the complaint is found genuine the Commission may communicate with identified appropriate authority like the police to give action taken reports where any matter is pending investigation or there has been any failure on their part to take appropriate action concerning the complaint registered. The concerned authorities may be asked to intimate the Commission of the action taken within four weeks. The concerned police authorities may also be called in person to furnish information/ report on receiving a notice from the Commission, to the concerned Police authority.

Where the Commission is satisfied that the complaint requires to be referred to concern Indian Embassy abroad, it shall be so done, under intimation to the complainant. A complaint shall be forwarded to Indian Embassy abroad when, both the complainant and respondent being NRIs are residing in the concerned country or in the case in which both the complainant and respondent being Indian Citizens are residing in the concerned country for the time being and there is a prima facie case made out that the aggrieved wife cannot travel to India. Indian Embassy will be informed in cases where the husband had deserted his wife and is residing abroad with scanty information as to his whereabouts and his relatives if existing in India, have given so in writing that they have no idea as to the whereabouts of the accused and that they are not in touch with him at all. Provided that follow-ups shall be done of such complaints till an appropriate reply is received from the concerned Embassy. Letters for appropriate action on their part as per the law of the land with due approval from the appropriate authority in the Commission.

If necessary the Commission may communicate with the Division of Overseas Indian Affairs of Ministry of External Affairs,

Ministry of Home Affairs and the Ministry of Law and Justice to expedite service of summons, warrants issued or any orders passed, by the appropriate Court of Law and for other relevant matters, whenever and wherever required. The Commission may communicate with Indian Embassies abroad and Division of Overseas Indian Affairs of Ministry of External Affairs to provide legal and financial assistance to victim as per their scheme "Legal and Financial Assistance to Indian Women Deserted by their Overseas Indian Spouses" The Commission may also communicate with concern Passport authorities for any matter relating to passports

The Commission may communicate with employers of the respondent-husband through Indian Embassies abroad to take appropriate action as per law/procedure. The Commission, depending upon the nature of the complaint may communicate with any other department/Ministry Inquiry into the Complaints.

If on consideration of the complaint cognizance of the complaint is taken, notice will be issued to the opposite party/ parties calling upon, to furnish information or further particulars within 15 days. This shall be issued by enclosing a copy of the complaint thereto. If the reports/information is not received from the party within the given time, notices shall be reissued enclosing a copy of the complaint, calling upon to furnish information or further particulars within a stipulated period. If acceptance of such notice is refused by the opposite party/parties then said notice shall be served through the Police of the area concerned. On receipt of the reply to the complaint, the same shall be sent to the complainant for a rejoinder to the reply.

On the receipt of rejoinder, the parties to the complaint may be called for a preliminary hearing The proceeding and the result of the hearing shall be duly recorded by the counselor. Whenever a second hearing or more hearings are required, the same may be continued by the concerned Appropriate Authority. At the preliminary hearing, the Appropriate Authority shall ascertain from the opposite party/parties whether he/she admits the allegations made by him/her. The complainant may file an affidavit supporting the facts of the case or may be directed to produce a list of witnesses/documents proposed to be relied upon, if any, to support her claim. Thereafter the witnesses on behalf of the complainant shall be examined and the opposite party shall have the right to cross-examine. The opposite party against whom the complaint has been made would then be required to submit his/her defence and produce a list of documents/witnesses, if any, relied on.

Where no further action is called for, the complaint may be closed under intimation to the complainant, or else complaint may be sent to the appropriate Government/other authorities for their consideration.

The Commission may take any of the following steps upon the completion of an inquiry held under these regulations, namely:-

1. Where the inquiry discloses, the Commission of violation of any rights or negligence, in the prevention of violation of any rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or

such other action as the Commission may deem fit against the concerned person or persons.

2.Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary.

1.Recommend to the concerned Government or authority for the grant of such immediate relief to the victim or the members of his family as the Commission may consider necessary.

The Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission. The Commission shall publish its inquiry report together with the comments of the concerned Government or authority if any, and the action is taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Complaints not ordinarily entertainable by the National Commission four Women.

The Commission may not entertain the complaints of the following nature:

1.Complaints illegible or vague, anonymous or pseudonymous;

2.Matters not related to marital disputes, involving NRI/PIO couples;

3.Matters not related to cross-country marriage;

4.Issues related to a civil dispute between the parties such as contractual rights obligations;

5.Issues related to division of property;

6.Issue related to service matters;

7.Issues related to labour/industrial disputes;

8.Issues concerning civic issues and civic agencies;

9.Matter sub judice before a Court/Tribunal. Provided that the Commission may co-ordinate such matters as would facilitate the complainant to get justice;

10.Any matter pending before a State Commission or any other Commission duly constituted under any law for the time being in force;

11.Matter already decided by the Commission;

12.Matter outside the purview of the Commission on any other ground;

13.Matters where only financial help is sought for travel tickets or stay in foreign countries;

14.Matters relating to visa requests as visa issuance as it relates to the jurisdiction of foreign Governments.❐❐

[Source: Live Law, 18/02/2020]

We Are Worried For Future: Top Court Over Delhi Air Pollution

NDTV-March 06, 2020

We are worried for future", the Supreme Court said asking the municipal corporations and other agencies in Delhi to consider purchasing BS-VI compliant diesel vehicles for their respective works to reduce pollution. A bench of justices Arun Mishra and Deepak Gupta said this while hearing a plea filed by the East Delhi Municipal Corporation (EDMC), seeking permission to allow registration of several diesel vehicles of 2000cc capacity and above to carry out solid waste management.

"We are worried for future. It is not for today," the bench said, referring to the menace of pollution in the Delhi-National Capital Region. Solicitor General Tushar Mehta, appearing for EDMC, told the bench that vehicles required by the civic body for solid waste management were available in diesel variant as the power needed for these vehicles can be generated only by diesel fuel. "Next in future, you will have to buy BS-VI compliant vehicles. Once BS-VI will come into play, the pollution from diesel vehicles will reduce," the bench said. Mr Mehta said these vehicles were required for essential services only. The bench was informed that other agencies, including civic bodies, also needed new diesel vehicles to carry out their works. During the hearing, the bench asked, "Instead of going for BS-VI variant, why do you want to go for BS-IV variant vehicles?" One of the counsel appearing in the matter said the vehicles needed by the civic bodies are so far available in BS-IV variant only. The bench also dealt with the issue of installation of smog towers, being designed as large-scale air purifiers to reduce air pollution, in the national capital. In January this year, the court had given three months to the Centre and the Delhi government for the pilot project of setting up smog towers at Connaught Place and Anand Vihar in Delhi. During the hearing, Additional Solicitor General ANS Nadkarni told the bench that the top court had given three months' time for setting up smog towers but the Indian Institute of Technology (IIT), which is assisting authorities in the project, has said it required around 10 months.

The counsel appearing for the Delhi government also said they require time till August-September this year to set up smog towers. These issues have cropped up before the top court which is hearing a matter related to air-pollution in the Delhi-NCR. ❐❐

Supreme Court Declines To Scrap 2017 SSC Examination

NDTV-March 06, 2020

The Supreme Court recently declined to scrap the 2017 Staff Selection Commission (SSC) combined graduate level examination, which came under cloud due to allegations of malpractice and leaking of the paper. Advocate Prashant Bhushan contended before a Bench, headed by Chief Justice S.A. Bobde, that according to the Central Bureau of Investigation (CBI) report there were several malpractice, including the paper leak. Earlier, the the top court had set up a seven-member panel to recommend steps to insulate examinations for jobs and educational institutions from the malpractice.

The panel said the SSC examination process had many loopholes. The panel, headed by retired Supreme Court judge Justice G.S. Singhvi, included Infosys co-founder Nandan Nilekani, renowned computer scientist Vijay Bhatkar, famous mathematician R.L. Karandikar, Sanjay Bhardwaj and a representative each from the Centre and the CBI. Mr Bhushan's client had sought probe into the alleged paper leak and scrapping of the examination. He contended that the custodian of the examination paper had been charge-sheeted for leaking the paper for illegal gratification.

The court observed that the criminal court will deal with matter. "Your argument is to cancel the examination. We are reluctant to do so," the court told Mr Bhushan. Additional Solicitor General A.N.S. Nadkarni, representing the Centre, said the CBI conducted the inquiry into the matter. The government would accept the committee's recommendations, Mr Nadkarni said. Mr Bhushan said the CBI had gone on record that it was not possible to identify every candidate, who would had benefited from the malpractice that included remote access for computers used for the online examination. The apex court in May 2019 had allowed declaration of results of SSC CGLE-2017 by vacating its stay. However, it said results would be subjected to final outcome of the case.

The SSC combined graduate level examination has a four-tier system. While the tier I and II are computer-based, tier III and IV comprises descriptive paper and a computer proficiency test. Thousands of students appear in the SSC examination each year.❐❐

No need to refer Pleas against Article 370 move to Larger Bench: Top Court

NDTV-March 02, 2020

There are no reasons to refer a bunch of petitions challenging the government's move to end the special status of the state under Article 370 and bifurcate it to a larger, seven-judge bench. The petitions are currently

being heard by a five-judge constitution bench headed by Justice NV Ramana.

The top court had on January 23 reserved its order on the issue of whether the batch of pleas would be referred to a larger seven-judge bench. Referring to two older judgments on Article 370, the top court has said there is no conflict between the two verdicts. On August last year, the government decided to withdraw Jammu and Kashmir's special status and also bifurcate it into two union territories.

As part of the sweeping curbs in movement and communication, several political leaders, including three former Chief Ministers, have been in detention in Kashmir. Former Chief Ministers Farooq Abdullah, his son Omar Abdullah and Mehbooba Mufti were charged under the Public Safety Act - a stringent law that allows detention without trial for up to three months and multiple extensions. The government had justified the restrictions and said that due to the preventive steps, not a single life was lost and not a single bullet was fired. ❐❐

Using Bluetooth phone while driving no offence

Times of India- March 18, 2020

Use of bluetooth for communication while driving and talking through a fixed phone on dashboard won't be treated as a violation of Motor Vehicle Act norms. The road transport ministry is also likely to bring more clarity on the provision defining "use of hand-held device" while driving as more and more

states/ UTs notify the specific fine for the offence. The Delhi government recently fixed Rs 5,000 and Rs 10,000 fine for first and second offence for using "hand-held phone" while driving. Sources said representatives from Delhi Police had recently taken up the need to explain this provision in detail with the road transport ministry so that there is no ambiguity in the implementation of this provision. However, road safety experts said drivers should avoid using phones in any form while driving since it distracts attention and is increasingly proving to be more fatal for drivers as also pedestrians.

Even countries like the United States have witnessed high number of deaths due to distracted driving, which claimed 2,841 lives in 2018 alone. Among those killed were 1,730 drivers, 605 passengers, 400 pedestrians and 77 bicyclists. Its highway safety agency, NHTSA even carried out an intensive campaign of "U Drive U Text U Pay" to crackdown on distracted driving. Distracted driving has been described as driving while doing another activity that takes your attention away from driving.❑❑

New policy on libraries in next Legislature session: Maha govt

Times of India – 04 March 2020

The Maharashtra government recently told the state Legislative Assembly that a new policy on libraries will be unveiled in the next legislature session. Higher and Technical Education Minister Uday Samant informed the Lower House that the new policy will give a boost to the movement of rural libraries in Maharashtra. At present there are 12,149 recognised public libraries in the state, he said, adding that since 2012-13, permission had not been given for new libraries and up gradation of the existing libraries.

"A committee was set up to formulate a policy for libraries regarding upgradation of the existing ones, provision of grants and recruitment of staff," he said. "The report has been given to the law and judiciary department and the new policy will be unveiled in the next session," the minister added.

"In the last few years, permission was not given to open new government-aided libraries," he said, adding that the new policy will help strengthen the library movement at village level.

The local authorities will be given powers to set up libraries in the villages, Samant said. The committee has also surveyed the existing libraries. Members cutting across the party lines stressed the need to encourage the library movement and inculcate reading habits among people, especially in view of the rising use of social media. The legislators also called for the need to digitise important manuscripts available in libraries.❐❐

India Bans Entry of Foreigners for a Month, WHO Declares Coronavirus a 'Pandemic'

The Wire- March 12, 2020

In a sweeping travel ban that will likely affect thousands of travellers, including many of Indian origin, who had planned visits to India, the government has suspended all tourist and student visas as well as the visa-free entry of Persons of Indian Origin (PIO) card holders for a month beginning March 13, 2020.

A travel advisory issued soon after the high-level Group of Ministers headed by Union health ministers Harsh Vardhan and civil aviation minister Hardeep Puri met here on Wednesday to take stock of measure to contain the spread of the new coronavirus noted that any foreigner departing for India from overseas after 12 pm GMT (5:30 pm IST) on March 13 would no longer be able to enter the country. While Overseas Citizen of India (OCI) card holders have also been brought under the ban, holders of diplomatic, official, UN/international organisations, employment and project visas will be exempt. The ban will "come into effect from 1200 GMT on March 13, 2020 at the port of departure" and be in

place till April 15. The advisory notes that "any foreign national who intends to travel to India for compelling reason" should get in touch with the nearest Indian embassy or consulate for guidance.

The ban means that the last flight foreigners with valid visas who wish to come to India between now and April 15 would have to leave Tokyo by 9 pm local time on March 13 or by 8 am from New York India's travel ban – one of the harshest to be imposed by any country thus far – came on the day the WHO declared the spread of the new coronavirus to be a "global pandemic".

Apart from the visa suspension, the new advisory also announced a tough new quarantine regime for those passengers entering the country on flights that depart from anywhere in the world after 12 pm GMT on March 13. Specifically: "All incoming travellers, including Indian nationals, arriving from or having visited China, Italy, Iran, Republic of Korea, France, Spain and Germany after 15th February, 2020 shall be quarantined for a minimum period of 14 days. This will come into effect from 1200 GMT on 13th March 2020 at the port of departure." In an attempt to discourage Indians from travelling abroad at present, the advisory warns that they run the risk of being quarantined upon their return: "Incoming travellers, including Indian nationals, are advised to avoid non-essential travel and are informed that they can be quarantined for a minimum of 14 days on their arrival in India. "Indian nationals are strongly advised to avoid all non-essential travel abroad. On their return, they can be subjected to quarantine for a minimum of 14 days."

Apart from restrictions on air passengers, the GoM also decided that "international traffic through land borders will be restricted to designated check posts with robust screening facilities" which would be notified separately by the Union home ministry. ❐❐

Ranjan Gogoi takes Rajya Sabha oath amid `shame on you' chant from opposition

[Times of India, 20/03/20]

Former Chief Justice of India Ranjan Gogoi has took oath 19/3/20920 as member of the Rajya Sabha amid sloganeering and jeers as well as a walkout by the Opposition parties, led by Congress. As Gogoi's name was called by chairman Venkaiah Naidu for the oath, MPs in the opposition benches started chanting slogans like "shame on you" with some trooping into the well or crowding the aisles. Even when Naidu called the booing unfair and unbecoming of Parliament, the MPs — from Congress, CPM, DMK, MDMK, Muslim League and BSP — remained undeterred. As Gogoi started taking the oath, the protesting MPs staged a walkout. All this while Gogoi's family — his wife, daughter and son-in-law — were in the RS viewing gallery, watching the unruly scenes.

After Gogoi finished his oath, Naidu said: "We know the constitutional position. We know the precedents. We know the powers of the President of India. We should not do anything in the House. Whatever views you have you can say outside... you are at liberty." Law minister Ravi Shankar Prasad said: "This House has a great tradition of many eminent persons coming from diverse fields including

former Chief Justices being nominated by those who — I regretfully say — have shouted."

"Hon'ble member Gogoi who has taken oath today (Thursday) will surely contribute his best to Parliament and it was grossly unfair to do like that," the minister added in reference to the jeers and walkout by opposition MPs. Anand Sharma, deputy leader of opposition in the RS, told reporters, "We have strong objections and reservations because he is a recently retired Chief Justice of India, who has given many controversial judgments. He, I have no hesitation to say, was a controversial chief justice and his acceptance and the government's appointment has raised bona fide questions about quid pro quo." ❐❐

Judicial independence threatened by stranglehold of a 'lobby' over it: Ranjan Gogoi

[Times of India 20/03/20]

In the eye of a storm for accepting nomination as a member of Rajya Sabha, former CJI Ranjan Gogoi struck a combative note on 19/3/20 and said judicial independence was under threat because of the stranglehold of a "lobby" of half-a-dozen people over the judiciary who maligned a judge if a judgment did not go as per their wishes. "Independence of judiciary means breaking the stranglehold of half-a-dozen people over it. Unless this stranglehold is broken, judiciary cannot be independent. They hold judges to ransom. If a case is not decided in a particular way advocated by them, they malign the judge in every way possible. I fear for the status quoist judges, who do not want to take them on and who want to retire peacefully," Justice Gogoi told TOI hours after taking oath as a nominated member of RS. He dismissed criticism that his nomination was quid pro quo for the Ayodhya and Rafale judgments, saying he was being slandered because he defied the "lobby". "A judge is not true to his oath if he does not decide a case according to his conscience. If a judge decides a case fearing what the half-a-dozen people will say, then he is not true to his oath. I decide according to what my conscience tells me is correct. Otherwise, I am not being true as a judge," Justice Gogoi said.

"I was the darling of the lobby when I went for the press conference in January 2018. But they want judges to decide cases in a certain manner and only then they will certify them as 'independent judges'. I never entertained any feeling that there is some expectation outside the court. I did and I do what I feel is correct, otherwise, I am not being true as a judge," he said, referring to the presser he held along with three other judges to protest against the way cases were being allocated to different benches by the then CJI Dipak Misra. "I never was, never am and never will be afraid of anyone's opinion (except my wife's). What opinion others have of me is not my problem, but their problem and they will have to solve it. Am I afraid of criticism? If so, would I have been able to function as a judge? Coming to Ayodhya judgment, it was a unanimous verdict by a five-judge bench. Rafale was again a unanimous verdict by a three-judge bench. By levelling quid pro quo allegation, aren't they questioning the integrity of all the judges involved in the two judgments?" he asked.

He said judges preferred silence because of the vitriol heaped on them by the "lobby".

"I will not remain silent today," the defiant former CJI said. He trashed the insinuation that his nomination to Rajya Sabha was part of a quid pro quo where he delivered verdicts suitable to the government. "Those who are criticising acceptance of nomination as quid pro quo must grant a better sense of proportion to a former CJI. If a former CJI wants quid pro quo, then he could seek bigger, lucrative posts with bigger emoluments and facilities and not a nomination to RS, where the pecuniary benefits are same as that of a retired judge. But I have decided that if the rules permit, I will not take salary and allowances from the RS and give it for refurbishing libraries of law colleges in small towns," he said.

Justice Gogoi also addressed the criticism that he practised "sealed cover" jurisprudence, a practice that is antithetical to transparency, in important cases such as Rafale. "Should we have made public sensitive information relating to weaponry attached to Rafale jets? Pakistan would have laughed its heart out and said it outwitted India through the Supreme Court. And was the Rafale deal scrutiny an ordinary road construction petition to demand similar level of transparency regarding pricing?" he asked.

"Why was this same bunch silent when the Supreme Court dealt with the case relating to irregular allotment of 2G spectrum only through sealed cover reports? Why are they silent when the SC was given 'sealed cover report' on Shaheen Bagh protests? Why is it not being questioned," the ex-CJI asked. On his nomination as a member of RS by the President, Justice Gogoi said, "The offer came a week ago from an individual who is not connected with the judiciary or the government. Is a former CJI who has spent 20 years as a constitutional judge not suitable to be nominated to RS under Article 80 of the Constitution where the President makes the choice on the aid and advice of the council of ministers? In what way does a retired judge compromise the independence of judiciary by accepting nomination?"

When his attention was drawn to criticism by former colleagues J Chelameswar, Madan B Lokur and Kurian Joseph, he said, "I had attended the press conference when I was a sitting judge. Today, having satisfactorily (to my satisfaction) completed my role as a judge, if I accept nomination to Rajya Sabha, where is the question of compromising judicial independence?" ❐❐

No bar on architecture work for not being qualified and registered under law: SC

[Times of India, 18/03/20]

The Supreme Court has ruled that unlike doctors and lawyers who need to get registered under relevant laws to practise, a person does not require to have a professional degree and be registered under the Architects Act to undertake work related to architecture and its cognate activities. A bench of Justices D Y Chandrachud and Ajay Rastogi said the profession of architecture involves a wide range of activities including design, supervision and construction of buildings and a person cannot be denied to carry the work for not being registered with the Council of Architecture, which is the regulatory body for the profession.

"It is evident that the legislature did not intend to create a prohibition on the practice of architecture and associated activities by unregistered individuals. As opposed to the case of physicians or surgeons under the Indian Medical Council Act of advocates under the Advocates Act, the legislature consciously chose to employ a less stringent measure in the case of architects, merely prohibiting unregistered individuals from using the title of architect," the bench said.

Expounding various provisions of the Act, the bench said the law prohibits a person from using the title 'architect' if one is not qualified and not registered under the Act but there is no prohibition from carrying out work of construction and other activities associated with the profession.

"The legislature chose to define an architect as an individual registered under the Architects Act and not as an individual practising architecture or any cognate activities. Thus, the legislature limited the regulatory regime created by the Act to the first class of individuals. In protecting the public from the risk of the second class, untrained individuals, the legislature had two options: first, it could bar this second class of individuals from engaging in the profession altogether (as it had done with doctors and advocates) or it could prevent this second class of individuals from calling themselves architects," the bench said.

"The Statement of Objects and Reasons makes it clear that the legislature chose the second option and went to great lengths to clarify that choice. The legislature stated that with the passing of the legislation, it shall be unlawful for an unregistered individual to designate himself as an architect," it added.

The court agreed with attorney general KK Venugopal's submission that the Architects Act does not contain a prohibition on the practice of architecture or designing, supervising or construction of buildings by individuals not registered with the Council. It rejected the plea of the Council which contended that the law was framed to ensure that only qualified architects are permitted to provide architectural services. ❐❐

THE BANKING REGULATION (AMENDMENT) BILL, 2020

A BILL

further to amend the Banking Regulation Act, 1949.

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

1. Short title and commencement.-

(1) This Act may be called the Banking Regulation (Amendment) Act, 2020.

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

Provided that different dates may be appointed for different provisions of this Act and that different dates may be appointed for state co-operative banks, central co-operative banks and primary co-operative banks and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Substitution of new section for section 3.-

In the Banking Regulation Act, 1949 (hereinafter referred to as the principal Act), for section 3, the following section shall be substituted, namely:—

Act not to apply to certain cooperative societies.

'3. Notwithstanding anything contained in the National Bank for Agriculture and Rural Development Act, 1981, this Act shall not apply to—

(a) a primary agricultural credit society; or

(b) a co-operative society whose primary object and principal business is providing of long term finance for agricultural development,

if such society does not use as part of its name, or in connection with its business, the words "bank", "banker" or "banking" and does not act as drawee of cheques.'.

3. Amendment of section 56.-

In section 56 of the principal Act,—

(A) in the opening portion, for the words "The provisions of this Act, as in force for the time being," the words "Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act" shall be substituted;

(B) in clause (a), after sub-clause (ii), the

following sub-clauses shall be inserted, namely:—

'(iii) references to "memorandum of association" or "articles of association" shall be construed as references to bye-laws;

(iv) references to the provisions of the Companies Act, 1956, except in Part III and Part IIIA, shall be construed as references to the corresponding provisions, if any, of the law under which a co-operative bank is registered;

(v) references to "Registrar" or "Registrar of Companies" shall be construed as references to "Central Registrar" or "Registrar of Co-operative Societies", as the case may be, under the law under which a co-operative bank is registered;';

(C) clause (d) and sub-clauses (i) and (iii) of clause (e) shall be omitted;

(D) in clause (f),—

(i) the words "or co-operative land mortgage banks"; and

(ii) the words "or a co-operative land mortgage bank", shall be omitted;

(E) clauses (fi), (fii) and (g) shall be omitted;

(F) for clause (i), the following clause shall be substituted, namely:—

'(i) for section 12, the following section shall be substituted, namely:—

Issue and regulation of paid-up share capital and securities by co-operative banks.

"12. (1) A co-operative bank may, with the prior approval of the Reserve Bank, issue, by way of public issue or private placement,—

(i) equity shares or preference shares or special shares, on face value or at premium; and

(ii) unsecured debentures or bonds or other like securities with initial or original maturity of not less than ten years, to any member of such co-operative bank or any other person residing within its area of operation, subject to such conditions and ceiling, limit or restriction on its issue or subscription or transfer, as may be specified by the Reserve Bank in this behalf.

(2) Save as otherwise provided in this Act,—

(i) no person shall be entitled to demand payment towards surrender of shares issued to him by a co-operative bank; and

(ii) a co-operative bank shall not withdraw or reduce its share capital, except to the extent and subject to such conditions as the Reserve Bank may specify in this behalf."

(G) clauses (l), (n), (p), sub-clauses (ii) and (iv) of clause (q), clauses (r), (ria) and (sa), sub-clause (i) of clause (t), clauses (u), (v), (x), (y), (z) and (za) shall be omitted;

(H) in clause (zaa),—

(i) for the words "multi-State co-operative bank" wherever they

occur, the words "co-operative bank" shall be substituted;

(ii) after the portion beginning with ‘‘36AAA.

(i)Where the Reserve Bank is satisfy’’ and ending with ‘‘shall not exceed five years.’’, the following proviso shall be inserted, namely:—

‘‘Provided that in case of a co-operative bank registered with the Registrar of Co-operative Societies of a State, the Reserve Bank shall issue such order in consultation with the concerned State Government seeking its comments, if any, within such period as the Reserve Bank may specify.’’

(iii) for the portion beginning with "36AAB. Where a Multi-State Cooperative bank" and ending with "(c) shall not be liable to be called in question in any manner.", the following shall be substituted, namely:—

"(10) The provisions of section 36ACA shall not apply to a co-operative bank."

(I) for clause (zb), the following clause shall be substituted, namely:—

"(zb) Part IIC shall be omitted;";

(J) sub-clause (i) of clause (zc) and clauses (zd) and (zf) shall be omitted;

(K) for clause (zg), the following clause shall be substituted, namely:—

'(zg) in section 49B, references to "Central Government" shall be construed as references to "Central Registrar" or "Registrar of Co-operative Societies", as the case may be, under the law under which a co-operative bank is registered;';

(L) clause (zh) shall be omitted;

(M) for clause (zj), the following clause shall be substituted, namely:—

'(zj) after section 53, the following section shall be inserted, namely:

Power to exempt cooperative banks in certain cases.

"53A. Notwithstanding anything contained in any other provision of this Act, the Reserve Bank may, from time to time, on being satisfied that it is necessary so to do, declare by notification in the Official Gazette, that the provisions of item (iii) of clause (b) of sub-section (1) and sub-section (2) of section 10, clause (a) of sub-section (2) of section 10A, sub-section (1A) of section 10B and clause (b) of sub-section (1) of section 35B of this Act shall not apply to a co-operative bank or class of co-operative banks, either generally or for such period as may be specified therein, subject to such conditions, limitations or restrictions as it may think fit to impose."

STATEMENT OF OBJECTS AND REASONS

The Banking Regulation Act, 1949 was enacted to consolidate and amend the law relating to banking. Part V of the said Act provides for the application of the Banking Regulation Act, 1949 to co-operative banks, subject to certain modifications specified in section 56 thereof. Keeping in view the developments in the banking sector and regulation thereof overtime, it has become necessary to strengthen the provisions of the said Act as applicable to co-operative banks.

2. It is proposed to bring the co-operative banks on par with the developments in the banking sector through better management and proper regulation of co-operative

banks with a view to ensure that the affairs of the co-operative banks are conducted in a manner that protects the interests of the depositors. It is further proposed to strengthen the co-operative banks by increasing professionalism, enabling access to capital, improving governance and ensuring sound banking through the Reserve Bank of India.

3. In view of the above, it is decided to amend the Banking Regulation Act, 1949 by the Banking Regulation (Amendment) Bill, 2020, inter alia, to provide for the following:

(i) to amend section 3, so as to make the provisions of the said Act not applicable to—

(a) a primary agricultural credit society; or

(b) a co-operative society whose primary object and principal business is providing of long term finance for agricultural development, if such society does not use as part of its name, or in connection with its business, the words "bank", "banker" or "banking" and does not act as drawee of cheques;

(ii) to substitute clause (i) of section 56, so as to provide for the issue and regulation of paid-up share capital and securities by co-operative banks;

(iii) to amend clause (zaa) of section 56, so as to provide that in the case of a co-operative bank registered with the Registrar of Co-operative Societies of a State, the Reserve Bank shall consult the concerned State Government before issuing order for supersession of the board of directors under section 36AAA;

(iv) to omit certain clauses of section 56 as the other provisions of the Banking Regulation Act, 1949 would apply to co-operative banks;

(v) to make other consequential changes in section 56.

4. The Bill seeks to achieve the above objectives. ❐❐

NEW DELHI;

NIRMALA SITHARAMAN

The 10th February, 2020.

THE DIRECT TAX VIVAD SE VISHWAS BILL, 2020

A
BILL

to provide for resolution of disputed tax and for matters connected therewith or incidental thereto.

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

1. Short title.--This Act may be called the Direct Tax Vivad se Vishwas Act, 2020.

2. Definitions.--(1) In this Act, unless the context otherwise requires,—

(a)"appellant" means the person or the income-tax authority or both who has filed appeal before the appellate forum and such appeal is pending on the specified date;

(b)"appellate forum" means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);

(c) "declarant" means a person who files declaration under section 4;

(d) "declaration" means the declaration filed under section 4;

(e) "designated authority" means an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner for the purposes of this Act;

(f)"disputed fee" means the fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant;

(g) "disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;

(h) "disputed interest" means the interest determined in any case under the provisions of the Income-tax Act, 1961, where—

(i) such interest is not charged or chargeable on disputed tax;

(ii) an appeal has been filed by the appellant in respect of such interest;

(i) "disputed penalty" means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where—

(i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;

(ii) an appeal has been filed by the appellant in respect of such penalty;

(j)"disputed tax", in relation to an assessment year, means—

(i) tax determined under the Income-tax Act, 1961 in accordance with the following formula—

(A – B) + (C – D) where,

A = an amount of tax on the total income assessed as per the provisions of the Income-tax Act, 1961other than the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961(herein after called general provisions);

B = an amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which appeal has been filed by the appellant;

C = an amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961;

D = an amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 been reduced by the amount of income in respect of which appeal has been filed by the appellant:

Provided that where the amount of income in respect of which appeal has been filed by the appellant is considered under the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D:

Provided further that in a case where the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 are not applicable, the item (C – D) in the formula shall be ignored:

Provided also that in a case where the amount of income, in respect of which appeal has been filed by the appellant, has the effect of reducing the loss declared in the return or converting that loss into income, the amount of disputed tax shall be determined in accordance with the formula specified in sub-clause (i) with the modification that the amount to be determined for item (A - B) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which appeal has been filed by the appellant had such income been the total income;

(ii) tax determined under the section 200A or section 201 or subsection (6A) of section 206C or section 206CB of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant.

(k) "Income-tax Act" means the Income-tax Act, 1961;

(l)"last date" means such date as may be notified by the Central Government in the Official Gazette;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "specified date" means the 31st day of January, 2020;

(o) "tax arrear" means,—

(i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or

(ii) disputed interest; or

(iii) disputed penalty; or
(iv) disputed fee,

as determined under the provisions of the Income-tax Act;

(2)The words and expressions used herein and not defined but defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

3. Amount payable by declarant.--Subject to the provisions of this Act, where a declarant files under the provision of this Act on or before the last date, a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then, notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely:—

S.NO	Nature of tax arrear	Amount payable under this Act on or before the 31st day of March, 2020	Amount payable under this Act on or after 1st day of April, 2020 but no or before the last date.
(a)	Where the tax arrear is the aggregate amount of disputed tax, interest Chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax.	Amount of the disputed tax.	The aggregate of the amount of disputed tax and ten per cent of disputed tax: Provided that where the ten per ent of disputed tax exceeds the aggregate aount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.
(b)	Where the tax arrear relates to disputed interest or disputed penalty or disputed fee..	Twenty five per cent of disputed interest or disputed penalty or disputed fee.	Thirty per cent of disputed interest or disputed penalty or disputed fee.

4. Filing of declaration and particulars to be furnished.-- (1) The declaration referred to in section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.

(2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.

(3) Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required and furnish proof of such withdrawal along with the declaration referred to in sub-section (1).

(4) Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice prior to making the declaration and furnish proof thereof along with the declaration referred to in sub-section (1).

(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.

(6) The declaration under sub-section (1) shall be presumed never to have been made if,—

(a) any material particular furnished in the declaration is found to be false at any stage;

(b) the declarant violates any of the conditions referred to in this Act;

(c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),

and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

(7) No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of section 5 by the designated authority or the payment of sum determined under that section.

5. Time and manner of payment.--(1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate

to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.

(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.

(3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

6. Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases.--Subject to the provisions of section 5, the designated authority shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrear.

7. No benefit, concession or immunity to declarant.--Any amount paid in pursuance of a declaration made under section 4 shall not be refundable under any circumstances.

8. Act not to apply in certain cases.--Save as otherwise expressly provided in sub-section (3) of section 5 or section 6, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

9. No refund of amount paid.--The provisions of this Act shall not apply—

(a) in respect of tax arrear,—

(i) relating to an assessment year in respect of which an assessment has been made under section 153A or section 153C of the Income-tax Act, if it relates to any tax arrear;

(ii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;

(iii) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;

(iv) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear;

(v) relating to an appeal before the Commissioner (Appeals) in respect of which notice of enhancement under section 251 of the Income-tax Act has been issued on or before the specified date;

(b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration:

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, the Prohibition of Benami Property Transactions Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts;

(d) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration.

10. Power of Board to issue directions, etc.--(1) The Central Board of Direct Taxes may, from time to time, issue such directions or orders to the income-tax authorities, as it may deem fit:

Provided that no direction or order shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.

(2) Without prejudice to the generality of the foregoing power, the said Board may, if it considers necessary or expedient so to do, for the purpose of this Act, including collection of revenue, issue from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in any work relating to this Act, including collection of revenue and issue such order, if the Board is of the opinion that it is necessary in the public interest so to do.

11. Power to remove difficulties.--(1) If any difficulty arises in giving effect to the provisions of this Act , the Central Government may, by order, not inconsistent with the provisions of this Act , remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Act come into force.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

12. Power to make rules.--(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which a declaration may be made, and the manner of its verification under section 4;

(b) the form and manner in which declarant shall furnish undertaking under sub-section (5) of section 4;

(c) the form in which certificate shall be granted under sub-section (1) of section 5;

(d) the form in which payment shall be intimated under sub-section (2) of section 5;

(e) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.

2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities.

3. It is, therefore, proposed to introduce The Direct Tax Vivad se Vishwas Bill, 2020 for dispute resolution related to direct taxes, which, inter alia, provides for the following, namely:—

(a) The provisions of the Bill shall be applicable to appeals filed by taxpayers or

the Government, which are pending with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid;

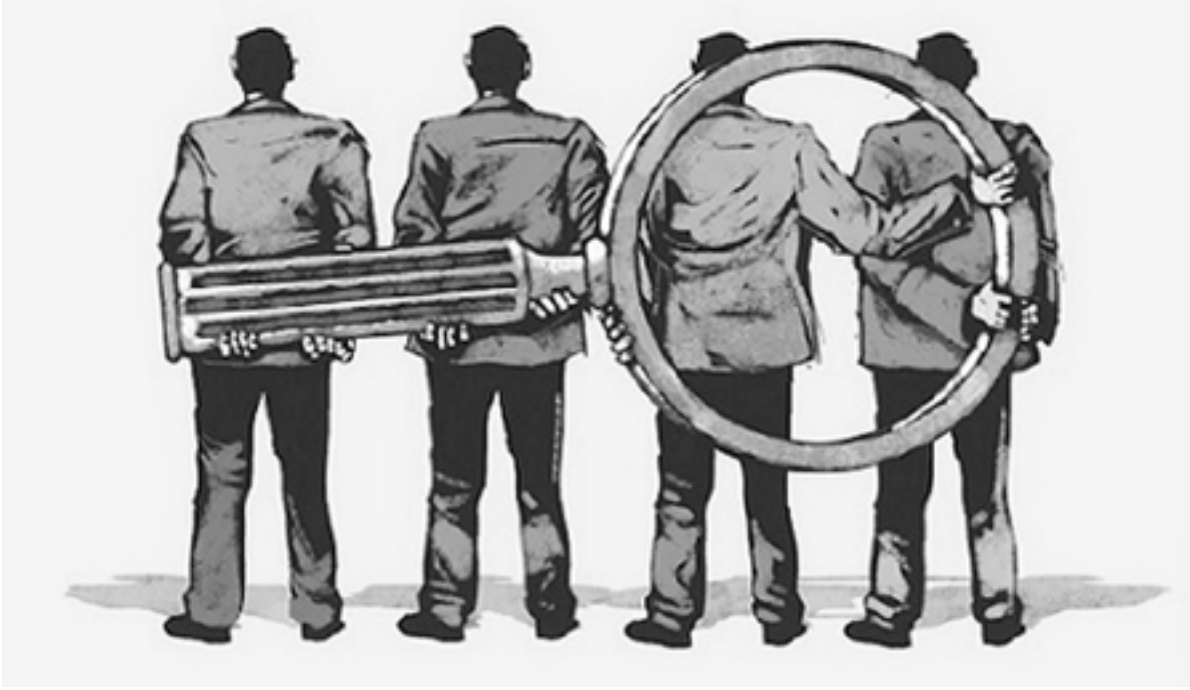
(b) the pending appeal may be against disputed tax, interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source;

(c) in appeals related to disputed tax, the declarant shall only pay the whole of the disputed tax if the payment is made before the 31st day of March, 2020 and for the payments made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 per cent. of disputed tax;

(d) in appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 per cent of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31st day of March, 2020. If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to 30 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be.

4. The proposed Bill shall come into force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government. ❐

NEW DELHI;
NIRMALA SITHARAMAN.
The 1st February, 2020.



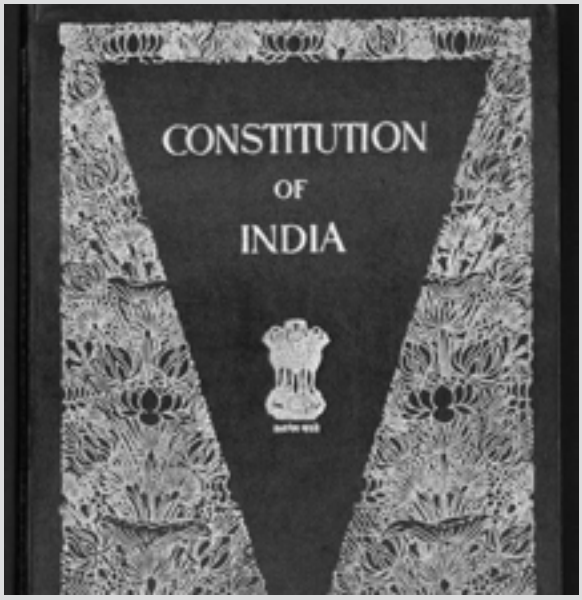
OBJECTIVES MUTATING AS PREAMBLE

Dr. M.P. Raju, Advocate

Objectives Resolution was considered and passed by the Constituent Assembly even before the starting of the framing of the Constitution. The Preamble, though treated as part of the Constitution, was taken up at the end after all other provisions were settled and passed. Objectives Resolution was the declaration of intent and aims of the Constitution which was to be framed. The Preamble was expected to reflect the core and substance of the final Constitution. Could they have been substantially different? Did the Preamble embody the spirit and to a great extent even the language of the Objectives Resolution?

Composite, Non-controversial and Perennial

The objective resolution reflected the composite dreams, aspirations and aims of the then people of India. It contained the minimum objectives the people belonging to different cultures, ethnic groups, languages, ideologies and religions could agree upon. The draft was formulated by an Experts Committee appointed on 8 July 1946 by the Congress working committee for preparing material for the Constituent Assembly. This was approved by the Congress working Committee on 20 November 1946 with some modifications.



It was moved in the Constituent Assembly on 13 December 1946 by the then Prime Minister and seconded by Shri Purushottam Lal Tandon. This was passed as the Objectives Resolution by the Constituent Assembly unanimously on 22 January, 1947 in a most solemn manner. Admittedly, the contents of the Resolution dealt with fundamentals which are commonly held and have been accepted by the people, at the same time avoiding almost all controversial issues. In fact it was nothing new. It was merely in a new form and in a new shape the aims of the people which had a long trail of resolutions pledges and declarations including the world-famed resolutions of 'Independence" and "Quit India' behind. (CAD, vol 2, p 318)

Even the proposed amendments to the Objectives Resolution were not with regard to its content but about the technicality of passing it then and there or postponing it. Dr Jayakar, the author of the main amendment wanted only to postpone the discussion and voting on it. Dr. Ambedkar also wanted the postponement but had supported the contents, though was surprised why the objective of a socialist state did not find place in it despite Congress' patronage of it. (CAD, Book-1, Vol. 1, p.101). The very unanimity on its content in the Assembly was proof enough that unless the mind of the Assembly substantially changed, the Preamble also should reflect the same.

Preamble as Giving Shape and Form to the Objectives

One of the first attempts to draft a Preamble was that of Dr Ambedkar in his personal capacity. This happened within two months of the passing of the Objectives Resolution. After the passing of the resolution but before the actual drafting of the Constitution started, Dr Ambedkar had prepared 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 this to the Advisory Committee on Fundamental Rights, Minorities, etc., of the Constituent Assembly. According to Ambedkar this Preamble of his was giving shape and form to the Objectives Resolution.

This Preamble also started with the words, "We, the people of ….". However, it called the constitution as "the Constitution of the United States of India." Though it was intended to give shape and form to the Objectives Resolution, the terms used were slightly different from it and reflected the philosophical and political bent of Dr. Ambedkar. The text of this Memorandum which had a sketch of a full Constitution was

published by him subsequently.

A Format from Ireland

There was a Preamble to the Memorandum of the Union Constitution dated 30 May, 1947as prepared by Sir B.N. Rau, the Constitutional Advisor. This Preamble was merely a format and was as follows:
"We, the People of India, seeking to promote the common good, do hereby through our chosen representatives Adopt, Enact and Give ourselves this Constitution". This format was adapted from the Preamble in the Constitution of Ireland.

Tsunami Attacking the Foundation of Objectives and the Constitution

On 3 June, 1947 the Mountbatten Plan was announced in the House of Commons by British Prime Minister by finally laying down the plan of Partition. In view of the Partition Plan announced, the limitations and procedure laid down in Cabinet Mission Plan changed substantially. It also appeared that the very foundation of the Constitution and the Objectives would be substantially altered by this plan, consequent partition and the ensuing events.

This brought into focus the question whether the objectives resolution required amendment and changes. A sub-committee was formed to look into this issue. On 9/6/1947 the sub-committee decided that only after full effect is given to the terms of the Partition announcement on 3 June 1947, the needed changes to Objectives Resolution could be considered.

The issue also was addressed as to the relationship between Objectives resolution and the Preamble. It was understood that the Objectives Resolution was meant to lay down the principles according to which the Constitution was to be drafted and the Preamble was to reflect these Principles in the Constitution. It was also understood that the Preamble need to be finalized when the Constitution itself was finalized.

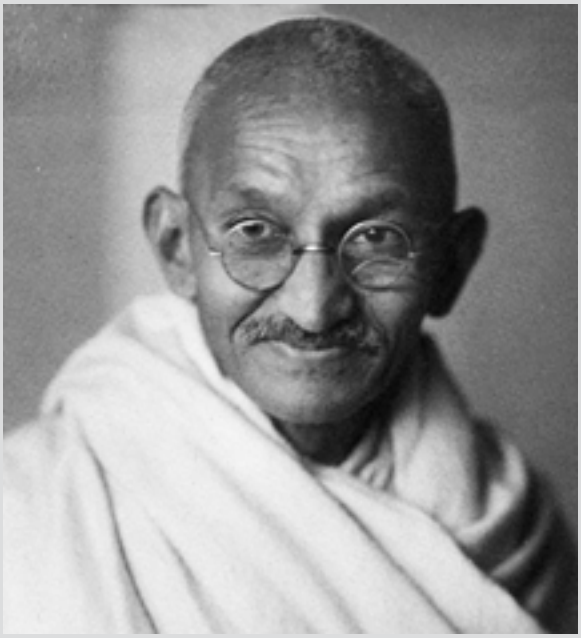
Constitutional Advisor's Draft

The Draft Constitution of India as prepared by the Constitutional Advisor on 7 October 1947 had given the following format: "We, the People of India, seeking to promote the common good, do hereby through our chosen representatives Enact, Adopt and Give ourselves this Constitution".

Then it was the turn of the Drafting Committee to take up the Preamble during the consideration of the Draft Constitution. The drafting Committee considered the draft first

on 27 October, 1947 and the consideration of Preamble was held over till the completion of the Draft.

In the meantime, Mahatma Gandhi, the Father of the Nation, was murdered by a group of people claiming to represent one of the major ideologies and ways of life in India and insisting that they are the only nationalists. This and the related events brought to the focus the need to proclaim explicitly and unequivocally the supreme objective of the Constitution to promote fraternity assuring the dignity of the individual and the unity of the nation.



Drafting Committee's Preamble – Highlighting Fraternity and Dignity

On 6 February, 1948 the Drafting Committee under the Chairmanship of Dr. BR Ambedkar, and with Sir Alladi Krishnaswami Ayyar, Maulana Saiyid Muhammad Saadullah and Shri N. Madhava Rao present formulated for the first time the draft of the present Preamble as follows:

"We, the People of India, having solemnly resolved to constitute India into a Sovereign Independent State, and to secure to, or to promote among, all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith, worship, vocation, association and action; Equality of status, and of opportunity; and Fraternity assuring the dignity of every individual without distinction of caste or creed; In our Constituent Assembly this … of … (…day of May, 1948 A.D.) do hereby Adopt, Enact and Give to ourselves this Constitution."

On February 9, 1948, the Drafting Committee made a few changes in it. It deleted the words 'or promote among' before 'all its citizens'. It added the word 'and' after the word 'action'. Addition of the clause, 'to promote among all its citizens' after the word 'and' in Equality clause was made. The Fraternity Clause was reformulated with insertion of the word 'class' between the words 'caste' and 'or creed' and addition of the clause 'and the unity of the Nation' towards the end of the clause.

Thus the draft Preamble read as follows:

> "We, the People of India, having solemnly resolved to constitute India into a Sovereign Independent State, and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith, worship, vocation, association and action; and Equality of status, and of opportunity; and to promote among all its citizens Fraternity without distinction of caste, class or creed so as to assure the

dignity of every individual and the unity of the Nation In our Constituent Assembly this … of … (…day of May, 1948 A.D.) do hereby Adopt, Enact and Give to ourselves this Constitution."

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."

Finally in the Draft Constitution of India, as prepared by the Drafting Committee on 21 February 1948 the following changes were made to the Preamble:

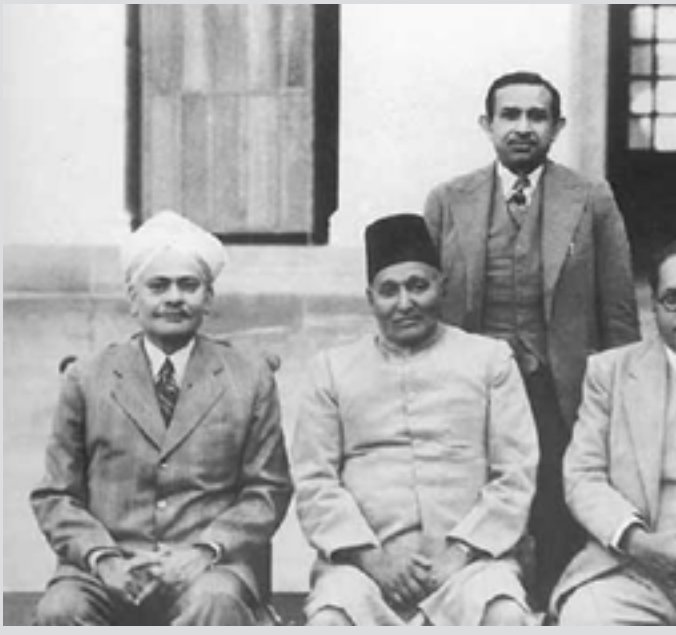
(1) substitution of the word 'Democratic' for 'Independent';
(2) deletion of the words 'vocation, association and action' after 'worship' in the Liberty clause;
(3) deletion of the words 'its citizens' after 'all' in the Equality clause; and
(4) deletion of the words 'without distinction of caste, class or creed so as to' in the Fraternity clause; substituting the word 'assuring' for assure; and substituting the word 'the' for every in the same clause.

The final form the Preamble took is:

"We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic, and to secure to all its citizens Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status, and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity of the Nation in our Constituent Assembly this … of … (…day of May, 1948 A.D.) do hereby Adopt, Enact and Give to ourselves this Constitution."

In a letter forwarding the Draft Constitution prepared by the Drafting Committee of February 21, 1948, 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."

The Draft Constitution as settled by the Drafting Committee and submitted to the President of the Constituent Assembly on 21 February 1948 was published on February 26 so that all individuals and organizations in the country interested in the framing of the India's Constitution might have an opportunity of expressing their views. Copies of the Draft were also sent to members of the CA with the request that they should send in their suggestions and criticism on or before 22 March, 1948.

Proposed Amendments to Preamble

A number of amendments were suggested to the Preamble, by Shri L.N. Sahu, Shri Pattabi Sitaramayya, G. Durgabai, Pandit Thakurdas Bhargava, Dr. B.V.Keshkar, Shri T.T. Krishamachari, Shri M. Aanatasayanam Ayyangar, Shri K. Santhanam, Shri Atul Chandra Guha, Shri Upendranath Burman, and Prof. K.T.Shah.

In addition to these, the Drafting Committee itself at its meeting on March 23, 1948 decided that the following amendment be made to the Preamble: "that in the Preamble for the word 'Republic' the word 'State' be substituted.'

The Constitutional Advisor, Shri B. N. Rao in a note circulated to the members of the Constituent Assembly commented on the proposed amendments to the Preamble. This reflected the views of the Committee on these proposals. Some of the important amendments proposed and the comments thereon are as follows:

One amendment had sought to insert the word 'association' for the word 'belief' in the Preamble. In the note it was explained that the reason for omitting 'association' was that it would have seemed odd to stress so prominently freedom of association at a time when certain associations dangerous to the State were being banned.

Another amendment had sought to put the words 'unity of the Nation' first and then the words 'dignity of the individual' in the line commencing with the word 'Fraternity' in the Preamble. It was explained that the reason for putting the dignity of the individual first was that unless the dignity of the individual is assured, the nation cannot be united. In the Preamble to the Irish Constitution the 'dignity of the individual' comes before 'the unity of our country'. We may, therefore, retain the existing order of the phrases.

With regard to the amendment seeking to substitute the word 'Bharatvarsa' for 'India', it was explained that the term 'India' has not only been in current use for well over

a century and a half but is also well-known in the international world. It is not, therefore, advisable to change it to 'Bharatvarsha throughout the Draft.

Commenting on the Drafting Committee's amendment to the Preamble substituting the word 'State' for 'Republic' Sir B.N.Rau observed, among other things, that the term used in the Hindi translation is Gana-Rajya. Its primary meaning, according to Dr. Jayaswal, is a State where numbers rule:

> 'It is necessary to ascertain what was exactly meant by gana. It means 'numbers': Gan-Rajya will, therefore, mean the rule of the numbers, the rule of many."(Jayaswal:Hindu Polity, 1943, p. 24.)

If we were translating from Hindi into English, the strict rendering would be 'democratic State'.

All the comments and proposed amendments to the draft Preamble were considered by the Drafting Committee in its meeting held on 23 March 1948 and rejected all except its own.

Draft Preamble and the comments on it by the Drafting Committee were considered by the Special Committee constituted by the President of Constituent Assembly to examine the Draft Constitution as settled by the Drafting Committee. This Special Committee on 10 April 1948 decided that the considerations of the amendments to the Preamble be held over and that the final settlement of the Preamble be left to the decision of the Constituent Assembly.

On 15 November 1948 Maulanan Hazrat Mohani suggested postponement of the clause by clause consideration till it has been decided which of the three sets of words Sovereign Independent Republic ……. were to be incorporated in the Preamble. The Vice-President Dr. H.C . Mukherjee who was in the chair disallowed this amendment on the ground that it pertained to the Preamble and that he could move the same when the CA would be taking up for consideration the Preamble. He also added that the Preamble would be taken up last of all following the procedure adopted by the House of Commons. Shri Mahavir Tyagi had moved an amendment and wanted to lay down clearly in the Preamble or in some Article of the Constitution that the sovereignty resided in the whole people. He contended that the Preamble was not part of the Constitution and as such the question of sovereignty being vested with the people should be stated in an Article.

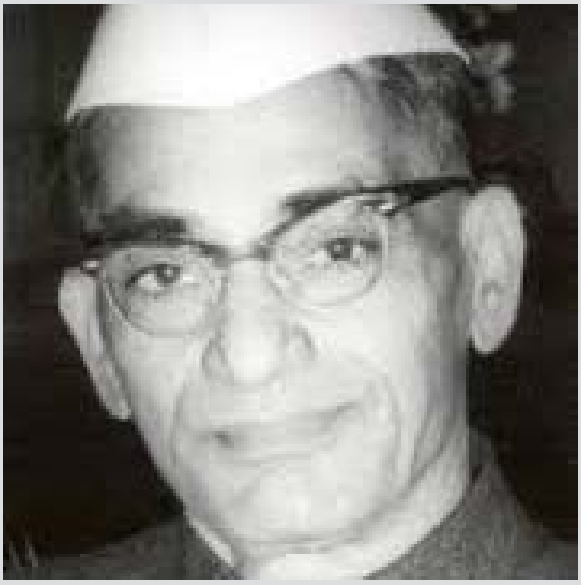
On 17 October 1949 the Assembly took up the consideration of the Preamble as the last item in the Second Reading of the Constitution. One of the Members of the Assembly had proposed that the Preamble be taken up only at the third reading implying that Preamble needed no discussion and debate, which was the purpose of second Reading, but merely to be moved and passed. The President of the Assembly rejected it stating,

"I think we should get the Preamble also passed today. The Constitution as whole has to be passed in its Second Reading and the Preamble forms part of the Constitution. Therefore the Preamble cannot be postponed." Thereafter discussion on the Preamble ensued and the amendments were moved by Maulana Hazarat Mohani, Shri H.V. Kamath, Prof. Shibban Lal Saksena, Shri Brajeshwar Prasad and Smt Purnima Banerjee. All these

amendments were rejected. These included the one seeking to start the Preamble invoking the name of God which was also put to vote.

The Allegation of Deviation from Objectives Resolution

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 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. He also stated,

> "… we shall consider it (the Constitution) in detail, always using that Objectives Resolution as the yard measure with which to test every clause and phrase in this Constitution. It may be, of course, that we can improve even on that Resolution; if so, certainly we should do it, but I think that Resolution in some of its clauses laid down the fundamental and basic content of what our Constitution should be. The Constitution is after all some kind of legal body given to the ways of Governments and the life of a people. A Constitution if it is out of touch with the people's life aims and aspirations becomes rather empty: if it falls behind those aims, it drags the people down. It should be something ahead to keep people's eyes and minds up to a certain high mark. I think that the Objectives Resolution did that."

In spite of the clarification made by Nehru Shri Vishwambar Dayal Tripahi (U.P.General) on 9 November expressed 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 asserted on 9 November 1948 that the Drafting Committee did not deviate from the Objectives Resolution and it had merely filled in the details of the outline provided by the Objectives Resolution. He said:

"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."

"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."

There have been arguments to the effect that the Fraternity clause in the Preamble is a specific and clear variation from the Objectives Resolution. But a dispassionate look at both would show that even the fraternity clause was implied in the resolution which was made explicit by the Drafting Committee as per the mind of the Assembly and the demand of the times. This has been explained by Dr Ambedkar.

In the letter dated 21st February 1948 written by Dr Ambedkar on behalf of the Drafting Committee addressed to the President of the Constituent Assembly, had this to say about the changes the Committee had made to the Objectives Resolution while converting it into the Preamble:

"The committee has added a clause about fraternity in the preamble though 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".

Earlier the draft of the Preamble had a footnote stating that it is based purely on the Objectives Resolution. Thus it is evident that the Preamble contained the very spirit and to all possible extent the language of the Objectives Resolution. The clause about the fraternity was merely a drafting addition which was an abundant way of expressing the very content of the Resolution itself.❐❐

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

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

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

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

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

06. What was the basis for constituting the Constituent Assembly of India?
    A. The Resolution of the Indian National Congress
    B. The Cabinet Mission plan, 1946
    C. The Indian Independence Act, 1947
    D. None of these

07. Of the following words in the Preamble of the Constitution of India, which was not inserted through the Constitution (Forty Second Amendment) Act, 1976?
    A. Socialist
    B. Secular
    C. Dignity
    D. Integrity

08. According to the UN convention on the rights of the child which amidst the following is NOT a right?
    A. Social security
    B. Employment
    C. Protection from exploitation
    D. Education

09. Who is empowered to transfer a Judge from one High Court to another High Court?
    A. Chief Justice of India
    B. President of India
    C. Law Minister of India
    D. The Union Cabinet

10. What is the maximum time interval permitted between two sessions of Parliament?
    A. 4
    B. 8
    C. 6
    D. 9

11. Who constitutes the Finance Commission after every five years?
    A. The council of Ministers
    B. The Parliament
    C. The President
    D. The comptroller and Auditor General

12. An ordinary bill passed by the State Assembly can be delayed by the Legislative Council for a maximum period of
    A. 3
    B. 4
    C. 5
    D. 6

13. Which of the following States was first to adopt the Panchayti Raj?

A. Andhra Pradesh
B. Bihar
C. Gujarat
D. Rajasthan

14. Indian Parliament can rename or redefine the boundary of a State by
    A. A simple Majority
    B. Absolute Majority
    C. 2/3rd majority of the members voting and an absolute majority of its total membership
    D. None of the above

15. Members of the Union Public Service Commission can be removed by the
    A. Parliament after a resolution adopted with 2/3rd majority
    B. President on a unanimous recommendation from the Union Council of Ministers
    C. President on recommendation from Central Administrative Tribunal
    D.President on the basis of an inquiry and reported by the Supreme Court

16. In Indian Parliament a bill may be sent to a select committee
    A. After the first reading
    B. After the second reading
    C. After general discussion during second reading
    D. At any stage at the discretion of the Speaker

17. Which is the source of political power in India?
    A. The Constitution
    B. The parliament
    C. The parliament and the State legislative
    D. We, the people

18. Once elected for a full term, a judge serves on the International Court of Justice for
    A. 5 Years
    B. 6 Years
    C. 9 Years
    D. 8 Years

19. Which of the following sets of Articles deals with 'Emergency Provisions'?
    A. Articles 352,356 and 360
    B. Articles 35 and 36
    C. Articles 35, 36 and 37
    D. None of these

20. The Salaries and allowances payable to the Members of the Parliament are decided by the
    A. President
    B. Cabinet
    C. Parliament
    D. Finance Commission

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

LEGAL TERMS & MAXIMS

Acquit	: Free (someone) from a criminal charge by a verdict of not guilty.
Bail	: The security given (or posted) to ensure the future appearance of a defendant.
Certify	: To testify or affirm in writing.
De Novo	: Start anew, a new trial.
Enjoin	: To perform or to refrain from or cease doing some act.
Fine	: A sum imposed as punishment for an offense.
Garnish	: To attach a portion of the wages or other property of a debtor to secure repayment of the debt.
Impaneling	: The process by which jurors are selected and sworn to their task.
Jury	: A prescribed number of persons selected according to law and sworn to make findings of fact.
Legal Aid	: System by which legal services are rendered to those in financial need who cannot afford private counsel.
Motion	: An oral or written request to the court made by a party for a ruling or order.
Notice of Entry	: A notice with an affidavit of service stating that the attached copy of an entered order or judgment has been served by a party on another party.
Pleadings	: a formal statement of the cause of an action or defence.
Recuse	: To disqualify oneself as a judge.
Satisfaction	: Discharge of a legal obligation.
Tort	: An injury or wrong committed.

Posted on
26th of Advance Month

Regd. with R.N.I.
RNI No. 45913/87
DL-(S)17/3096/2018-2020
Price Rs.30

Edited by Joy Karayampuram, Printed and Published by Denzil Fernandes for Integrated Social Initiatives
10 Institutional Area, Lodi Road, New Delhi-110 003 and printed at
Bosco Society for Printing & Graphic Training, Jamia Nagar, Okhla Raod, New Delhi - 110 025