

# LEGAL NEWS & VIEWS

An Integrated Social Initiatives Publication

## FUNDAMENTAL RIGHTS UNDER COVID-19

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India celebrates her Independence Day on 15 August to commemorate the birth of free and democratic nation. That day is of great significance for the people of India. On this occasion, the “Legal News & Views” wishes all the readers an incredibly happy Independence Day. May all the people of India experience true fraternity as enshrined in the preamble of the Constitution of India. The value of fraternity has been predominant in the constitutional and political realm in India.

Dr. M.P. Raju in his regular column “The Making of the Constitution”, says that the concept of fraternity was not any new concept for the founding fathers of the constituent assembly. “It would be difficult to imagine that the value and ideal of fraternity was foreign to our long-fought independence movement and the numerous attempts at Constitution-Making”. In other words, commemoration, and the celebration of Independence Day is a reminder to all of us that long cherished constitutional values and ideals are founded on the concept of fraternity which itself is the constitutional value and ideal. Subscribing to different shades of meaning in a pluralistic country, fraternity is the only link that brings unity in diversity. Tagore speaks of that place where freedom exists, and which can become a reality. “Into that heaven of freedom let my country awake, where the world has not been broken up into fragments by narrow domestic walls”.

The celebration of 74th Independence Day has a different context where the entire world is reeling under the pandemic – Covid – 19. Therefore, our attempt has been to dwell deeper into the meaning of independence and its implication in our daily living. Accordingly, Mr. Ashutosh Kumar, traversing the movement of ‘human rights’, explains ‘human rights’ as paramount right for human beings. India is not only party to the International Covenants but also enshrines fundamental ‘human rights’ in her Constitution. He says, “The greatest single idea offered by humans to humanity is the idea of individual human right”.

Jessy Kurien, takes a look at the fundamental rights enshrined in the Part III of the Constitution in the present context. She says, “Fundamental Rights are not only restricted but also locked down”. Numberless have lost their jobs. Basic human right to life and livelihood is seriously affected. Therefore, she urges the government to find the maximum possibilities to protect the maximum lives of citizens. Centre and State should find unanimous strategies to uphold the right to life of every person in this country, especially regarding the migrants, health workers, children, women and senior citizens and to find easy and held the means for education of the children.

The words of Jawaharlal Nehru remind us the dream of the nation. “It is fitting that at this solemn moment we take the pledge of dedication to the service of India, and her people, and to the still larger cause of humanity. The future beckons to us. Whither do we go and what shall be our endeavour? To bring freedom and opportunity to the common man, to the peasants and workers of India; to fight and end poverty and ignorance and disease; to build up a prosperous, democratic and progressive nation, and to create social, economic and political institutions which will ensure justice and fullness of life to every man and woman”.■■■

# Human Rights: Paramount right for human being

— Ashutosh Kumar\*

**“One people does not differ  
from another, save in  
manners and customs.”**

...Turkish proverb, 15th century

**Y**ears ago a group of rebellious barons forced a medieval king John in a boggy meadow at Runnymede, on the banks of the Thames River to put his seal on a historic document that established the foundations of parliamentary democracy, human rights and the supremacy of law. Runnymede is an ancient and resonant meeting place where the Great Charter was sealed. Runnymede was originally chosen as the agreed venue because the boggy ground prevented either the king or his barons from bringing their armies for battle.

Magna Carta--or the Great Charter, a Latin translation has 3,500 words on calfskin parchment, first drafted by the Archbishop of Canterbury--was extracted from King John. The atrocities of power intoxicated King John brought people's revolt producing immemorable Magna Carta (1215 A.D.). It was creation of people's right against the King. It is significant to quote Lord Denning here as to how Norman barons insisted for Magna Carta.

“King John oppressed the people. The

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barons rose against him. The city of London turned the scale. The king assented to the Charter. He did it with his tongue in his cheek. Two months later a papal bull declared it void. But after the death of King John, the charter was revived by the Young King Henry III.”

... What next in the law (P 271-272).

Magna Carta as a basic document later seeped into constitutional and basic document for human rights of several countries. The Bill of Right, Declaration of American Independence 1776; French Declaration of Human Right of Man and Citizen, 1789; Covenant of League of Nation, 1919; U.N. Universal Declaration of Human Rights, 1948 followed by our Constitution in 1950 are few among those documents.

Year 1793 is another important page in the history of Human Rights. The French Republic which had in the previous year executed King Louis the XVI declared terror “the order of the day” to preserve the Revolution against its enemies, namely Kings and Aristocrats. However, most of its victims were ordinary civilians who refused to recognize the attempt by the State to reorganize the Roman Catholic Church. Amidst this horror and confusion, there were born two modern concepts of Human Rights. The Committee of public safety

and general security pioneered the concepts of representative democracy and equality before the law. The French Revolutionary leader Marat opposed the traditional concept that a King was sovereign by divine right. He dropped the term “divine right” and came up with a novel concept that the people were sovereign and that the sovereignty of the people was an imprescriptible right. Since the French Revolution, groups of people have believed themselves justified in opposing with violence a repressive regime in which no freedom of political expression or organization was permitted.

It is equally important to remember that in the landmark judgment *West Virginia State Board of Education Vs Barnette*, 319 U.S. 624,638, Justice Jackson of USA held that Bill of Right in the Constitution guarantees basic human freedoms including economic,

social and cultural rights. He further held that the very purpose of a Bill of Rights is to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote; they depend on the

**“I know not whether Laws be right,  
Or whether the Laws be wrong,  
All that we know who lie in goal  
Is that the wall is strong;  
And that each day is like a year  
A year whose days are long.  
Something was dead in each of us  
And what was dead was Hope.  
The vilest deeds like poison weeds  
Bloom well in prison air;  
It is only what is good in man  
That wastes and withers there;  
Pale Anguish keeps the heavy gate  
And the Warder is Despair.**

outcome of no elections.

The renaissance of the doctrine of natural rights in the form of human rights across the globe is a significant development in the jurisprudential field in the contemporary era. Today the human rights movement is worldwide. There is, as Jerome Shestack observed, “a moral inevitability to human rights.” In India, the Constitution makers put in considerable effort to formulate our Charter of rights. These rights are recognized under Part III of the Constitution providing remedies for enforcement of such rights. Article 21 & Article 19 as originally intended and as now interpreted illustrate the remarkable change brought about by the judicial interpretation. Since India adopted the ICCPR, 1966 we have the Protection of Human Rights Act, 1993. Section 2 (d) of the Act, 10 of 1994 defines human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts of India. Objects and reasons of the Act 10 of 1994 states: “India is party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations in the 16th December, 1966. The human rights embodied on the aforesaid Covenants stand substantially protected by the Constitution.”

Article 21 of the Indian Constitution protects the life and liberty of all persons. The Supreme Court in the matter of *Centre for Environment Law Vs UOI & Ors*, WP (Civil) No 337 of 1995 stated: “Article 21 of



the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct, conservation and protection of environment is an inseparable part of right to life.” It also held that in case of violation of Human Rights, the State is liable to pay compensation. This dynamic move of the Supreme Court resulted in the emergence of compensatory jurisprudence for the violation of human rights. It provided positive signal indicating that the judiciary has undertaken the task of protecting the right to life and personal liberty of all the people irrespective of the absence of any express constitutional provision and of judicial precedents.

Even with these noble documents, it is irony that human rights violations have created more deaths and more human misery than have all the weapons of mass-destruction. The French Declaration did nothing for the



hundreds who were being guillotined. The American Civil War was born of the conviction that a nation cannot remain half slave and half free. But the world continues to remain more than half slave and less than half free. Thousands of African-Americans were held in slavery for nearly ninety years and quite possibly many of those who signed the declaration, themselves possessed slaves. In fact, the violation of human rights started on the day the first caveman clubbed his chosen lady love and dragged her by the hair into his case, may perhaps be claimed to be first instance of violation of human rights. Since then the history of humankind had been a continuous litany of human rights abuses. Unfortunately, with our incredible scientific progress, we have reached a stage when the only threat to man, left to be met, is man himself. In the zoo at Lusaka, there is a cage where the notice reads, "The world's most dangerous animal." Inside the cage there is no

animal but a mirror where you see yourself.

It was from the horrors of the deaths, deprivation and degradation of the holocaust that the United Nation was formed, promising to "save succeeding generations from the scourge of war which twice in our life time has brought untold sorrow to mankind and to reaffirm faith in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women." In 1948, the United Nations adopted the Universal Declaration of Human Rights, arguably by most important statement on human rights. It gave birth to two vital international covenants. The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil & Political Rights (ICCPR).

These two instruments covered virtually the whole gamut of human activity and, if positively and resolutely enforced, would guarantee human rights. But these were followed by a plethora of declarations, covenants, treaties and innumerable workshops and grandiloquent speeches full of lofty rhetoric. Unfortunately, these have not achieved the lofty aims expressed therein.

Infact, the United Nations was hobbled from the start. Despite the preamble to the Universal Declaration of Human Rights, states "whereas it is essential if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression that Human Rights should be protected by the rule of law"; human rights are being denied to many among us by the government chosen by the people & bound to abide Universal declaration of human rights. Article 1 of

Universal Declaration of Human Rights which states that “All human beings are born free and equal in dignity and rights” and Article 3 which provides that everyone has a right to life, liberty and security of person was openly violated. Thus the rationale for the rights set out in the Universal Declaration of Human Rights, namely that these rights should be protected by the Rule of Law failed. The consequence which it foresaw, namely, rebellion, began. Paul Lauren in his book ‘The Evolution of International Human Rights’ observes (p 191): “The Charter also spoke in new and eloquent words about responsibilities for the United Nations in the area of international human rights. It provided unparalleled specificity for a treaty of this wide-ranging nature against discrimination on the basis of race, gender, language, and religion. But it did not define precisely what was meant by the expression “human right”.

The present situation is beautifully penned by Professor Marvin Bell of Iowa, in his poem “The Dead Have Nothing to Lose by Telling the Truth”:

“How many pairs of disembodied heads will  
it take?

How many detached hands and feet?

How many hollow cheeks, empty stomachs,  
vacant eyes?

How many skulls without memory.”

These plaintive cries of despair represent the frustration felt with a world that in spite of huge technological advances and material growth still remains oblivious to the sufferings, and the needs of the disadvantaged, the disabled and the oppressed. We should

recall the anguished voice of Oscar Wilde, the poet, when he was in prison in Reading for an offence, which is not an offence in Britain today:

“I know not whether Laws be right,  
Or whether the Laws be wrong,  
All that we know who lie in goal  
Is that the wall is strong;  
And that each day is like a year  
A year whose days are long.  
Something was dead in each of us  
And what was dead was Hope.  
The vilest deeds like poison weeds  
Bloom well in prison air;  
It is only what is good in man  
That wastes and withers there;  
Pale Anguish keeps the heavy gate  
And the Warder is Despair.

We cannot preserve democracy by destroying the very values we have long cherished and nurtured. We cannot preserve human freedom by emasculating human rights. Even, we cannot preserve human existence by ignoring rights conferred by



the nature. We can preserve basic fibers only when we respect others as human being. Mahatma Gandhi once stated: “For we are all tarred with the same brush, and are children of one and the same Creator and as such the divine powers within us are infinite. The slight a single human being is to slight those divine powers, and thus to harm not only that being but with him the whole world.”

We should remember that “Human rights” should be distinguished from “human needs”. The essence of liberty which comprises rights against the state should not be confused with claims or entitlements which fall to be satisfied by the state. It is pertinent to note that the primary idea of human rights involves rights against the government. Modern liberalism has expanded the idea to include rights to be satisfied by the government. In the present era, it is important to note that rights of men are not only against the government but against the people collectively. Paul Sieghart once stated that the test of rights is not whether the prosperous, with access to the law courts, are well protected, or whether living standards for the majority are improving, but whether the weak are helped by the strong. “The ultimate measure of whether a society can properly be called civilized.” He concludes, “is how it treats those who are near the bottom of its human heap.”

Justice V.R. Krishna Iyer once stated: "Human Right Law has no locomotion on its own unless the necessary

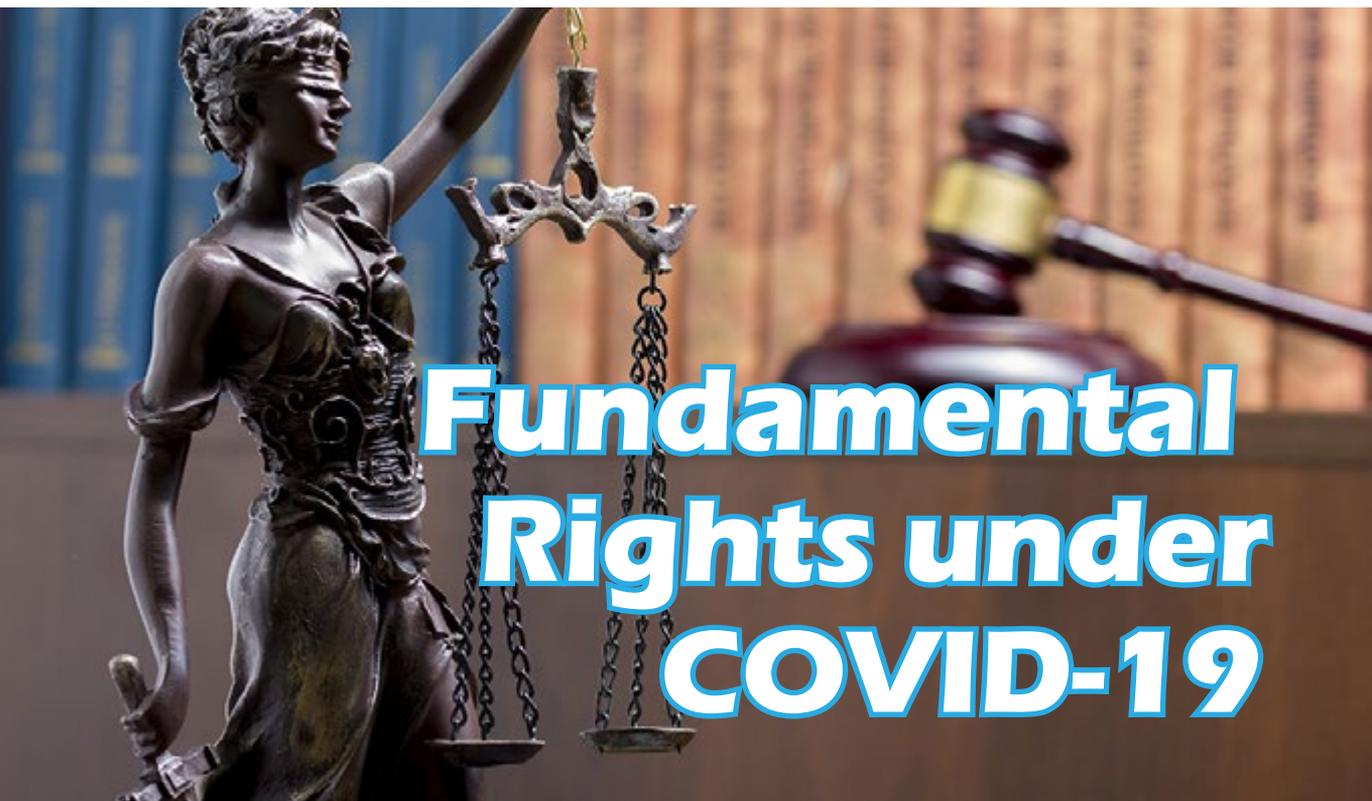
infrastructure for receiving information, investigating into events and accusations, providing for prompt adjudication with due process requirements, easy access and legal aid, agencies to prosecute, enforcement of verdicts and delivery of relief - these are the viability aspects which must be vigilantly attended to lest Covenants and legislations should slumber in libraries. Each of these items calls for close and creative work if the Cornucopia of human rights were to raise the dignity of the humblest, handicapped and humiliated member of Society. The agenda of action begins with education in human rights and ends with their full compliance through law, national and international.”

The greatest single idea offered by humans to humanity is the idea of individual human right. In the present state of human consciousness--when man continues to be merely a caricature of man to be--there is a certainty of freedom being abused unless legal responsibilities are given the same prime importance as human rights.■ ■

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- ‘The Law and the Human Rights’ by Brian Harris published in The Literature of the Law.





# Fundamental Rights under COVID-19

—| *Jessy Kurian\**

**W**e learn, Fundamental Rights are not absolute but they can be restricted. In *A.K.Gopalan v State of Madras, the Supreme Court* held that there cannot be any such thing as absolute and uncontrolled liberty. These rights are restricted mainly in the interest of sovereignty, integrity and security of India, friendly relations with foreign states, public order, decency or morality or for contempt of court, defamation or incitement of offence.

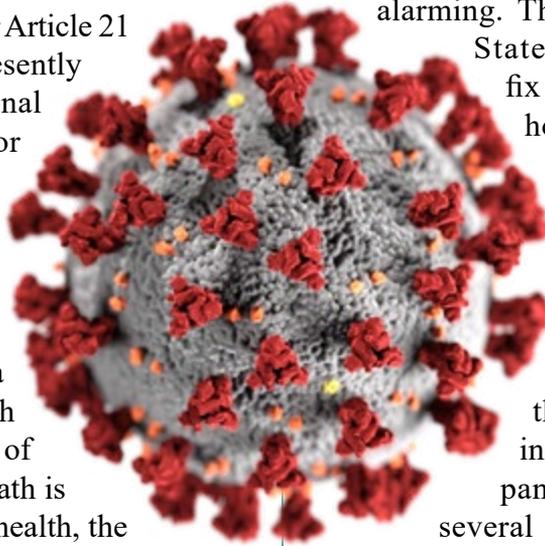
Part III of the Indian Constitution guarantees to every citizen fundamental rights. These rights are essential for intellectual moral and spiritual development of citizens. They are: (1) Right to Equality (Articles 14-18), (2) Right to Freedom (Articles 19-22), (3) Right against Exploitation (Articles 23-24), (4) Right to Freedom of Religion (Articles 25-28), (5) Cultural and Educational Rights (Articles 29,30), (6) Right to Constitutional Remedies (Articles 32-35).

However, in 4 phases of lockdown

\* Advocate Supreme Court

due to COVID-19, fundamental rights were not only restricted but lockdown. We are witnesses to it. We the present generation have witnessed something historical, unforgettable, very drastic and tragic and now we know fundamental rights can not only be restricted but be locked down.

The most important fundamental right of a citizen is “Right to Life and Personal Liberty” enshrined under Article 21 of the Constitution. Presently the second part “Personal Liberty” is restricted or locked down to protect the first part “Right to Life”. ‘Right to Health’ is the most important component of ‘Right to Life’. But Covid-19 is a threat to our health. Health crisis is on the rise. Data of COVID patients and death is increasing. In matter of health, the ‘Right to Equality’ remains only on the page of the Constitution. Treatment for COVID-19 costs differently in Government and Private hospitals. Cost varies even among private hospitals with some charging exorbitantly. In some places Government hospitals are unable to accommodate any more and the patients are compelled to go to Private hospitals. The Tamil Nadu State health department has fixed maximum applicable rates for per day treatment of COVID-19 patients in private hospitals after classifying them under two categories--Grade A1/A2 and



**The most important fundamental right of a citizen is “Right to life and Personal Liberty” enshrined under Article 21 of the Constitution.**

Grade A3/A4. Grade A1 and A2 may levy a maximum of Rs. 7,500 per day, whereas Grade A3 and A4 hospitals may levy upto Rs.5,000 per day of admission. Hospitals are also instructed not to exceed Rs.15,000 for an admission to intensive care unit. Karnataka Government also has fixed rate in the private hospitals for COVID-19 treatment. Despite a check on Delhi hospitals rate issue goes on alarming. The only remedy is every State Government should fix the rate for the Private hospitals. However many States have no sufficient Government hospitals to accommodate the COVID patients.

Health workers’ lives are at risk. Though they are at the forefront in the battle of COVID -19 pandemic, they are facing several challenges in delivering their duties. Shortages of Personal Protective Equipments ( PPE) including face masks, gloves, and respirators, shortage of health workers, hence long working hours ,violence against them and increased risk of infection. The matter is evident in the letter published by Dr.(Prof) Raju Vaishya, Senior Orthopedic Surgeon at Indraprastha Apollo Hospitals, New Delhi, in a prestigious medical journal-British Medical Journal (BM). They also face social and family impact. It is pertinent, due to the negligence on the part of the Government India has lost some committed Health

Workers. A big salute to them.

Another aspect is 'Right to privacy', an intrinsic part of Article 21. Slum dwellers, beggars, street dwellers, homeless citizens and migrants are the most affected persons in this regard. In many centres/shelter homes, guest workers or migrants are put together, where men, women in particular pregnant women and children have to live together. Government failed to uphold their right to privacy by providing them with separate accommodation.

Other most affected fundamental right is "Right to Live with Human Dignity". The plight of migrant workers is the grave violation to this effect. Even after two months of lockdown many are stranded on the roads, railway tracks and bus stands. Their cry is not heard by the politicians as they are not vote bank. Also they are the helpless citizens who have no money power, muscle power and mafia influence. The Supreme Court has taken up the matter *suo moto* and ordered the Centre and States to immediately provide transport, food and shelter free of cost to stranded migrant workers. The court on 19th June again ordered the governments to transport them within 15 days. However issue remains grim. Telangana High Court, a bench comprising Chief Justice Raghvendra Singh Chauhan and

Justice A Abhishek Reddy passed an order on a PIL asking the Government to provide the migrant workers with safety and if not to make arrangements immediately to transport them to their respective States. It is the duty of every State to bring back their citizens. Instead they are found abandoned without food and shelter.

**Part III of the Indian Constitution guarantees to every citizen fundamental rights. These rights are essential for intellectual moral and spiritual development of citizens. They are: (1)Right to equality (Articles 14-18),(2) Right to Freedom (Articles 19-22), (3) Right against exploitation (Articles 23-24), (4)Right to Freedom of Religion (Articles 25-28), (5) Cultural and Educational Rights (Articles 29,30),(6)Right to Constitutional remedies (Articles 32-35).**

'Right to practice any profession and carry on any business' is also affected. As many as 40 migrant workers staged a protest at Hirpur village in Hathras district for not getting any work under government schem, MGNREGA, even after two months of their return home. Same is with all the migrant workers. They are not provided with any

job .Unemployment has become a common phenomenan. I have helped many migrant workers either by sending them to their respective States or with food or with food items through concerned officials in different States. However all said, they have lost their job. Many companies or work places are closed down. Now they have no means to make their both ends meet. It can lead to depression and untoward incidents. A migrant worker after returning to his house in Bihar, no means to buy provisions, sold his mobile for Rs.2000/- and then finding no means to

live further committed suicide. In order to mitigate their sufferings the respective State Government should immediately provide means of livelihood. The rural unemployment rate of 25.09% is the highest since India went into a lockdown on 25th March, except for the weeks ended 19 April and 3 May when it was more than 26%. Overall unemployment inched up to 24.34% in the week ended 24 May from 24.01% in the week ended 17 May, CMIE data said.

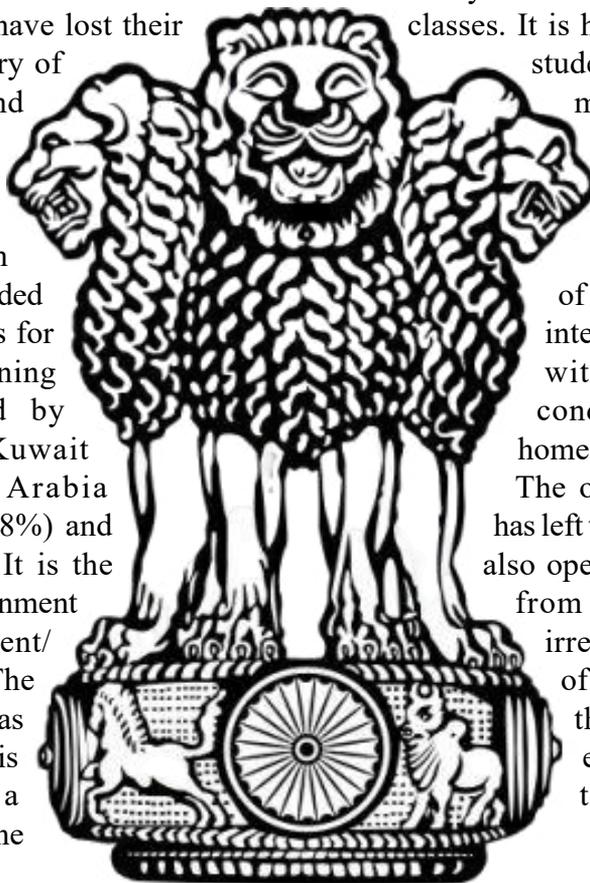
Many pravasies have become jobless too. 59% people returning to India on flights from overseas have lost jobs according to govt's recently launched SWADES programme. 59% migrant workforce returning to India on the Vande Bharat Mission flights from overseas have lost their jobs as per the Ministry of Skill Development and Entrepreneurship. The United Arab Emirates (UAE) tops the list of countries from where Indians have headed back home. It accounts for 27.82% of the returning workforce, followed by QATAR (14.76%), Kuwait (12.73%) Saudi Arabia (11.87%) Oman (10.58%) and Bahrain with 3.88%. It is the duty of the State Government to provide employment/work to the citizens. The Central Government has to play a vital role in this regard. However, it is a big challenge before the

Government/s.

Right to elementary education has become a myth under Covid-19. Online classes are not successful. Many students have no android mobiles. Many places have no range, no proper connectivity. Many parents have no money to recharge their mobiles. Where, there are more than one child, parents have to provide for each child an android mobile. It is a heavy burden on the parents especially at this time of COVID. Though State of Kerala has started a TV channel for the students of Government schools students in interior places face problem of connectivity, electricity etc. Other schools like CBSE, ISC, ICSE etc., have not provided with required

facility. Students struggle on online classes. It is highly strenuous for the students to look at the tiny mobile although. There is no teacher-student physical interaction which is very much needed for the growth of students. Also they lack interaction and association with their friends and condusive atmosphere at home.

The online teaching process has left teachers overworked and also open to abusive behaviour from students. Low and irregular attendance, lack of attention by students, the fear of technology, especially among older teachers, poor internet



connectivity and in most cases, the added pressure of household chores, have made online teaching a dreaded activity for many teachers. Parental reaction has been extreme. While some feel that if they hover around the child, they will interfere with learning, others have become too demanding of the teachers.

Every State and Centre should unanimously find a strategy not only for the schools in public sector but in private sector too to meet the challenges faced by the students in online classes.

It may be relaxing and feasible for the students and parents that CBSE has cut 30% of syllabus from 9th to 12th classes. What

is shocking is the most important topics for the nation building and national integration are out now such as federalism, secularism, nationalism, citizenship, local government etc. If these topics are not instilled in the children, undisputedly it will have adverse effect on the future of our nation.

What is need of the hour is, Centre and the States should find maximum possibilities to protect maximum lives of citizens. Centre and States should find unanimous strategies to uphold the right to life of every person in this country, especially regarding the migrants, health workers, children, women and senior citizens and find easy and healthy means for the education of the children■ ■



Right To  
Free  
Speech



# The right of a journalist under Article 19(1) (a) is no higher than the right of the citizen to speak and express

**SUPREME COURT**

-Summarized by Adv. Tresa Paul

On 19th May, 2020, in a writ petition bearing W. P (Crl) No. 130 of 2020 in the matter of *Arnab Ranjan Goswami vs. Union of India & Others*, the Supreme Court of India observed that “India’s freedom will rest safe as long as journalists can speak to power without being chilled by a threat of reprisal.” The writ petition was filed by the petitioner praying for quashing all the complaints and FIRs lodged against the petitioner in multiple States and Union Territories.

## Brief facts of the case

The petitioner who is the Editor-in-Chief of an English television news channel, Republic TV and also the Managing Director of ARG Outlier Media Asianet News Private Limited, anchors news shows on both channels. A broadcast which took place on 16 April, 2020 on Republic TV and subsequently on 21 April, 2020 led to the lodging of multiple FIRs and criminal complaints against the petitioner. The said broadcast was related to an incident which took place in Gadchinchle village of Palghar district in Maharashtra on 16 April, 2020. During the course of the said incident three persons including two sadhus were brutally killed by a mob, allegedly in the presence of the police and forest guard personnel. The incident was widely reported in the print and electronic media. In his news show titled “Poochta hai Bharat” on 21 April, 2020 on R Bharat, the petitioner claims to have raised issues in relation to the allegedly tardy investigation of the

incident. Subsequently, multiple FIRs and criminal complaints were lodged against the petitioner in the States of Maharashtra, Chhattisgarh, Rajasthan, Madhya Pradesh, Telangana and Jharkhand as well as in the Union Territories of Jammu and Kashmir under Sections 153, 153A, 153B, 295A, 298, 500, 504 and 506 of the Indian Penal Code. Asserting his fundamental right to the freedom of speech and expression under Article 19(1) (a) of the Constitution, the petitioner moved the Supreme Court under Article 32 for the protection of those rights.

### Major submission on behalf of the petitioner

The petitioner denied that he had propagated views of a communal nature in the course of the news broadcasts which gave rise to the institution of numerous complaints. It was also submitted by the petitioner that the manner in which the investigation has been conducted by the Mumbai police led to the “inescapable conclusion” that the authorities “harbor grave malice and mala fide intention” against the petitioner. It was also contented on behalf of the petitioner that the investigation was politically motivated and has been conducted with “a pre-determined and pre-meditated objective” to arm-twist, harass and humiliate the petitioner and his family and to diminish his right to free speech and expression under Article 19(1) (a) of the Constitution.

### Major submission on behalf of respondent State Maharashtra

While opposing the petitions, it was urged on behalf of the State of Maharashtra that the petitions were an attempt to seek directions from the Supreme Court to monitor the course of the investigation which is impermissible in view of the settled legal position. It was also submitted that the petitioner, as the person against whom the first FIR has been lodged, had absolutely no locus to question the line of investigation or nature of the interrogation. The rights of the petitioner under Article 19(1)(a) are subject to the limitation stipulated in Article 19(2).

### Analysis and Decision by the Supreme Court

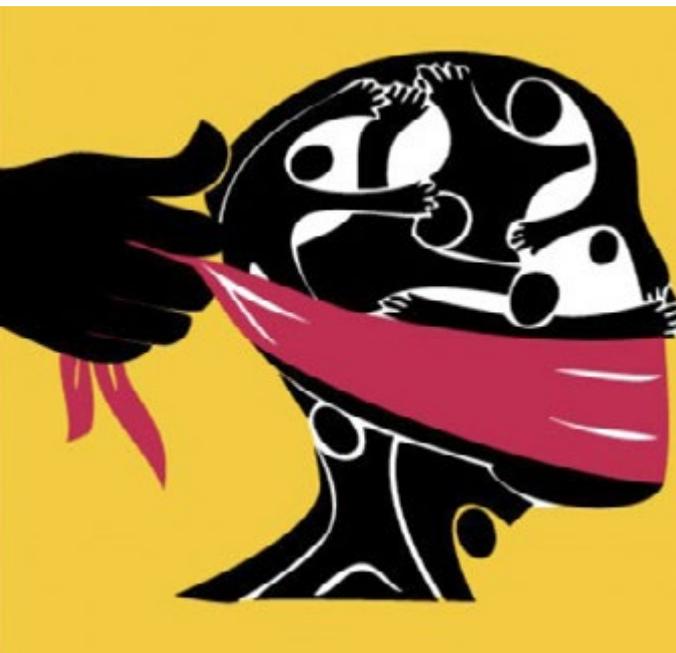
Analyzing the law laid down by the Supreme Court regarding multiple criminal proceedings on the same cause of action, the Court observed that “allowing a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that *the right of a journalist under Article 19(1) (a) is no higher than the right of the citizen to speak and express.*”

Referring to *TT Antony vs. State of Kerala*, (2001) 6

**“Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate state aim in prosecuting crime.”**

**“the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.PC. It would clearly be beyond the purview of Sections 154 and 156 Cr.PC, nay, a case of abuse of the statutory power of investigation in a given case.”**

SCC 181, the Court further observed that *“the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.PC.*



*It would clearly be beyond the purview of Sections 154 and 156 Cr.PC, nay, a case of abuse of the statutory power of investigation in a given case.”*

The Court asserted that any reasonable restriction on fundamental rights must comport with the proportionality standard, of which one component is that the measure adopted must be the least restrictive measure to effectively achieve the legitimate state aim. *“Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate state aim in prosecuting crime.”* It was also further observed by the Court that “the manner in which the petitioner has been subjected to numerous FIRs in several States, besides the Union Territories of Jammu and Kashmir on the basis of identical allegations arising out of the same television show would leave no manner of doubt that the intervention of this Court is necessary to protect the rights of the petitioner as a citizen and as a journalist to fair treatment (guaranteed by Article 14) and the liberty to conduct an independent portrayal of views. In such a situation to require the petitioner to approach the respective High Courts having jurisdiction for quashing would result into a multiplicity of proceedings and unnecessary harassment to the petitioner, who is a journalist.”

The petition was disposed of with certain directions. However, the Supreme Court refused to entertain the prayers for quashing of the FIR and the alternate relief sought for transfer of probe to CBI.■

# PERSON IN WHOSE NAME VEHICLE STANDS REGISTERED ON THE DATE OF THE ACCIDENT TO BE TREATED AS OWNER

— | *Supreme Court*

-Summarized by Adv. Tresa Paul

**The Hon'ble Supreme Court in its judgment dated 18 June 2020 in a Civil Appeal bearing No. 2632 of 2020 held that the person in whose name the motor vehicle stands registered would be treated as the owner of the vehicle, for the purposes of the Motor Vehicles Act. This judgment was delivered in the case of Surendra Kumar Bhilawe vs. The New India Assurance Company Limited.**

*I*t is an appeal against a judgment and order passed by the National Consumer Disputes Redressal Commission, New Delhi, whereby the National Commission allowed the Revision Petition filed by the Respondent, the Insurer. By allowing the said Revision petition, the National Commission set aside the order passed by the District Consumer Disputes Redressal Forum which had allowed the complaint and also set aside the order passed by the Chhattisgarh State Consumer Disputes Redressal Commission which had dismissed the appeal filed by the Insurer against the order of the District Forum.

## **Brief Facts of the Case**

The Appellant was the owner of Ashok Leyland 2214 Truck and the same was covered by a Policy of Insurance issued by the Insurer. On 13.11.2011, while the said truck was on its journey from Raipur to Dhanbad, it met with an accident near Bhakuwa Toil Police Station, Gumla in Jharkhand and the truck was extensively damaged. The Ammonia Nitrate, carried in the truck was also washed away. The accident was reported to the Gumla



Police Station and the appellant also lodged a claim with the Insurer, through one Mohammad Ilyas Ansari with whom the appellant had entered into a sale agreement. However, the Insurance Company repudiated the claim on the ground that the appellant had already sold the truck to the said Mohammad Ilyas Ansari about three years ago.

The appellant filed a consumer complaint and the same was allowed by the Learned District Forum. The appeal filed by the Insurance Company was also dismissed by the Learned State Commission wherein the Hon'ble State Commission inter alia noted that merely filing an agreement executed between the appellant and Mohammad Ilyas Ansari, it could not be said the vehicle in question was duly transferred by the appellant to Mohammad Ilyas Ansari and Mohammad Ilyas Ansari is

**Under the old Act 'owner' meant the person in possession of a motor vehicle. The definition has undergone a change. Legislature has consciously changed the definition of 'owner' to mean the person in whose name the motor vehicle stands.**

owner of the vehicle in question. However, on a Revision Petition filed by the Insurer, the Hon'ble National Commission allowed the same on the ground that when an owner of a vehicle sells his vehicle and executes a sale letter without in any manner postponing passing of the title to the property in the vehicle, the ownership in the vehicle passes to the purchaser on execution of the sale letter. The National Commission thereby completely ignored the concurrent findings of the District Forum and State Commission that even after the date of the purported sale agreement, the appellant continued to pay instalments to the Bank towards the repayment of the loan for purchase of the said truck.

#### **Analysis and Decision by the Supreme Court**

The Hon'ble Supreme Court opined that property in a specific movable property is transferred to the buyer at such time as parties to the contract intend it to be transferred, provided such immovable property is free to be transferred, and/or in other words capable of being transferred.

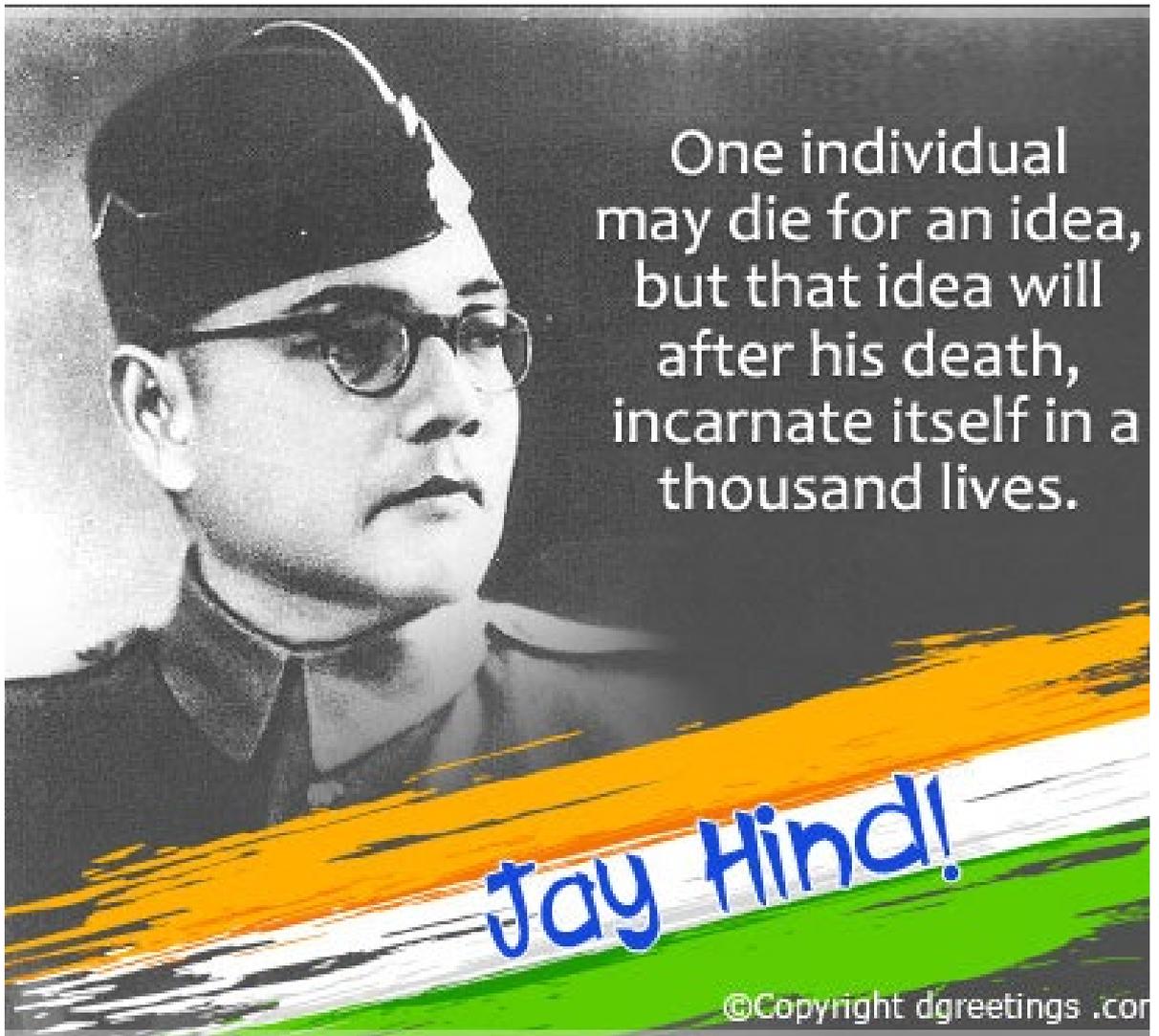
The Court further observed that the National Commission overlooked the definition of 'owner' in Section 2(30) of the Motor Vehicle Act,



transferred the ownership of a goods carriage vehicle on receipt of consideration, would not report the transfer or apply for transfer of registration, and thereby continue to incur the risks and liabilities of ownership of the vehicle under the provisions of law including in particular, under the Motor Vehicles Act, 1988 and other criminal/penal laws". The Hon'ble Court also found it difficult to accept why a person who has transferred the

ownership of the vehicle should, for over three years, benevolently go on repaying the loan for purchase of the vehicle, take out insurance policies to cover the vehicle or otherwise discharge obligations of ownership.

Thus the Hon'ble Supreme Court held the judgment and order of the National Commission as unsustainable and the same was set aside and the order of the District Forum was restored.■ ■





# CUSTODIAL DEATHS: WHAT IS THE PROCEDURE FOR INQUIRY?

**Custodial death is one of the worst crimes in a civilised society governed by Rule of Law. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? The answer, indeed, has to be an emphatic "No" - Supreme Court in D K Basu v State of West Bengal AIR 1997 SC 610**

**I**ndependent investigation in a case of custodial death/torture, at least in the initial stages, is a big problem, owing to the obvious fact that the police are called upon to probe against themselves. The Supreme Court had commented about the 'ties of brotherhood' within police, which stall fruitful investigation in cases of custodial violence, as follows :

*"...rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available. Generally speaking, it would be police officials alone who can only explain*

*the circumstance in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not pervert the truth to save their colleagues" (State of MP vs Shyamsunder Trivedi, 1997).*

In many cases, investigation is later handed over to independent agencies like CBI, or Special Investigation Teams, mostly as a result of cases fought by the relatives of the victims. But such a subsequent transfer of probe cannot assure concrete results, if the investigation in the initial crucial stages of evidence collection such as post-mortem, inquest etc., has been manipulated.

To take care of this problem, the law has envisaged a process of parallel Magisterial Inquiry, immediately after the incident. This is as per Section 176(1A) of the Code of Criminal Procedure, inserted after 2005 amendment to CrPC. Section 176(1) CrPC states that a Magistrate, who is empowered to hold inquests with respect to an unnatural death, may hold an inquiry into the cause of death in addition to the investigation held by the police officer. This is only a general, empowering provision, giving Magistrate the discretion to hold such an inquiry. Another fact to be noted is that such inquiry can be held either by an Executive Magistrate or Judicial Magistrate.

On the other hand, Section 176(1A) is a special provision to deal with cases of *death, disappearance or rape in police custody*. The provision says that in such cases, the Judicial Magistrate or the Metropolitan Magistrate, within whose local jurisdiction the offence has been committed, shall hold an inquiry in

addition to the inquiry or investigation held by the police.

The section can be broken down as :

- This inquiry is parallel to the police investigation into custodial death/rape/ disappearance.
- This inquiry cannot be done by an Executive Magistrate and must be carried out by a Judicial Magistrate.
- This inquiry is mandatory (denoted by the use of word "shall" in distinction with the use of word "may" in Section 176(1)).

Section 176(5), also inserted after 2005 amendment, mandates that the Magistrate holding such inquiry should, within 24 hours of the death of the person, forward the body with a view to it being examined to the nearest Civil Surgeon. If it is not possible to do so, reasons must be recorded in writing.

In 1994, the Law Commission of India, after taking note of abysmal rates of conviction in cases of custodial violence, had recommended the insertion of these provisions - Sections 176(1A) and 176(5) - in its 152nd



report. They were inserted a decade later, as per 2005 amendment.

The National Human Rights Commission has also issued guidelines for Magisterial Enquiry, as per which it should cover the following aspects.

1. The circumstances of death.
2. The manner and sequence of incidents leading to death.
3. The cause of death.
4. Any person found responsible for the death, or suspicion of foul play that emerges during the enquiry.
5. Act of commission/omission on the part of public servants that contributed to the death.
6. Adequacy of medical treatment provided to the deceased.

The NHRC has also set a two month deadline for the completion of enquiry by Magistrate.

### **Non-compliance of Section 176(1A)**

Despite the mandatory nature of this provision, its compliance is highly rare.

In January 2020, the Supreme Court had issued notice on a Public Interest Litigation petition seeking a directive to all States/UTs for strict implementation of Section 176(1A). That PIL filed by human rights activist Suhas Chakma stated that out of 827 cases of death or disappearance of persons in police custody between 2005 and 2017, judicial inquiry was ordered only in 166 cases i.e. 20% of the total cases.

*"Section 176 (1A) since its enactment*

*has been left untouched, remained only in the statute books, and not implemented on the ground with the consequence of rising custodial crimes.," the plea said.*

Even in the Jeyaraj-Bennix custodial deaths cases of Sathankulam, Tamil Nadu, the Madras High Court had to make a suo moto intervention to order enquiry by the Kovilpatti Judicial Magistrate.

### **Registration of FIR**

Registration of FIR in a case of custodial death is mandatory.

The Supreme Court clarified in the decision *Lalitakumari vs State of UP*, (2014) 2 SCC 1, that 'registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation'.

Even Section 176(1A) speaks of regular police investigation in cases of custodial death, and the Magisterial Inquiry is envisaged as in addition to police investigation. As regards the Sathankulam case, the police



has not lodged an FIR with respect to the custodial deaths at the time of writing this piece.

The Law Commission of India had foreseen this problem of police delaying lodging of FIR in cases of custodial deaths, and had suggested in its 152nd the insertion of a new provision to enable any person to approach a judicial authority on the failure of police to register FIR.

This was proposed to be inserted Section 154A in the CrPC, reading as follows:

*"Section 154A. Notwithstanding anything contained in Section 154 :*

- (1) Any person (including Legal Aid Centre, or NGO, or any friend or relative) aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) of that section in cases relating to custodial offences, may file a petition giving substance of such information :*
  - (a) before the Chief Judicial Magistrate, in case of custodial offences other than those involving death of the victim, or.*
  - (b) before the Sessions Judge, in cases of custodial offences involving death of the victim.*
- (2) The Chief Judicial Magistrate or*

*the Sessions Judge, if satisfied, on a preliminary enquiry that there is a prima facie case, may himself hold enquiry into the complaint or direct some other Judicial Magistrate or Additional Sessions Judge, as the case may be, to hold enquiry and thereupon direct the ministerial officer of the Court to make a complaint to the competent court in respect of the offence that may appear to have been committed.*

- (3) Notwithstanding anything contained in Section 190 of the Code of Criminal Procedure on a complaint made under sub-section (2), the competent court shall take cognizance of the offence and try the same.*
- (4) The Chief Judicial Magistrate or the Sessions Judge may obtain the assistance of any public servant or authority as they may deem fit in holding the enquiry under sub-section (2)."*

The incorporation of this provision, following the recommendations of the Law Commission of India, would have addressed the problem of delay in lodging FIR by setting off the criminal investigation process through judicial intervention at the instance of aggrieved persons or public-spirited parties.

### **Intimation to NHRC**

The National Human Rights

**Registration of FIR in a case of custodial death is mandatory.**

Commission had issued general instructions in 1993 that within 24 hours of occurrence of any custodial death, the Commission must be given intimation about it.

All reports including post-mortem, videograph and magisterial inquiry report must be sent within two months of the incident.

### **Directions to video record and photograph autopsy proceedings**

The NHRC has issued guidelines to all the States to video-film the post-mortem examination in cases of custodial deaths and send the cassettes to the Commission. The aim of video-filming and photography of postmortem examination should be:-

- i) to record the detailed findings of the post-mortem examination, especially pertaining to marks of injury and violence which may suggest custodial torture.
- ii) to supplement the findings of post-mortem examination (recorded in the postmortem report) by video graphic evidence so as to rule out any undue influence or suppression of material information.
- iii) to facilitate an independent review of the post-mortem examination report at a later stage if required.

The Commission, after ascertaining the views of the States and discussing with the experts in the field and taking into consideration the U.N. Model Autopsy protocol, has prepared a Model Autopsy Form for custodial death cases.



### **Is there need for sanction under Section 197 CrPC to prosecute police officers accused of custodial torture?**

The Supreme Court, in *Devinder Singh and others vs State of Punjab* through CBI, held that protection of sanction under Section 197 CrPc was not available for offences which have no connection with official duties.

In this case, a bench comprising Justices V Gopala Gowda and Arun Mishra upheld the argument of prosecution sanction for prosecution was not required in cases of fake encounter and custodial torture.

*"Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime",* the bench said.

The top Court observed that "public servant is not entitled to indulge in criminal activities", and that the protection under Section 197 CrPC has to be "construed narrowly and in a restricted manner".

"The offence must be directly and reasonably connected with official duty to

require sanction. It is no part of official duty to commit offence", the bench clarified.

The Court added that to claim protection under Section 197 CrPC, it has to be proved that the act was intrinsically connected with official duties.

*"In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim",* the Court said.

The Law Commission of India, taking note of the fact that the need for sanction under

Section 197 CrPC was raised by accused officers in many cases of custodial torture, had recommended the insertion of an explanation in the said Section as follows :

*"For the avoidance of doubts, it is hereby declared that the provisions of this section do not apply to any offence committed by a judge or public servant, being an offence against the human body committed in respect of a person in his custody, nor to any offence constituting an abuse of authority".*

But this recommendation made in the 152nd report has not been acted upon.■

*Live Law – 28 June 2020*

# The Preamble: What does it say, and what does it mean to India and its Constitution?

**The ideals behind the Preamble to India's Constitution were laid down by Jawaharlal Nehru's Objectives Resolution, adopted by the Constituent Assembly on January 22, 1947.**

**What is a Preamble, and what is the history of the Preamble to India's Constitution?**

**A** preamble is an introductory statement in a document that explains the document's philosophy and objectives. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation.

The ideals behind the Preamble to India's Constitution were laid down by Jawaharlal Nehru's

Objectives Resolution, adopted by the Constituent Assembly on January 22, 1947. Although not enforceable in court, the Preamble states the objects of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous.

The Preamble reads:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR 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 and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

### **What do the key words in the Preamble stand for?**

The words, “We, the people of India...” indicate the ultimate sovereignty of the people of India. Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.

The text declares India to be a “Republic” — indicating a government by the people and for the people.

It states “social, economic, and political justice” as an objective.

Nehru had said in 1956, “Democracy

has been spoken of chiefly in the past, as political democracy, roughly represented by every person having a vote. But a vote by itself does not represent very much to a person who is down and out, to a person, let us say, who is starving and hungry. Political democracy, by itself, is not enough except that it may be used to obtain a gradually increasing measure of economic democracy, equality and the spread of good things of life to others and removal of gross inequalities.”

“Liberty”, “equality”, and “fraternity” have also been made ideals.

Dr B R Ambedkar, in his concluding speech in the Constituent Assembly, had said, “Political democracy cannot last unless there lies at the base of it social democracy. What does democracy mean? It means a way of life which recognises liberty, equality and fraternity which are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity.”

The 42nd Amendment to the Constitution, passed in 1976, replaced the words “sovereign democratic republic” to “sovereign socialist secular democratic republic”. It also changed “unity of the nation” to “unity and integrity of the nation”.

### **What do the Preambles to the world’s other Constitutions say?**

#### **UNITED STATES (adopted 1787)**

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide

for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

### **IRELAND (1937)**

“In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,  
We, the people of Éire,

Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial,

Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation,

And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations,

Do hereby adopt, enact, and give to ourselves this Constitution.”

### **JAPAN (1947)**

“We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people

and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.”

### **GERMANY (1949)**

“Conscious of their responsibility before God and man,

Inspired by the determination to promote world peace as an equal partner in

a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law.

Germans in the Länder of Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia have achieved the unity and freedom of Germany in free self-determination. This Basic Law thus applies to the entire German people.”

**FRANCE (1958)**

“The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004.

By virtue of these principles and that of the self-determination of peoples, the Republic offers to the overseas territories which have expressed the will to adhere to them new institutions founded on the common ideal of liberty, equality and fraternity and conceived for the purpose of their democratic development

**ARTICLE 1**

France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralized basis.

Statutes shall promote equal access

by women and men to elective offices and posts as well as to position of professional and social responsibility.”

**SPAIN (1978)**

“The Spanish Nation, desiring to establish justice, liberty, and security, and to promote the wellbeing of all its members, in the exercise of its sovereignty, proclaims its will to:

Guarantee democratic coexistence within the Constitution and the laws, in accordance with a fair economic and social order.

Consolidate a State of Law which ensures the rule of law as the expression of the popular will.

Protect all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages and institutions.

Promote the progress of culture and of the economy to ensure a dignified quality of life for all.

Establish an advanced democratic society, and Cooperate in the strengthening of peaceful relations and effective cooperation among all the peoples of the earth.

Therefore, the Cortes pass and the Spanish people ratifies the following.”

**THE UN CHARTER (1945)**

“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

— to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

— to reaffirm faith in fundamental human rights, in the dignity and worth of the

human person, in the equal rights of men and women and of nations large and small, and

— to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

— to promote social progress and better standards of life in larger freedom,

— to practice tolerance and live together in peace with one another as good neighbours, and

— to unite our strength to maintain international peace and security, and

— to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the

common interest, and

— to employ international machinery for the promotion of the economic and social advancement of all peoples,

**HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS**

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.”●●

*Indian Express – January 24, 2020*



**EXPLAINED**  
by The Indian Express

## Delhi HC extends Helpline facility for 'Online e-Filing' related to nags in the procedure

*Latest Laws. Com- July 7, 2020*



The Delhi High Court has extended the 'Helpline' facility for resolution of complaints regarding nags in the 'Online e-Filing' system in place for Advocates/ Litigents-in-person.

The Helpline No. 14611 which is presently in use with regard to order dated 22-04-2020 to receive complaints regarding deficiency in visual acuity or audibility experienced by participants during the video conferencing has now been extended for resolving the complaints regarding the Online e-Filing system.

The timing for Helpline shall be between 9:00 am to 6:00 pm on all working days.

However it is to be noted that the concerned Officer/ Official receiving the diverted from the Helpline Number shall not be able to provide any assistance with regard to matters already filed and under process or scrutiny or about any other information related to the filing, listing or Judicial Branches. ■

## Only 25% students have access to Internet', plea filed in HC challenges constitutional validity of BCI guidelines on Online Exams & Classes

*Latest Laws. Com- July 6, 2020*

Recently, a petition has been filed in the Delhi High Court challenging the constitutional validity of the directions issued by BCI to all Law Universities in the country to conduct the final year law examinations through online mode or through any other appropriate method, and to conduct intermediate year law examinations after reopening of colleges.

In its 27th May Guidelines along with 9th June Press Release, the BCI has stated that the final year law students would be allowed to appear in online examinations, and the Universities would have the liberty to adopt an alternative strategy for conducting examinations for those students who are unable to avail the online examinations.

It mentions that for intermediate students, promotion will be on the basis of performance of previous years and marks obtained in internal examination of the current year while the Universities were directed to the conduct the end semester examination within a month of reopening of colleges.

The petitioner students have challenged the 27th June notification of University of Delhi in which it was stated that the new date sheets for all UG and PG programmes in Open Book Examination mode would be notified by the examination branch on 3rd July, and the examination would begin from 10th July.

The petitioners highlighted that only 25% law students, at the maximum, have smart phones, computers and internet connection.

The plea mentioned the suicide of a 16-year-old student in Assam who was troubled due to being unable to participate in online classes and examinations as he didn't have a smart phone.

The plea read in this regard:

"The basic submission is that any direction to hold examinations would be discriminatory and exclude the poorer 75% of the student population. The online trainings that are said to have happened, even assuming that they did take place, would not be freely accessible to the poor who have neither the device, nor the internet facilities to access these trainings".

Stating the above, it was averted in the plea that the online/internet mode education which was adopted as an alternative soon after the shutdown of the educational institutions was essentially limited to the rich

and comfortable class of the society.

The petitioners further submitted that the alternative is to have no examinations and to take the average of the students' grades/marks over the previous semesters and confer grades/marks on the basis of this average citing CBSE notification wherein similar steps were taken as an example.

"In the present case, it is suggested that the average performance of the students in the earlier years be taken to allow the students to graduate. This would obviate the need for having a system of examinations which would be discriminatory on a large scale."

The petitioners were also critical of the online lectures delivered by the Universities have also been criticized in the petition.

"...the so-called lectures that were online were delivered haphazardly and partially, in that many of the lectures on account of COVID-19 were not delivered at all. The BCI may be called upon to produce the information as to what percentage of the lectures supposed to be done online were



actually done."

It brought to the Court's notice the situation in Delhi University wherein the students have not been provided physical copies of case material. It mentioned the issues of the outstation students were stuck in their hometowns, with no access to their study material the lockdown had been announced during the University mid-semester break.

Additionally, the petition put forward that many students did not have access to online classes due to lack of accessibility to laptops, internet, phones compatible with video-conferencing applications, a quiet space, printers or finances to avail hard copies of study material.

In regard to all this, the petitioners thus pleaded for the quashing of the 27th May BCI Guidelines, as well as the 9th June Press Release, as well as the quashing of the 27th June University of Delhi notification. The pleas further sought an order directing an alternative system of evaluation to be formulated so as to do complete justice to the poorer section students and to exclude any possibility of discrimination and disadvantage. ■

### **CBSE rationalises syllabus by up to 30% for classes 9 to 12 to reduce course load** **Times of India- July 7, 2020**

The Central Board of Secondary Education (CBSE) has rationalised the syllabus by up to 30 per cent for classes 9 to 12 for the academic year 2020-21 to reduce course load of students amid the COVID-19 crisis, Union HRD minister Ramesh Pokhriyal 'Nishank' announced



recently.

The curriculum has been rationalised while retaining the core elements. "Looking at the extraordinary situation prevailing in the country and the world, CBSE was advised to revise the curriculum and reduce course load for the students of classes 9 to 12." To aid the decision, a few weeks back I also invited suggestions from all educationists on the reduction of syllabus for students and I am glad to share that we received more than 1.5K suggestions. Thank you, everyone, for the overwhelming response," Nishank tweeted.

"Considering the importance of learning achievement, it has been decided to rationalise syllabus up to 30 per cent by retaining the core concepts," he added. The Union minister said the changes made in the syllabi have been finalised by the respective course committees with the approval of the curriculum committee and the Governing Body of the Board. "The heads of schools and teachers have been advised by the board to ensure that the topics that have been reduced are also explained to the students to the extent required to connect different topics. However,

the reduced syllabus will not be part of the topics for internal assessment and year-end board examination.

"Alternative academic calendar and inputs from the NCERT on transacting the curriculum using different strategies shall also be part of the teaching pedagogy in the affiliated schools," a senior official of the HRD ministry said. For classes 1 to 8, the National Council of Education Research and Training (NCERT) has already notified an alternative calendar and learning outcomes. Universities and schools across the country have been closed since March 16 when the central government announced a nationwide classroom shutdown as one of the measures to contain the COVID-19 outbreak. A nationwide lockdown was announced on March 24, which came into effect the next day. While the government has eased several restrictions, schools and colleges continue to remain closed.■

## ICAI to top court: CA exam slotted for July-August cancelled

*The Indian Express- July 13, 2020*



**T**he Chartered Accountancy examination scheduled to be held in July-August has been cancelled in view of the Covid-19



situation and will now be held in November, the Institute of Chartered Accountants of India (ICAI) informed the Supreme Court recently.

The ICAI counsel conveyed this to the court as it took up a plea challenging the “opt out” option provided by the Institute to students who cannot undertake the test due to the pandemic. The petitioners had said that the option “arbitrarily” discriminates between the aspirants. The May cycle of the CA examination was earlier scheduled to be held between July 29 and August 16.

Hearing the plea on June 29, the court had asked ICAI to extend its ‘opt out’ facility for candidates who are unable to take the exams on account of the Covid-19 situation to all candidates who cannot make it, irrespective of whether they opted to remain out or not. The court also advised the ICAI to be flexible in conducting exams amid the pandemic and take care of concerns of candidates.

It said the ICAI should keep open options open for a change in examination till the last week and not freeze it as the situation is constantly evolving.■



## SC refuses to entertain plea to waive off private school fees

*Times of India- July 10, 2020*

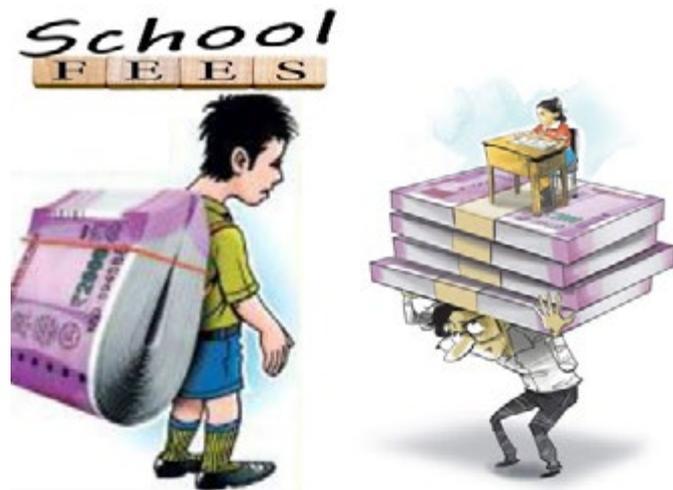
The Supreme recently refused to entertain a petition seeking a waiver of private school fees due to the coronavirus-induced lockdown. A bench headed by Chief Justice SA Bobde refused to interfere on the issue saying that problems of each state are different and the matter should have been raised before respective High Courts.

Asking the petitioners to withdraw the plea, the bench said it was a fact-intensive situation as problems of each state are different. "You have filed a plea for the whole country. It is a problem for us as we do not know who would take a decision for the whole country. Problems in each state are different," the bench told the petitioner.

The apex court was hearing a plea filed by parents from eight different states seeking regulatory mechanisms for school fees in private schools due to Covid-19 outbreak.

The petition, while seeking regulation of online education, said that full fees should not be charged for online classes and claimed that several schools are charging extra fees for online classes. The petitioners led by one Sushil Sharma sought directions to the Centre and States to ensure all the private and unaided schools do not charge any fees from the students from April 1 till the commencement of physical classes, which are suspended due to the lockdown.

In the plea, the litigants also urged that the Central and state governments direct the private, unaided and aided schools to not strike out/oust students or levy any penal/surcharge on the school fees for non-payment by enrolled students on account of the country-wide lockdown. It said that due to lockdown, parents are facing constant financial and emotional hardships and it may leave a few of them with no option but to withdraw their children or students from schools for an unforeseeable period of time. ■



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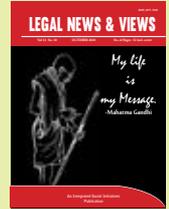


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MINISTRY OF LAW AND JUSTICE  
(Legislative Department)

New Delhi, the 22nd April, 2020/ Vaisakha 2, 1942 (Saka)

**THE EPIDEMIC DISEASES  
[AMENDMENT] ORDINANCE, 2020**  
**No. 5 OF 2020**

Promulgated by the President in the Seventy-first Year of the Republic of India.

An ordinance further to amend the Epidemic Diseases Act, 1897.

**W**HEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

**1. Short title and commencement.-**

- (1) This Ordinance may be called the Epidemic Diseases (Amendment) Ordinance, 2020.
- (2) It shall come into force at once.

**2. Amendment of section 1.-**

In section 1 of the Epidemic Diseases Act, 1897 (hereinafter referred to as the principal Act, in sub-section (2), the words “except the territories which, immediately before the

1st November, 1956, were comprised in Part B States” shall be omitted.

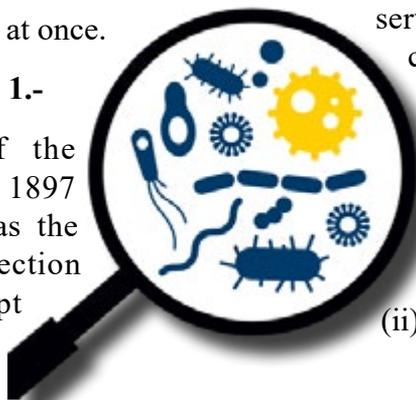
**3. Insertion of new section 1A.**

After section 1 of the principal Act, the following section shall be inserted, namely:-

**Definitions.-**

1A .In this Act, unless the Context otherwise requires.—

- (a) “act of violence” includes any of the following acts committed by any person against a health care service personnel serving during an epidemic, which causes or may cause—
  - (i) harassment impacting the living or working conditions of such healthcare service personnel and preventing him from discharging his duties;
  - (ii) harm, injury, hurt, intimidation or danger to the life of such



- healthcare service personnel, either within the premises of a clinical establishment or otherwise;
- (iii) obstruction or hindrance to such healthcare service personnel in the discharge of his duties, either within the premises of a clinical establishment or otherwise; or
- (iv) loss or damage to any property or documents in the custody, of or in relation to, such healthcare service personnel;
- (b) “Healthcare service personnel” means a person who while carrying out his duties in relation to epidemic related responsibilities, may come in direct contact with affected patients and thereby is at the risk of being impacted by such disease, and includes—
- (1) any public and clinical healthcare provider such as doctor, nurse, paramedical worker and community health worker.
- (ii) any other person empowered under the Act to take measures to prevent the outbreak of the disease or spread thereof, and
- (iii) any person declared as such by the State Government, by notification in the Official Gazette;
- (c) “properly” includes
- (i) a clinical establishment as defined in the Clinical Establishments (Registration and Regulation) Act, 2010;
- (ii) any facility identified for quarantine and isolation of patients during an epidemic;
- (iii) a mobile medical unit and
- (iv) any other property in which a healthcare service personnel has direct interest in relation to the epidemic;
- (d) the words and expression used herein and not defined, but defined in the Indian Ports Act, 1908. The Aircraft Act. 1934 or the Land Ports Authority of India Act, 2010, as the case may be, shall have the same meaning as assigned to them in that Act.

**The inquiry or trial should be concluded within one year. If it is not concluded within this time period, the Judge must record the reasons for the delay and extend the time period. However, the time period may not be extended for more than six months at a time.**

#### 4. Amendment of Section 2A.-

In section 2A of the principal Act, for the portion Amendment of beginning with the words “the Central Government may take measures” and ending with the words “as may be necessary”, the following shall be substituted, namely.—

“the Central Government may take such measures, as it deems fit and prescribe regulations for the inspection of any bus or train or goods vehicle or ship or vessel or aircraft leaving or arriving at any land port or port or aerodrome, as the case may be, in the territories to which this Act extends and for such detention thereof or of any person intending to travel therein, or arriving thereby, as may be necessary”.

### 5. Insertion of new section 2B.-

After section 2A of the principal Act, the following section shall be inserted, namely:- —

“2B. Prohibition of violence against health care service personnel and damage to property.-

No person shall indulge in any act of violence against a healthcare service personnel or cause any damage or loss to any property during an epidemic.

### 6. Amendment of section 3.-

Section 3 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered the following sub-sections shall be inserted, namely:

“(2) Whoever, —

(I) commits or abets the commission of an act of violence against a health care service

personnel; or

(ii) abets or causes damage or loss to any property.

shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees

(3) Whoever, while committing an act of violence against healthcare service personnel, causes grievous hurt as defined in section 320 of the Indian Penal Code to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.”.

### 7. Insertion of new section 3A,3B, 3C, 3D and 3E.-



**The Epidemic Diseases (Amendment) Ordinance, 2020 was promulgated on April 22, 2020. The Ordinance amends the Epidemic Diseases Act, 1897. The Act provides for the prevention of the spread of dangerous epidemic diseases. The Ordinance amends the Act to include protections for healthcare personnel combatting epidemic diseases and expands the powers of the central government to prevent the spread of such diseases.**

After section 3 of the principal Act, the following section shall be inserted, namely:-

**‘3A.Cognizance, investigation and trial of offences.-**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

- (i) an offence punishable under sub-section (2) or sub-section (3) of section 3 shall be cognizable and non-bailable;
- (ii) any case registered under sub-section (2) or sub-section (3) of section 3 shall be investigated by a police officer not below the rank of Inspector;
- (iii) Investigation of a case under sub-section (2) or sub-section (3) of section 3 shall be completed within a period of thirty days from the date of registration of the First Information Report.,
- (iv) in every inquiry or trial of a case under sub-section (2) or sub-section (3) of section 3. the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Courts find the adjournment of the same beyond the following day to be necessary for reasons to be recorded, and an Endeavour shall be made to ensure that the inquiry or trial is concluded within a period of one year

Provided that where the trial is not concluded within the said period, the Judge shall record the reasons for not having

done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing, but not exceeding six month at a time.

**3B. Composition of certain offences.-**

Where a person is prosecuted for committing an offence punishable under sub-section (2) of section 3. such offence may, with the permission of the Court, be compounded by the person against whom such act of violence is committed.

**3C. Presumption as to certain offences.-**

where a person is prosecuted for committing an offence punishable under sub-section (3) of sections 3. the Court shall presume that such person has committed such offence, unless the contrary is proved.

**3D. Presumption of culpable mental state.-**

(1) In any prosecution for an offence under sub- section (3) of section 3 which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state, but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section. a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by preponderance of probability.

*Explanation.-* In this section. culpable mental state' includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

3E.(1) In addition to the punishment provided for an offence under sub-section (2) or sub-section (3) of section 3, the person so convicted shall also be liable to pay. by way of compensation, such amount, as may be determined by the Court for causing hurt or grievous hurt to any healthcare service personnel

(2) Notwithstanding the composition of an offence under section 3B, in case of damage to any property or loss caused. the compensation payable shall be twice the amount of fair market value of the damaged property or the loss caused, as may be determined by the Court.

(3) Upon failure to pay the compensation awarded under sub-sections (I) end (2), such amount shall be recovered as an arrear of land revenue under the Revenue Recovery Act, 1890'. ■

*RAM NATH KOVIND.*  
*President.*

**The Constitution only gives  
people the right to pursue  
happiness. You have to catch it  
yourself.**

**Benjamin Franklin**



# Fraternity in the Debates on Objectives

Dr. M.P. Raju, Advocate

**T**he fraternity clause in the preamble as such was absent in the objectives Resolution which was its precursor. However, fraternity was not any new concept for the founding mothers and fathers in the Constituent Assembly. It would be difficult to imagine that the value and ideal of fraternity was foreign to our long fought independence movement and the numerous attempts at constitution making.

**‘If I had a brother I would have called him cousin’**

During the discussion on the

Objectives resolution French revolution was referred to with regard to the concept of fraternity. The French revolution is famous for highlighting the ideal of fraternity. It is generally accepted that the value of fraternity has been predominant in the constitutional and political realms not only in India but throughout the world. The events related to the French revolution have been made subject matter of various discussions both for their positive and negative implications. Same is the case with the ideal of fraternity raised during the revolution. A lot of cruelties

and injustices were committed in the name of fraternity. In our Constituent Assembly, it was understood from the beginning that more than the terms themselves, their contents were rather important and fraternity was one such term.

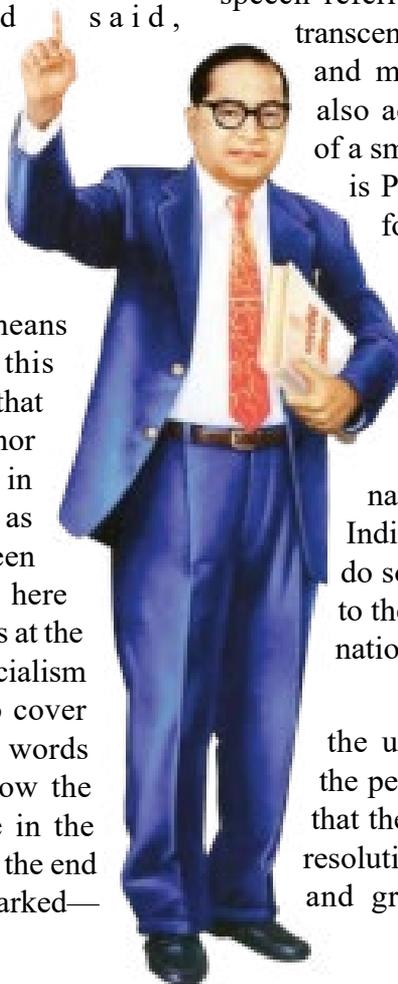
Mr. M.R.Masani (Bombay: General) had referred to the French revolution which had Fraternity as part of its motto and referred to the possibility of misuse of keeping fraternity as a motto and acting contrary to it. For him fraternity was the content of democracy and socialism. On 17th December 1946, M.R. Masani, while responding to the draft of the objectives resolution, had said, "I approach this part of the Resolution, Sir, as a democratic socialist, a socialist who feels that democracy needs to be extended from the political to the economic and social spheres and that, if socialism does not mean that, then it means nothing at all. I welcome this Resolution in spite of the fact that neither the word 'democracy' nor the word 'socialist' finds a place in its Preamble. It is perhaps just as well that those words have been avoided because, as one of us here put it in his Presidential Address at the Meerut Congress, terms like socialism or democracy can be made to cover multitude of sins. The fog of words often covers realities. We know the French Revolution was made in the name of fraternity but, towards the end of that Revolution a cynic remarked—

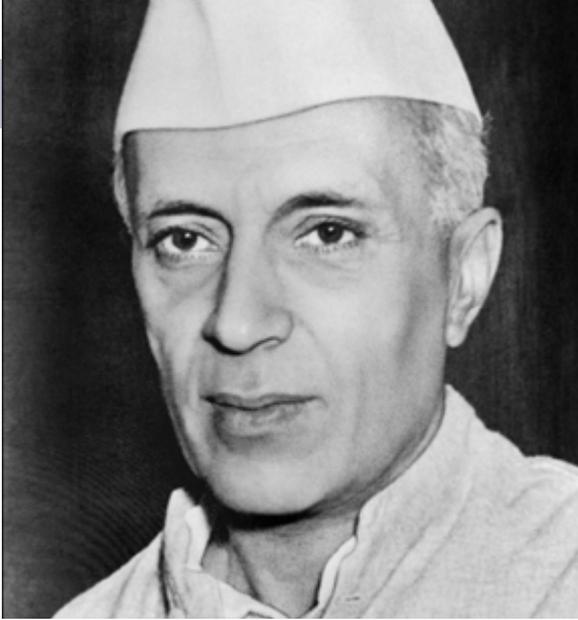
*'When I saw what men did in the name of fraternity, I resolved if I had a brother to call him cousin!'*" ( 17th December 1946, CAD, vol. 1, p. 92)

According to Masani what was required was the content of the term fraternity and not the term used as a motto without its content and many a time contrary to it. Thus almost all those who spoke supporting the objectives resolution considered democracy as political fraternity, and socialism as social and economic fraternity.

In fact, Mr Masani had begun his speech referring to the national fraternity transcending the fraternities of minority and majority communities. He had also acknowledged his membership of a smaller communal fraternity, that is Parsi. His initial words were as follows, "Mr. Chairman, in rising to speak on this Resolution, I would like to make it clear that at the outset that I do so, not as a member of one of the several communities into which unfortunately, our nation is today divided, but as an Indian first and last. (Hear, hear). I do so even though I owe my origin to the very smallest or tiniest of our national minorities." (ibid, p. 91).

At the same time he highlighted the utter lack of fraternity among the people of the nation and asserted that the constitution envisaged by the resolution would not tolerate the wide and gross inequalities which exist





in our country. “It would not tolerate the exploitation of a man’s labour by somebody else. It certainly means that everyone who toils for the common good will get his fair share of the fruits of his labour. It also means that the people of this country, so far as any constitution can endow them, will get social security – the right to work or maintenance by the Community.” (ibid, p. 92).

Dr. B. R. Ambedkar, despite supporting the resolution, stressed on this socialistic fraternity and had wanted Nehru to give more socialist content to the resolution: “I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this Resolution, although non-controversial, is to my mind very disappointing. I should have expected him to go much further than he has done in that part of the Resolution.” He further pointed out that he expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, there would be nationalization of industry and nationalization of land. He had said emphatically, “I do not understand how it could be possible for any future

Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy.” (CAD, vol. 1, p. 100). However, Dr Ambedkar was certain about the ideal of fraternity which the nation would attain in future. He said, “I know today we are divided politically, socially and economically. We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. (Applause). With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people. (Cheers.)” (ibid.). But he asserted further that this unity and fraternity can be effected only by exercising wisdom and not at all by using force of any kind. After quoting Burke, he said, “That is the only way by which we can carry with us all sections of the country. There is no other way that can lead us to unity. Let us not have no doubt on that point.” (ibid. p. 103).

On 20th January 1947, Shri Algurai Shastri (United Provinces : General) spoke supporting the resolution and insisted on the socialistic content of the resolution:

“All the human ideals of ages--equality, fraternity and brotherhood--are embodied in this Resolution. In the eighth. 'Mandal' of the 'Rig Veda' is a hymn which says:

"All human beings are equal. The King should have the same regard for his subject that a mother has for her sons."

I am glad that all such higher ideals, we have been taught for ages, are enunciated in the Resolution and therefore I am here to support it.

The Resolution visualises a State where there is no dearth of food and cloth and distribution is equitable. It embodies scientific socialistic ideals when it says "to each according to his needs and from each according to his capacity". All the ideals of a State conceived in the 'Bhagwat' are embodied in the Resolution. It is the sacred duty of a State to provide its people with all their necessities, says the 'Bhagwat':

### **Annadeh Samvibhagah Prajanam Yathahitah.**

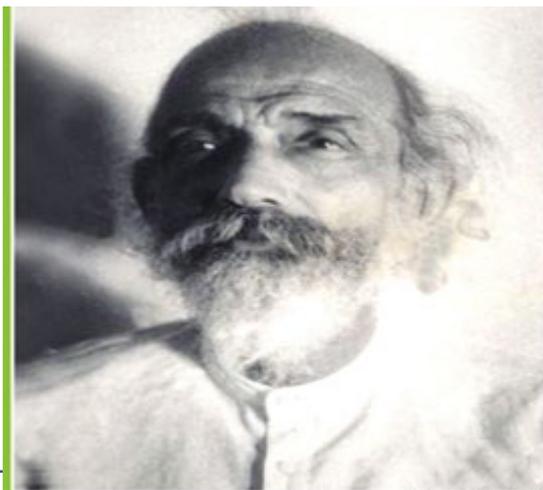
The Resolution affirms the equality of men. We wish to eliminate all class distinction existing at present. The behaviour of men with one another should be on the basis of equality. The Resolution affirms this equality and hence I support it." (CAD, vol 2, p. 287) On 20th January 1947, Prof. N. G. Ranga, while supporting the resolution spoke, that the ideals including fraternity need to be translated into enforceable rights of the ordinary people including the poor masses. He has referred to the failure of French revolution in translating these ideals into reality. He said, "Therefore we will have to stipulate certain provisions in our own Constitution, by which it will be possible for our masses to invoke the aid of the law as against the State, as against the Government and its incumbents from time to time in order to see that these fundamental rights are actually enforced. For instance, in France they had noble ideals of equality, fraternity and liberty, and they laid it down

that no Member of Parliament could possibly be put in jail while the House was in session. Yet that right was denied. Several Deputies of the French Parliament were put in jail and there was no safeguard against it. In America, before the law all the people are equal, but yet you know how depressed are the Negroes in that country. We have to prevent a repetition of that sort of thing in our country." (20th January, 1947 ) CAD, vol 2, p.)

On 17th December, 1946 itself Dr Shyama Prasad Mookherjee (Bengal General) while supporting the Resolution pointed to the fraternity of the people of India as a whole: "The Resolution has an importance of its own. After all, we are sitting here not in our individual capacity, but we claim to represent the people of this great land." (CAD, vol. 1, p. 96).

### **National fraternity with manifold smaller fraternities**

The discussions on the resolution clearly reflected the ideal of fraternity which not only did not want the annihilation of smaller fraternities but their due flourishing. While seconding the resolution, Shri Purushottam Das Tandon had stressed that



Purushottam Das Tandon  
पुरुशोत्तम दास टंडन



**J. J. M. Nichols Roy**  
1884 – 1959

our country is one and yet we shall give full freedom to its various sections to have for themselves whatever administration they liked. He added, “We shall do justice to all communities and give them full freedom in their social and religious affairs.” (13/12/1946 CADn vol 1, p. 66-67)

With regard to the small fraternities of autonomous units within India, the Hon'ble Rev. J. J. M. Nichols Roy from the General Seat of Assam asserted with full force that the units or territories will remain autonomous units together with residuary powers and will exercise all powers and functions of government and administration, save and except such powers which are assigned to the Central Government. He said, “This is our desire, this is the desire of all the people of this country. It is the object before us that each Province will be autonomous.” CAD, p. 113-114) He further reiterated that the new national fraternity cannot result in a Hindu-raj.

The leader of the Scheduled Tribes Jaipal Singh, Gurkha representative Shri Gurung, the only lady representative of Scheduled Castes Dakshayani Velayudhan,

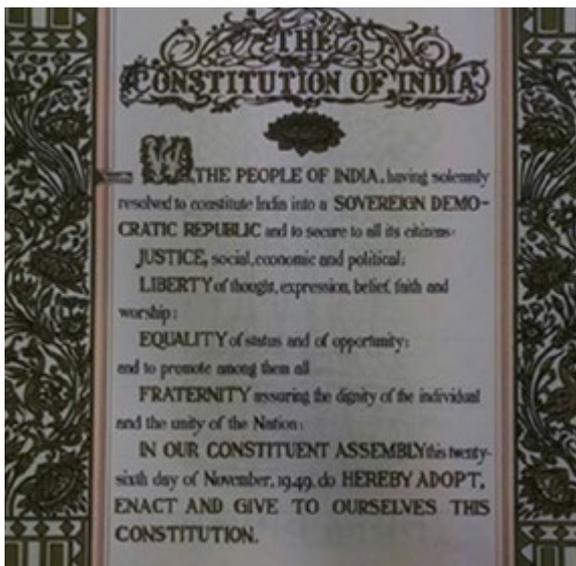
and others had spoken about the vision of the Resolution to promote the Tribal and Dalit fraternities and their aspirations.

On 20th January 1947, Shri Algurai Shastri, while speaking in Hindi acknowledged the different language fraternities in India and the need to allow them their right to develop their languages. He said, “I hear the voices of the sons of Bahadur Shah, now lying in their graves, saying ‘In what language are you expressing yourself? You are here to fulfil our desire cherished for centuries. Please express yourself in such a manner that we also may follow.’ The spirits of Jayasi, Prithviraj and Sanyukta are eager to hear what we say in this House, they are eager to know that we are here for; they want to know your aspirations and ideals.” He said that the spirits of our ancestors resting in their graves are calling upon us to address them in their own language. Thus he asserted the rights of language fraternities in India. (20th January 1947, CAD, vol. 2, p. 288-289).

In paragraphs 5 and 6, the Resolution itself has emphasized the smaller fraternities and the need to protect their rights:

“(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes;”



Thus the Resolution and the debates on it were well aware of the relevance and importance of the smaller fraternities within the larger fraternity.

### A fraternity of the world

The framers of our Constitution had not forgotten to stress the wider fraternity of the whole world within which we were attempting to find our national fraternity. Our ultimate objective was the promotion of world peace and welfare of mankind. The very Resolution itself in its last two paragraphs has this as follows:

“(7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations; and

(8) this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.” Shri Algurai Shastri, speaking on the

Resolution expanded the vision that we were contemplating a national fraternity emphasizing the world fraternity and not against or away from it:

“The Resolution does not visualise the creation of a State which will remain isolated from the world and indifferent to its good and bad. But it says that this great land, independent according to its ancient principles, will fulfil its aspirations for advancement and prosperity. Our country and all its resources shall be used for the good of the world and we will have our relations with the world on the basis of the fundamental principal of human welfare and equality. We shall try to live up to the high human ideals enunciated in the 'Rig Veda'--Devahitam Yadayuh.

Our powerful, advanced and flourishing State shall not exist for its own welfare; rather it shall use all its resources for the welfare of the world.” (20th January 1947, CAD, vol. 2, p. 287)

### A high moral Fraternity

Was the fraternity we were declaring in the Resolution a fraternity of the majority or even of unanimity? We did not want merely a fraternity of a democratic republic, but a fraternity which would hold its feet on moral high ground and can appeal to the conscience of the whole humanity.

Dr S.Radhakrishnan (United Provinces General) while expressing his support to the Resolution had highlighted this aspect of the ideal of fraternity from which the sovereignty of the people is derived. On 20th January 1947, he had said,

“Much has been said about the

sovereignty of the people. We have held that the ultimate sovereignty rests with the moral law, with the conscience of humanity. People as well as kings are subordinate to that. Dharma, righteousness, is the king of kings.

### ‘Dharmam Kshatrasya Kshatram’

It is the ruler of both the people and the rulers themselves. It is the sovereignty of the law which we have asserted.” (CAD, vol 2, p. 272.)

Shri Algurai Shastri had seen an assertion of moral fraternity which mandates the protection of the people. This moral unity of mankind is reflected across cultures communities and even governments. He said,

“This Resolution enables us to show to the world that the independence we conceive is not to serve selfish ends and to rule the people against their will. We find all the Vedic ideals embodied in the Resolution. The noble ideals of state-protection and maintenance of subjects, held high during the Muslim regime, beginning from the reign of Hazrat Umar to Bahadur Shah, are embodied in this Resolution. When Muhammad Bin Qasim had conquered and occupied Sind

he sent a letter to the then Caliph asking for his directions as to how he should rule the conquered people. The letter from the Caliph in reply is an important document and a treasure in History. The Caliph's directives, based on the ideals held by Hazrat Umar, said that he (Muhammad Bin Qasim) should treat the subjects with paternal feelings and protect their life, and property and places of worship. Humayun too, following these very ideals, taught his son Akbar to rule the people. In the Ain-e-Akbari by Akbar, where the relations between the ruler and the ruled are defined, we find nowhere that the people should be oppressed and deprived of their freedom. The former rulers acted on these ideals and we are here to revive them and the Resolution leads us to this noble task.” (CAD, vol. 2, p. 288)

The objectives resolution passed on 22nd January 1946 was in fact a declaration of the ideal of fraternity in its manifold dimension. It is this value and ideal which found its place of pride in the Constitution and more evidently in the Preamble in the form of the fraternity clause. However it would worth considering whether this has become a forgotten ideal by now. ■■

## ANSWERS TO LEGAL QUIZ

<b>1</b> <b>C</b>	<b>4</b> <b>D</b>	<b>7</b> <b>C</b>	<b>10</b> <b>A</b>
<b>2</b> <b>A</b>	<b>5</b> <b>A</b>	<b>8</b> <b>B</b>	<b>11</b> <b>D</b>
<b>3</b> <b>A</b>	<b>6</b> <b>A</b>	<b>9</b> <b>A</b>	<b>12</b> <b>D</b>

**1. The power to issue writs has been envisaged under the provisions of which of the following fundamental rights?**

- A. Right to Equality
- B. Right to Freedom
- C. Right to Constitutional Remedies
- D. Right against Exploitation

**2. Rule of Law means -**

- A. all persons are equal in the eyes of law
- B. treating all unequally as equals
- C. working according to law
- D. distributing state largesse to everyone in equal proportion

**3. In law, the term 'neighbour' means**

- A. People who might be affected by your actions
- B. People who stay in your locality
- C. People who live adjoining to your residence
- D. The word has not been given any particular definition

**4. Who of the following is credited with drafting the Indian Penal Code, 1860?**

- A. Sir James Stephen
- B. Charles Wood
- C. John Morley
- D. Lord Macaulay

**5. In which one of the following judgments of the Constitutional Bench of the Supreme Court of India, the 'rarest of rare' principle in the award of death penalty was first laid down?**

- A. Bachan Singh v. State of Punjab (1980)
- B. Gopalanachari v. State of Kerala (1980)
- C. Dr. Upendra Baxi v. State of UP (1983)
- D. Tukaram v. State of Maharashtra (1979)

**6. In which one of the following cases, the Constitutional validity of the Muslim Women (Protection of Rights of Divorce) Act 1986, was upheld by the Supreme Court?**

- A. Muhammad Ahmed Khan v. Shah Bano Begum
- B. Danial Latifi v. Union of India

- C. Mary Roy v. State of Kerala
- D. Shankari Prasad v. Union of India

**7. The President's rule under article 356 remains valid in the State for the maximum period of**

- A. Two months
- B. Five months
- C. Six months
- D. One year

**8. The Indian Independence Act, 1947 came into effect on**

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

**9. The Lokpal Bill was passed under which Article of the constitution of India?**

- A. Article 252
- B. Article 253
- C. Article 246
- D. Article 248

**10. Which of the following is not state under Article 12 of the Constitution?**

- A. Gauhati University student Union
- B. C.S.I.R.
- C. Municipal Corporation, Bhubaneswar
- D. Union Public Service Commission.

**11. The Constitution (97th Amendment ) Act, 2011 inserted under Article 19 (1) (C) :**

- A. Associations
- B. Unions
- C. Organizations
- D. Co-operative societies

**12. Untouchability is abolished and its practice in any form is forbidden in the essence of which of the following Article of the Indian Constitution?**

- A. Article 14
- B. Article 15
- C. Article 16
- D. Article 17

**ANSWERS ON PAGE - 47**

# LEGAL TERMS & MAXIMS

<b>Acquittal</b>	: The court's decision that a person is innocent of the crime they were charged with.
<b>Impaneling</b>	: The process by which jurors are selected and sworn to their task.
<b>Jury</b>	: A prescribed number of persons selected according to law and sworn to make findings of fact.
<b>Legal Aid</b>	: System by which legal services are rendered to those in financial need who cannot afford private counsel.
<b>Motion</b>	: An oral or written request to the court made by a party for a ruling or order.
<b>Recuse</b>	: To disqualify oneself as a judge.
<b>Euthanasia</b>	: Killing someone to end their suffering.
<b>Feme covert</b>	: A woman who is married.
<b>Guilty</b>	: A court's verdict that the person charged with a crime committed it.
<b>Hearsay evidence</b>	: Evidence given in court of something said to the witness by another person.
<b>Indict</b>	: Using legal means, to officially accuse someone of committing an offence.
<b>Libel</b>	: A false statement made in writing or in some other permanent record (such as a film).
<b>Mortgagor</b>	: The person who borrows the money to buy a property. The lending is secured with a mortgage of the property.
<b>Patent</b>	: An official right for a specified period of time to be the only person (or organisation) to make or sell something.
<b>Redemption</b>	: Paying off all the money borrowed under an agreement.
<b>Repeat offender</b>	: A person who continues to commit the same offence.
<b>Vendee</b>	: A person who buys something.

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