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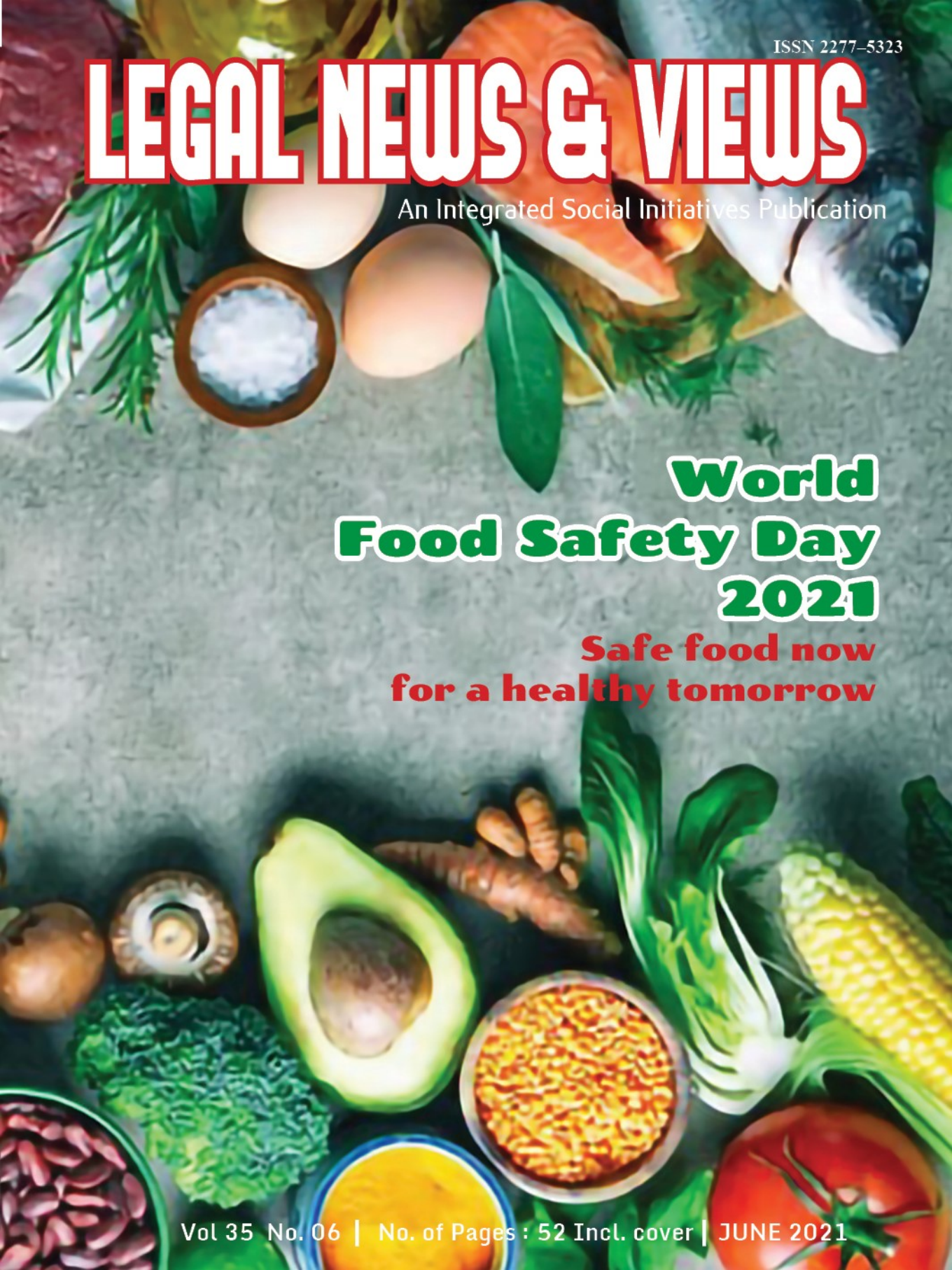

World Food Safety Day 2021

Safe food now for a healthy tomorrow

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This issue of Legal News and Views is emphasized on the theme 'Food Safety and Food Security', drawing the attention of the readers on the significance of the World Food Safety Day and slightly pondering over the issue of this very topic amidst this Covid-19 pandemic.

'Food Safety and Food Security' are the most important aspect of a living being especially in this time. To achieve what we call "life", it is important that we have food to eat and that such food is healthy and safe for human consumption. The basic concept of food security is to ensure that every human being should have access to the basic food for their active and healthy life which is characterized by availability, access, utilization and stability of food.

The Indian Constitution does not have any explicit provision with regard to right to food. However, the fundamental right to life enshrined in Article 21 of the Constitution may be interpreted to include right to live with human dignity, which may include the right to food and other basic necessities.

To compensate and relief the citizens and most importantly people with low or no income amidst the Covid-19 pandemic, the Finance Minister announced a relief package of Rs. 1.70 lakh crore in March 2020 for 80 crore people and hence to enhance the benefits of the said package, the government announced Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY) and Atma Nirbhar Bharat Scheme (ANBS) in March and June 2020.

The Department of Food and Public Distribution also allocated about 680 lakh tonnes of foodgrains, including rice, wheat and coarse cereals in 2020–21 out of which about 350 lt of foodgrains were supplied to the States and Union Territories for distribution under the National Food Security Act (NFSA), 2013 and Targeted Public Distribution System (TPDS). The Ministry of Consumer Affairs, Food and Public Distribution reported that an average of 93-94 per cent foodgrains per month was distributed under NFSA and PMGKAY.

The introduction of the Food Safety and Standards Act (FSSA) in 2006 was a paradigm shift in the Indian regulatory scenario, giving rise to newer opportunities and rights to all the stakeholders for a dignified and regulated approach towards food safety. While the government is making efforts to make sure that its people are not deprived of their basic needs by enacting various laws and schemes with regard to food safety and food security, it is important that all the stakeholders work to achieve such goals and see if it is really benefitting the public and the people in need. The data governance should also be put in place to increase transparency and accountability as that can help deepen portability benefits and scale up the implementation of integrated management of Public Distribution System.

The other portion of this issue of LNV also contains the highlights of various developments taking place in the Court of Law and the valuable interpretations of the Courts on various issues on the subject of Child Marriage Act where the Hon'ble High of Punjab and Harayana observed that Prohibition of Child Marriage Act does not differentiate on the basis of religion as regards commission of any offences punishable under the Act. Another major pronouncement of the High Court of Madhya Pradesh is that a policy which deprives married woman from right of consideration for compassionate appointment violates equality.

Sedition law which is often been misused and misinterpreted and employed in such a discretionary manner that those merely exercising their democratic rights have faced penal sanctions. But now that the Supreme Court have agreed to examine the constitutional validity of a sedition law, there is a ray of hope that democracy is rather alive and not death.

A write up on a Secular India by Dr. M. P. Raju, Supreme Court Advocate and editorial advisory board member of Legal News and Views, is another prime highlight of this issue, where he elaboratively penned down the political and constitutional concept of Secularism and how secularism as a composite pluralism is the direct consequence of assuring the individual dignity.

Hoping that the readers will enjoy reading this issue of Legal News and Views.

World Food Safety Day 2021

Theme: Safe food now for a healthy tomorrow

The consumption and production of safe food have immediate and long-term benefits for people, the planet and the economy. The availability of safe and healthy food for all can be sustained into the future by embracing digital innovations, advancing scientific solutions as well as honouring traditional knowledge that has stood the test of time. Our food systems need to produce enough safe food for all. Recognizing the systemic connections between the health of people, animals, plants, the environment and the economy will help us meet the needs of the future. Local actions based on equitable, often novel, solutions and strengthened multi-sectoral collaboration are essential to meeting the Sustainable Development Goals (SDGs).

World Food Safety Day (WFSD) celebrated on 7 June 2021 aims to draw attention and inspire action to help prevent, detect and manage foodborne risks, contributing to food security, human health, economic prosperity, agriculture, market access, tourism and sustainable development.

This year's theme, 'Safe food today for a healthy tomorrow', stresses that production and consumption of safe food has immediate and long-term benefits for people, the planet and the economy. Recognizing the systemic connections between the health of people, animals, plants, the environment and the economy will help us meet the needs of the future.

Recognizing the global burden of foodborne diseases, which affect individuals of all ages, in particular children under-5 and

persons living in low-income countries, the United Nations General Assembly proclaimed in 2018 that every 7 June would be World Food Safety Day. In 2020, the World Health Assembly further adopted a decision on strengthening efforts on food safety to reduce the burden of foodborne disease. World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO) jointly facilitate the observance of World Food Safety Day, in collaboration with Member States and other relevant organizations.

Food safety is a shared responsibility between governments, producers and consumers. Everyone has a role to play from farm to table to ensure the food we consume is safe and healthy. Through the World Food Safety Day, WHO works to mainstream food safety in the public agenda and reduce the burden of foodborne diseases globally. Food safety is everyone's business.

The food we eat is kept safe through the dedicated efforts of everyone who grows, processes, transports, stores, sells, prepares and serves it. Safe food contributes to a healthy life, a healthy economy, a healthy planet and a healthy future. Food safety is your business, too. Using food safety practices at home and in our daily lives will help avoid foodborne illness.

Calls to action

1 - Ensure it's safe - Government must ensure safe and nutritious food for all
2 - Grow it safe - Agriculture and food producers need to adopt good practices
3 - Keep it safe - Business operators must make sure food is safe
4 - Know what's safe - Consumers need to learn about safe and healthy food
5 - Team up for food safety - Work together for safe food and good health

Source: World Health Organization (WHO)

AMITABHA DASGUPTA V. UNITED BANK OF INDIA AND ORS.

Civil Appeal No. 3966 of 2010: Decided on February 19th, 2021.

The Hon'ble Supreme Court in a two Judge bench directs compensation of Rs. 5 Lakhs after a bank breaks customer's locker without just cause and directed RBI to frame rules for a locker management.

Summarized by
Adv. Bokali Kasho

This appeal, by special leave, arises out of the judgment of the National Consumer Disputes Redressal Commission ('National Commission') delivered on 18.12.2008 dismissing the Revision Petition filed against the judgment of the State Consumer Disputes Redressal Commission ('State Commission') dated 12.10.2004.

Facts of the Case:

In this case, the Appellant filed a complaint against the Respondent No. 1 for relocating the locker to other customer without formally informing him about it. The locker was rented out by the Appellant's mother in the branch of Respondent No.1.

In the early 1950's, the Appellant's mother (since deceased) took a locker on rent bearing

No. A222 in the Deshapriya Park, Kolkata Branch of the Respondent No. 1 Bank. On 27.05.1995, the Appellant who was included as a joint holder in 1970, visited the Respondent No.1 Bank to operate the locker and deposit the locker rent. However, the Appellant was informed that the Bank had broken open his locker on 22.09.1994 for nonpayment of rent dues for the period of 1993-1994. Further, that the locker had subsequently been reallocated to another customer.

The Appellant claimed that such breaking of his locker by the Bank was illegal since he had cleared dues for 1994-1995 on 30.07.1994, i.e., prior to the breaking of the locker. The Chief Manager i.e., Respondent No. 3 admitted to having inadvertently broken open the locker, though there were no outstanding dues to be paid. Later when the Appellant went to collect the contents of the locker, he found only two (one pair of bangles and one pair of ear pussa) of the seven ornaments that had been deposited in the locker in a no sealed envelope. However, Respondent No.1 Bank contends that only those two ornaments were found in the Appellant's locker when it was broken open.

Subsequently, the Appellant filed a consumer complaint before the District Consumer Forum ('District Forum') calling upon Respondent No. 1 to return the seven ornaments that were in the locker or alternatively pay Rs. 3,00,000/- towards the cost of jewelry, and a compensation for damages suffered by the Appellant.

The District Forum allowed the complaint and held Respondent No. 1 liable for deficiency of service. Hence, Respondent No. 1 was directed to return the entire contents of the locker or pay the Appellant the above stated amount along with Rs. 50,000/- as compensation for mental agony, harassment and cost of litigation.

On appeal, the State Commission reduced the compensation from Rs. 50,000/- to Rs 30,000/-However, with respect to the recovery of the cost of the ornaments it was observed that the Consumer Forum was not equipped to undertake this evaluation since it only has jurisdiction to conduct summary trial. Therefore, the Appellant was directed to approach the civil court for adjudication on the contents of the locker.

The Revision Petition against the order of the State Commission was dismissed. Hence, an appeal was filed.

Appellant's Contention:

Remitting to the Civil Court for adjudication on the issue of the contents of the locker would be improper because the contents of a locker are exclusively known to the locker holder along. Therefore, compensation must be awarded to bring a qualitative change in the attitude of the service provider.

Respondent's Submission:

The National Commission's holding does not warrant interference. And therefore, a compensation for the loss of jewellery can only be awarded after appreciation of evidence by the trail court.

Observations of the Supreme Court:

Disputes between banks and locker holders, pertaining to loss of articles placed inside the locker, have been subject to judicial consideration in various jurisdictions. Therefore, for a broader understanding the Hon'ble Court referred to certain judgments of foreign jurisdictions, before clarifying the position under Indian law.

The Court's observation that whether or not the defendant had discharged its obligations as a bailee would have to be discerned from the undisputed evidence on the record. For this the Supreme Court referred to the cases of Emma M. Lockwood v. The Manhattan Storage & Warehouse Company, Mayer v. Brensigner, National Safe Deposit Co. v. Stead and Cussen v. Southern Cal. Savings Bank, where it was held that the bank was liable under the laws of bailment. The dominant view of courts around the globe has been that the bank is in the position of a bailee with respect to the goods placed inside the locker by the locker holder.

However, it observed that the plaintiff would have to make a prima facie case that they had deposited the money inside the locker, and that it was subsequently lost. The burden of proof would then shift to the defendant bank to prove that it exercised the

necessary care required under the laws of bailment for the protection of its contents. Therefore, before applying the laws of bailment, the court must first find on the facts of the case whether the plaintiff had transferred possession of the articles to the bank.

But it is also seen that each bank is following its own set of procedures and there is no uniformity in the rules and the banks are under the mistaken impression that not having knowledge of the contents of the locker exempts them from liability for failing to secure the lockers in themselves as well. Therefore, the Hon'ble Court contended that:

"In as much as we are the highest Court of the country, we cannot allow the litigation between the bank and locker holders to continue in this vein. This will lead to a state of anarchy wherein the banks will routinely commit lapses in proper management of the lockers, leaving it to the hapless customers to bear the costs."

It further observed that, it is imperative to lay down certain principles which will ensure that the banks follow due diligence in operating their locker facilities, until the issuance of comprehensive guidelines in this regard. Noticing that irrespective of the value of the articles placed inside the locker, the bank is under a separate obligation to ensure that proper procedures are followed while allotting and operating the lockers, hence, the Court enumerated a list of obligations.

Also, to identify if the relationship of bailment exists between the bank and the locker holder under Indian law, the Hon'ble Court observed that it is necessary at the outset to refer to the relevant provisions under the Indian Contract Act, 1872.

In 2006, the Reserve Bank of India (RBI) had issued a Draft Circular on Safe Deposit Lockers which was only in the form of a proposal issued to the banks and hence does not have any binding value. However, on perusal of the 2006 Circular, it is evident that at that point in time, the RBI had recommended that the laws of bailment ought to guide the relationship between the bank and the locker holder, even if the bank has no knowledge of the contents of the locker.

Imposition of liability upon the bank with respect to the contents of the locker is dependent upon provision and appreciation of evidence in a civil suit for such purpose. However, this does not mean that the Appellant in the present case is left without any remedy. Banks as service providers under the earlier Consumer Protection Act, 1986, as well as the newly enacted Consumer Protection Act, 2019, owe a separate duty of care to exercise due diligence in maintaining and operating their locker or safety deposit systems.

Thus, the Supreme Court observed that the banks owe a duty of care to exercise due diligence in maintaining and operating their locker or safety deposit systems and that they cannot contract out of the minimum standard of care in this regard.

The bench while directing the Reserve Bank of India to lay down Rules and Regulations

mandating the steps to be taken by banks with respect to locker facility/safe deposit facility management observed that the banks cannot wash off their hands and claim that they bear no liability towards their customers for the operation of the locker.

Decisions of the Supreme Court:

1. The Hon'ble Court imposed costs of Rs. 5,00,000/- on the Bank to be paid to the Appellant as compensation, which is to be deducted from the salary of the erring officers, if they are still in service and if they have already retired, the amount of costs should be paid by the Bank with an additional amount of Rs. 1,00,000/- as litigation expenses.
2. The Hon'ble Court also directed the RBI to issue suitable rules and regulations, comprehensive directions mandating the steps to be taken by banks with respect to locker facility/safe deposit facility management within six months. The order reads as:

"Until such Rules are issued, the principles stated in this judgment, in general and at para 13 in particular, shall remain binding upon the banks which are providing locker or safe deposit facilities."

It further directed the RBI to issue suitable rules with respect to the responsibility owed by banks for any loss or damage to the contents of the lockers, so that the controversy on this issue is clarified as well.❐

Is Your Private Vehicle A 'Public Place?' Law Has Different Answers

Law is not an exact science. Its shades change depending on the context, differ from statute to statute. Background circumstances, and the expediency of the situation often influence the application of law.

So, one might find different, if not totally conflicting, answers in law to similar questions.

Two recent judgments on the issue whether a private car is a public place are examples. While the Delhi High Court held that a private car amounts to a public place in order to hold that wearing of face mask is compulsory even when travelling alone, the Supreme Court held in an NDPS case that a private vehicle is not a public place.

Though at first blush, these judgments seem conflicting, a deeper analysis will enable one to reconcile with them, accepting the interesting manners in which law operates.

Delhi High Court's facemask ruling

It was in the cases Saurabh Sharma and others v. Sub Divisional Magistrate (East) and others, that the Delhi High Court held that wearing of facemask was compulsory even while driving alone in a personal car. A single bench of Justice Prathiba M Singh held that a private vehicle will amount to a public place in the context of COVID-19 pandemic regulation.

Referring to precedents, the Court said that the meaning of the term 'public place' changes from context to context.

"...the word 'public place', has to be interpreted in this case in the context of the COVID pandemic. To determine what constitutes a `public place' the manner in which the Coronavirus can spread is the crucial part".

The Court said that there was a possibility of the droplets released by a person while driving alone in a car infecting other who may enter the vehicle hours later.

"The droplets carrying the virus can infect others even after a few hours after the occupant of the car has released the same. There are several possibilities in which while sitting alone in the car one could be exposed to the outside world. Thus, it cannot be said that merely because the person is travelling alone in a car, the car would not be a public place", it said.

"A vehicle which is moving across the city, even if occupied at a given point in time by one person, would be a public place owing to the immediate risk of exposure to other persons under varying circumstances. Thus, a vehicle even if occupied by only one person would constitute a 'public place' and wearing of a mask there in, would be compulsory".

While there are views doubting the rationale of mandating wearing of facemask during lone travel in a car, it is to be noted that the High Court was essentially refusing

to interfere with the regulations issued by the authorities under the Epidemic Diseases Act and Disaster Management Act. In other words, the Court was exercising an extra caution, taking note of the grave pandemic situation. If this practice reduces the risk of corona transmission even by a single percentage, let that happen – this seems to have been the intention which drove the judgment.

When private vehicle did not become a 'public place' under NDPS Act

On April 16, the Supreme Court held that a private vehicle is not a "public place" as per Section 43 of the Narcotic Drugs and Psychedelic Substances Act in the case Boota Singh v. State of Haryana.

Here, recovery was made from the accused while they were in a jeep at a public place. The high court held that the case of the accused would be covered by Section 43 of NDPS Act and not by Section 42. Section 42 deals with Power of entry, search, seizure and arrest without warrant or authorisation while Section 43 with power of seizure and arrest in public place.

Before the Apex Court, the accused contended that the vehicle in question was a private vehicle belonging to accused and was not a public conveyance, though parked on a public road and therefore the case would not be come under Section 43 but would be governed by the provisions of Section 42 NDPS Act. Since Section 42 having not been complied with at all, they were entitled to acquittal, they contended.

The Explanation to Section 43 stated: For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

The Supreme Court held that since the explanation only referred to "public conveyance" and not to private vehicle, the jeep involved in the case was not a "public place" coming under Section 43. Hence, the officers had to follow the procedure under Section 42 NPDS with respect to the recovery. The same having not been followed, the accused were acquitted.

"The evidence in the present case clearly shows that the vehicle was not a public conveyance but was a vehicle belonging to accused Gurdeep Singh. The Registration Certificate of the vehicle, which has been placed on record also does not indicate it to be a Public Transport Vehicle. The explanation to Section 43 shows that a private vehicle would not come within the expression "public place" as explained in Section 43 of the NDPS Act", a bench comprising Justices UU Lalit and KM Joseph held.

Here, the conclusion of the Court turned on the specific entry in the statutory provision.

Drinking alcohol inside private car amounts to drinking in public place

In 2019, the Supreme Court held that consuming liquor in a private vehicle in a public place will attract the offence under the Bihar Excise Act, which prohibits alcohol.

In this case Satvinder Singh Saluja v. State of Bihar, the appellant were charge-sheeted under Section 53(a) of the Bihar Excise (Amendment) Act 2016 on the ground that they were found drunk inside a private vehicle.

For seeking the quashing of the chargesheet, the appellant argued that Section 53(a), which punishes drinking in public place, is not applicable as private car is not a public place.

The SC rejected the first argument on the basis of statutory definitions of 'public place' under the Bihar Excise (Amendment) Act 2016 and Bihar Prohibition and Exchise Act 2016.

As per Section 2(17A) of the Bihar Excise (Amendment) Act "Public Place" means "any place to which public have access, whether as a matter of right or not and includes all places visited by general public and also includes any open space".

According to the Court, the key word in the definition was "access". Any place to which public have access, whether as a matter of right or not, is a public place.

It observed that public can have access to a private vehicle in a road. The Court noted that 'access' has been defined in Black's Law Dictionary as "A right, opportunity, or ability to enter, approach, pass to and from, or communicate with access to the courts."

"When private vehicle is passing through a public road it cannot be accepted that public have no access. It is true that public may not have access to private vehicle as matter of right but definitely public have opportunity to approach the private vehicle while it is on the public road. Hence, we are not able to accept the submission that vehicle in which appellants are travelling is not covered by definition of 'public place' as defined in Section 2(17A) of the Bihar Excise (Amendment) Act, 2016", said the judgment authored by Justice Bhushan.

The bench further added:

"The omission of public conveyance in the definition of Section 2(17A) brought by the Bihar Excise (Amendment)Act, 2016 also indicates that the difference between public conveyance and private conveyance was done away in the statutory amendment. We, thus, cannot accept the submission of the learned counsel for the appellant that private conveyance will be excluded from the definition of 'public place' as contained in Section 2(17A)".

The top court also took into account the fact that the definition of 'public place' under Section 2(53) of the Bihar Prohibition and Excise Act 2016 specifically included means of transport, both public and private.

The Kerala High Court has also held that drinking inside a private car at a public place will amount to an offence. This is because after the 2010 amendment to the Kerala Abkari Act, private vehicles parked in any public place were also treated as public places for the purpose of Section 15C of the Act, which prohibits drinking in public places.

These examples show that the answers in law can be counter-intuitive to common thinking.❐

Source: LiveLaw: 17th April 2021

Concept Of Repugnancy Under Article 254: Supreme Court Explains

In its judgment declaring West Bengal Housing Industry Regulation Act, 2017 (WBHIRA) unconstitutional, the Supreme Court explained the concept of repugnancy between a law enacted by the State legislature and Parliament.

The bench comprising Justices DY Chandrachud and MR Shah held that WBHIRA is repugnant to the RERA, and hence unconstitutional.

At the outset, the Court noted some of the salient features of Article 254 as follows:

(i) Firstly, Article 254(1) embodies the concept of repugnancy on subjects within the Concurrent List on which both the State legislatures and Parliament are entrusted with the power to enact laws;

(ii) Secondly, a law made by the legislature of a State which is repugnant to Parliamentary legislation on a matter enumerated in the Concurrent List has to yield to a Parliamentary law whether enacted before or after the law made by the State legislature;

(iii) Thirdly, in the event of a repugnancy, the Parliamentary legislation shall prevail and the State law shall "to the extent of the repugnancy" be void;

(iv) Fourthly, the consequence of a repugnancy between the State legislation with a law enacted by Parliament within the ambit of List III can be cured if the State legislation receives the assent of the President; and

(v) Fifthly, the grant of Presidential assent under clause (2) of Article 254 will not preclude

Parliament from enacting a law on the subject matter, as stipulated in the proviso to clause (2)

Referring to precedents in this regard, the Part H of the judgment discusses three types of repugnancy.

The first, the Court said, envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a Parliamentary law with reference to a matter in the Concurrent List.

"Such a conflict brings both the statutes into a state of direct collision. This may arise, for instance, where the two statutes adopt norms or standards of behavior or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other", the Court said.

The Court said that this type of repugnancy is grounded in an irreconcilable conflict between the provisions of the two statutes each of which operates in the Concurrent List. *"The conflict between the two statutes gives rise to a repugnancy, the consequence of which is that the State legislation will be void to the extent of the repugnancy. The expression 'to the extent of the repugnancy' postulates that those elements or portions of the state law which run into conflict with the central legislation shall be excised on the ground that they are void."*, the bench observed.

The Court further explained the second type as that involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. "The notion of occupying a field emerges when a Parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a Parliamentary enactment not because of an actual conflict with the absolute terms of a Parliamentary law but because the nature of the legislation enacted by Parliament is such as to constitute a complete and exhaustive Code on the subject.", it said.

"The third test of repugnancy is where the law enacted by Parliament and by the State legislature regulate the same subject. In such a case the repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject.", the bench added.

The second and third tests, the Court noted, are not grounded in a conflict borne out of a comparative evaluation of the text of the two provisions.

"Where a law enacted by Parliament is an exhaustive Code, the second test may come into being. The intent of Parliament in enacting an exhaustive Code on a subject in the Concurrent List may well be to promote uniformity and standardization of its legislative scheme as a matter of public interest. Parliament in a given case may intend to secure the protection of vital interests which require a uniformity of law and a consistency of its application all over the country. A uniform national legislation is considered necessary by Parliament in many cases to prevent vulnerabilities of a segment of society being exploited by an asymmetry of information and unequal power in a societal context. The exhaustive nature of the Parliamentary code is then an indicator of the exercise of the State's power to legislate being repugnant on the same subject. The third test of repugnancy may arise where both the Parliament and the State legislation cover the same subject matter. Allowing the exercise of power over the same subject matter would

trigger the application of the concept of repugnancy. This may implicate the doctrine of implied repeal in that the State legislation cannot co-exist with a legislation enacted by Parliament. But even here if the legislation by the State covers distinct subject matters, no repugnancy would exist. In deciding whether a case of repugnancy arises on the application of the second and third tests, both the text and the context of the Parliamentary legislation have to be borne in mind. The nature of the subject matter which is legislated upon, the purpose of the legislation, the rights which are sought to be protected, the legislative history and the nature and ambit of the statutory provisions are among the factors that provide guidance in the exercise of judicial review. The text of the statute would indicate whether Parliament contemplated the existence of State legislation on the subject within the ambit of the Concurrent List. Often times, a legislative draftsperson may utilize either of both of two legislative techniques. The draftsperson may provide that the Parliamentary law shall have overriding force and effect notwithstanding anything to the contrary contained in any other law for the time being in force. Such a provision is indicative of a Parliamentary intent to override anything inconsistent or in conflict with its provisions. The Parliamentary legislation may also stipulate that its provisions are in addition to and not in derogation of other laws. Those other laws may be specifically referred to by name, in which event this is an indication that the operation of those specifically named laws is not to be affected. Such a legislative device is often adopted by Parliament by saving the operation of other Parliamentary legislation which is specifically named. When such a provision is utilized, it is an indicator of Parliament intending to allow the specific legislation which is enlisted or enumerated to exist unaffected by a subsequent law. Alternatively, Parliament may provide that its legislation shall be in addition to and not in derogation of other laws or of remedies, without specifically elucidating specifically any other legislation. In such cases where the competent legislation has been enacted by the same legislature, techniques such as a harmonious construction can be resorted to in order to ensure that the operation of both the statutes can co-exist. Where, however, the competing statutes are not of the same legislature, it then becomes necessary to apply the concept of repugnancy, bearing in mind the intent of Parliament. The primary effort in the exercise of judicial review must be an endeavour to harmonise. Repugnancy in other words is not an option of first choice but something which can be drawn where a clear case based on the application of one of the three tests arises for determination...", the judgment reads.❐

LiveLaw: 5th May 2021

TEST YOUR KNOWLEDGE

1. Who is responsible for laying down procedure to handle hazardous substances?
   A. Central Government appointed panel
   B. State Government
   C. State Government appointed panel
   D. Central Government
2. The Bhopal Gas Leak Act empowers Government to
   A. penalize polluters
   B. secure claims
   C. setup special courts
   D. monitor gas industry
3. Acid rain is formed due to contribution from the following pair of gases
   A. Oxygen and nitrous oxide
   B. Methane and sulphur dioxide
   C. Nitrogen dioxide and sulphur dioxide
   D. Methane and ozone
4. World Environmental day is celebrated on:
   A. December 1 B. June 5
   C. November 14 D. August 15
5. The first of the major Environmental Protection Act to be promulgated in India was:
   A. Water Act B. Air Act
   C. Environmental Act
   D. Noise Pollution Rule
6. What is Cross-Contamination?
   A. The transfer of microorganisms from one food or surface to another.
   B. The presence of harmful microorganisms in food.
   C. When someone becomes ill after having eaten food containing toxins.
   D. When more than two people become sick from eating the same food.
7. The three factors that cause foodborne illness are:
   A. Contamination, improper use of thermometers, backflow.
   B. Control points, critical control points, and critical limits.
   C. Time-temperature abuse, poor personal hygiene, and cross-contamination.
   D. Potentially hazardous foods, the flow of food, and temperature of food.
8. What does the term 'Habeas Corpus' mean?
   A. Church authority B. To produce a body
   C. The word of law D. The body of law
9. The first chairman of the Atomic Energy Commission was?
   A. Dr. C.V.Raman B. Dr. H.J.Bhabha
   C. Dr. A.P.J.Abdul Kalam
   D. Dr. Vickram Sarabhai
10. Name the Governor General who abolished sati in 1829?
    A. Lord Clive B. Lord Curzon
    C. Lord William Bentinck
    D. Lord Dalhousie
11. Money bill is given under which article of the Constitution of India?
    A. Article 110 B. Article 210
    C. Article 101 D. Article 201
12. The president's rule under article 356 remains valid in the state for the maximum period of?
    A. Two months B. Three months
    C. Four months D. Six months

Answers on page 48

Prohibition of Child Marriage Act does not differentiate on basis of religion: Punjab & Haryana HC

Bar and Bench: 01 May, 2021

The Court held that though as per Muslim Personal law, a valid marriage can be contracted between the parties upon attaining the age of puberty, there is no such special treatment under Prohibition of Child Marriage Act Prohibition of Child Marriage Act, 2006 does not differentiate on the basis of religion as regards commission of any offences punishable under the Act, the Punjab & Haryana High Court recently held (Jaspreet Kaur v. State of Punjab).

Thus, even though as per the Muslim Personal law, a valid marriage can be contracted between the parties upon attaining the age of puberty, there is no such special treatment afforded by the Prohibition of Child Marriage Act, the Court said.

"As per the Muslim Personal law a valid marriage can be contracted between the parties upon attaining the age of puberty; however, it is to be further noticed that the Prohibition of Child Marriage Act, 2006, does not differentiate on the basis of religion, as regards the commission of any offences punishable under the provisions of that Act," the order stated.

However, as per the judgment of the Supreme Court in Hardev Singh vs. Harpreet Kaur [2020 (1) RCR (Criminal)], if a girl/woman is above marriageable age in terms of that Act (above 18 years), no offence punishable under the provisions of that Act would be made out, the Court clarified.

It, therefore, ordered that protection be provided to an inter-faith couple, the girl being above the marriageable age of 18 as per the Act though the boy was below the marriageable age.

Since protection of life and liberty is a fundamental right of every citizen under Article 21 of the Constitution of India, Justice Amol Rattan Singh directed the Senior Superintendent of Police, to ensure that the lives and liberty of the petitioners are not put to any harm or threat at the hands of their family. However, the Court added that if upon verification of the certificates, the age of petitioner is found to be actually below 18 years of age, this order would not prohibit proceedings under the provisions of the Act.

Further, it was made clear that if any of the averments made in the petition are found to be incorrect, specifically with regard to either the petitioners being in any prohibited relationship to each other, or as regards their previous marital status, they shall not be construed to be a bar on proceedings initiated as per law.❐

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COVID-19 disrupted food security for millions; will likely reverse progress on ending hunger by 2030: Dr Harsh Vardhan

The Economic Times: 20th April 2021

The COVID-19 pandemic has severely disrupted the food security and nutrition for millions of people around the world, and will likely reverse the progress made towards

ending hunger by 2030, Minister of Health and Family Welfare Dr Harsh Vardhan has said.

Addressing the 54th Commission on Population and Development on the theme 'Population, food security, nutrition and sustainable development', he said that the Government of India accords the highest priority to food and nutrition as evidenced by the various national legal instruments and schemes over the last few years.

"The population, food security, nutrition and sustainable development theme is of critical importance at all times. But even more so now as the world is trying to rebuild itself while emerging from the challenges posed by COVID-19," Vardhan said.

UN Deputy Secretary-General Amina Mohammed, in her address to the event, also stressed that the pandemic has devastated livelihoods, exacerbated injustices and inequalities, and threatened decades of development progress. COVID-19 is also exacerbating food crises caused by the conflict, severe climate events and pest infestations. "Sadly, the world is not on track to eliminate hunger and malnutrition by 2030. Undernourishment was already rising before the pandemic, and the trend has worsened considerably over the past year," she said.

Vardhan said that even during the COVID-19 crisis, while making efforts to contain the spread of the pandemic, India has taken "concerted actions" to ensure that food security and nutrition services are not compromised and vulnerable groups such as farmers, daily wage earners, woman, self-help groups and poor senior citizens are provided the support necessary in these unprecedented times.

In 2020, India announced a USD 22.6 billion relief package to take care of food security measures to help the poorest of the poor. A second economic stimulus plan worth

USD 13 billion was sanctioned to aid small and medium businesses mainly in the agricultural and food sectors, he said.

He highlighted the various national programmes that have contributed to improving the nutrition outcomes in India, addressing both the immediate and the underlying determinants of undernutrition through nutrition specific and nutrition sensitive interventions. "The largest of all, the targeted public distribution system distributes 58 million tonnes of wheat and rice at highly subsidised prices, covering 814 million people across all states in our country," he said. The POSHAN Abhiyaan is the government of India's flagship programme to improve nutritional outcomes for children, pregnant women and lactating mothers, he said.

In her remarks, Mohammed noted that despite the significant contributions of women to food production, they face a higher prevalence of food insecurity than men. "Meanwhile, women are facing increased household and community demands due to the pandemic, and often must feed their families on reduced incomes," she said, adding that women's full and effective participation in pandemic response and recovery and in all other spheres must be ensured.❐

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Supreme Court advances summer vacation in view of COVID-19

Bar and Bench: 01 May, 2021

The Supreme Court of India has advanced its summer vacation in view of the surge in COVID-19 cases. According to revised schedule, the vacation will start on May 10, 2021 and the Court will reopen on June 28, 2021.

A circular to that effect was issued on Saturday by Additional Registrar Mahesh T Patankar.

The circular also said that November 13 will be a working day for the top court.

Earlier, the vacation was scheduled to commence on May 14 and end on June 30.❐

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Food safety and security must become everyone's business in India

FnBnews.com: 06 June, 2020

India is traditionally an agrarian economy. However, its contribution to the nation's GDP is still below that of the industrial and services sectors, despite various measures and governmental policies. While it is heartening to note that the contribution to GDP is higher than the global average, India still lags behind China.

The Ministry of Agriculture has strategies in place to boost the agriculture sector's contribution to the nation's GDP and is striving to implement food safety protocols to ensure food security for all.

While there has been some progress, closer inspection indicates that programmes, policies and protocols are too focussed on specific parts of the value chain. Considering the size of the value chain, it will take time before tangible results are obtained. However, it should be noted that, often, the implementation at grassroots levels is dependent on too many stakeholders and its execution is not always streamlined. This gives rise to delays in the translation of benefits.

The FSSAI (Food Safety and Standards Authority of India) as a nodal agency is doing extensive work in revising and strengthening the food safety laws and regulations. The food safety authority has created various schemes to curtail and prevent food adulteration, which is still an on-going battle in the Indian agriculture sector. Its efforts to ensure clean labelling of food products, revamp packaging guidelines and launch the Food Safety and Compliance System (FoSCoS) in June 2020, as a one-stop point for regulatory and compliance engagements with food business operators (FBOs) are noteworthy.

However, organisations such as the Central Food Technological Research Institute (CFTRI), National Institute of Nutrition (NIN),

and others, emphasize the need for better regulations on excess fat and sugar, especially in packaged and ready-to-eat foods.

The use of pesticides, antibiotics, and other chemicals in food needs to be addressed and regulated as it directly impacts the health of the nation. Careful consideration of the myriad approaches, schemes, policies, regulations, and protocols gives the impression that the "Farm-to-Fork" concept is still not a reality.

Considering the size and volume of the agriculture and food and beverage sector operations, it can be argued that the concept cannot be realised in the next few years. However, it is vital to consider the entire value chain network (from agricultural inputs until products reach the end- consumer) as a single entity to help in realizing food safety and security.

Despite claims of infrastructure availability, a surplus of storage facilities and so on, the reality depicts a contradictory picture. A report from FSSAI late last year found that many states lack the infrastructural facilities to ensure food safety protocols. It specified that many states lack facilities for testing food samples on time. Similarly, cold chain facilities still need to be streamlined as lack of the same has been attributed to food spoilage and product wastage. Current approaches are often aimed at specific segments of the value chain network. They must be streamlined to implement a unified goal of self-sufficiency and food security across the nation.

Awareness and accessibility of available technologies and services that can boost productivity, access to storage facilities, infrastructure development, and linkages across the nation to ensure seamless transportation of goods and produce can reduce food wastage, avoid delays and meet consumer demands across the nation.

Integrated approaches toward continuous monitoring of productivity and yield across agriculture, streamlining availability for exports, internal consumption, and food and beverage and fast-moving consumer goods sector fields to potentially reduce barriers between various segments can help India realise its goal of self-sufficiency while ensuring food safety and security for all.❐

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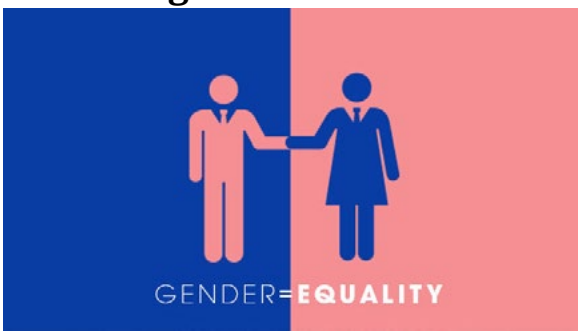
"Policy Which Deprives Married Daughters from Compassionate Appointment Violates Equality": Madhya Pradesh HC [DB] Upholds Single Bench Order



Live Law: 19th April 2021

The Gwalior Bench of the Madhya Pradesh High Court has expressed its agreement with the position taken by a Full Bench of the High Court in Indore, vis-à-vis consideration of married daughter from compassionate appointment.

In the said case, a Full Bench at Indore had held that the policy of the Government prohibiting consideration of married daughter from compassionate appointment is violative of Article 14 of the Constitution.

The Bench comprised of Justices Sujoy Paul, JP Gupta and Nandita Dubey had observed that such a policy which deprives married woman from right of consideration for compassionate appointment violates equality.

In the said case, the Full Bench referred to various international law principles and treaties that deter gender discrimination. It also referred to the view opted by the Supreme Court in Secretary, Ministry of Defence v. Babita Puniya & Ors.:

"The policy decision of the Union Government is a recognition of the right of women officers to equality of opportunity. One facet of that right is the principle of nondiscrimination on the ground of sex which is embodied in Article 15(1) of the Constitution. The second facet of the right is equality of opportunity for all citizens in matters of public employment under Article 16(1)."❐

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What Is the Basis for Differential COVID Vaccine Pricing, SC Asks Centre

The Wire: 27th April 2021.

New Delhi: Terming the massive resurgence of COVID-19 cases a "national crisis", the Supreme Court said it cannot remain a mute spectator and made clear that its *suo motu* proceeding on devising a national policy for COVID-19 management is not meant to supplant high court hearings.

A bench headed by Justice D.Y. Chandrachud said the high courts are in a better position to monitor the pandemic situation within their territorial boundaries and the apex court was playing a complementary role and its intervention must be understood in the correct perspective as there are some matters which transcend the regional boundaries. There is a need for top court's intervention on certain national issues as there might be matters related to coordination between states, it said.

"We are playing complementary role. If high courts have any difficulty in dealing with issues due to territorial limitations, we will help," said the bench. These observations assume significance as some lawyers had criticised the apex court for taking suo motu cognisance of the pandemic's resurgence and issues by saying that high courts be allowed to continue with hearings.

CJI S.A. Bobde, who has since retired, took a very strong exception to what it called unfair criticism by some lawyers and said this is how the institution is being destroyed.

The bench also took note of the submissions of lawyers on differential pricing of COVID-19 vaccines and asked the Centre to apprise it of the rationale and basis behind such pricing.

"Regarding pricing on vaccination different manufacturers is quoting in different prices. There are powers under Patent act. This is a pandemic and a national crisis," Justice Bhat said.

In the court's order, the bench said, "Union shall clarify the projected requirements of vaccine due to enhancement of coverage. Modality to be put in place to ensure that shortage and deficit would be looked into. Centre to clarify basis and rationale for pricing of vaccine."

On the government's decision to vaccinate all citizens above 18 years, the court sought replies from states by Thursday as to how they intend to cope with the surge in vaccine demand and the infrastructure required for that.

The bench also asked the Centre to apprise the top court of the modalities on distribution of oxygen as well as the vaccines to states and the monitoring mechanism.

The bench took note of the pandemic situation due to sudden surge in COVID-19 cases as also in mortality and said it expected the Centre to come out with a national plan to deal with distribution of essential services and supplies, including oxygen and drugs.

Observing that oxygen to patients infected

with the virus is said to be an essential part of treatment, the top court had said it seemed that a certain amount of panic has been generated due to which people have approached several high courts seeking relief.❐

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The Uniform Civil Code & Judicial Activism

Bar and Bench: 22nd April, 2021

Is the birth of a UCC, midwifed by the Supreme Court of India, finally on the horizon?

"Goa has what Constitutional framers envisaged for India - a Uniform Civil Code. And I have had the great privilege of administering justice under that Code. It applies in marriage and succession, governing all Goans irrespective of religious affiliation", said the outgoing Chief Justice of India SA Bobde at a function in Goa, with the incoming CJI and the Law Minister in attendance.

Taking into consideration the fact that in pursuance of several PILs, a bench headed by the CJI had sought the Centre's stand on gender and religion-neutral uniform law conferring succession and inheritance rights on citizens, one can surmise that the outgoing Chief Justice of India, via his pronouncement in favour of the Uniform Civil Code, was throwing down the gauntlet to the second senior-most judge of the Supreme Court and the incoming Chief Justice of India to adjudicate on the vexed issue of the viability of personal laws in a secular and democratic republic.

Is the birth of a UCC, midwifed by the Supreme Court of India, finally on the horizon? Fastidious watchers of the Supreme Court would counsel cautionary optimism. The apex court has been dallying with the idea of having uniform laws in respect of marriage, divorce, inheritance, adoption and so on, applicable to all religious communities since the founding of the Republic.

The institutional approach of the superior courts of the country towards matters calling attention to the dichotomy between the preservation of visibly discriminatory personal laws and the constitutional directive to secure social justice and equality of status to all the citizens has varied between conformism, activism, grudging conformism and reluctant activism.

Phase I: Conformism and Legal Pluralism

If Warren Hastings' 1772 regulation directing the application of the laws of the Quran to the Muslims and that of the Shastras to the Hindus in respect of disputes concerning inheritance, marriage, caste and further religious observances constituted the first move to recognise group identities in post-medieval India, then, the judgement of the Bombay High Court in State of Bombay v. Narasu Appa Mali (herein after referred as Narasu Appa) unwittingly served to ossify those identities.

In the extant case, the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages Act of 1946, a punitive law against bigamy even before the enactment of the Hindu Code Bills which criminalized polygamy among Hindus in the 1950s, was challenged on grounds of violation of the right to profess, practice and propagate religion under Article 25 as well as the violation of the right to equality under Article 14 of the Constitution as the law expressly exempted Non-Hindus from the purview of its application.

Despite holding that personal laws were outside the ambit of fundamental rights, the Bombay High Court effectively insulated uncodified personal laws from judicial scrutiny.

According to Article 13 of the Constitution of India, all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III of the Constitution dealing with fundamental rights, shall, to the extent of such inconsistency, be void.

The Court adjudged that uncodified personal law do not fall within the ambit of laws in force and thus, could not be held to be in derogation of the fundamental rights. The Court's verdict in the Narasu Appa case was puzzling because on one hand, while uncodified personal laws could not be tested on the touchstone of the Indian Constitution, their catalogued counterparts along with ordinary laws, codified into legislation, could not escape judicial scrutiny.

By not taking recourse to legal universalism and failing to treat individuals as the basic unit of society with uniform legal rights, the Bombay High Court virtually left citizens to the tender mercies of uncodified personal laws. The Bombay High Court's conformism to the outcome of the Constituent Assembly Debates ("CAD") on the Uniform Civil Code resulting in the adoption of a gradualist approach towards the enactment of the UCC as enshrined in Article 44 eventually won the day and reinvigorated the doctrine of legal pluralism in the Indian constitutional jurisprudence, thus perpetuating a false equivalence between the existence of minority rights and the unnatural prolongation of diverse personal laws.

Phase II: Activism and Legal Universalism

Three decades hence, in 1985, the Supreme Court took the strongest stand yet on the need for a Uniform Civil Code in the case of Mohd. Ahmed Khan v. Shah Bano Begum (hereinafter referred as Shah Bano). While examining a matter involving a conspicuous conflict between civil and criminal laws pertinent to the obligatory provision of maintenance by a Muslim husband to his divorced wife, the Court ruled the fact that despite the state's legislative competence, Article 44 had continued to remain a dead letter.

Rejecting the husband's argument that mahr, or the money and the possessions paid by the groom, to the wife at the time of the Islamic marriage, was equivalent to the amount payable by the husband to his wife upon divorce, the Court drew from both, ordinary as well as customary laws and ruled in favour of the divorced woman. While holding that the maintenance provisions under Section 125 of Cr.P.C. were religion-agnostic, the court, justifying its UCC-centric activism, held, "[i]nevitably, the role of the reformer has to be assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable."

While the Shah Bano judgement, premised on the doctrine of legal universalism, indeed broke several religious barriers by allowing all distressed women to seek remedy under ordinary law in respect of limited personal matters, the circumambulatory exercise involving the exegesis of gender-sensitive provisions in the Quran and the ensuing controversy could have been avoided with a simple review of the Narasu Appa judgement. The principle actus curiae neminem gravabit, or an act of the court shall prejudice no one could have been invoked to recall and revise the ratio of the Narasu Appa case which made uncodified personal laws immune from judicial scrutiny.

Phase III: Grudging Conformism and Legal Pluralism Redux

It took the Supreme Court less than two decades to turn the clock back and restore the

dominance of the doctrine of legal pluralism in the Indian constitutional jurisprudence, in the case of Danial Latifi v. Union of India in 2001. In this case, the Muslim Women (Protection of Rights on Divorce) Act, 1986, the consequence of nationwide demonstrations by the Muslim community irked by the Shah Bano ruling, was challenged before the Supreme Court.

Despite the Act being evidently worded to enable the Muslim husband to circumvent his maintenance responsibilities towards his divorced wife by limiting the payment of maintenance amount only for the period of Iddat, or the mandatory waiting period that a Muslim woman must observe after the death of her husband or after a divorce, during which she may not marry another man, as well as the involvement of Wakf Boards in resolving maintenance disputes, thereby compelling only Muslim women to seek extrajudicial redressal of maintenance-related grievances and violating the equality provisions enshrined in Article 14 and Article 15 of the Indian Constitution, the Supreme Court upheld the Act using a technical 'rule of construction', according to which a legislature does not intend to enact unconstitutional laws.

The Danial Latifi judgement embellished the doctrine of legal pluralism, precipitated by the Narasu Appa judgement and in complete derogation of the fundamental right to equality of status, perpetuated the application of differential treatment to groups of citizens who were similarly circumstanced.

Phase IV: Reluctant Activism and Waxing Legal Universalism

More than a decade after the Danial Latifi judgement, in 2017, Shayara Bano v. Union of India and Ors. afforded the Supreme Court yet another opportunity to bury the ghost of Narasu Appa for good. The ratio of Narasu, once thought of as being only a transitional judgement had clearly overstayed its welcome.

However, the court adopted a narrower approach instead and annulled the practice of Talaq-e-Biddat or irrevocable, instant divorce which could be given by a Muslim husband to his Muslim wife in a fit of rage, in a drunken state, even if a husband is misled, even if the husband is ignorant, even if compelled, or even in jest.

In its majority judgement, the Court rationalized its intervention on the ground that since Talaq-e-Biddat was recognized and enforced under Section 2 of the codified personal law, namely the Shariat Act of 1937, and because it was a manifestly arbitrary practice, therefore it did not deserve to be protected under Article 25.

Conclusion

While the Supreme Court maintained the status quo by not tinkering with the ratio of the Narasu Appa judgement which made uncodified personal laws immune from judicial scrutiny, it did however offer some hope for the progressive and gender-sensitive interpretation of personal laws as well as offered a glimpse of the increasing significance of the doctrine of legal universalism in the Indian constitutional jurisprudence in the times to come.

However, pending the recall and revision of Narasu's ratio, piecemeal reforms, even with the enthusiastic support of the courts will not take us too far in our quest for a Uniform Civil Code. Narasu Appa Mali represents the proverbial Augean Stable, waiting for the currents of River Alpheus to wash away the accumulated grime in the form of recall and revision. The question is whether our honourable judges are willing to play the role of Hercules and clean the stables? Until then, the words of the outgoing CJI will remain nothing but a storm in a teacup.❐

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Supreme Court agrees to examine Constitutional validity of Sedition law – Section 124A of Indian Penal Code

Bar and Bench: 30th April 2021

This comes less than 3 months after the top court had dismissed a similar plea by three lawyers challenging the provision.

In a significant development, the Supreme Court on Friday decided that it will examine the validity of Section 124A of the Indian Penal Code which criminalises sedition.

A three-judge Bench issued notice to the Central government on a plea by two journalists, Kishorechandra Wangkhemcha from Manipur and Kanhaiya Lal Shukla from Chhattisgarh challenging the validity of the provision for violation of freedom of speech and expression. This comes less than 3 months after the top court had dismissed a similar plea by three lawyers challenging the provision. Both Wangkhemcha and Shukla submitted that they were charged under Section 124A raising questions against their respective state governments as well as the Central Government.

FIRs were registered against them under Section 124A for comments and cartoons shared by them on the social networking website Facebook.

"The impugned section clearly infringes the fundamental right under Article 19(1)(a) of the Constitution of India which guarantees that "all citizens shall have the right to freedom of speech and expression". Further, the restriction imposed by the section is an unreasonable one, and therefore does not constitute a permissible restriction in terms of Article 19(2) of the Constitution," the petition said.

In this regard, the petitioners contended that though 1962 judgment of the top court in Kedar Nath Singh v. State of Bihar may have been correct in its finding nearly sixty years ago, Section 124A no longer passes constitutional C muster today.

In Kedra Nath, the Supreme Court had held that Section 124A is constitutional since it imposed a reasonable restriction on Article 19(1)(a), falling within the ambit of Article 19(2).

The petitioners advanced the following major arguments:

Section 124-A no more necessary

It was submitted that in 1962 there may have been a need to use Section 124A as a means to prevent the public violence and public disorder that fell short of waging war against the state. Section 124-A, was, at the time a necessary tool in crime control. But that is not the case in 2021.

Alternative, less intrusive legislations now available

The plea pointed out that there has been extensive enactment of new legislations dealing directly with safety and security, public disorder and terrorism. Such enactments include Unlawful Activities Act, the Public Safety Act and the National Security Act. Various sections of these Acts deal directly with the overt conduct that sedition seeks to make penal - inciting violence and public disorder, the petitioners submitted.

Such alternative legislation, therefore, eliminates the need to employ Section 124-A to deal with public disorder and violence, it was contended.

Prevailing conditions of the time

The constitutional enquiry involves the consideration of the "prevailing conditions at the time". In this regard it was submitted that there are three relevant circumstances:

The first of these relevant considerations cited was that India now has obligations under International Law. India has ratified and is bound by the International Covenant on Civil and Political Rights ("ICCPR"), the petition stated.

Article 19 of the ICCPR protects the freedom of expression as a right of all individuals in the world. Section 124-A as a restriction of freedom of expression falls short of the requirements provided under International law in that it is neither "necessary" nor sufficiently "provided by law", it was submitted.

The second relevant circumstance pointed out is the frequent phenomenon of misuse, misapplication and abuse of Section 124-A since 1962.

Tendency and intention have been so widely interpreted and employed in such a discretionary manner that those merely exercising their democratic rights have faced penal sanction under the section," the petitioners claimed.

While abuse of a law, in itself, does not bear on the validity of that law, this phenomenon clearly points to the vagueness and uncertainty of the current law, it was submitted.

The third relevant circumstance cited was the repeal of sedition sections in comparative post-colonial democratic jurisdictions around the world.

"The United Kingdom, the author of sedition laws in India and globally, has recently repealed the offence of sedition in its own jurisdiction in 2009. New Zealand and Ghana have already passed legislation repealing sedition, while the Law Commissions of Canada, Ireland and Australia have recommended repeal to their respective parliaments. In both Uganda and Nigeria sedition has been declared unconstitutional," it was pointed out

Since the Kedar Nath judgment was rendered by a judge of five judges, any decision pronouncing on the validity of Section 124A can be decided only by a Bench of seven or more judges.❐

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Violation of fundamental right to speedy trial is a ground for constitutional court to grant bail in UAPA cases: Supreme Court

[Case: Union of India v. KA Najeeb; Citation: LL 2021 SC 56]

LiveLaw.in: 11th March 2021

A bench comprising Justices NV Ramana, Surya Kant and Aniruddha Bose held that Section 43D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on ground of violation of Fundamental Right to Speedy Trial. It held, "Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence."

The court observed thus while dismissing the appeal filed by NIA against an order of the Kerala High Court granting bail to the accused in palm chopping of Thodupuzha Newman College professor TJ Joseph case.❐

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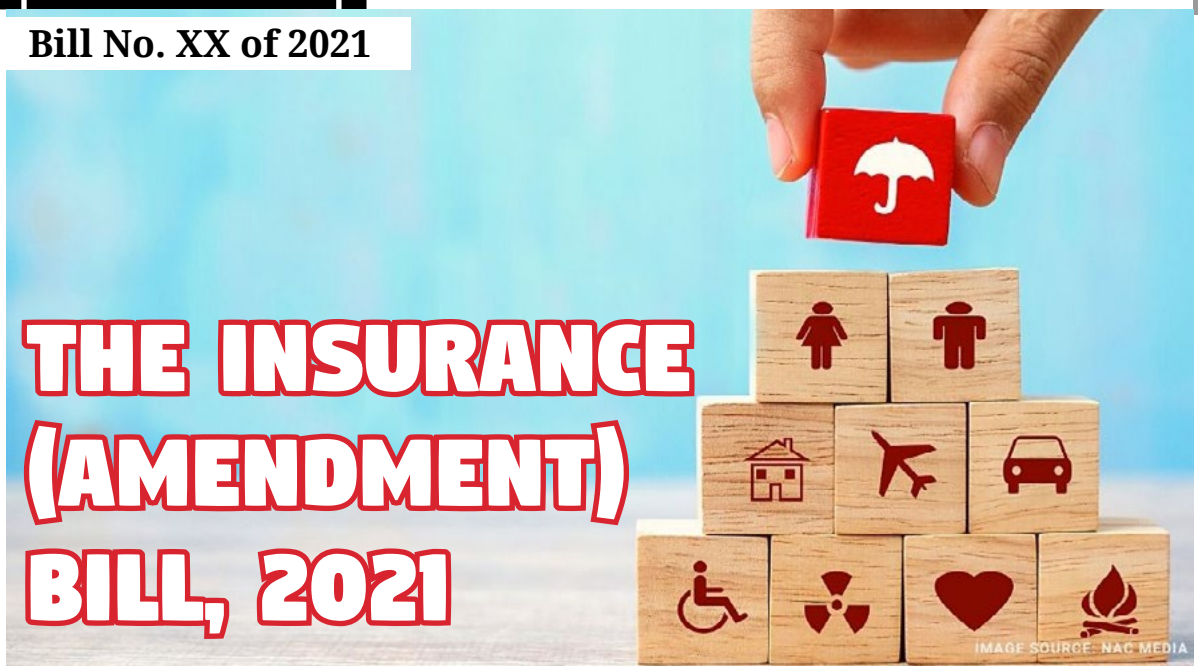
Bill No. XX of 2021



A BILL

further to amend the Insurance Act, 1938.

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

1.(1) This Act may be called the Insurance (Amendment) Act, 2021.

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

2.In the Insurance Act, 1938 (hereinafter referred to as the principal Act), in section 2, in clause (7A), for sub-clause (b), the following sub-clause shall be substituted, namely:—

"(b) in which the aggregate holdings of equity shares by foreign investors including portfolio investors, do not exceed seventy-four per cent. of the paid-up equity capital of such Indian insurance company, and the foreign investment in which shall be subject to such conditions and manner, as may be prescribed;".

3. In section 27 of the principal Act, in sub-section (7), the Explanation shall be omitted.

4. In section 114 of the principal Act, in sub-section (2), for clause (aaa), the following clause shall be substituted, namely:—

"(aaa) the conditions and manner of foreign investment under sub-clause (b) of 5 clause (7A) of section 2;".

STATEMENT OF OBJECTS AND REASONS

The Insurance Act, 1938 was enacted to consolidate and amend the law relating to business of insurance in the country. The foreign investment in insurance sector was permitted in the year 2000 by allowing the same up to 26 per cent. in an Indian insurance company. Subsequently, vide the Insurance Laws (Amendment) Act, 2015, this limit of foreign investment was raised to 49 per cent. of the paid-up equity capital of such company, which is Indian owned and controlled as per the rules made in this behalf.

2. In order to achieve the objective of Government's Foreign Direct Investment Policy of supplementing domestic long-term capital, technology and skills for the growth of the economy and the insurance sector, and thereby enhance insurance penetration and social protection, it has been decided to raise the limit of foreign investment in Indian insurance companies from the existing 49 per cent. to 74 per cent.

3. Accordingly, the Insurance (Amendment) Bill, 2021, amending the Insurance Act, 1938, seeks, inter alia, to provide for—

(i)substitution of sub-clause (b) in the definition of "Indian insurance company" in clause (7A) of section 2 of the Insurance Act, 1938, so as to raise the limit of foreign investment in an Indian insurance company from the existing 49 per cent. to 74 per cent. and to allow foreign ownership and control with safeguards;

(ii)omission of the Explanation to sub-section (7) of section 27.

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

NEW DELHI; NIRMALA SITHARAMAN.
The 12th March, 2021.

THE MINES AND MINERALS (DEVELOPMENT AND REGULATION) AMENDMENT BILL, 2021

A
BILL

further to amend the Mines and Minerals (Development and Regulation) Act, 1957.

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

1. Short title and commencement.

(1) This Act may be called the Mines and Minerals (Development and Regulation) Amendment Act, 2021.

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

dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Substitution of references to certain expressions by certain other expressions

Throughout the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the principal Act), -

(i) for the words "reconnaissance permit, prospecting license or mining lease" wherever they occur, the words "mineral concession" shall be substituted;

(ii) for the words "prospecting licence-cum-mining lease", wherever they occur [other than in clause (a) of section 3], the words "composite licence" shall be substituted.

3. Amendment of section 3.

In section 3 of the principal Act, -—

(i) for clauses (a) and (aa), the following clauses shall be substituted, namely: —

'(a) "composite licence" means the prospecting licence-cum-mining lease which is a two stage concession granted for the purpose of undertaking prospecting operations followed by mining operations in a seamless manner;

(aa) "dispatch" means the removal of minerals or mineral products from the leased area and includes the consumption of minerals and mineral products within such leased area;

(ab) "Government company" shall have the same meaning as assigned to it in clause (45) of section 2 of the Companies Act, 2013;

(ac) "leased area" means the area specified in the mining lease within which the mining operations can be undertaken and includes the non-mineralised area required and approved for the activities falling under the definition of "mine" as referred to in clause (i);

(ad) "minerals" includes all minerals except mineral oils;

(ae) "mineral concession" means either a reconnaissance permit, prospecting licence, mining lease, composite licence or a combination of any of these and the expression "concession" shall be construed accordingly;'

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

'(fa) "production" or any derivative of the word "production" means the winning or raising of mineral within the leased area for the purpose of processing or dispatch;';

(iii) after clause (hb), the following clause shall be inserted, namely: —

'(hba) "Schedule" means the Schedules appended to the Act;';

(iv) in clause (i), —

(i) for the words and figures, "the Mines Act, 1952", the words and figures "the Occupational Safety, Health and Working Conditions Code, 2020" shall be substituted;

(ii) the following Explanation shall be inserted, namely: -— "Explanation. —For the purposes of this clause, —

(i) a mine continues to be a mine till exhaustion of its mineable mineral reserve and a mine may have different owners during different times from the grant of first mining lease till exhaustion of such mineable 35 mineral reserve;

(ii) the expression "mineral reserve" means the economically mineable part of a measured and indicated mineral resource."

4. Amendment of section 4.

In section 4 of the principal Act, in sub-section (1), in the second proviso, for the words "such entity that may be notified for this purpose by the Central Government", the words "other entities including private entities that may be notified for this purpose, subject to such conditions as may be specified by the Central Government" shall be substituted.

5. Amendment of section 4A

In section 4A of the principal Act, in sub-

section (4), —

(i) for the words "mining operations" wherever they occur, the words "production and dispatch" shall be substituted;

(ii) for the first, second, third and fourth provisos, the following provisos shall be substituted, namely: -—

"Provided that the State Government may, on an application made by the holder of such lease before it lapses and on being satisfied that it shall not be possible for the holder of the lease to undertake production and dispatch or to continue such production and dispatch for reasons beyond his control, make an order, within a period of three months from the date of receipt of such application, to extend the period of two years by a further period not exceeding one year and such extension shall not be granted for more than once during the entire period of lease:

Provided further that such lease shall lapse on failure to undertake production and dispatch or having commenced the production and dispatch fails to continue the same before the end of such extended period."

6. Amendment of section 5.

In section 5 of the principal Act, in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that the composite licence or mining lease shall not be granted for an area to any person other than the Government, Government company or corporation, in respect of any minerals specified in Part B of the First Schedule where the grade of such mineral in such area is equal to or above such threshold value as may be notified by the Central Government."

7. Amendment of section 8.

In section 8 of the principal Act, after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) Notwithstanding anything contained in this section, in case of Government companies or corporations, the period of mining leases including the existing mining leases, shall be such as may be prescribed by the Central Government:

Provided that the period of mining leases, other than the mining leases granted through auction, shall be extended on payment of such additional amount as specified in the Fifth Schedule:

Provided further that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Fifth Schedule so as to modify the entries mentioned therein in the said Schedule with effect from such date as may be specified in the said notification.

(5) Any lessee may, where coal or lignite is used for captive purpose, sell such coal or lignite up to fifty per cent. of the total coal or lignite produced in a year after meeting the requirement of the end use plant linked with the mine in such manner as may be prescribed by the Central Government and on payment of such additional amount as specified in the Sixth Schedule:

Provided that the Central Government may, by notification in the Official Gazette and for the reasons to be recorded in writing, increase the said percentage of coal or lignite that may be sold by a Government company or corporation:

Provided further that the sale of coal shall not be allowed from the coal mines allotted to a company or corporation that has been awarded a power project on the basis of competitive bid for tariff (including Ultra Mega Power Projects):

Provided also that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Sixth Schedule so as to modify the entries mentioned therein with effect from such date as may be specified in the said notification.".

8. Amendment of section 8A.

In section 8A of the principal Act,—

(a) after sub-section (7), the following sub-section shall be inserted, namely:—

"(7A) Any lessee may, where mineral is used for captive purpose, sell mineral up to fifty per cent. of the total mineral produced in a year after meeting the requirement of the end use plant linked with the mine in such manner as may 5 be prescribed by the Central Government and on payment of such additional amount as specified in the Sixth Schedule:

Provided that the Central Government may, by notification in the Official Gazette and for the reasons to be recorded in writing, increase the said percentage of mineral that may be sold by a Government company or corporation:

Provided further that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Sixth Schedule so as to modify the entries mentioned therein with effect from such date as may be specified in the said notification.";

(b) in sub-section (8), the following provisos shall be inserted, namely:-—

"Provided that the period of mining leases, other than the mining leases granted through auction, shall be extended on payment of such additional amount as specified in the Fifth Schedule:

Provided further that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Fifth Schedule 20 so as to modify the entries mentioned therein with effect from such date as may be specified in the said notification.

Explanation.—For the removal of doubts, it is hereby clarified that all such Government companies or corporations whose mining lease has been extended after the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall also pay such additional amount as specified in the Fifth Schedule for the mineral produced after the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021."

9. Substitution of new section for section 8B.

"8B. (1) Notwithstanding anything contained in this Act or any other law for the force, all valid rights, approvals, clearances, licences and the like granted to a lessee in respect of a mine (other than those granted under the provisions of the Atomic Energy Act, 1962 and the rules made thereunder) shall continue to be valid even after expiry or termination of lease and such rights, approvals, clearances, licences and the like shall be transferred to, and vested; subject to the conditions provided under such laws; in the successful bidder of the mining lease selected through auction under this Act:

Provided that where on the expiry of such lease period, mining lease has not 40 been executed pursuant to an auction under provisions of sub-section (4) of section 8A, or lease executed pursuant to such auction has been terminated within a period of one year from such auction, the State Government may, with the previous approval of the Central Government, grant lease to a Government company or corporation for a period not exceeding ten years or till selection of new lessee through 45 auction, whichever is earlier and such Government company or corporation shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee:

Provided further that the provisions of sub-section (1) of section 6 shall not apply where such mining lease is granted to a Government company or corporation under the first proviso:

Provided also that in case of atomic minerals having grade equal to or above the threshold value, all valid rights, approvals, clearances, licences and the like in respect of expired or terminated mining leases shall be deemed to have been transferred to, and vested in the Government company or corporation that has been subsequently granted the mining lease for the said mine.

(2) Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land till expiry or termination of mining lease granted to it, in which mining operations were being carried out by the previous lessee."

10. Amendment of section 9B.

In section 9B of the principal Act,—

(i) after sub-section (3), the following proviso shall be inserted, namely:—

"Provided that the Central Government may give directions regarding composition and utilisation of fund by the District Mineral Foundation.";

(ii) in sub-section (5), after the words and figures, "Amendment Act, 2015", the words, brackets, figures and letter ", other than those covered under the provisions of sub-section (2) of section 10A" shall be inserted;

(iii) in sub-section (6), after the words and figures, "Amendment Act, 2015", the words, brackets, figures and letter "and those covered under the provisions of sub-section (2) of section 10A" shall be inserted.

11. Amendment of section 9C.

In section 9C of the principal Act,—

(i) in sub-section (1), for the words "non-profit body", the words "non-profit autonomous body" shall be substituted;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) The entities specified and notified under sub-section (1) of section 4 shall be eligible for funding under the National Mineral Exploration Trust."

12. Amendment of section 10.

In section 10 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Notwithstanding anything contained in this section, no person shall be eligible to make an application under this section unless-—

(a) he has been selected in accordance with the procedure specified under sections 10B, 11, 11A or the rules made under section 11B;

(b) he has been selected under the Coal Mines (Special) Provisions Act, 2015; or

(C) an area has been reserved in his favour under section 17A."

13. Amendment of section 10A.

In section 10A of the principal Act, in sub-section (2),—

(i) in clause (b), the following provisos shall be inserted, namely:—

"Provided that for the cases covered under this clause including the pending cases, the right to obtain a prospecting licence followed by a mining lease or a mining lease, as the case may be, shall lapse on the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021:

Provided further that the holder of a reconnaissance permit or prospecting licence whose rights lapsed under the first proviso, shall be reimbursed the expenditure incurred towards reconnaissance or prospecting operations in such manner as may be prescribed by the Central Government.";

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

"(d) in cases where right to obtain licence or lease has lapsed under, clauses (b) and (c), such areas shall be put up for auction as per the provisions 5 of this Act:

Provided that in respect of the minerals specified in Part B of the First Schedule where the grade of atomic mineral is equal to or greater than the threshold value, the mineral concession for such areas shall be granted in accordance with the rules made under section 11B."

14. Amendment of section 10B.

In section 10B of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The provisions of this section shall not apply to the,—

(a) cases falling under section 17A;

(b) minerals specified in Part A of the First Schedule;

(c) minerals specified in Part B of the First Schedule where the grade of atomic mineral is equal to or greater than such threshold value as may be notified by the Central Government from time to time; or

(d) land in respect of which the minerals do not vest in the Government.";

(ii) in sub-section (3), the following proviso shall be inserted, namely:—

"Provided that where the State Government has not notified such area for grant of mining lease after establishment of existence of mineral contents of any mineral (whether notified mineral or otherwise), the Central Government may require the State Government to notify such area within a period to be fixed in consultation with the State Government and in cases where the notification is not issued within such period, the Central Government may notify such area for grant of mining lease after the expiry of the period so specified.";

(iii) in sub-section (4), the following provisos shall be inserted, namely:—

"Provided that-—where the State Government has not successfully completed auction for the purpose of granting a mining lease in respect of any mineral (whether notified mineral or otherwise) in such notified area; or

(a) upon completion of such auction, the mining lease or letter of intent for grant of mining lease has been terminated or lapsed for any reason whatsoever, the Central Government may require the State Government to conduct and complete the auction or re-auction process, as the case may be, within a period to be fixed in consultation with the State Government and in cases where such auction or re-auction process is not completed within such period, the Central Government may conduct auction for grant of mining lease for such area after the expiry of the period so specified:

Provided further that upon successful completion of the auction, the Central Government shall intimate the details of the preferred bidder in the auction to the State Government and the State Government shall grant mining lease for such area to such preferred bidder in such manner as may be prescribed by the Central Government.";

(iv) in sub-section (6), for the proviso, the following proviso shall be substituted, namely:—

"Provided that no mine shall be reserved for captive purpose in the auction.".

15. Omission of section 10C.

Section 10C of the principal Act shall be omitted.

16. Amendment of section 11.

In section 11 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:— "(1) The provisions of this section shall not apply to the,-—

(a) cases falling under section 17A;

(b) minerals specified in Part A of the First Schedule;

(c) minerals specified in Part B of the First

Schedule where the grade of atomic mineral is equal to or greater than such threshold value as may be notified by the Central Government from time to time; or

(d) land in respect of which the minerals do not vest in the Government.";

(ii) in sub-section (4), the following proviso shall be inserted, namely:—

"Provided that where the State Government has not notified such area for grant of composite licence of any mineral (whether notified mineral or otherwise), the Central Government may require the State Government to notify such area within a period to be fixed in consultation with the State Government and in cases where the notification is not issued within such period, the Central Government may notify such area for grant of composite licence after the expiry of the period so specified.";

(iii) in sub-section (5), the following provisos shall be inserted, namely:—

"Provided that—

(a) where the State Government has not successfully completed auction for the purpose of granting a composite licence in respect of any mineral (whether notified mineral or otherwise) in such notified area; or

(b) upon completion of such auction, the composite licence or letter of intent for grant of composite licence has been terminated or lapsed for any reason whatsoever, the Central Government may require the State Government to conduct and complete the auction or re-auction process, as the case may be, within a period to be fixed in consultation with the State Government and in cases where such auction or re-auction process is not completed within such period, the Central Government may conduct auction for grant of composite licences for such area after the expiry of the period so specified:

Provided further that upon successful completion of the auction, the Central Government shall intimate the details of the preferred bidder in the auction to the State Government and the State Government shall grant composite licence for such area to such preferred bidder in such manner as may be prescribed by the Central Government.";

(iv) for sub-section (10), the following sub-section shall be substituted, namely:—

"(10) On completion of the prospecting operations, the holder of the composite licence shall submit the result of the prospecting operations in the form of a geological report to the State Government specifying the area required for mining lease and the State Government shall grant mining lease for such area, to the holder of the composite licence in such manner as may be prescribed by the Central Government."

17. Amendment of section 12A.

In section 12A of the principal Act,—

(i) in sub-section (2),—

(a)for the words, figures and letter, "section 10B or section 11", the words, "this Act" shall be substituted;

(b)the following proviso shall be inserted, namely:-—

"Provided that the transferee of mining lease shall not be required to pay the amount or transfer charges referred to in sub-section (6), as it stood prior to the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, after such commencement but no refund shall be made of the charges already paid.";

(iii) sub-section (6) shall be omitted.

18. Amendment of section 13.

In section 13 of the principal Act,—

(a) in sub-section (1), for the words "reconnaissance permits, prospecting licences and mining leases", the words "mineral concession" shall be substituted;

(b) in sub-section (2),—

(i) the clauses (qqh) and (qqk) shall be omitted;

(ii) for clause (r), the following clauses shall be substituted, namely:-— "(r) the period of mining lease under sub-section (4) of section 8;

(s) the manner of sale of mineral by the holder of a mining lease under sub-section (5) of section 8;

(t) the manner of sale of mineral under sub-section (7A) of section 8A;

(u) the manner for reimbursement of expenditure towards reconnaissance permits or prospecting operations under second proviso to clause (b) of sub-section (2) of section 10A;

(v) the manner of granting mining lease to the preferred bidder under the second proviso to sub-section (4) of section 10B;

(w) the manner of granting composite licence to the preferred bidder under the second proviso to sub-section (5) of section 11;

(x) the manner of granting mining lease by the State Government to the holder of the composite licence under sub-section (10) of section 11;

(y) any other matter which is to be, or may be prescribed, under this Act."

19. Amendment of section 17A.

19. In section 17A of the principal Act,—

(a) for sub-section (2A), the following shall be substituted, namely:—

"(2A) Where in exercise of the powers conferred by sub-section (1A) or sub-section (2), the Central Government or the State Government, as the case may be, reserves any area for undertaking prospecting or mining operations or 40 prospecting operations followed by mining operations, the State Government shall grant prospecting licence, mining lease or composite licence, as the case may be, in respect of such area to such Government company or corporation within the period specified in this section:

Provided that in respect of any mineral specified in Part B of the First Schedule, the State Government shall grant the prospecting licence, mining lease or composite licence, as the case may be, only after obtaining the previous approval of the Central Government.";

(b) in sub-section (2C),—

(i)for the words, "may be prescribed by the Central Government.", the words "specified in the Fifth Schedule" shall be substituted;

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

"Provided that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Fifth Schedule so as to modify the entries mentioned therein in the said Schedule with effect from such date as may be specified in the said notification.

Explanation.—For the removal of doubts, it is hereby clarified that all such Government companies or corporations whose mining lease has been extended after the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall also pay such additional amount as specified in the Fifth Schedule for the mineral produced after the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021."

(c) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) The reservation made under this section shall lapse in case no mining lease is granted within a period of five years from the date of such reservation:

Provided that where the period of five years from the date of reservation has expired before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021 or expires within a period of one year from the date of commencement

of the said Act, the reservation shall lapse in case no mining lease is granted within a period of one year from the date of commencement of the said Act:

Provided further that the State Government may, on application made by such Government company or corporation or on its own motion, and on being satisfied that it shall not be possible to grant the mining lease within the said period, make an order with reasons in writing, within a period of three months from the date of receipt of such application, to relax such period by a further period not exceeding one year:

Provided also that where the Government company or corporation in whose favour an area has been reserved under this section before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, has commenced production from the reserved area without execution of mining lease, such Government company or corporation shall be deemed to have become lessee of the State Government from the date of commencement of mining operations and such deemed lease shall lapse upon execution of the mining lease in accordance with this sub-section or expiry of period of one year from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, whichever is earlier.

(5) The termination or lapse of mining lease shall result in the lapse of the reservation under this section."

20. Amendment of section 21.

In section 21 of the principal Act, after sub-section (6), the following Explanation shall be inserted, namely:—

"Explanation.—On and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, the expression "raising, transporting or causing to raise or transport any mineral without any lawful authority" occurring in this section, shall mean raising, transporting or causing to raise or transport any mineral by a person without prospecting licence, mining lease or composite licence or in contravention of the rules made under section 23C.".

21. Amendment of Schedules.

After the Fourth Schedule to the principal Act, the following Schedules shall be inserted, namely:—

"THE FIFTH SCHEDULE

[See sections 8(4), 8A(8) and 17A(2C)]

S.No	Mineral	Additional amount on grant or extension of mining lease
1	Iron ore and chromite	Equivalent to one hundred and fifty per cent. of the royalty payable
2	Copper	Equivalent to fifty per cent. of the royalty payable
3	Coal and lignite	Equivalent to the royalty payable
4	Other minerals (other coal and lignite)	Equivalent to the royalty payable

Explanation.—For the purposes of this Schedule, the additional amount shall be in addition to royalty or payment to the District Mineral Foundation and National Mineral Exploration Trust or any other statutory payment.

THE SIXTH SCHEDULE

[See sections 8(5) and 8A(7A)]

(i) For non-auctioned captive mines (other than coal and lignite):

S.No.	Mineral	Additional Amount
1	Bauxite (i) Metallurgical Grade (ii) Non Metallurgical Grade	 Equivalent to one hundred and fifty per cent. of the royalty payable Equivalent to the royalty payable
2	Chromite (i) Up to forty per cent. of Cr2O3 (ii) forty per cent. and more of Cr2O3 and concentrates	 Equivalent to the royalty payable Equivalent to two hundred per cent. of the royalty payable
3	Iron ore (i) Lumps, ROM and concentrates (ii) Fines	 Equivalent to two hundred and fifty per cent. of the royalty payable Equivalent to one hundred and fifty per cent. of the royalty payable
4	Limestone (i) L.D. Grade (less than 1.5 per cent. silica content) (ii) Other grades	 Equivalent to two hundred per cent. of the royalty payable Equivalent to the royalty payable
5	Manganese (i) Less than thirty-five per cent. of manganese content (ii) Thirty-five per cent. and above of manganese content	 Equivalent to the royalty payable Equivalent to five hundred per cent. of the royalty payable
6	Other minerals	Equivalent to the royalty payable

(ii) For auctioned captive mines (other than coal and lignite):

S.No.	Quantity of sale	Additional Amount
1	Sale of mineral up to twenty-five per cent. of annual production	Nil
2	Sale of mineral more than twenty-five per cent. and up to fifty per cent. of annual production	Equivalent to fifty per cent. of the royalty payable

(iii) For coal and lignite:

Sl	Type of mine	Additional Amount
1	(i) Captive coal and lignite mines, auctioned for power sector through reverse bidding under the Coal Mines (Special Provisions) Act, 2015 (11 of 2015)	Equivalent to two hundred per cent. of the royalty payable
	(ii) Captive Coal and lignite mines allocated through auction route (other than mines covered under item no. (iv))	Equivalent to the royalty payable
	(iii) Captive Coal and lignite mines allocated through allotment route (other than mines covered under item nos. (i) and (iv))	Equivalent to the royalty payable
	(iv) For captive coal and lignite mines that were auctioned and allotted with condition allowing sale of coal up to twenty-five per cent. of annual production—	
	(a) for sale of coal up to twenty-five per cent. of annual production	Additional amount payable as per the condition mentioned in the tender document or allotment document
	(b) for sale of coal more than twenty-five per cent. and up to fifty per cent. of annual production	Fifty per cent. of the royalty payable

Explanation.—For the purposes of this Schedule, it is hereby clarified that—

(i) the additional amount shall be in addition to royalty or payment to the District Mineral Foundation and National Mineral Exploration Trust or any other statutory payment or payment specified in the tender document or the auction premium (wherever applicable).

(ii) *Ad valorem* royalty for the purpose of calculating the additional amount for coal and lignite shall be based on National Coal Index and Representative Price of coal excluding the taxes, levies and other charges.".

STATEMENT OF OBJECTS AND REASONS

The Mines and Minerals (Development and Regulation) Act, 1957 (the Act) was enacted with a view to provide for the development and regulation of mines and minerals under the control of Union.

2. The Act was comprehensively amended in 2015 to bring several reforms in the mineral sector, notably, mandating auction of mineral concessions to improve transparency, establishing District Mineral Foundation and National Mineral Exploration Trust and stringent penalty for illegal mining. The Act was further amended in the years 2016 and 2020 to allow transfer of leases for non-auctioned captive mines and to deal with the emergent issue of expiry of leases on 31st March 2020.

3. In order to fully harness the potential of the mineral sector, increase employment and investment in the mining sector including coal, increase the revenue to the States, increase the production and time bound operationalisation of mines, maintain continuity in mining operations after change of lessee, increase the pace of exploration and

auction of mineral resources and resolve long pending issues that have slowed the growth of the sector, it is felt necessary to further amend the said Act.

4.The Mines and Minerals (Development and Regulation) Amendment Bill, 2021, inter alia, provides for the following, namely:—

(i) to remove the distinction between captive and merchant mines by providing for auction of mines in future without restriction of captive use of minerals and allowing existing captive mines including captive coal mines to sell up to fifty per cent. of the minerals produced after meeting the requirement of linked end use plants to ensure optimal mining of mineral resources and specify the additional amount to be charged on such sale. The sale of minerals by captive plants would facilitate increase in production and supply of minerals, ensure economies of scale in mineral production, stabilize prices of ore in the market and bring additional revenue to the States;

(ii) to provide for payment of additional amount to the State Government on extension and grant of mining lease of Government companies to create level playing field between the auctioned mines and the mines of Government companies;

(iii) to provide that all the valid rights, approvals, clearances, licences and the like granted to a lessee in respect of a mine shall continue to be valid even after expiry or termination of lease and such clearances shall be transferred and vested to the successful bidder of the mining lease. This will ensure continuity in mining operations even with change of lessee, conservation of mineral and avoid repetitive and redundant process of obtaining clearances again for the same mine;

(iv) to grant short term mining lease to Government companies in situations where the auction of mines pursuant to sub-section (4) of section 8A has failed;

(v) to empower the Central Government to issue directions regarding composition and utilisation of Fund by the District Mineral Foundation;

(vi) to close the pending cases of non-auctioned concession holders which have not resulted in grant of mining leases despite passage of a considerable time of more than five years. The existence of these cases is anachronistic and antagonistic to the auction regime. The closure of the pending cases would facilitate the Government to put to auction a large number of mineral blocks in the interest of nation resulting in early operationalisation of such blocks and additional revenue to the State Governments;

(vii) to remove the restrictions on transfer of mineral concessions for non-auctioned mines to attract fresh investment and new technology in the sector;

(viii) to empower the Central Government to notify the area and conduct auction in cases where the State Governments face difficulty in notifying the areas and conducting auction or fails to notify the area or conduct auction in order to ensure auction of more number of mineral blocks on regular basis for continuous supply of minerals in the country;

(ix) to fix a time-frame for grant of leases for the areas reserved for Government companies for expediting grant of leases and production by the Government companies; and

(x) to amend section 21 of the Act so as to clarify the expression "without any lawful authority" in order to limit its scope to the violations of the said Act and the rules made thereunder. The said amendment will bring clarity and certainty to the mining sector.

5. The Bill seeks to achieve the above objectives.

NEW DELHI; PRALHAD JOSHI.
The 10th March, 2021.

Towards a Secular India

Dr M. P. Raju

The Constituent Assembly visualized India as a secular Republic. However, there have been questions raised as to the meaning of the term 'secular' in addition to the doubt whether the Constitution of India has been really secular or not. The fact that the word secular was absent from the Preamble before its addition by way of an amendment in 1977 adds fuel to the allegation that Indian Constitution was not and could not be secular at all. Some would even argue that secularism is a western concept alien to the Indian ethos and traditions and that our constitution cannot be secular at all.

Indian Heritage of secularism

It is generally understood that the values and ideals which the Constituent Assembly incorporated into the Indian Constitution were all drawn from the composite culture of the Indian subcontinent evolved through the millennia from very ancient times though it had drawn inspirations from several of the contemporary constitutions of the world. The political or constitutional ideal of secularism also had its roots deep into the Indian heritage even if it might not have been as developed as the modern concept of secularism.

Even prior to the Vedic period, India had a tradition of secularism in the form of lifeway pluralism as evidenced from archaeological findings. It is clear that even from the time of Vedic people, the anti-secular and anti-pluralistic culture and attitudes had become prevalent side by side with the pluralistic and secular way of living. After Brahmanism could get royal patronage, the persecution of Buddhists, Jains and other lifeways like Lokayatas (Charvakas) and Ajivikas increased and secularism receded even as a political ideal or aspiration. Dharmasastra codifications of moral and legal rules and redactions of Puranas and other religious texts formulated theoretical basis

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for such persecution and discrimination. Discriminatory varna-caste prescriptions and anti-women customs and practices got 'shastric' or 'dharmic' imprimatur. However, pluralistic and secular aspirations were kept alive through various people's movements. Medieval protest movements collectively called Bhakti movements are examples of these secular aspirations.

Pre-Constitution Drafting and Secularism

In the modern period the constitution making had been happening through movements and revolts upholding the universal human values and revolting against the inhuman and oppressive systems and people not only foreign but also Indian. The revolts by peasants, tribal groups and the ordinary masses like the Sanyasi revolt, Shanthal protests all were led and participated by people belonging to different religions like Hindus, Muslims, animists and others. Even the 1957 agitation known as the First War of Independence or Sepoy Mutiny was also an expression of the secular ideal fought together by Hindus, Muslims and others alike. The revolutionaries like Bhagat Singh, Sukhdev, Chandrashekhar Azad, Ashfaqulla Khan all were incarnations of the secular ideal. The various drafts of the Constitution which were prepared by various groups all had kept the secular ideal on the forefront.

The Constitution of India Bill 1895, also referred to as Swaraj Bill, known as the first articulation of a constitutional imagination by Indians had this in its article 6: " Religions of India - All religions, creeds and faiths are allowed in the Empire, and the modes of worship may either be domestic, private or public."

The Commonwealth of India Bill 1925 had a number of provisions expressing the secular ideal, like: "Freedom of conscience and the free profession and practice of religion are, subject to public order or morality, hereby guaranteed to every person.". The Nehru Report (Motilal Nehru,1928) had under the section on Fundamental rights a number of provisions denoting the secular ideal similar to the present Constitution. For example it had provided thus, "Freedom of conscience and free profession and practice of religion are, subject to public order or morality, hereby guaranteed to every person."

Declaration of Purna Swaraj (Indian National Congres, 1930) was an announcement of our secular ideal recapturing our 'our moorings' and at the same time declaring our commitment to 'non-violence' and 'civil disobedience' to end the inhuman rule and establishment of 'Purna Swaraj'. The Karachi Resolution (1931) passed by the Indian National Congress also had specified the core of our secular ideal, including freedom of conscience and the free profession and practice of religion, and religious neutrality on part of the state.

Gandhian Constitution for Free India (2nd April 1945) had similar provisions regarding the secular ideal. Dr B.R.Ambedkar's model Constitution 'States and Minorities' (1945) also had a number of detailed provisions stressing on the secular ideal. The Draft Constitution of the Indian Republic (1948) prepared by Socialist Party of India with a forward by Jayprakash Narayan had secular value explicitly incorporated into it. All the above attempts at drafting a Constitution for India had the secular ideal for Indian Constitution very clearly expressed.

Objectives Resolution and Secularism

The Objectives Resolution moved in the Constituent Assembly on 13 December 1946 and passed on 22 January 1947, though did not have the term 'secular' in it, did have the secular ideal clearly spelt out in it. The paragraphs 4, 5 and 6 are evidence to it. The speeches of Shri Jawahar Lal Nehru Nehru both while moving

it and concluding discussions also supported this ideal. (CAD, Vol.1:58, 60, 62; CAD, Vol.2: 318, 323). Nehru had concluded his speech with the hope that the spirit of humanity would prevail. The spirit of humanity was the core of the secular ideal which the Assembly had put forward through the Resolution.

On 13th December 1946 Shri Purushottam Das Tandon while seconding the resolution moved by Nehru, stressed on the principles of pluralism. At one place he stressed and said, "We shall do justice to all communities and give them full freedom in their social and religious affairs." (CAD, Vol. 1:66-67)

Speaking on the Resolution, on 19th December 1946 Dr. Sir Hari Singh Gour gave a suggestion for joint electorates wherein the winning candidate should require a certain percentage of votes of the other community. He said,

"...My friends on the Muslim side ought to have a constructive policy, not for dividing and disuniting India but for the purpose of creating a homogeneous solidarity between the various castes, communities and classes in India so as to bring about a united free India." (CAD, Volume no.1, 19th December 1946, p. 150).

On 19th December 1946 itself Shrimati Dakshayani Velayudan spoke on communalism and the need for a republic without any barriers of caste or community from the point of view of Harijans. She explained, " In the Indian Republic there will be no barriers based on caste or community... Communalism, whether Harijan, Christian, Muslim or Sikh, is opposed to nationalism...." (CAD, Volume no.1, pp. 151-152).

On 20th January 1947 speaking on the Objectives Resolution Dr S Radhakrishnan said that the sovereignty of the people needed to be understood in the sense that "the ultimate sovereignty rests with the moral law, with the conscience of humanity". It is the value of secularism which makes the righteousness or morality as the real ruler and not any individual, group, religion or culture. "It is the ruler of both the people and the rulers themselves. It is the sovereignty of the law which we have asserted. ..." (CAD, Volume no.2, p. 272.)

Pointing to the pluralistic character of our polity Dr Radhakrishnan said. "... Again nationalism, not religion, is the basis of modern life. Allenby's liberating campaigns in Egypt, Lawrence's adventures in Arabia, Kemal Pasha's defiant creation of a secular Turkey, point out that the days of religious States are over. These are the days of nationalism..." (Ibid). Dr Radhakrishnan stressed that the Assembly proposed "to develop a multi-national State which will give adequate scope for the play of variations among the different cultures themselves." (Ibid, p. 273)

Thus from the Objectives Resolution and the initial debates, it becomes clear that the Assembly was specifically focused on the ideal of a secular State.

The Flag, a Symbol of Secularism

In the Constituent Assembly while discussing on the National Flag several persons spoke highlighting the Flag as a symbol of pluralism in India. On 22nd July 1947, Dr S. Radhakrishnan explained the secular significance of the Indian flag in the following words:

"The green is there – our relation to the soil, our relation to the plant life here on which all other life depends. We must build our

Paradise here on this green earth. If we are to succeed in this enterprise, we must be guided by truth (white), practice virtue (wheel), adopt the method of self-control and renunciation (saffron). This Flag tells us 'Be ever alert, be ever on the move, go forward, work for a free, flexible compassionate, decent, democratic, society in which Christians, Sikhs, Moslems, Hindus, Buddhists will all find a safe shelter.'." CAD, | Volume no.4, p. 746)

Determined To Draft a Secular Constitution

Even before the Drafting Committee submitted the Draft Constitution. the Assembly had been considering the reports of the several other Committees and deciding several matters with regard to the form and contents of the Constitution to be drafted. During these discussions a consensus had been evolving with regard to the secular character of the Constitution.

On 27th August 1947 Shri M. Ananthasayanam Ayyangar arguing for a joint electorate and opposing separate electorates appealed to the members of the Assembly to develop and form a secular state, by making Hindus and Muslims standing together and not allowing religion to come on the way. He said, "...I expect very soon a secular State will arise here. Are you going to stand between us and the establishment of a secular State? Will you not profit by the events recorded history? ... Therefore it is up to us to create a secular State." (CAD, Volume no.5, 27th August 1947, p. 215-216)

On the same day Shri Govind Ballabh Pant spoke, "Further, what is your ultimate ideal? Do you want a real national secular State or a theocratic State? If the latter, then in this Union of India a theocratic State can be only a Hindu State..." (CAD, Volume no.5, 27th August 1947, p. 223.).

On 28th August 1947 Shrimati Renuka Ray said, "After all ..., it is not a question of minorities and majorities on a religious basis that we should consider in a democratic secular State...." (CAD, Volume no.5, p. 268.) She further said, "...We have learnt indeed a bitter lesson. We have submitted to all this so that at least in the rest of India that remains with us now we may go ahead in forming a democratic secular State without bringing in religion to cloud the issue..." (CAD, Volume no.5, 28th August 1947, p. 268-269)

Debates on the Draft Constitution

After Ambedkar's speech presenting the Draft Constitution and explaining its salient features Mr Frank Anthony responded on 5th November 1948 appreciating the provisions made in the draft constitution in favour of the minorities and spoke on the ideal of a secular country:

"...Believe me, Sir, when I tell you that I, at any rate, do not think that there is a single right minded minority that does not want to see this country reach, and reach in the shortest possible time, the goal of a real secular democratic State.... I am one of those who believe that India will attain her fullest stature in a secular democratic society. ... I believe that in this Constitution we have both the opportunity and the guarantee of a secular democratic society in this country." (CAD, Volume no.7, 5th November 1948, p. 229)

On 8th November 1948 Shri Mahboob Ali Baig Sahib Bahadur while commenting on the Draft Constitution wanted that as a secular state India should be protecting the personal laws of the people (CAD, Volume no.7, 8th November 1948, p. 297). On the same day Z. H. Lari said that the Draft Constitution "is primarily intended to usher in a democratic secular republic..." (CAD, Volume no.7, 8th November 1948, p. 298)

On 9th November 1948 Shri M. Thirumala Rao spoke about the ideal of a secular state

and pleaded for the protection of ancient traditions and culture of India. He said,

"... We have been talking too much of a secular State. What is meant by a secular State? I understand that a secular State may not allow religion to play a very important part to the exclusion of other activities of the State..." (CAD, Volume no.7, 9th November 1948, p. 348).

Shri Mahavir Tyagi spoke opposing any concept of religious majority or minorities since according to him it was against the ideal of a secular state. He said,

"...We are a secular State. We cannot give any recognition or weightage to any religious group of individuals." (CAD, Volume no.7, 9th November 1948, pp. 362).

In the words of Shri L. Krishnaswami Bharathi, "...In a secular State the right to representation is only the right to represent a territory in which all communities live ..." (CAD, Volume no.7, 9th November 1948, p. 366).

A number of members spoke about the secular character of the draft Constitution and made a few suggestions also, for example, Chaudhari Ranbir Singh, (CAD, Vol. 7, 17th November 1948, p. 451-452), Mahboob Ali Baig Sahib Bahadur, (CAD, Volume no.7, 23rd November 1948, p. 544), Hussain Imam, (CAD, Volume no.7, 23rd November 1948, p. 546) Shri K. M. Munshi, (CAD,| Volume no.7, 23rd November 1948, p. 547) (CAD, Volume no.7, 23rd November 1948, p. 548); B. H. Khardekar (CAD, Volume no.7, 24th November 1948, pp.557-558); Prof. K. T. Shah (CAD, Volume no.7, 30th November 1948, pp. 683), Kazi Syed Karimuddin (CAD, Volume no.7, 2nd December 1948, p. 757), highlighted different aspects of a secular state in the context of various topics.

While debating the Article 19 (present article 25) there have been a lot of discussions on the secular ideal of the Constitution especially in the context of the freedom to propagate religion. On 6th December 1948, Mr. Lokanath Misra during the discussions on Article 19 (present article 25), said, "Gradually it seems to me that our 'Secular State' is a slippery phrase, a device to by-pass the ancient culture of the land." CAD, Volume no.7, 6th December 1948, p.823-824). Shri H. V. Kamath was of the view, "We have certainly declared that India would be a secular State. But to my mind a secular state is neither a God-less State nor an irreligious nor an anti-religious State." (CAD, Volume no.7, 6th December 1948, p.824-825) Lakshmi Kanta Maitra supported the article 19 and defended the right to propagate as part of the secular ideal. He went on to argue, "Sir, I feel that every single community in India should be given this right to propagate its own religion. Even in a secular state I believe there is necessity for religion." (CAD, Volume no.7, 6th December 1948, p.833). Shri L. Krishnaswami Bharathi supported the right to propagate religion and said, "Again, it is not at all inconsistent with the secular nature of the State." (CAD, Volume no.7, 6th December 1948, p.834). Shri K. M. Munshi said, "....In the present set up that we are now creating under this Constitution, there is a secular State. ... In those circumstances, the word `propagate' cannot possibly have dangerous implications, which some of the Members think that it has." (CAD, Volume no.7, 6th December 1948, p. 437).

In the Assembly itself there have been a lot of the confusion about the various meanings attributed to the concept of a secular state. In view of this Shri Jawaharlal Nehru while speaking on the granting of citizenship to those who came from Pakistan after partition warned the Assembly about the secular state business,

"Another word is thrown up a good deal, this secular State business. May we beg with all humility those gentlemen who use this word often to consult some dictionary before they

use it? It is brought in at every conceivable step and at every conceivable stage. I just do not understand it. It has a great deal of importance, no doubt. But, it is brought in all contexts, as if by saying that we are a secular State we have done something amazingly generous, given something out of our pocket to the rest of the world, something which we ought not to have done, so on and so forth. We have only done something which every country does except a very few misguided and backward countries in the world. Let us not refer to that word in the sense that we have done something very mighty." (CAD, Volume no.9, 12th August 1949, pp. 401).

On the same day, Alladi Krishnaswami Ayyar spoke saying that India is committed to the principles of a secular State. He was discussing about Article 5-B, (present article 8). He said,

"We are plighted to the principles of a secular State." (CAD, Volume no.9, 12th August 1949, pp. 404)

On 26th August 1949 while discussing the form of oath as prescribed in the third Schedule of the Constitution, Sardar Bhopinder Singh Man had moved an amendment to delete the name of God from the forms of oath and swearing. (CAD, Volume no.9, 26th August 1949, p. 709). Shri Brajeshwar Prasad also expressed his opposition to the bringing in the name of God in the format of oath and said that the concept of religion and the concept of secularism are poles asunder. There is no meeting ground between these two." (CAD, Volume no.9, 26th August 1949, pp. 712-713.). However, Shri Mahavir Tyagi while supporting the amendment moved by Mr Kamath wanted that the name of God should be above he line in the form of oath thus giving more importance to God and swearing than the solemn affirmation without the name of God since in India the majority of the people are believers in God and agnostics would be very few. (CAD, Volume no.9, 26th August 1949, pp 713-714)

On 12th September 1949 Seth Govind Das advocated for one language and one script for the whole country and relied on the concept of secular state for the said purpose. (CAD, Volume no.9, 12th September 1949, p. 1330)

Mohd. Hifzur Rahman arguing for accepting Hindustani as the language of the Union and the country invoked secularity of the State for his support. (CAD, Volume no.9, 12th September 1949, p. 1347-1348)

On 14the October 1949 Shri Brajeshwar Prasad during the discussion on the proposed article 296 (present Article 335) argued that providing reservations in pubic employment would be against the secular character of the State. (CAD, Volume no.10, 14th October 1949, p. 239)

Sardar Vallabhbhai Patel spoke about the secular character of the Sate, while opposing the suggestion of some Sikh leaders to include Sikhs also for the reservation in public employment,: "... When the decision of the Advisory Committee came before this House for its acceptance, I made it clear that this Constitution of India, of free India, of a secular State will not hereafter be disfigured by any provision on a communal basis. It was accepted with acclamation." (CAD, Volume no.10, 14th October 1949, p. 248). He continued, "You do not know the immense difficulties of a secular Slate being governed peacefully in such conditions ...." (CAD, Volume no.10, 14th October 1949, p. 249)

Failed Attempt to Insert the Term Secular

On 15th November 1948 Prof. K. T. Shah moved an amendment to Article 1 to describe India as a 'secular' Union of States, among other things. The proposed amendment wanted Article 1 to state: "India shall be a Secular... Union of States." (CAD, Volume no.7, 15th November 1948, p. 399)

Explaining the need to declare India as a secular state he said,

"Next, as regards the Secular character of the State, we have been told time and again from every platform, that ours is a secular State. If that is true, if that holds good, I do not see why the term could not be added or inserted in the constitution itself, once again, to guard against any possibility of misunderstanding or misapprehension. The term` 'secular', I agree, does not find place necessarily in constitutions on which ours seems to have been modelled..." Still he wanted, "The secularity of the state must be stressed..." (Ibid, p. 400)

Dr. B.R. Ambedkar expressed his inability to accept any of the proposals of Prof Shaw's amendment. He was not against the concepts or ideals themselves. His first objection was regarding the propriety of incorporating them at that time and place, since these matters were to be "decided by the people themselves according to time and circumstances." His second reason to oppose was that the amendment was purely superfluous since the provisions of the Constitution including Fundamental Rights and Directive Principles. (CAD, Volume no.7, 15th November 1948, p. 401-402)

Shri H. V. Kamath had a suggestion that Prof Shaw's proposals were out of place in Article 1 and that they should find a place, if at all only in the Preamble. (CAD, Volume no.7, 15th November 1948, p. 402-403)

Ultimately the motion by Prof Shaw was negatived. (ibid, 403).

Forced to Vote Out God

At the end of the passing and finalization of the different provisions, when the Preamble was being finalized and passed, there was an occasion again to revisit secularism to the effect, the Assembly had to decide on whether the Constitution and the Preamble should start with the invocation to God. Owing to the stubbornness of some members who insisted on invoking the name of God, it had to be put to vote and thus the name of God had to be voted out from the Preamble.

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

"In the name of God, We, the people of India .... secure to all her citizens .... to ourselves this Constitution."

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

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

Other attempts were also made by Prof Shibban Lal Saksena and Pandit Govind Malaviya tp bring in the name of God or Parameshwar through other means but were disallowed in view of the decision of the Assembly on Kamath's amendment. [CAD, vol, X, p. 445-446]

Secular Character of the Final Draft

During the third Reading, that is, the debate and motion for the passing of the final Draft of the Constitution which started on 17th November 1949 and ended on 26th November 1949, there have been a number of references to the secular character of the Constitution from various points of view. All were of the view that the Constitution is a secular one. They even called it a secular constitution.

However, some were unhappy about the Constitution being too much secular. On 19th November 1949 Prof. Shibban Lal Saksena was unhappy of banning religious instruction in fully government funded educational institutions : "...This is an instance where secularity has gone too far." (CAD, Volume no.11, 19th November 1949, p. 706). Dr. P. S. Deshmukh was of the view, "... At the present day I do not think in the whole world there is any other country which is so definitely irreligious as India is and on the excuse or on the fundamental principle of making our Constitution secular we have seen to it that there is not even a shadow of our religion reflected in our Constitution..." (CAD, Volume no.11, 22nd November 1949, p. 776-777). Shri Jagat Narain Lal, in one of the final speeches on 25th November 1949 expressed his displeasure,

"I am sorry, Sir, that there has been an undue anxiety in our minds about the avoidance of the name of God. ... I would have liked that the name of God should have been introduced. Again, the words 'Secular State' should not have come into the Constitution. It would have been enough if it had been said that the State should not interfere with any religion. Or, we could have said that the State should have a spiritual and moral outlook, instead of saying that it should be secular. The introduction of these words has created a lot of misunderstanding." (CAD, Volume no.11, 25th November 1949, p. 948)

However majority of the people were happy about the secular feature. Begum A. Rasul spoke highlighting the fact that the most outstanding feature of the Constitution is its secular nature:

"Sir, the most outstanding feature of the Constitution is the fact that India is to be a purely secular State. The sanctity of the Constitution lies essentially in its affirmation of secularity and we are proud of it. I have full faith that this secularity will always be kept guarded and unsullied, as upon it depends that complete unity of the peoples of India without which all hopes of progress would be in vain." (CAD, Volume no.11, 22nd November 1949, p. 774)

On 18th November 1949 Lakshmi Kanta Maitra said that "we must without delay bring about the conditions necessary for the proper evolution of a secular democracy in this country. ..." (CAD, Volume no.11, p. 656). Shri Ajit Prasad Jain spoke about the rights granted to minorities as given in a secular state: "...The minorities therefore should have nothing to fear or be apprehensive about their future. It is in that sense that we have established what is popularly known as a secular State." (CAD, Volume no.11, 22nd November 1949, p. 807)

Whereas Shri Kamalashwari Prasad Yadav expressed his happiness in the Constitution upholding the very high ideal of secularism. In his speech on 25th November 1949 he said, "... Under the able leadership of Pandit Jawaharlal Nehru, we have made our Sate a secular one and have thereby maintained a very high ideal..." (CAD, Volume no.11, 25th November 1949, p. 971)

'Secular' Term Entering the Preamble

Even prior to the insertion of the word secular into the Preamble in 1977, the Supreme Court of India in a number of decisions had held secularism as a basic feature of the Constitution. In 1976 the Preamble was

amended by the Parliament through the Forty Second amendment introducing the word 'secular' in the Preamble and it came into effect with effect from 3rd January 1977. This amendment was taken up by Lok Sabha on 25 October 1976 for discussion and passed it on 2 November 1976. On 4 November 1976 The Rajya Sabha took it up and passed it on 11 November 1976. By and large members from both the Houses welcomed the addition of the word secular as also other additions. to proclaim that India was, among other things, a secular Republic. But the term 'secular' was not defined. The Statement of Objects and Reasons attached to the Constitution (42nd Amendment) Bill explained that the purpose of inserting the word 'secular' was "to spell out expressly" the high ideal of secularism - which meant that what was implied in the Constitution was to be made explicit.

Failed Attempts at Definition: Neither Neutrality Nor Equal Respect

There had been two failed attempts to define the meaning of the term secular, first in the Constitutional Assembly itself as 'neutrality', second in the Parliament in 1978 as 'equal respect for all religions'.

In the Constituent Assembly itself there was an attempt for a kind of definition and inclusion of absolute religious neutrality as a Fundamental Right. On 3rd December 1948, Prof. K.T. Shah moved an amendment no. 566 to get a provision regarding the secular character of the State incorporated under the Fundamental Rights as a new Article 18A under the title Freedom of Religion and before the Article 19 (present article25) in the Constitution. It was as follows:

"The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union."

This amendment was put to vote and negatived. (CAD Vol. VII, 3rd December 1948: 815-816)

There was yet another attempt to define secularism in the year 1978 after the 42nd Amendment to the Constitution in 1976 had inserted the word 'secular' in the Preamble. During the Janata Government, a part of the 45th Constitution Amendment Bill (1978) which sought to define the word secularism as 'equal respect for all religions' (Sarva Dharma Samabhav') was passed by the Lok Sabha but was rejected by the Rajya Sabha.

When this proposed definition of secularism was debated in the Rajya Sabha, it was commented upon that the definition of secularism as "equal respect for all religions" Sarv Dharma samabhav was the biggest joke of the year. To this others had added that it was also "a joke on the Constitution". One of the objections to the definition of secularism was that, like democracy, secularism in the constitution cannot and should not be defined, instead it should only be interpreted (debate in the Rajya Sabha on 29th August 1978).

Meaning of the word 'secular' in the Constitution

Though the Constitution of India so far has not chosen to define the term secular or secularism, the word secular is used in two places (Preamble and Article 25) both in related but separate meanings. In the Preamble it denotes a political value or ideal relatable to social life and more specifically to the plurality of lifeways or world-views. This is evident from the Hindi term used for it: 'panth-nirapeksha' which would mean 'lifeway-independent'. In Article 25 it is used to denote other activity like economic, financial or political activity associated with religious practice. Here the Hindi term used is 'laukik' which would mean 'temporal', 'mundane' or 'this-worldly'. None

of these two usages is either anti-religion or pro-religion; these usages however are not religion-indifferent either. Instead they are supra-religion in the sense of being 'jurisdictionalist', and 'composite' (with both negative and positive dimensions). However, the usage in the Preamble can be seen as denoting a value or ideal relevant to plurality of life-ways including religious and non-religious lifeways.

Secularism as composite pluralism is the direct consequence of assuring the individual dignity while promoting fraternity not only national fraternity but also other fraternities like family, panchayat, province, language, culture, lifeways (including religious, denominational, agnostic, materialistic, atheistic etc), world fraternity, cosmic fraternity so on. In other words it is the political arrangement of a republic to ensure social justice.

During the last speech Dr Ambedkar delivered in the Assembly on 25/11/1949 concluding the debate on the Draft Constitution, he stressed the need for social democracy which is the real content of secularism according to our Constitution, that is to have a social system and life on the principle of 'one person one value', promoting fraternity assuring the dignity of the individual. This value then accrues through the individual to the smallest and weakest of groups. He said, "... We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy." He further stressed the core of secularism, the principle of fraternity assuring the dignity of the individual: "What does fraternity mean? Fraternity means a sense of common brotherhood of all Indians – if Indians being one people. It is the principle which gives unity and solidarity to social life..." (CAD, Volume no.11, 25th November 1949, p. 979). It is this fraternity assuring the dignity of the individual which sustains the core of the secular character of the republic.❐

ANSWERS TO LEGAL QUIZ

01-D	02-B	03-C	04-B	05-A	06-A
07-C	08-B	09-B	10-C	11-A	12-D

LEGAL TERMS & MAXIMS

Actio Personalis Moritur Cum Persona: A personal action dies with the person.

Appeal : A request to a higher court to overturn the judgment of a lower one.

Arbitration : A method of amicable dispute resolution.

Beneficiary : The person named as such in a will or insurance policy. A beneficiary may also be the equitable named person under a trust, where the legal owner is the trustee.

Deed : A written legal document describing a piece of property and setting out the boundaries of that property.

Ex post facto law : A retroactive law. E.g., a law that makes a past act illegal that was not illegal when it was done.

Fraus est celare fraudem: It is a fraud to conceal a fraud.

Grantor : The person who establishes a trust on behalf of the beneficiaries.

Guarantor : The person who provide a guarantee on behalf of another.

Ignorantia juris non excusat: Ignorance of the law excuses no one.

In mitius : A type of retroactive law that decriminalizes offenses committed in the past. Also known as an amnesty law.

Intestate : Means to die without having left a will.

Lease : A legal agreement to lend/hire something to a third party.

Motion : A request made to a judge asking him to rule on an issue of law.

Respondeat superior : The master (e.g., employer) is responsible for the actions of his subordinates (e.g., employees).

Veto : The power of an executive to prevent an action, especially the enactment of legislation.

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