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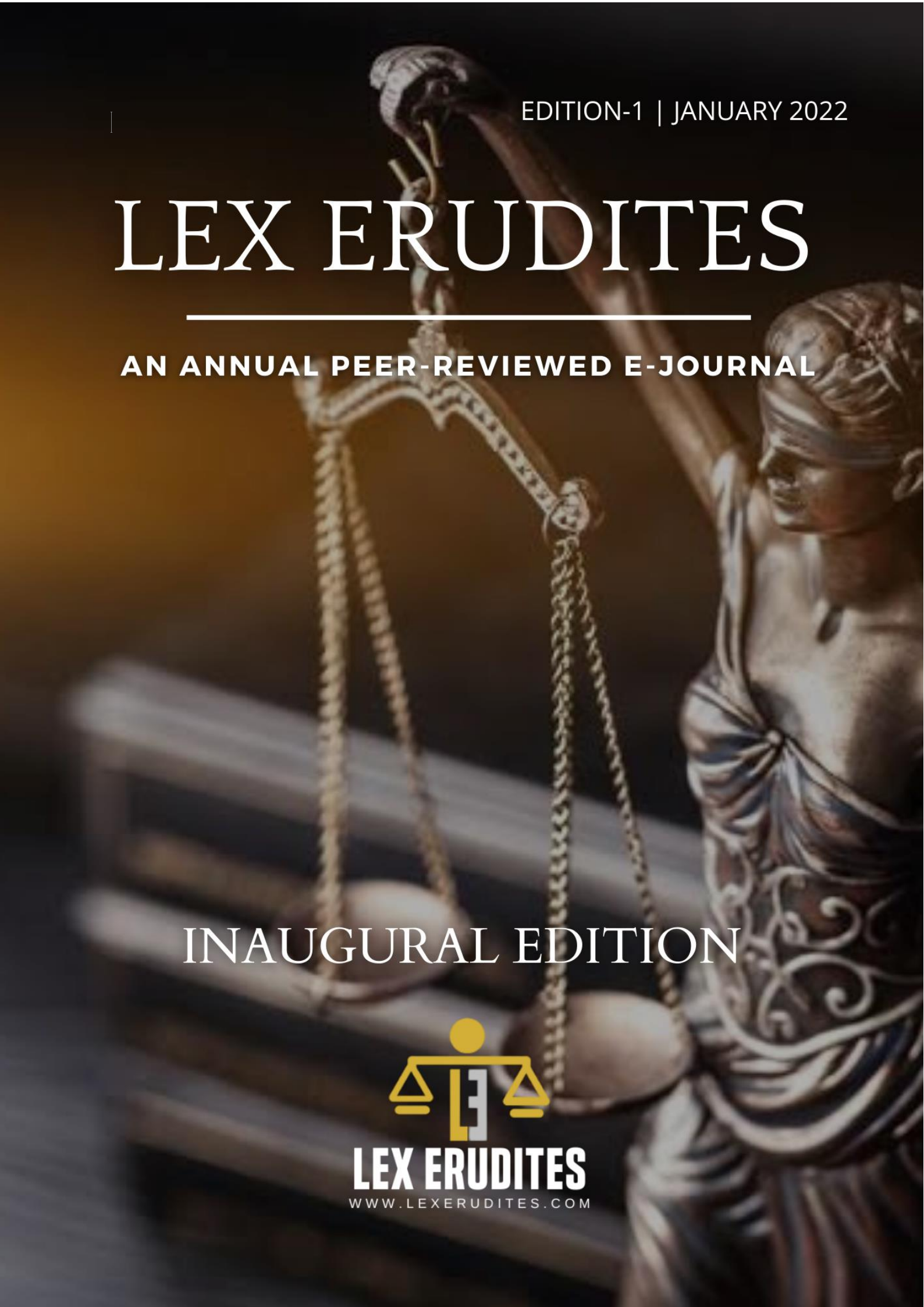

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About the Publisher

Lex Erudites is a humble initiative by a few undergraduate students of law with the primary vision to provide a platform for socio-legal discourse and scholarship. Our trajectory as an open e-journal intends to disseminate constructive, independent ideas and thoughts on socio-legal issues and national and international developments in the field of law and society. We as an e-journal have embarked on a journey to support and encourage aspiring writers and young-aspiring minds to ink their free-spirited, reasoned thoughts and opinions. With the objective of expanding our operations beyond the borders, we also intend to build a meritorious community of law students, academicians and legal professionals to bridge the gap between the legal fraternities around the world.

A Note from the Editor-in-Chief

The Lex Erudites Journal exhibits a collective aspiration of a cohort of undergraduate students from various universities across India to promote the documentation of reasoned perspectives and ideas of young independent minds on contemporary socio-political issues. The idea of this journal is not limited to being a pensive host to enthusiastic authors; whereas, it is also geared towards extending continuous and extensive orientation to aspiring authors to systematically inculcate a sterling balance between scholarly analysis and refined presentation of arguments and understandings.

This Journal intends to establish itself as a breeding pasture of academic discourse, critical analysis and exchange of ideas and thoughts to cater the requirements of socially responsible citizenry, academia and students. Being a student driven initiative supported by distinguished board of advisors chaired by Dr. Dhvani Mehta from Vidhi Centre for Legal Policy, Professor Dr. Bryan Clark from Newcastle University, UK and Mr. Sagar Singamsetty, senior passenger analyst for IRU, Brussels and an Adjunct Professor of CADL, NALSAR University of Law, it intends to affiliate towards sustainable development of student community in multiple avenues.

It gives me immense pleasure to become a part of the inaugural edition of this Journal which symbolically manifests a combined vision of the contributors of articles and the editorial team of Lex Erudites. And I sincerely believe that this edition is capable enough to engage your attention and stimulate your critical assimilation.

Adv. Akhil George

Editor-In-Chief

Constitutional Morality V. Subjective Morality: An Insight on the Concept of Constitutional Morality with Reference to Secularism & Basic Structure Doctrine

Silpa V.R

The phrase "constitutional morality" existed in the Indian Constitutional scheme since the times of Dr. Ambedkar. According to Dr.Ambedkar[1], Constitutional morality would mean an effective coordination between conflicting interests of different people in the society and the administrative cooperation to resolve them amicably without any confrontation amongst various groups i.e. when there arises a situation of conflicting or contradicting interest of two groups in a society, whose interest is to be protected has to be determined by testing it against the touchstone of constitutional morality. Constitutional morality in its spirit means nothing but adherence to the core principles of the constitution in a democracy i.e. a moral obligation of an individual to uphold the constitutional values with utmost dignity without any compromise and being faithful towards it. The doctrine dwells into the spirit of the constitution wherein both individual and collective interests of the society are satisfied. The term Constitutional morality has often been confused and misunderstood with the concept of popular or social or subjective morality. Subjective morality means that each individual has their own sense of right and wrong. In the matter of religion and faith, the words right and wrong are like two sides of a coin and every individual is bound by the moral values that are cultivated from the family and the society he lives in. What is protected under the Constitution is Constitutional morality and not Subjective morality. To understand the concept of constitutional morality, it is important to analyze the

[1] Ambedkar, 'Speech Delivered on 25 November 1949' in The Constitution and Constituent Assembly Debates, p. 174

core constitutional principles that are to be protected. Values like liberty, equality, fraternity recognized in preamble, rights under part III which includes the right against discrimination, right to life, right to equality etc, the tacit ideas of Human Rights which are though not specifically mentioned, however, forms the integral part of one's existence from the essence of morality. These constitutional values in a way form the basic structure of the Constitution which should not be disrupted. Though framers had intended to imbibe the spirit of constitutional morality ever since the Constitution was adopted, constitutional morality gained popularity when the Supreme Court in the *Kesavananda Bharati v. State of Kerala*[2] laid down the basic structure doctrine. Since then, the Supreme Court has been the interpreter of the Constitution, and the authority of all amendments made by the Parliament. The Supreme Court in a plethora of cases discussed what constitutes basic structure. On analysis of the ratios laid down by the Apex Court, it is inferred that all that has been considered the foundation of constitutional morality is recognized as the basic structure of the constitution. i.e. to uphold constitutional morality is to protect the basic structure of the Indian Constitution

The debate on what constitutes the "basic structure" of the Constitution which was lying uninterested in the archives of Indian Constitutional history gained popularity during the last decade of the 20th century. While setting up the National Commission to review the working of the Constitution, the National Democratic Alliance government stated that the basic structure of the Constitution should not be meddled with. Justice M. N. Venkatachaliah, Chairman of the Commission had focused attention on several occasions on the inquiry into the basic structure of the Constitution which is beyond the scope of the Commission's work. According to the Constitution of India, Parliament and the State legislatures in India have the power to make laws within their

[2] AIR 1973 SC

respective jurisdictions. This power is not absolute in nature and has to be in such a way that it does not violate the spirit of constitutional morality.

Now the question is who determines what constitutes 'basic structure' or what should be the constitutional morality that has to be upheld. The Constitution vests in the judiciary, the power to adjudicate upon the constitutional validity of all enacted laws which are essential[3]. If a law made by the Parliament or State legislatures violates any provision of the Constitution, the Supreme Court has the power to declare such law as invalid or ultra vires and thus unconstitutional. The framers of the Constitution wanted the Constitution to be an adaptable document rather than a rigid framework for governance. Thus, Parliament was endowed with the power to amend the Constitution and Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. But the Supreme Court had acted as a vigilant umpire to the legislative enthusiasm of Parliament ever since independence. With the intention of preserving the original ideals envisaged by the Constitution makers, the Supreme Court pronounced that Parliament could not destroy, or alter the basic features of the Constitution under the pretext of amending it. The phrase 'basic structure' cannot be found in the Constitution itself and the idea is not static, so is constitutional morality. The facets of constitutional morality changes with time but the original principles upon which it is based would be the core constitutional values. It is the duty of the Judiciary to interpret the doctrine in such a way as to fit the changing concept of society. Judiciary has from time to time elaborated the concept of basic structure by adding different constitutional values to the list thereby extending the limits of constitutional morality as well. However, the conflict arises when such added values come in contradiction to the popular sentiments or social morality. Perhaps, when a question arises as to what has to

[3] Surya, Rao Rega, *Lectures on Constitutional Law*: 2nd ed. Hyderabad: Asia Law House, 2016

be prioritized, the answer would obviously be the constitutional value and not the popular opinion. One such issue that arose is that of conflict between the core constitutional idea of secularism and the time immemorial custom practised by a certain religion. In *S.R.Bommai v. Union of India*,[4] the Supreme Court has held that 'secularism' is a basic feature of the Constitution. The State treats equally all religions and religious denominations. Every individual has the freedom to profess and practice his own religion, and it cannot be conceded that "if a person is a devout Hindu or a devout Muslim, he ceases to be secular." Right to profess and practice the religion of one's choice is their fundamental right. But whether a tradition or custom that has been practised for a long time could overthrow a certain category of people's fundamental right is a debatable issue. This is in fact a conflict between constitutional morality and subjective morality.

The conflict between constitutional morality and subjective morality mainly arises when it comes to matters of religion. Francis Bacon, in his essay titled 'Of Unity in Religion'[5] said that "Religion being the chief band of human society, is a happy thing when itself is well contained within the true band of unity. The quarrels and divisions about religion are evils unknown to the heathens."Being a secular nation, the Constitution protects each and every religion as equal and without discrimination. Article 15(1)[4] directs the State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The word 'discrimination' means to make an adverse distinction from others. If a law makes discrimination on any of the grounds mentioned above, it can be declared as invalid.

[4] AIR 1994 SC 1918

[5] Lall,Ramji, *Bacon's Essays*: 31st ed. New Delhi: Rama Brothers India Pvt. Ltd., 2005.

In *Indian Young Lawyers Association & Others v. The State of Kerala & Others*[6], petitioners argued that the practice which has been running for a very long time in Sabarimala violates Article 14(Right to equality), Article 15 (Prohibition of discrimination), Article 17(Untouchability) and Article 25 (Freedom to practice and propagation of religion). The Court observed that religion is a way of life naturally linked to the dignity of an individual and patriarchal practices based on the exclusion of one gender in could not be allowed to infringe the fundamental freedom to practice and profess one's religion as mentioned in the Constitution of India. However, one of issues raised by the Petitioners who wanted to uphold the practice of not allowing women to enter in the temple was that the practice as such form their fundamental right under Art 25. The right guaranteed is not confined to religious belief, but extends to various rituals and ceremonies and modes of worship, which the followers of a particular religion consider necessary and instrumental for the members of their community. Hence, the Court had to interpret in detail the limits and extent of the right guaranteed under Art 25 – 28.

Articles 25 to 28 of the Constitution give a concrete shape to the concept of secularism. However, this freedom of religion is not an absolute freedom but is subject to the regulatory power of the State. Shri.R.Venkataraman, when he was the President of India had rightly remarked about Indian Secularism: "The State is neither religious nor anti- religious. But it is wholly detached from religious dogmas and activities and thus neutral in religious matters." Jawaharlal Nehru defined the secular State as one in which the state protects all religions but does not favour one at the expense of others and does not itself adopt any religion as the state religion. To profess a religion means to declare freely and openly one's faith and belief. 'To practice religion' means to perform

[6] (2018)SCC Online SC 1690

the prescribed religious duties, rites and to exhibit his religious belief by such acts as prescribed by the religious order in which one believes. To 'propagate' means to spread and publicize one's religious views for the instruction of others. The right to propagate one's religion does not give a right to convert any person to one's own religion. In the name of religion, no act can be done against public order, morality and health of the society. The Parliament can by law, regulate or restrict any economic, financial, political or other secular activity which is associated with religious practice. The State is entitled to make laws for social welfare and social reform. The State can make laws to eradicate social evils such as Sati, Devadasi system which are practiced in the name of religion. The State in the interest of public order can impose certain restrictions on the freedom of religion. The State is also empowered to compulsorily acquire religious property for the public purpose. The State in the interest of public health and morality has prohibited certain deleterious religious practices for the welfare of the State[7].

However the concept of constitutional morality is not free from criticisms. As there is no mention of the term 'constitutional morality' in the Constitution and no fixed definition that has been attributed to it, it has been left to discretion of the Court to interpret the essence of this doctrine and apply in requisite situations. This makes it privy to subjective interpretations by individual judges having different perceptions. For instance, in Sabarimala case, the majority opinion held the restriction imposed upon women in age group 10-50 years is against Constitutional Morality while one dissenting opinion found that the "Constitutional morality will require that every single individual would have the right to his own faith and nobody can interfere with it, the courts cannot interfere with what is the matter of faith". Thus even Constitutional Morality is interpreted by different judges in different way. Also, elaborating the concept in such a way

[7] Quoted by Smith D.E, Nehru and Democracy, Orient Longmans Pvt. Ltd, 1st ed,(1958), p.150.

as to violate the popular opinion is often criticized as 'judicial overreach and hence violating basic tenet of democracy, that is, of separation of power between judiciary, legislature and the executive'. The fluidity of public morality is the essence of a society making moral progress through social evolution. Subsequently, stating that this natural progress should not be overpowered by transformative constitutionalism or constitutional morality acting as top-down doctrines.

Thus the requirement of limiting certain principles for the application of Constitutional Morality cannot be denied. However, the aspect of constitutional morality should not be completely dissolved but rather harmoniously constructed in order for better functioning of the society. A harmony between Constitutional morality and public morality is what is required. The importance of upholding constitutional morality has to be cultivated in the minds of citizens. With regard to protecting the constitutional doctrine of secularism and to implement the ideals and the goals enshrined in the Constitution, the society needs to cooperate with welfare activities without any religious segregation. Religious segregation will affect the entire developmental activities of the State. Thus the importance of the slogan 'unity in diversity' comes in vain. The State should be neutral to all religions and promote them owing to the fact that religion plays a prominent role in the cultivation of human behavior that is the backbone of subjective morality. It is understood that the Constitution does not specify which part forms the basic structure. Sabarimala verdict is an example. *Sarva Matha Prarthana,* is a light to brighten the aspect of secularism. A person should understand and give respect to another religion and in that aspect the basic structure and secularist idea will come into effect without any flaw. Constitutional morality and subjective morality are two aspects which are to be harmoniously interpreted in the light of changing social dimensions.

Socio-Legal Aspects of Racial Discrimination- A Global Perspective

Soorya V.R

"The piano keys are black and white, but they sound like a million colors in your mind"- Maria Cristina Mena

Racial discrimination is an accumulation of individual acts of unfairness between members of different groups based on race. It can be found throughout the world. Racial discrimination is a belief that a particular race is superior or inferior, that an individual's social and moral traits are decided by one's born biological characteristics. The word 'discrimination' means a confronting separation or to distinguish unsuitable from others. Members of various races are treated differently. Historically, racism was an evil behind racial segregation such as in some parts in the US in the 19th and early 20th centuries and South Africa under apartheid. Inequality and discrimination lead to genocide, racism and other intolerance practices that wholly affect the peace of the entire world. Even in some developed countries the social setup didn't change. The Office of the High Commissioner for Human Rights is effortlessly trying to eradicate the social evil. The United Nations has been concerned with the same issue since it is broadening day by day. The principle of equality also requires the elimination of racial discrimination. With the aim of deteriorating this evil entirely, the framers of the Indian Constitution codified Article 15 which is a Fundamental Right. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Even today in some parts of India, the practice is still active. It is high time to wipe out the global evil from the human community. The world is under the shackles of the evil power of racial discrimination. Contemporary societal issues are evidence of this.

In 539 B.C., the armies of Cyrus the Great, the first king of ancient Persia, conquered the city of Babylon, but it was his subsequent actions that marked a major progress for Man. He freed the slaves, announced that all people had the right to decide on their religion and established racial equality. These and other decisions were registered on a baked clay cylinder in the Akkadian language with Cuneiform script. Known today as the Cyrus Cylinder (539 B.C), this ancient record has now been recognized as the world's first charter of human rights. It is translated into all six official languages of the United Nations and its provisions parallel the first four Articles of the Universal Declaration of Human Rights. It is understood that from the ancient age segregation based on race was prevalent. The world is on the verge of development but, social system and divisions are yet static and steady. There are various conventions to extirpate the atrocious acts which are against humanity.

The word 'genocide' was propounded by Raphael Lemkin in 1944. Genocide means 'Murder' of a whole race or group of people.'[1] On December 9, 1948, the UN approved the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention was passed to ban actions similar to the Armenian Genocide by the Ottoman Empire during World War I and the Holocaust by Nazi Germany during World War II. Genocide is not a natural disaster. It is a massacre intentionally planned and carried through by individuals. Convention has provided that the States shall enact the necessary legislation to provide effective penalties for the crime.

UN supports the activities of The Committee on the Elimination of Racial Discrimination (CERD). The Committee on the Elimination of Racial Discrimination, in its General Recommendation concluded that the convention obliges states "to nullify any law or practice which has the effect of creating or prolonging the existence of racial discrimination."[2]The committee affirms that

[1] Oxford Advanced Learner's Dictionary.

[2] CERD Article 1, Paragraph 1.

any doctrine of superiority based on racial differentiation is false, condemnable, unjust and dangerous, and that there is no justification for racial discrimination as it affects the harmony of persons living nearby. The Committee authoritatively ruled that India's scheduled castes, which were based on descent, fell within the scope of this convention. In *Kama Dorjee v. Union of India*,[3] Supreme Court observed that in order to enhance a sense of security and inclusion, the Union Government and the Ministry of Home Affairs should take proactive steps to guard the reparation of issues appurtenant to racial discrimination faced by citizens of the nation drawn from the northeast. In that regard, a regular exercise of monitoring and redressal should be carried out by the committee constituted for that purpose. Article 4(c) says that State parties shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.[4]The aggrieved party can approach the tribunal for justice.[5]In the United States, racial discrimination incidents of police brutality seem to target disproportionately individuals belonging to racial or ethnic minorities. The plight of George Floyd is a terrifying incident that jolted the entire world with fear.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001, adopted the Durban Declaration and Programme of Action. It "requests the Commission on Human Rights to consider establishing a working group or other mechanism of the United Nations to study the problems of racial discrimination faced by people of African descent living in the African Diaspora and make proposals for the elimination of racial discrimination against people of African descent."[6]The Secretary-General of the Conference and High Commissioner for Human Rights, Mary Robinson, stated

[3] Kama Dorjee v. Union of India, A.I.R 2017 S.C. 113, (India).
[4] CERD, Article 4(c).
[5] CERD, Article 6.
[6]Durban Programme of Action, Paragraph 7.
https://www.ohchr.org/EN/Issues/Racism/WGAfricanDescent/Pages/WGEPADIndex.aspx (Sep 19, 2020, 7:17 PM).

about this conference that "it can be more: it can shape and embody the spirit of the new century, based on the shared conviction that we are all members of one human family."[7] In *Brown v. Board of Education*,[8]the Court prohibited racial segregation of public schools. In *Bailey v. Patterson*,[9]the Court in this case prohibited racial severance of interstate and intrastate transportation facilities.

The Convention on the Suppression and Punishment of the Crime of Apartheid declares that apartheid is a crime against mankind and that "inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination" are international crimes.[10] But still, in South- Africa apartheid is carried out without any hesitation.

India as a developing nation, caste system is still prevalent in some parts of India. One specific application of the general principle of equality is embodied in Article 15. The guarantee of equality under Article 15 is available to citizens only and not to every person as in Article 14. Racism in India is related to language, colour, caste, economics, politics, etc. but mostly related to the complexion of a person. The hatred for dark skin colour is a fact that can't be changed. The constant torture relating to complexion of one person is very deplorable and it can be seen mostly in between the educated groups of people. There are some incidents where students who couldn't tolerate the humiliation committed suicide. Even in educated group of people there is segregation based on race. Everyone should realize that all are equal and all are the same in the eyes of God.

[7]https://www.un.org/WCAR/e-kit/backgrounder1.htm (Sep 19, 2020, 7:20 PM).
[8]Brown v. Board of Education 347 U.S. 483 (1954).
[9]Bailey v. Patterson, 369 U.S. 31 (1962).
[10]Convention on the Suppression and Punishment of the Crime of Apartheid, art 1. https://legal.un.org/avl/ha/cspca/cspca.html#:~:text=The%20Convention%20on%20the%20Suppression,lasted%20from%201948%20to%201990. (19 Sep 19, 2020, 9 PM).

In order to liberate humanity from such an aversion, international co-operation is required. **Article IV** of Convention on the Prevention and Punishment of the Crime of Genocide, 1948 codifies, persons committing genocide or any of the other acts like conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; complicity in genocide shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals. **Article V** of the **Convention** provides effective penalties for persons guilty of genocide. **Article VI specifies** persons charged with genocide shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have recognized its jurisdiction.

Awareness should be given to the people that race and caste doesn't matter, but what matters is the importance of human values and human dignity. Victims of racial discrimination should be compensated. The society should take care of the issue mindfully and should react towards the atrocities. No life should be lost because of barbaric acts or impressions. The world' thought's regarding race should change. Feeling of harmony is to be felt in the minds of people unless and otherwise many 'George Floyds' will be the result. A codified law should be helpful to eradicate the offense from society. The intensity of the punishments should be increased and be implemented. Liberty and justice for all should be our national consonant and we should work for it till gaining it. Every individual should be aware of his/her legal rights, duties, obligations, etc. Moral values are degrading day by day. The three organs of the Government namely Legislature, Executive, Judiciary should take steps regarding the unequal aspects in the society, then only one day everyone will hold hands without any regressions. The fourth estate is a brick for the organs of the Government.

It is very apropos to remember the words of Martin Luther King, Jr:

"Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear drenched communities, and in some not-too-distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty."

Unfolding the Cold Reality of How Caste Based Reservation in India Barricades the Economic Upswing.

Abdul Noor N &,Aswani C Rajeev

As the preamble of the constitution of India suggests, achievements of social, economic, political justice and equality of status and opportunity is considered as one of the paramount purposes of our constitution. We do believe that the reason behind the inclusion of reservation of education seats was to promote social justice. It's high time to check whether it serves its purpose.

Reservation in India is the process where a certain percent of the seats are set aside for so-called 'underdeveloped' or 'backward castes' in government institutions. These sections weren't able to enjoy their basic human rights because of the caste system that prevailed long ago.

The history of reservations in India started before the independence of the nation. Long before the first democratic government of India, the rulers of different regions understood the need for reservation among their citizens. First of them was the maharaja of the princely state of Kolhapur who introduced the reservation for non-Brahmins in the year 1902. But reservation in the newly independent India was only discussed in1954. In 1932, Mac Donald announces the proposal of minority representation, which is known as a communal award granted separate electorates in British India for the forward castes, Muslims, Buddhists, Sikhs, Indian Christians, Anglo Indians, Europeans and Dalit. The depressed classes were assigned a number of seats to be filled by election from special constituencies in which voters belonging to the depressed classes only could vote. This was protested by Mahatma Gandhi and he went on a hunger strike. Gandhi was afraid of the division because of the fact it would disintegrate Hindu society.

In the case of State of Madras Vs. Smt. Champakam Dorairanjan[1], Court held that caste-based reservations as per Communal Award violate basic rights. But, the Nehru government introduced the 1st constitutional amendment[2] and made this decision invalid.

The government of India saw reservations mainly as a method for eradicating untouchability, the major issue India faced. Untouchability, which was primarily faced by SC and ST communities were also outlawed by the constitution of India. For the eradication of 'untouchability' it was necessary that the SC and ST community of India be uplifted, socially and economically. With this motive, the ministry of education suggested 20 % place to be reserved for the SCs and STs and a 5% relaxation in terms of qualifying marks for admission in educational institutions in1954. After 28 years, in 1982, 15% and 7.5 % of vacancies in public sectors and educational institutions was then made reserved for SC and ST respectively. When the constitution came in 1950, the provision for reservation was to cease after 10 years. However, the conditions of SC/ST showed no progress and necessary amendments were brought again and again to the constitution which led to the 95th amendment act 2009 whereby the reservation will cease only after 70 years.

An important change in the reservation in India happened when the Mandal commission was assigned in the year 1979.In1980; the commission submitted a report indicating the need of reserving 27% of places in the public sector for other backward communities. The Mandal commission also suggested similar changes in the admissions into educational institutions. These suggestions were only implemented in the 1990s. In 1992, the Supreme Court of India ruled that the reservations could not exceed more than 50% and judged any reservation above 50% as violative of equal access guaranteed by the constitution of India. It is to be noted that even the recent amendment of the constitution exceeds 50%. In

[1] State of Madras v Champakam Dorairajan, (1951) AIR SC 226 (India).
[2] Constitution (First Amendment) Act, 1951.

2019, the government of India amended the constitution giving the 103rdamendment act[3] which provided 10% of reservation in government jobs and educational institutions to the economically weaker sections of the general category. This reservation scheme which was not given to those who were included in other reservation quota was much needed in the present-day India.

Grounds for Introducing Reservation

Before questioning the need for caste-based reservation in the present-day India, it would be fair to know why we needed this kind of reservation policy in the first place. The framers of the constitution of India firmly believed that caste-based reservation policy would be a revolutionary step, which would bring a change to the discriminatory tradition followed in this land rich in culture. Did it work? Is a counter-question. Beyond the shadow of a doubt, this policy was mandatory for the newly independent India, where people were divided on the basis of caste to which they were born. The fact that reservation based on caste started in India way before the independence of the nation shows that this ideology was right at that time to correct the historical injustice faced by backward castes.

The framers of the constitution of India had mainly one thing in their mind when reservations based on caste was established, that being the complete eradication of untouchability. Untouchability is the practice of ostracizing certain minority groups by segregating them from the mainstream by social custom or legal mandate. In India at that time, the Dalit community was considered as polluting and they were made to be separated from certain castes that considered themselves to be above other castes. In the worst-case scenario, the so-called "lower" caste people were not allowed to walk through public roads which were used by the "upper" caste. This kind of custom which killed the soul of the nation

[3] Constitution (103rd Amendment) Act, 2019, introduces 10% reservation for Economically Weaker Sections.

had to be eradicated at any cost. Reservation based on caste was surely a method to do that.

The people of the lower caste were discriminated against in all ways possible by the upper-caste. So, it is more than reasonable to worry about the chances of the lower-class to having an equal opportunity of education and work and more importantly their wellbeing. The group of people who were considered to be polluted was never allowed to be in the same room as the upper-class. Even the touch of a lower-class was considered a wrong by upper-class people. At that time reserving seats for the lower-class was one of the necessary ways to abolish this custom. Reserving seats to the lower-class which is not available to the upper-class would bring equality in opportunity. Abolishing the untouchability can help the lower-class to rise socially and economically.

During the time of independence, India was mainly divided in terms of caste. Those who were seen at the apex of that division were always at the top of the chain in terms of all privileges. Due to this, only upper-caste people succeeded. The lower-class people remained where they were, which is always at the bottom of the table. On the other side, the upper-class was rich, they were having a very luxurious life with acres of land and the lower-class suffered poverty at that time. As a result, it widened the gap between the rich and the poor. Adequate chances for excellence had to be provided for the lower-class. Reserving seats on the basis of caste helped the lower-classes to have opportunities in education and work. More than that, they got a chance to prove themselves in a world where they were always ignored. In particular, two key objectives such as protection from atrocities and adequate representation gained relevance. The caste-based reservation system clearly gave the lower-class a way to represent themselves in different sections of our society.

After the submission of a detailed report by the Mandal commission, it became clear that there were other people among Indian citizens who required reservation.

These sections needed reservation for getting an equal opportunity. When these reservations were allotted, then the total percentage of reserved seats increased. But this decision was fair because this number of reserved seats were needed at that time. This reservation for the socially and economically backward community helped in upbringing a large group of citizens who were struggling to have a standard living. This community continued to be in that stage for a longtime. Even though this section didn't face any sort of untouchability, poverty was engulfing them. This so-called 'Other Backward Community' was the larger percentage of the poor section of India. The upbringing of this class was also a priority for the makers of the constitution.

As per article 15 (4), 15(5), and 15(6)[4] of the constitution of India, there is a need to advance SC/ST or other weaker sections. So, by giving reservation we are giving reasonable opportunity to represent themselves in the services under the state. Additional relaxations like upper age relaxations, additional attempts, lower cut off marks are also provided to these categories in order to bring them to the forefront. For example, the UPSC (Union Public Service Commission) conducts various examinations in the country to recruit candidates for various posts in the Government of India. The UPSC age limit varies from candidates to candidates based on the category to which they belong. The upper age limit will be relaxable up to a maximum of 5 years if a candidate belongs to a scheduled caste or scheduled tribe. The number of attempts till that age limit is unlimited for them.

Reservation for SC/ST in services is not only to give jobs but also it aims at empowering them in all ways. The State is ensuring fuller participation in the

[4]Article 15(4) says that, Article 15 and Article29 shall not prevent the state from making any special provision for the advancement of any SEBC of citizens or for the SCs and STs.
Article 15(5) empowers the country to make reservations with regard to admissions in to educational institutions both privately run and those that are run by the government.
Article 15(6) is added to provide reservation to economically weaker sections for admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions referred to in clause (1) of Article 30.

decision-making process. As a way to do it, they are provided with relaxations in direct recruitment and promotions.

The ministry of social justice and empowerment is the nodal ministry to oversee the interests of the SC. The efforts made by the state government and the central government for protecting and promoting the interest are also monitored. Thus, from all this, we can understand the fact that our government is putting the maximum effort to uplift them in all possible ways.

Seven decades after independence, where everything has changed from what it used to be, it would be right to question whether the caste-based reservation is needed right now. For a country like India which is large in terms of its population, there is a need for reservation for providing its citizens with equal opportunity.

Problems and End Result

In India reservation is provided in government educational institutions like IIM, IIT as per Article 15 (4), (5), and (6). And in government jobs like IAS, IPS, etc. as per article 16 (4) and (6)[5]. Before 2019, the reservation was mainly for social and educational backwardness. But now with the 103rd constitutional amendment in 2019, economic backwardness is also considered.

The present reservation quota in India for higher educational institutions and government jobs are given below:

Category	Reservation (In %)
ST	7.5

[5]Article 16(4) - Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
Article 16(6) is added to provide reservations to people from economically weaker sections in government posts.

SC	15
OBC	27
EWS	10
TOTAL	59.5

Here, vacancies for SC, ST and OBC can only be filled by them. About 60% are reserved in India and the remaining 40 % of seats are available under merit. In this merit seat, not only the general category but also other categories can also compete. According to article 16(4A)[8], SC/ST is also provided with reservation with respect to direct recruitment and promotion.

There is no concept of the 'creamy layer' in SC/ST reservation. This means that irrespective of the income status or the government posts held by the parents, children of SC/ST parents will get SC/ST Reservation.

The reservation for OBC is 27% in government jobs and higher educational institutions. The peculiarity of OBC is that it has a concept of creamy layer. Persons who are in Non-Creamy Layer will only get the benefits of OBC reservation. The Central Government constituted a commission chaired by Justice Ram Nandan Prasad to identify the creamy layer among OBC. The recommendations of this commission were approved by the central government. Based on this, certain guidelines and criteria for excluding creamy layer among OBC have been issued by the Central Government.

If the parents are not directly recruited Class1 (Group A) or Class2 (Group B) officers or they do not occupy any constitutional posts (like that of President, Vice President, Governor etc.) then they are most likely to fall under Non-Creamy Layer OBC. If the parents are not employed by the government, their income should be within the limits by the government to be treated as Non-Creamy Layer OBC. In order to qualify as an OBC non-creamy layer candidate, the applicant's

parents' annual income should be less than Rs. 8 lakhs. The purpose of the OBC reservation (non-creamy layer), is to uplift the most deserving candidates among backward classes. A 10 % is provided for the Economically Weaker Sections (EWS) among the general category candidates recently. Persons who are not covered under the scheme of reservation for SCs, STs, and OBCs and whose family has a gross annual income below Rs. 8 lakhs (Rupees eight lakhs only) are to be identified as EWSs for the benefit of reservation. Income shall also include income from all sources i.e. salary, agriculture, business, profession, etc. for the financial year prior to the year of application. Present Reservation is creating an illusion that the mentioned categories are benefited. Only a few can get this privilege and these will be mostly from the creamy layer. There are many out there who are facing problems with respect to reservation. In the case of the general category, their merit and excellence are always ignored in order to give preference for the backward castes. When the merit is ignored, a nation cannot develop. It has been more than decades still; reservation is an ongoing process. By these years, there are still people in backward communities who don't get any of the privileges. Thus, they remain at the bottom. Analysis regarding the effectiveness of the reservation policy is conducted by the government every year. Sad truth is that they are not developing according to their expectations. What Gandhi believed was it is not the protection of the so-called interests of the depressed classes required but the complete cessation of untouchability.

Reservation can act as psychological crutches to students in different categories. For students belonging to the SC category may think that even without studying hard, they can get admission to any college they wish for. It can diminish the need to learn and progress. Naturally, they will become lazier. But for students who belong to the general category, they know that their cut-off marks are high so they try so hard to achieve a seat. But a large number of students in this category are eliminated due to the lesser number of seats available. The reality turns cold

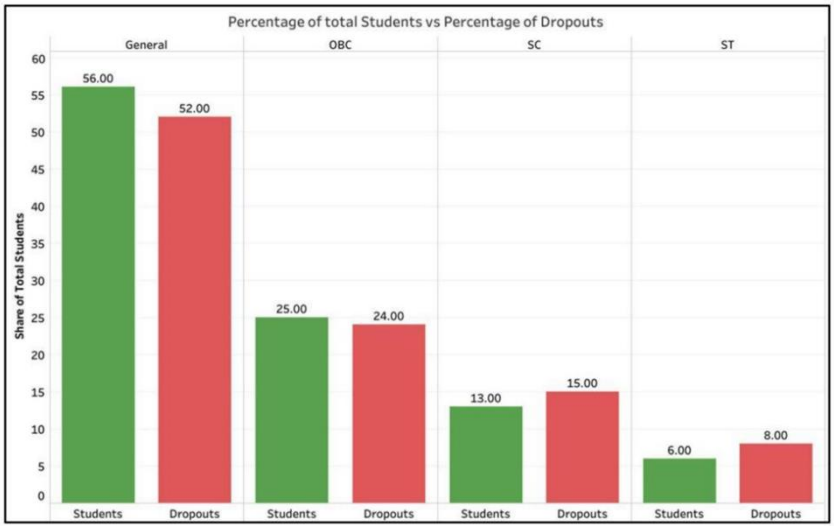
when students with lower marks are easily admitted to the same college in the name of caste which is reserved. It can demotivate them and create the impression that they are born in the wrong place.

For example, an upper-caste youth who got 90 percent in his exams may be denied admission/job, while an SC/OBC who got 40 percent may get it, by virtue of reservation. This naturally causes anguish in the former.

Even now, many people belonging to the "higher castes" of the bygone era are highly apologetic about the atrocities committed by their ancestors and still support equality.

It is easier for SC/ST Communities to have admission in educational institutions than the unreserved. It is also significant that apart from the reservation in the total seats in the educational institutions, the cut off mark for the qualification is also made much lesser than the common cut off mark. For instance, the cut-off mark for the SC/ST communities in the 2019 NEET were 133- 107 while it was 701 – 134. While this difference in the cut off mark is made for the assurance of the excellence of these communities, it does have a negative impact on the whole education system of the nation. It is an important fact that the reserved category candidates have a lower cut off criterion in the entrance exams, but once in college, the passing marks are the same for all. This makes it hard for the reserved category students to cope up with the rest of the class. This ultimately leads them to drop out of these institutions.

For instance, out of 2461 students who dropped out from the Indian Institute of Technology (IIT) between the years 2018 and 2019, 371 were from the scheduled caste (SC), 199 from the scheduled tribe (ST) and 601 were from the other backward community (OBC). This implies that nearly 48 percent of students dropping out of the IIT's are from the reserved category.



In the case of the Indian Institute of Management (IIM), out of 99 students who dropped out between the year 2018 and the year 2019, 14 were from SC, 21 from ST and 27 from OBC category, as per the official HRD data. This shows that over 62.6 percent of dropouts from IIMs are from the reserved category. Among IIMs, the most dropouts were seen in IIM – Indore where a total of 19 students dropped out of which 9 were from the reserved category. In IIM – Kashipuram all the 113 dropouts were from the reserved category.

Even though this drop out can hint at discrimination against these candidates, it also raises questions against caste-based reservation system that allows reserved category candidates with lower marks to have admission in an institute.

What is to be noted is that the percentage of dropouts for SC/ST and OBC candidates is equal or more than that of the unreserved category, while their number of admissions is below unreserved category candidates. The reason for such a trend in drop out is said to be because of the academic stress of the students. When the reserved category students find it difficult to cope up with the required mark percentage to complete the course, they are forced to drop out due to the pressure that they can't handle.

Due to these lower mark criteria for the reserved students, they are only required to put up minimum effort while the unreserved candidates have to do their best for the admission in the same institutions. This may make the reserved category candidates take the examination for granted.

It should be pointed out that at the same time a reserved category student who got the admission by the privilege of lower cut-off mark drop out from the institution due to academic stress, there are students belonging to the unreserved category, who scored more than average marks and still couldn't get admission to the institution itself. Rather than reserving seats on the basis of castes, the government should be focusing on reserving seats to those qualified and deserved.

Reservation is a means to prosper the vote banks of politics. It can hinder the country's growth, development and competency in all aspects. Reservation is chaining all facets of our constitution like a free, democratic, and sovereign nation.

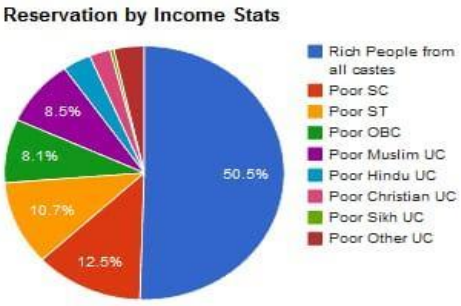
This policy is used for voting campaigns to get more support. No one is going to say no to the benefits. But as citizens of India who abide by the constitution, we all should look for justice. We should be able to raise our voices whenever justice is denied. A policy based on economic status should be brought into existence to improve the growth of the country –that is the one and only key by which India will be a developed country in upcoming years.

It has been striving to strike a balance between the commitment to an over-aching concept of equality in terms of basic freedom and the imperatives of reservation in favor of specific caste. Criticisms of reservation policy, which remained feeble for a long time, have become strident in some regions especially in extending the benefits of this policy to more social groups. Reserved groups are more militant and determined to safeguard the policy and more people are clamoring for 'legal

backward statuses. The upper-caste middle-class youth who are educated are increasingly threatened by the shrinking job market and transient perspective of political elites in enacting provisions for reservation.

If covert casteism distorted class struggle, the right step was removing distortions that had crept into class struggle. It is the politics of caste that motivates politicians to support caste-based reservation. The politicians often dare to question the reservation policy for fear of alienating voters. Changing politics ensures that caste always influences the selection of poll candidates. Only class consolidation can unify votes across castes to create a wave.

Reservation policy based on caste is established in India, to bring the weaker section of the society to economic and social well-being. But even though years after independence, the nation is still clinging on this policy to fulfill its aim. For a nation like India with such a large population reservation is much needed for the empowerment of its weaker section. By weaker section, we mainly mean the poor section of the nation. It is fair to ask that as the reservation policy reserves seats for the so-called lower class of the society; doesn't it cover the poor section also? Well, the truth is it doesn't. At the time of independence, the lower class constituted the major part of the poorer section of the nation. But that situation has changed. In India poverty is not limited to the lower class. There are sections in society who belong to the upper class and still live in poverty. In a country with this kind of situation, reservation based on caste is not a solution as it provides help only to the lower class, while poor people belonging to the upper class don't get any reservation.



It also should be pointed out that there are economically rich people in the lower class who can afford education but still make use of reservation even though they don't need it, while there are poorer people in the so-called upper class that can't afford education and need help from the government but doesn't receive them. What India needs now is a reservation policy based on the economic status of the people rather than their caste.

The EWS reservation which was introduced in 2019, was a major step towards the empowerment of the poor sections of the society regardless of their caste. EWS helped in reserving seats for the poor among the upper-class. But this 10% reservation seats are taken from the 50.5% of seats belonging to the general category. We can't say that EWS reservation is the exact solution that the nation needs. This reservation should have been made about 50% of the total seats available and it should replace the caste-based reservation policy of the nation.

A major revolutionary step was taken when the Supreme Court of India held that the creamy layer of the OBC should be excluded from the reservation. Creamy layer is a term used in Indian politics to refer to some members of a backward class who are highly advanced socially as well as economically and educationally. They constitute the forward section of that particular backward class — as forward as any other forward class member. They are not eligible for government-sponsored educational and professional benefit programs. But the drawback of this was that the concept of non-creamy layer was limited to the OBC category only. This concept of non-creamy layer should have been introduced to all reservation categories.

Apart from these reservation categories, there exists another category called NRI category to which the seats are reserved. This NRI reservation quota reserve seats to the non-residential Indians (NRI), Person of Indian Origin (PIO), Overseas Citizenship of India (OCI) and Foreign Nationals. These NRI quota reserved students have to pay a sufficiently big amount as fees as compared to the other

students. While the caste-based reservation is justified by saying that the weaker sections of the community need representation, there is no way to justify why we need an NRI reservation. Basically, these NRI students belong to rich families and will have a better family background unlike the poorer sections of the nation. When there are students who don't get reservations even though they can't afford education, just because they happened to belong to an upper-caste section, NRI reservation is a slap to their face. NRI students who have the opportunity to have good education don't deserve any reservation as they are fully able to afford the same. Instead of reserving seats to the able ones, the government of India should be focusing on reserving the seats to those who deserve it.

India is a nation with a large population, a population which keeps on increasing every minute. For such a population reservation is necessary. But when the reservation is based on caste, many students who deserve reservation in order to learn are left out. When they don't get the opportunity here, they are forced to look for opportunities outside the nation. Those who do so are seen to stay there rather than returning. This makes India lose its workforce to other nations, while India needs them more than anyone else. This affects the nation negatively. India, even after 7 decades of independence is still a developing nation. For India to become a developed nation, it should be run by the fittest. Reservation based on caste is forcing the fittest of the nation to depend on foreign countries. For this not to happen reservation should be based on economic status rather than caste so that the fittest is never left out.

The surprising fact about the constitution is that nowhere the term backward classes are defined. It is the discretion of the government, either at the state or central government to grant reservation in promotions. This ruling by the Supreme Court has invoked sharp responses from various political parties and stakeholders. However, the fact that reservation cannot be claimed as a fundamental right is a settled position under the law, and it has been pointed out

by several judgments in the past. Since it is not a fundamental right, the government is not obligated to collect data showing a particular community is inadequately represented in public services as per Article 16(4A).

In Indra Sawhney v. Union of India, [6]the Court observed that the policy of reservation was the state's discretion to keep reservation at reasonable level by taking relevant factors into consideration. The perception is that the term 'creamy layer' which means the elite people in lower castes was coined in this case. Justice Jeevan Reddy stated that the creamy layer must be excluded from getting the benefit of reservation. Because, when a member of class reaches an advanced level of social status, he is no longer represented as backward. The court also held that reservation shall not exceed 50% and no reservation is to be provided in a promotion.

In Ashok Kumar Thakur v. Union of India[7]it is clear that the identification of SEBC or OBC cannot be solely based on the "caste". In Article 15(4), it is important to notice that it only speaks of classes, not about the caste. If Article 15(4) inserted in the constitution with the purpose of considering "caste" as one of the elements of social and educationally backwardness, they would be mentioned in the Article. The constitution intends to help in the development of backward classes and put social interest above individual interests or groups which are advanced, both socially and educationally. This case also clears some doubt about the identification of socially and economically backward class or other backward castes by the union government.

In the case of M.R. Balaji and Ors. V. State of Mysore,[8] the state of Mysore issued an order under Article 15(4) of the constitution declaring all the communities except the Brahmins as socially and educationally backward and

[6] Indira Sawhney v Union of India, (1993) AIR SC 477, (India).
[7] Ashok Kumar Thakur v Union of India (2008), Writ petition (civil) 265 of 2006
[8] M R Balaji and Ors. v. State of Mysore (1963) Suppl. 1 S.C.R. 439 (India).

reserving a total of 75 percent seats in educational institutions in favour of SEBC and SCs/STs. Later a similar order was given in which the state reserved 68 percent of the seats in all engineering and medical colleges and technical institutions for SEBC, SCs and STs. Further SEBC was again divided into two as backward classes and more backward classes. The supreme court of India struck down the order and held that Article 15(4) is an exception to article 15(1) and article 29(2). The court also held that for Article 15(4), backwardness must be both social and educational. Though caste in relation to Hindus may be a relevant factor to consider, in determining the social backwardness of a class of citizens, it cannot be made the sole and dominant test. The court said that the permissible percentage of the reservation to be less than 50 percent. The further categorization of backward classes into backward and more backward was also struck down by the court as it is not warranted by Article 15(4).

In Preethi Srivastava v. State of M. P. [9]the supreme court of India gave a verdict against caste-based reservations at the postgraduate level in medical institutions. The court also held that there cannot be a wide disparity between the minimum qualifying marks for reserved category candidates and the minimum qualifying marks for general candidates. This verdict linked declining standards of education and training to the reservation in admission procedures. This decision also took away the right of state authorities (including the legislature and executive) to alter the norms set for admission procedures by the Medical Council of India.

In another case, C.A. Rajendran v. Union of India[10]the Supreme Court of India held that the government is under no constitutional duty to provide reservations for SCs and STs, either at the initial stage of recruitment or at the stage of promotion. The Supreme Court agreed with the Centre holding that Article 16(4) does not confer any right on the petitioner and there is no constitutional duty

[9] Preethi Srivastava v State of M.P, (1999) AIR SC 2894, (India)
[10] C A Rajendran v Union of India, (1968) AIR 507 (India)

imposed on the government to make reservations for the SCs and STs, either at the initial stage of recruitment or at the stage of promotion.

Need of the Hour

Reservation in India is largely governed by vote-bank politics. People by thinking about the welfare cast vote for them. Caste-based reservation has created vote banks which have hijacked democracy. Reservation in government job promotions bill introduced for SC/ST people is another example of this which divides the people based on caste, not on economic conditions. They are hindering the country's growth, development and competency in all aspects. So, it will separate us from "one nation one policy". The real beauty of democracy lies in a successful government which assures full security, safety, freedom, and equality to their citizens.

'Respect the work and Reward the worthy'. Reforms in the reservation system in India is the need of the hour. Fixing time for reservation is important rather than extending to eternity. Financial problems are relevant now in comparison with lower caste issues. There are complications associated with the reservation policy such as it undermines the quality of education and it's a lifelong spoon-feeding process. Getting something can make them lazy, incompetent and creates the impression that they are inferior.

Reworking Defection- A Scrutiny on Intricacies of Anti-Defection Law in India

Navya R Raviprasad, Nihala Jasmin

Democracy is a form of government in which the rulers are elected by the people; final decision-making power rest with those elected by the people; couched on free and fair election where those in power have a fair chance of losing; adult suffrage coupled with uniform value for every vote; governed within constitutional limits. Democracy is not restricted to casting of votes and formation of government; it dwells upon the trust of the citizens towards the formation of the government by the political parties with varied ideologies that secures majority in the elections. Therefore, through the exercise of voting the citizens are apparently manifesting their allegiance towards a particular ideology and their desire to be governed by such ideology. Unequivocally, in a democracy the will of the citizens is the underscoring goal and their trust is the indispensable propellant that fuels a democratic structure. Inter-alia, ungainly activities in the nature of horse-trading, floor-crossing etc. are the unruly demons in democracy which lead to the formation of the unholy alliances by undermining the will of the voters. Incidents from 1985 to present shows that the People's elected representatives are condemnably using the democratic fabric for political gambling which frowns at the entire democratic system. These elected representatives tends to mortgage the trust of voters for getting personal financial and other benefits and thereby compromise on the promised vision of the elected government. All these incidents clamor for stringent laws to clog the loopholes in the existing defection law for cementing the base for ensuring the stability of Government and to uphold the real meaning of democracy.

Anti -Defection law struggles to tie down anti -democratic practices

Democracy is a form of government in which the rulers are elected by the people; final decision-making power rest with those elected by the people; couched on free and fair election where those in power have a fair chance of losing; adult suffrage coupled with uniform value for every vote; governed within constitutional limits. Democracy is not restricted to casting of votes and formation of government; it dwells upon the trust of the citizens towards the formation of the government by the political parties with varied ideologies that secures majority in the elections. Therefore, through the exercise of voting the citizens are apparently manifesting their allegiance towards a particular ideology and their desire to be governed by such ideology. Unequivocally, in a democracy the will of the citizens is the underscoring goal and their trust is the indispensable propellant that fuels a democratic structure. Inter-alia, ungainly activities in the nature of horse-trading, floor-crossing etc. are the unruly demons in democracy which lead to the formation of the unholy alliances by undermining the will of the voters. Incidents from 1985 to present shows that the People's elected representatives are condemnably using the democratic fabric for political gambling which frowns at the entire democratic system. These elected representatives tends to mortgage the trust of voters for getting personal financial and other benefits and thereby compromise on the promised vision of the elected government. All these incidents clamors for stringent laws to clog the loopholes in the existing defection law for cementing the base for ensuring the stability of Government and to uphold the real meaning of democracy.

Seeds of defection

The practice of defection started to permeate in our country from the pre-independence era itself, when Shyam Lal Nehru crossed the floor to the British side during Mont-ford Reforms. In 1957-66 about 556 members crossed the floor

and switched to the Congress Party, 275 members who got the ticket of the Congress party switched to other parties. Further, between 1967 and 71 about 142 MPs and 1900 MLAs defected. In Haryana, an MLA named Gaya Lal changed his party thrice in a day that led to the famous phrase " **Aaya Ram Gaya Ram**". In the fourth and fifth general elections and of state assemblies, Lok Sabha, Union territories nearly 2000 members defected. On an average, almost one state government in India collapsed every month due to abrupt changing of political affixations by the legislators. The alarming scale of horse-trading, counter horse-trading and counter-counter horse-trading triggered several rounds of frequent political defection by the serial turn coating politicians resulted in the formation of an unholy alliance, leading to dissolution of many assemblies.

It had trampled democracy and broken the trust of people of India, thereby leading to the need for a strong law to wipe out unethical malpractices in democracy. As a result, the Government of India appointed a committee chaired by Y.B.Chavan in February 1968 to study this national malady eating the vital part of our country's democratic ethos. Committee presented a report on February 18, 1969 stating some recommendations. It took 17 years for Parliament to address the defection and in 1985 Rajiv Gandhi Government the bill was introduced and it became law to curb the defection by The Constitution (fifty second amendment) Act, 1985.

Anti-defection law in a nutshell

The anti-defection law encompassed in the constitution of India through the introduction of the tenth schedule comprises of 8 paragraphs. The purpose, as is obvious, is to curb political defection by all the legislators.

Paragraph 1 deals with the interpretation of Anti-defection law.

Paragraph 2 states the grounds of disqualification.

2.1(a)- provide disqualification of a member if he or she voluntarily gives up the membership of such a political party.

2.1(b)- provide disqualification when a member votes or abstain from any pivotal voting contrary to any direction prescribed by their corresponding political parties.

2.2 states that any member, after being elected as a representative of a certain political party, shall be disqualified if he/she any other political party after the election.

2.3 states that a nominated member shall be disqualified if he/she joins any political party after six months from the date he/she takes his seat.

Paragraph 3, 4, 5 deal with exemptions on disqualification.

Paragraph 3- removed by passing The Constitution (Ninety first amendment) Act, 2003 which exempted disqualifications resulting splits with one third: of the members defecting from a political party.

Paragraph 4- in cases of merger of political parties where not less than two-third of the legislature party members has agreed to same.

Paragraph 5- Exception of the Speaker or Deputy speaker of Lok Sabha or the Deputy Chairman of Rajya Sabha or the Chairman or the Deputy Chairman of Legislative Council of a State or the Speaker or the Deputy Speaker of a state.

Paragraph 6- Chairman /speaker of the respective legislative house to be the final decision maker related to disqualification matters.

Paragraph 7- Bar of justice of courts.

Paragraph 8- Power to frame rules regarding the concerned disqualification matters of the respective house of Legislature.

Exigency for an effective Anti- Defection law

The paramount issue regarding the 10th schedule is that it does not have a defined procedure with definite time limit for completion of the disqualification process of the defecting members. The incongruous scenario arose in Telangana which made a mockery of the outcome of the May 2014 assembly election, on the voluntary giving up of 11 members elected by the ticket of TDP, Congress, YSR Congress and allowing them to subsist as members of the assembly. All resigned members joined the ruling party TRS. Irony is, the speaker didn't initiate any proceedings, Talasani Srinivas Yadav has even been appointed as minister of commercial taxes and cinematography, by overriding the provision of RPP (Remunerative political position) in the 91stamendment[4]. The Speaker, being a constitutional functionary, is generally presumed to have adjudicated with the highest traditions of constitutionalism. It was for this very reason that the constitution has limited the power of the Court to review the Speaker's order under the Tenth Schedule. It is clearly depicted in KihotoHollohon v. Zachillhu and ors, 1992[1] which upheld the validity of Anti Defection Law. The Constitution Bench in that case reaffirmed the power of judicial review of Constitution Amendments. As a member who entered into the House by winning the ticket of the ruling party, Presiding Officer can have a bias towards the ruling party, which acts as a loophole endangering the system which in turn undermines the provision of the tenth schedule and make capital out of the prescribed provision in paragraph 6, that we witnessed in Karnataka, Madhya Pradesh, Goa and Manipur.

Neither the Constitution nor the statutory scheme contemplates disqualification under the tenth schedule operates as a bar for contesting re-elections. But there is an envenom loophole, making democracy at stake, people's elected representatives as untrustworthy. Dramatic instances were held at Karnataka auguring the urgent need to plug this loophole, on the resignation of MLA's,

[1] Kihoto Hollohan V Zachillhu and Ors AIR 1992 SC (1)686 India

ruling coalition was reduced to a minority, which making the opposition a single major party. Speaker disqualified members till the end of the term by prohibiting them to contest an election. But the Court's verdict was an antithesis to the Speaker's decision, upheld The Representation of People Act, 1951, S 36, which does not contemplate such disqualification. The evil motive of democracy witnessed at Karnataka is cast in the same mould of Madhya Pradesh, thus resignation with permission to contest election in remaining years till the end of the term is another tool or loophole, making a mockery of democracy and ' tread and grind' the trust of voters like 'bite the hand that feeds one'.

In 2003, when the Ninety third Amendment was incorporated in the Indian Constitution, the terminal intention of it was to bring an end to the frequent defection. It stated that it requires at least 2/3rd members of a legislative party to form a new political group or a merge with another political party, without getting disqualified under the anti-defection law. In 2019, Goa became the venue for gambling on the merger of two of the three MGP party MLAs to BJP. The total strength of the legislators of MGP is 3 and the merge constitutes 2 /3rd of members. 2/3rd of the members of the legislative party merger was deemed to have taken place under the provision of sub clause ;(2) of clause (4) of the tenth schedule. These thespian incidents held in Goa provide, without getting disqualified under anti-defection law requires at least two by third members of the Legislative party to form a new political group. This is precariousness. Breaking the small party by large parties with their potential to bribe any number of legislators with huge money, again satirize democracy and enhancing the trust of voters.

Suggestions: filling the cavities

We have to curb these evil practices which break the trust of the public in the Indian democracy and stop making puppets of common people. To strengthen democracy and to bring stability to Indian politics, we have to fill these loopholes.

For that, the first solution is to define the entire defection procedure and a reasonable time limit. It can be for one month, two months or three months. So, if the legislator defects, the speaker can take decisions within that prescribed time limit, within that time at least and no need for such a long time for answering a simple question whether he should be disqualified or not. Therefore, it is important that the law should prescribe a time limit.

The bias of the presiding officer towards the ruling party and against the opposition party influences the final decision taken by him /her The same we witnessed in Karnataka, MP, Manipur, Goa and recently in Rajasthan.

In Rajendra Singh Rana v. Swami Prasad Maurya, 2007[2], the presiding officer of Legislative Assembly, Uttar Pradesh failed to act on the petition for disqualification which is not merely an irregularity but a violation of the constitutional duties. The solution to eliminate this evil procedure is to transfer the power of decision-making analysis regarding disqualification, from the speaker to the Election Commission. Make a report and submit it to the Governor, if it is in the case of the State assembly and to the President, if in case of the Parliament; Hene to take a final decision regarding whether he is disqualified or not, the Governor or the President need not act on his own, but on the basis of the report submitted by the election commission. Thus, we can make defection as a tough task and can plug the major loopholes by making respective changes in paragraph 6 of anti-defection law.

Karnataka's dramatic incidents exposed resignation as another tool or loophole making a mockery of democracy. If their MLAs or MPs are resigning, they have the right to resign, but then don't allow them to join again or to contest election in the remainder of the term and he/she should be disqualified for the remaining term of the house. If this provision comes into force, it will preserve the Indian

[2] Rajendra Singh Rana V .Swami Prasad Maurya , AIR 2007 SC 1305 India.

democracy for a long time by making defection as a tough choice for the legislators.

The provision contained in the Constitution (Ninety first Amendment) Act 2003 is another major loophole which makes Indian politics a vicious one. If it doesn't clog with a pertinent provision, this loophole will become a big question mark in the Indian democracy. The dramas held in Goa Legislative Assembly highlights the need to clog this loophole, because it may be difficult to break 50 MLA's or 100 MLA's, but it is very easy to break the party with three, five or ten MLA's. The party with lots of money in the bank account has the potential to bribe various legislators. Thus 2/3rd merger of the party should also be avoided because the breaking up of small parties is very easy.

Our Judicial system is the key aspect of our democratic way of life. It upholds peace, order and good governance. Citizens look up to the judiciary to uphold their rights whereas the government looks up to the court to interpret laws. India as a country, adopts principal synthesis of both Parliament sovereignty and judicial supremacy in the form of the amendments and judicial review. The interference of the Judiciary into the affairs of other organs is limited, and they are helpless in certain situations because the legislature is the supreme organ of the Constitution. But the mere silence of Judiciary is not good at all when considered their role to uphold good government. The intervention of the Judiciary in Manipur in the legislators' defection is the most worthy example of what the Judiciary can do within its limits regarding the defection of legislators.

Conclusion

To conclude, the law certainly has been able to curb the evil of defection to a great extent. But, recently, a very alarming trend of legislators defecting in groups to another party in search of greener pastures is visible. The recent examples of

defection in state assemblies and even in Rajya Sabha bear this out. This only shows that the law needs a relook in order to plug the loopholes if any. Nevertheless, Political instability caused by the frequent and unholy change of allegiance on the part of the legislators of our country has been contained to a large extent by the Act. Hence it can be rightly said that the introduction of anti defection law is one of the most important steps government has taken so far to uphold the principles of democracy.

Tackling a Domestic Pandemic amidst a Global Pandemic- The Need to Address and Analyse the Rise in Domestic Violence Against Women During Covid-19

Meenakshy Priya CM

Introduction

Violence against women is a grave human rights violation, an age old universal issue, which has a great negative impact not only on its victims/survivors but also on their families, and communities. According to the special report of UN Secretary General[1], in the last 12 months, almost 18 per cent of women and girls aged 15 to 49 years who have ever been in a domestic relationship have experienced physical or sexual violence by an intimate partner. The United Nations described the increased violence against women in India during the pandemic as a "shadow pandemic"[2] When that is the Global scenario, India also witnessed a similar spate of Domestic Violence cases during the pandemic

Domestic violence has always been a subject of discussion ever since Independence and the statistics of Domestic Violence cases during Covid'19 in Indian Scenario is much worse. In order to battle against the Covid'19 the government had imposed a lockdown from 24th March 2020. Meanwhile, the National Commission for Women recorded double the number of complaints from March 23 to April 24 than it had in the previous month. Also, the reports of National Legal Services Authority (NLSA) shows that there is a great toll in the rise of complaints regarding domestic violence during last few months. Hence, there is a significant need to address and analyse how this issue has been tackled

[1] Report of the UN Secretary General, Special edition: Progress towards the Sustainable Development Goals, UN Economic and Social Council Distr.: General E/2019/68 (May 8th 2019), https://undocs.org/en/E/2019/68

[2] UN News Global Perspective Human Stories, https://news.un.org/en/story/2020/12/1080182 {Accessed Sept 5, 2021}

by the legal machineries as of now, its short comings and how the situation can be resolved to a better extent.

The reasons why domestic violence cases sky rocketed during the pandemic cases are many and almost the same around the globe. Frustration as a result of loss of employment as a result of Covid'19 and financial dependence upon one's partner is one among the many reasons why domestic violence escalated especially in developed countries. This dependence forced the women to endure domestic violence from their partners and family members. Restrictions on movement to contain the spread of Covid'19 and the lockdown imposed in a way compelled the women to be enclosed in those four walls enduring her partner's violence. Despite the increased cases of domestic violence, majority of the cases go unreported owing to the proximity of relationship between the abuser and the victim. Another main reason why the domestic violence cases go untreated is because of the non availability of emergency services during Covid to deal with the abuse as they prioritized the patients of Covid'19. Also access to friends, family, public spaces, legal institutions and police stands rendered barricaded on account of the lockdowns. Resultantly women and girls are unable to escape from the abuser or the violations.

When it comes to India, the main reason for the increased figures of domestic violence cases is the non availability of alcohol and the resulting frustration upon those who are over dependant on alcohol. Due to the lockdown, the availability of liquor has reduced considerably; this has resulted in an increase in statistics of domestic violence. The consequences of this frustration are faced by their intimate partners in the form of physical, mental and sexual tortures. Economic dependence is another factor, majority of Indian women depend upon their partners for economic stability. Also, it is a tradition or custom of our society to be obligated to the male partner. This situation suggests that domestic violence can be regarded as a family menace. The male partners find it an apt reason for

torturing and harassing their women partners furthermore. As people are staying at home during lockdown women are in difficult position as they are to spend more time with their abusive partners

To understand the need and importance of mitigating domestic violence in our country, it is necessary to have a comparative analysis of domestic violence during the pandemic in different countries around the world, how they deal with the same and how far their strategies could be adopted here in India. Lockdown is really a tough time not only for Indian women but also for women around the world. Even women from developed countries are also undergoing similar situations. It is better to say there is no difference in the violence suffered by women whether it is a developing nation or developed nation. Since the lockdown on March 2020, reports of domestic violence in France have increased by 30%, Argentina emergency calls for domestic violence cases have increased by 25%, Cyprus and Singapore have registered an increase in calls of 30% and 33% respectively. Increased cases of domestic violence and demand for emergency shelter have also been reported in Canada, Germany, Spain, United Kingdom and United States. Countries in Africa such as Liberia, Kenya and Nigeria have reported an escalated rise in domestic violence cases during pandemic.

Countries around the World have come with their own strategies tackling increased domestic violence cases. In Argentina, pharmacies have been declared safe spaces for victims of abuse to report; In France, grocery stores are housing pop-up-counselling services. Victims are being asked to access pharmacies and inform pharmacists about the abuse directly, or using a code word: mask if they are accompanied by their abuser. France's government also recently announced that it had reserved 20,000 hotel rooms for victims of domestic violence. In Spain, where lockdown rules are extremely strict, and many people are being fined for breaking them, the government has told women they will not be fined if they leave home to report abuse. Canada and Australia have integrated funding for

violence against women as part of their national plans to counter the damaging fall-out from COVID-19. Prime Minister Justin Trudeau of Canada has set aside tens of millions of dollars to support women's NGOs, shelters and sexual assault centers across Canada.

In India, Protection of Women from Domestic Violence Act' (PWDVA) was passed in 2005. The law recognizes domestic violence beyond physical or sexual violence, including mental, economic, and emotional violence, and provides resort to both married as well as unmarried women. s. 12 of the act enables an aggrieved person or a protection officer on her behalf to file a petition seeking any of the reliefs under the Act which includes a protection order (s.18) prohibiting the respondent from committing domestic violence, residence order (s.19) which restrains the respondent from entering the shared household and committing domestic violence, monetary relief for any loss caused (s.20) custody order (s.21) and a compensation order (s.22). The court has under s.23 power to grant ad interim orders. Similarly under s.31, breach of an order passed by the magistrate under the Act is made punishable. Along with this special statute, Article 21 of the Indian Constitution provides every person right to life and personal liberty which includes right to have a dignified life free from any sort of violence. Hence, the fundamental shortcoming is not per se with the present legal framework but its implementation thereof.

Indian Courts have played a major role in handling this shadow pandemic of domestic violence during Covid'19. In April 2020, All India Council of Human Rights filed a PIL urging the Delhi High Court to address the increasing domestic violence cases during lockdown. The petition suggested various solutions such as increasing the number of staffs to attend the hotlines, establishing nodal offices, providing free tele-counselling etc. The High Court directed the State Government to form a committee to implement these recommendations. The High Court while considering the petition also suggested the appointment of more

number of temporary protection officers to deal with the situation. Similarly, Jammu &Kashmir High Court[3] has taken suo moto cognizance upon domestic violence cases during the Covid 19 and streamlined certain initiatives that the Government should take. Madras High Court[4] mandated that a magistrate should while considering an application under s. 12 of Domestic violence Act has to take necessary steps to dispose the same within 60 days from the filing of the petition thereby providing expeditious justice to the aggrieved. Both Allahabad and Karnataka High Courts[5] have asked for Status report from their respective State Government regarding the initiatives that they had taken to tackle domestic violence during Covid'19.

Indian Government as well as certain NGOs with a view to address the increasing domestic violence cases has introduced certain initiatives. In Uttar Pradesh, an NGO called Breakthrough started a community radio program, the purpose of which is to create awareness about domestic violence. It teaches the people how to recognize domestic violence, and ways to address the same. Women are encouraged to share their experiences through calls.[6] A platform called StreeLink was introduced that allows women to share, exchange, and collaborate with other women in dealing with problems at home, in public spaces, and at work to get practical, actionable solutions and find strength from each other. Similarly, the police launched 'Suppress corona, not your voice' initiative asking victim women to call a helpline number enabling women police officers to reach them following

[3] In Re Court on its own motion v. Union Territories of Jammu Kahmir through secretaries social welfare department, Order dated 21.07.2020 in W.P. (C) PIL No. 14/2020 before the Hon'ble Supreme Court.

[4] Express News Service, 'Effective steps taken to curb domestic violence during lockdown, TN tells Madras HC', New Indian Express, https://www.newindianexpress.com/states/tamil-nadu/2020/apr/25/effective-steps-taken-to-curb-domestic-violence-during-lockdown-tn-tells-madras-hc-2135296.html (April 25th, 2020)

[5] India Legal Bureau, Karnataka HC Directs Government To Take Measures For Migrant Workers And To Curb Domestic Violence, India Legal Live, https://www.indialegallive.com/constitutional-law-news/courts-news/karnataka-hc-directs-government-to-take-measures-for-migrant-workers-and-to-curb-domestic-violence/ (April 27th , 2020)

[6] Covid-19 and Impact On Women, Breakthrough, https://inbreakthrough.org/covid19-and-impact-on-women/ {Accessed Sept 5,2021}

a complaint. Another campaign, Bell Bajao! (Ring the Bell), was launched which calls on men and boys to take a stand against domestic violence. The NCW launched a whatsApp number allowing women to contact them for help related to domestic violence through messages. Odisha Police has launched a drive to contact and ascertain the status of all previous cases of domestic violence in the state. In Pune, Maharashtra, perpetrators of domestic violence will be institutionally quarantined. Women's Entrepreneurs for Transformation (WEFT), a non-profit organization has started red dot initiative where people can identify and inform authorities about the domestic violence victim by seeing a red dot on the palm to door service providers like postal workers, garbage collectors, food delivery staff home repair agencies thereby providing them the opportunity to detect violence in the home and report their concerns to the proper authorities.[7]

Conclusion and Suggestions

In the face of Covid'19 pandemic, the shadow pandemic, domestic violence is indeed posing a threat to women. To curb and mitigate the darker shades of this shadow pandemic following suggestions are put forward

- The first step to tackle the issue of rising gender violence in the times of pandemic is the acknowledgment of the issue, which has been ignored during the pandemics in the past.
- Shelters and help lines for women must be considered an essential service with specific funding and broad efforts made to increase awareness about their availability.

[7] Using red dot signal, women seek help to escape domestic violence during lockdown, Deccan Herald, https://www.deccanherald.com/national/north-and-central/using-red-dot-signal-women-seek-help-to-escape-domestic-violence-during-lockdown- 821281.html. {Accessed 5th Sept 2021}

- Anganwadi workers should be placed as co-ordinators to receive and escalate calls of domestic abuse to their immediate superior officials.
- As many counsellors should be temporarily designated as protection officers to address cases of violence expeditiously. The mobile numbers of all such officers (one in every district) should be made publicly available. The contact details of the one-stop centres at every district should also been made publicly available.
- Immediate arrangement for the transport of the protection officers and other officials to respond to complaints of domestic violence should be made and women in distress be rescued on time and be shifted to shelters when necessary.
- Ensure increased support to call-in lines, including text services so reports of abuse can take place discreetly
- The lack of enforcement as well as alternative source of residence also impedes women filing complaints with officials or the police. There is also a huge trust deficit. Hence awareness has to be provided that protection, adequate accommodation in shelter homes and free medical aid shall be provided to the victims.

Ensuring Justice Amidst the Covid-19 Pandemic
Expediting Disposal Through Alternate Dispute Resolution

Sandra Marie Roberio

Introduction

ADR is a process for settling disputes by means other than litigation such as arbitration, mediation, conciliation etc.. and is also known as conflict resolution or rather dispute resolution. The main aim of ADR is to resolve a matter of dispute between two or more parties. Under this mechanism, the disputes are addressed and settled outside the courtroom. ADR mechanism provides this technique in the Indian judicial system reducing the burden on the courts. Indian judiciary is considered as one of the most powerful systems of justice in the world but it is weighed down with unsettled cases. Despite having thousands of fast track courts set up to deal with pendency and speeding up disposal, the sheer amount of pending cases continues to rise. In order to deal with such cases in an efficient manner, there is ADR which resolves the matter in a way where both parties are equally satisfied.

An Opportunity For ADR In The Times Of Covid-19

During this pandemic, it was seen that our courts were still burdened from cases before the pandemic. In addition, the restrictions imposed on travelling, fear of coronavirus and reduced workforce has considerably impacted the disposal rates. There are different kinds of alternative methods but the easiest and the effective method for disposal is undoubtedly through mediation. In India, mediation is a voluntary process whereby the parties find a mutual solution for their legal problem by entering into a written contract and appointing a mediator. The parties can appoint an ADR lawyer who will be able to explain the procedure in a professional manner to them.

Generally, mediation is divided into two types i.e. court-referred mediation and private mediation. Court referred mediation in India according to Section 89 of Code of Civil Procedure, 1908[1]; this mediation is used for matrimonial disputes particularly divorce cases. Private mediation is meant for the government and corporate sector to resolve their dispute and is based on a fixed fees basis. Section applied for ADR i.e., Section 89 of the Civil Procedure Code of 1908[2] was introduced to mutually settle a dispute peacefully with the consent of the parties, the case may go for trial when there is a failure for resolution using this process. This Section states that when the disputes are before the Court and if it has an opinion that there are elements for settlement which may be acceptable to the parties, the court shall formulate the terms and settle the dispute and give parties an opportunity to observe and after the observation is done the court will reformulate the terms to settle the dispute. Otherwise, the Court can refer the same for (1) arbitration, (2) conciliation (3) judicial settlements including settlements through Lok Adalat or (4) mediation. Disputes which are referred to (1) arbitration and (2) conciliation under this provision follows the rules laid down in the Arbitration and Conciliation Act of 1996[3]., the proceedings for settlement are under the provision of this act. When Court refers to Lok Adalat it is the provision of subsection (1) of section 20 of the Legal Service Authorities Act of 1987[4] and for mediation, the dispute is mutually settled.

The Purpose of ADR

In ADR as long as the communication between the parties is not broken by the parties, it becomes the most efficient way to achieve the outcome i.e. settlement. It also maintains the privacy of the parties compared to the public nature of a court proceeding. Arbitration is a popular and attractive option for the Corporate

[1] The Code Of Civil Procedure, 1908 ,Act No. 5 of 1908
[2] Ibid
[3] The Arbitration and Conciliation Act, 1996, Act No. 26 of 1996
[4] The Legal Services Authorities Act, 1987, Act No.39 of 1987)

sector as it provides the space to keep matters confidential and maintain the reputation of the parties and the business involved intact.

Pros of ADR

It reduces time in dispute resolution; it takes lesser time to reach a final decision in ADR, so it is time-saving. It reduces the cost of dispute resolution; cheaper method of conflict settlement. Freedom for parties in choosing rules that would be applied to the dispute. ADR produces effective results; dispute settlement rate is up to 85% in ADR. The satisfaction among the parties in resolving their dispute is more. Disputes involving intellectual property can be solved by a single procedure. Confidentiality is maintained in ADR; the parties are allowed to keep the dispute between themselves without involving the public. ADR preserves the relationship between the parties because the settlement is reached without blaming each other.

Cons of ADR

Parties are not forced to continue negotiations or mediation. They don't have any legal precedents for clarity. Sometimes the relevant parties who are so sure can weaken the final judgment. Parties cannot demand the powers as it is limited; when there is no check on the powers it creates an imbalance between the parties. In ADR the rights may not be protected legally. ADR mainly resolves issues involving money matters or civil disputes this won't result in injunctive orders. ADR does not always lead to resolution. Sometimes, a speedy ADR might end up in faulty and unjustifiable judgments.

The Task And The Results Of ADR

This technique is made to list out the alternatives and to be fair. It's a fast-tracking of providing justice. There are many techniques for ADR such as mini-trial, private judging, final offer arbitration, court-annexed ADR, summary jury trial etc. Before the new Act the procedure of ADR did not meet the expectations of international standards of resolving disputes due to the delay in the courts which also frustrated the purpose of arbitration which is fast and speedy dispute resolution. The Supreme Court was constantly opined to have a change in the law. The Public Accounts Committee disapproved of the Arbitration Act, 1940. In a meeting of chief justices and chief ministers and law ministers of all states it was stated that the courts were burdened with cases ADR had to be adopted more.

So the government of India made new forum and procedure for resolving the dispute in domestic as well as international level to resolve quickly the problems with the old Act.

The statutory recognition of a legal aid is in article 14 of Constitution and section 22(1) of the Legal Service Authorities Act 1987[5]. These provisions ensure that it is obligatory on the state to ensure equality before the law. On the basis of equal opportunity to all, citizens have the right to a speedy trial and free legal aid. This has been recognized as being the part of the right to life and personal liberty under Article 21 of the Indian Constitution.

Provisions related to Alternate Dispute Resolution (ADR)

Lok Adalat is one of the ADR methods in India. It is a forum where pending cases in the pre-litigation stage in a court of law are settled. It has been given

[5] Ibid

statutory status under the Legal Service Authorities Act 1987[6]. According to authority, its main aim is to provide free legal services to the weaker sections. Article 39A of the Constitution of India provides that the state shall secure this operation. The perception of a free legal service is incomparable with the quality of services provided and there are not many lawyers under this authority who can deliver free legal aid services and they are not interested in providing legal assistance due to financial constraints.

Conclusions

In conclusion, ADR can be a way to obstruct or enhance the relationship between the parties and company culture depending on how it's handled. ADR increases the access to justice without reducing the quality of justice. The sections are in the right place to reduce the burden on courts, to resolve disputes between the parties and speedier dispute settlement with an effective method of administering justice. Although there are pros and cons for both arbitration and mediation each one serves in its area of business. ADR is not a replacement for litigation, but it is a mechanism that makes our traditional system more efficient and effective. ADR taking the scope of law out of its narrow decision making process to a wider application. It reiterates the fact that the main aim of justice is to solve the dispute and end the case rather than delaying if forever, and it is this motto that ADR follows. Hence it is the right time to utilize ADR to the maximum to reduce the burden on our courts and improve the efficiency of our system.

[6] Ibid

Environment Protection Laws in India

Radhika Prasad & Rani Maria Jospeh

In the beginning the earth was a mass of land, evolution and changes that took millions of years converted it into the one and only planet which has life and which can support life. The mass got divided into land and water and the first living organisms were formed which turned to be the pivotal step towards the formation of ecosystem or the environment where we live in. Then, earth was a magical place. Later when man started his life, he converted almost everything to satisfy his needs. The land which provided us life and shelter has was devastated by men in no time. India, which had a green cover of almost 65 percent decreased to less than 33 percent[1].

In 1972, after the Stockholm Conference[2], the Government of India incorporated Article 48A and Article 51A(g) in our Constitution[3]. The National Green Tribunal Act, 2010[4] (hereinafter referred to as NGT Act), The Environment Protection Act, 1986[5], The Water (Prevention and Control of Pollution) Act, 1974[6], The Air (Prevention and Control of Pollution) Act, 1981[7] are some of the statutes governing the environment protection in India. All the citizens have the fundamental duty to protect our environment just as the State has. Article 48A says that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country" and according to Article 51A(g) "It shall be the duty of every citizen of India to protect and improve the

[1] Minimum forest area recommended by the United Nations Organization according to NCERT textbook.
[2] The United Nations Conference on the Human Environment from 5 to 16 June 1972 leading to The Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972.
[3] Added by Constitutional 42nd Amendment Act of 1976
[4] The National Green Tribunal Act,2010, Act No.19 of 2010
[5] Ibid
[6] The Water (Prevention and Control of Pollution) Act, 1974, Act No.6 of 1974
[7] The Air (Prevention and Control of Pollution) Act, 1981 Act No.14 of 1981

natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

It was on M.C. Mehta v. Union of India[8], popularly known as the 'Oleum Gas Leak Case' the Supreme Court held that the right to pollution free environment is also a part of the fundamental right to life under Article 21 of the Indian Constitution. In the case of Rural Litigation and Entitlement Kendra v. State of U.P[9], the Supreme Court with regard to mining opined that the protection of the environment is not only the obligation of State but also that of every citizen under Article 51A(g) of our Constitution. So, as per the Constitution, we the citizens and State are under the obligation to protect our shelter to sustain our lives.

India, a land of diversity, not only among the people but also in the vibrant varieties of flora and fauna, which constitutes 7-8 percent of all species in the world, has undergone a phase of destruction in the 90s. Thus, the Indian Parliament enacted an act to save its ever-vanishing wealth, Wildlife Protection Act, 1970[10]. The act was enabled to protect plants, birds and animal species which together make our ecosystem. It was under this Act our wildlife sanctuaries and national parks were set up for protecting endangered species and to conserve the region. The Act has 66 sections and 6 schedules applicable to the whole nation.

National Green Tribunal, is a forum constituted to protect the environment, it provides speedy disposal of environment related cases, provides damages for violation of environment laws and aims to conserve our forests. The Water (Prevention and Control of Pollution) Act, 1974[11], The Air (Prevention and

[8] 1987 AIR SC 1086
[9] 1987 AIR SC 359
[10] Ibid
[11] Ibid

Control of Pollution) Act, 1981[12], The Environment Protection Act, 1986[13], The Biological Diversity Act, 2002[14] are some of the laws listed in the Schedule 1 of NGT Act. Thus, the NGT Act has the power to try cases relating to the laws listed in the above Schedule[15]. The Environment Protection Act, which came into force on 19th November 1986 was implemented in the wake of Bhopal gas tragedy case, Union Carbide Corporation v. Union of India[16]. The Supreme Court formulated the Doctrine of Absolute Liability in this context.

The Air (Prevention and Control of Pollution) Act[17], passed in the year 1981aims to protect the air from pollution and deterioration and to reverse the situation of ambient Air Quality Index, in the capital city. The Act has more than 50 sections and empowers both the Central and the State Government to provide restrictions and punishments for acts in violation of the Act. Industries of cement, fertilizers cannot operate without the consent of the State under this Act. A Pollution Control Board, is set up by the Government to have a data on the pollution levels and measured in ppm[18]. The main objectives are to provide for the prevention, control and abatement of air pollution.

The Water (Prevention and Control of Pollution) Act[19], was introduced and incorporated into the Constitution of India in 1974, to control and prevent water pollution and to maintain and restore the purity of resources through various guidelines and restrictions. The act is applied to almost all the states leaving some exceptions.

[12] Ibid
[13] Ibid
[14] The Biological Diversity Act, 2002, Act No.18 of 2003
[15] Conservation India, Enabling Conservation Action; 2nd May 2011
[16] 1990 AIR 273, 1989 SCC (2) 540
[17] Ibid
[18] Summary on Air prevention and Control of Pollution Act, 1981
[19] Ibid

The need to understand the basic principles of environment protection is vital. The precautionary principle, the polluter pays principle and sustainable development are some of the principles that must be considered while dealing with environmental issues. The precautionary principle is applied where there are "threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"[20] . Polluter pays principle states that the polluter has to bear the costs of their pollution and the sustainable development according to Brundtland Report which can be seen in the lists of many economic goals and five-year plans is "development that meets the need of the present without compromising the ability of future generations to meet their own needs".

The citizens must be bound by their duty to protect our environment. They also have to conserve our environment for the unborn or future generation. Thus, there is the importance of the principle of intergenerational equity. The principle of intergenerational equity defined as "the rights and obligations of present and future generations with respect to the use and enjoyment of natural and cultural resources, inherited by the present generation and to be passed on to the future generations in no worse conditions than received"[21] .

In Karnataka Industrial Areas Development Board v. C. Kenchappa[22], the Supreme Court observed that "the priority of developing nations is urgent industrialization and development. We have reached a point where it is necessary to strike a golden balance between development and ecology". But the current development in our country is against sustainable development and raises a question mark before our ecosystem. so, the observation of Justice P. D. Desai in the case of Kinkri Devi and Anr v. State of Himachal Pradesh and Ors[23]is

[20] Declaration on Environment and Development; International Agreement; Rio Declaration
[21] The Oxford Handbook of International Climate Change Law, 24th March, 2016
[22] 2006(6) SCC 371
[23] 1987 (4) SCC 463

remarkable. It was observed that "There is both a constitutional pointer to the State and a constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forest, the flora and fauna, the rivers and the lakes and all other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the State and, indeed, every Indian, high or low, is bound to uphold and maintain". In M. C. Mehta v. Union of India[24], it was observed by the Supreme Court that the public health, life, and ecology has priority over the loss of revenue and unemployment and the sustainable development still holds good. So, maintaining a good environment is the fundamental duty of State as well as Citizens and the observation in Virendra Gaur and Ors v. the State of Haryana[25], that the term 'environment' means hygienic atmosphere and ecological balance and the duty to maintain it is conferred on both State and citizens, the court further added that State has a sovereign power to forge in its policy to maintain ecological balance and hygienic environment. So, to live in a country wherein healthy lives are important, it is a necessity to protect our environment.

The EIA Notification of 2020[26] which was introduced to replace the 2006 Notification was highly criticized recently on various grounds such as it affects the balance between sustainable development and environment protection while favoring the industries and it irreversibly affects the environment and may cause hazards to human lives etc. The said draft is also contrary to the decision taken in the case of Alembic Pharmaceuticals Ltd v. Rohit Prajapati & Ors[27] that post-facto clearance is against the sustainable development and the precautionary principles. The L.G Polymers Plant, Visakapattanam where the recent gas leak

[24] 1994 SUPPL (6) SCR 78
[25] 2020 SCC Online SC 347
[26] Ibid
[27] 2020 (4) MLJ 277

occurred was operating for more than 20 years without environment clearance. These incidents raise a question mark before us about the upcoming days.

Even though the topic of environment protection is discussed and debated overtime, it is still a relevant and unresolved issue. So, it is our obligation to conserve our environment and to hand it over to the next generation in the same manner as we received it.

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