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Sustainable Development and Environment Protection in India: A Study

Prof. (Dr.) Rajendra Dhar Dubey[1]
Priya Singh[2]

I. INTRODUCTION

The contemporary world is reeling under overexploitation of resources, population explosions, and unpredictable climate changes. Industrialization and excavation of resources present in environment are carried out at break neck speed for growth of economy. For a developing country like India, which has vowed to lift its population out of poverty, it is neither feasible nor practicable to put a brake on its economic activity. The country always seeks to prosper, but it cannot be achieved by degrading the nature. Similarly, the precious environment must be safeguarded, but it cannot be done by affecting the economic development. Every individual is entitled to have access to healthy and clean environment. The pathetic condition regarding poverty in the nation needs acceleration of economic growth, however, it shall not cause harm to current and future citizens. An appropriate strategy for "sustainable development" has become a much-needed requirement. It signifies the growth which fulfils the requirement of current generation without affecting the ability of future to fulfil their needs.[3]

For attaining sustainable growth, safeguarding the environment forms an essential element of growth and it should not be examined in isolation. There exist a close association between economic status of population and clean environment. The issues relating to pollution is prevailing in both developed and developing countries. With respect to developing countries, underdevelopment and poor condition of people serves to be a crucial factor behind the environmental degradation. The individuals who are suffering from poverty are unable to afford food for one time, shelter to reside and

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3. Our Common Future – The World Commission on Environment and Development, 43 (1987).

clothes to wear, in such a situation they cannot even imagine regarding safeguarding environment. Whereas, the developed countries have their own problems like over production, nuclear radiations, over exploitation of resources, industrial wastes in different forms, industrial accidents and the life style of the people. The mechanism adopted for economic growth, which humans has complied, have also caused degradation of environment. Air pollution has emerged as the main killer. Forty percent of people across the globe are currently facing scarcity of freshwater. Half of world's wetlands have been lost. Two-thirds of the world's grasslands are over-grazed. It is expected that by the end of 21st century, there will be overall rise in global temperature by 5 degrees Celsius. Vector borne diseases such as dengue and malaria are expected to rise sharply in rising temperature. In Indian context, rampant development and ill consequences on environment has become a menace. Despite the current grim scenario, India has historically been at the forefront of taking all necessary efforts to conserve and improve the environment, as well as to promote sustainable development. The community in Indian perspective has from an ancient era, been cognizant of the need to safeguard ecology and environment. People worshiped the objects of nature. The trees, water, land and animals gained important position in the ancient times.[4] Human is the maker and shaper of his environment; his behaviour could be dictated by the rule of law. International concern for environmental preservation and sustainable development is expressed in a concrete manner in the "Stockholm Declaration on the Human Environment of 1972." India is a member to numerous international treaties relating to environmental issues. India has enacted a number of laws to address the issue of environmental deterioration. These laws are revised on a regular basis to reflect technological advancements and environmental quality.

II. ORIGIN OF THE CONCEPT OF SUSTAINABLE DEVELOPMENT

"Sustainable Development" is not a new concept. The Stockholm declaration from 1972 introduced the theory to the public. Man has a fundamental right to freedom, equality, and adequate living conditions in a decent environment which fosters a dignified life and well-being and he is responsible to safeguard and better the same for current and future generation (As per the first principle of declaration). Yet in a report by the World Commission on Environment, known as "our shared future," the idea was given a clearer form.[5] The commission's definition of "sustainable development" was "development that fulfils the requirements of the present without compromising the ability of the future generations to satisfy their own needs," according to Ms. G.H. Brundtland, the then-prime minister of Norway.

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4. P. Leelakrishnan (ed.), *Law and Environment* 1-25 (Lexis Nexis, New Delhi,2003)
5. Bill Adams, *Green Development: Environment and Sustainability in A Developing World* (Routledge, 4th edition, 2021)

The "Brundtland Commission" was established by the UN in 1983 to investigate the connections between environmental preservation and development in economy. The Commission defined "sustainable development" as "growth that fulfils the demands of the present without compromising the ability of future generations to meet their own needs" in its report "Our Common Future," which was published in 1987.[6]

III. INTERNATIONAL PERSPECTIVE ON SUSTAINABLE DEVELOPMENT

The expression "Sustainable Development" has emerged as a hallmark of global organisation dedicated to environmental protection. International concern for environmental preservation and Sustainable Development is reflected in the Stockholm Conference in the year 1972 is considered to be the Magna Carta of safeguarding environment and Sustainable Development. It was for the first time that the global community got together to deliberate seriously on an important issue of preserving environment and Sustainable Development. This conference resulted in the "Stockholm Declaration on the Human Environment." In 1972, around 114 countries took part in the "UN Conference on Human Environment" and agreed on drafting plan and norms. The Declaration, besides preamble, consists of seven universal truths and twenty-six principles. The principles contained in the Stockholm Declaration, which depicts that the entire planet has a common environment. Principle 1 and 2 of the declaration recognize the idea of inter-generational rights. Principle 18 incorporates the precautionary principle.

The idea of sustainable development receives further boost in the "World Conservation Strategy" which was prepared in 1980 by the ICUN (World Conservation Union) with the advice and support of "UNEP (United Nations Environment Programme) and WWP (World Wide Fund). The Concept was also recognized by the South Pacific Commission in 1980 and World Charter for Nature of 1982."

In 1991, the World Conservation Union, UNEP and World-Wide Fund, collectively framed an instrument known as "Caring for the Earth: A Strategy for Sustainable Living" which defined "sustainability" as a "characteristics or state that can be maintained indefinitely" whereas "development" is defined as "the increasing capacity to meet human needs and improve the quality of human life."

The United Nations Conference on Environment and Development (UNCED)," commonly called as "Earth Summit", was convened in the year of 1992 at Rio in which around 150 nations took part. This was emerged out to be the greatest Conference by UN and it showed the globe a way to attain Sustainable Development which stresses on fulfilling the requirement of contemporary generation without

6. The Bruntland Report, Our Common Future, 1979

depriving the capability of the future generation for fulfilling their requirement. The Summit brought remarkable change through major achievements as mentioned below-

(i) The Rio Declaration on Environment and Development: A series of 27 norms enunciating about the entitlements and duties of nations towards environmentally sound manner of maintaining Sustainable Development.

(ii) Agenda 21: A detailed instrument for international coordinated measures to impact the transformation to sustainable development. It emphasizes on coordination among nations for attaining the target of Sustainable Development. It is bifurcated into four sections namely- Economic & Social Dimensions, Conservation and resource management for Development, Strengthen the function of essential Groups, Methods to implement.

(iii) Forest Principles: A series of not legally binding standards to foster the management of forests in sustainable manner across the globe.

(iv) Two binding and legal instruments: The "Convention on Climate Change and Convention on Biodiversity" that are framed with a view to prevent change in global climate and elimination of diversified species from getting depleted. The said convention mandates the nations to minimize the release of gases which increases the probability of global warming.

In 2002, the UN conducted a "10-day World Summit on Sustainable Development in South Africa (Johannesburg)." The Earth Summit mandated for fighting the issues of preserving environment by coordinated global efforts. Eventually, a declaration was affirmed which was called as "Johannesburg Declaration on Sustainable Development".

IV. IMPLEMENTATION OF THE DOCTRINE OF SUSTAINABLE DEVELOPMENT IN INDIA

There were numerous variables that influenced the Indian Parliament's decision to pass various environmental regulations. These elements combined to result into favourable environment for environmental legislation, including the Environment Protection Act of 1986. "To safeguard and improve the human environment for current and future generations has become an important aim for mankind," said the statement made at the First U.N. Conference i.e., Stockholm Conference in June 1972. Hence, it urged all levels of government and citizens to work together to protect and enhance the human environment. The first head of state to address the conference was Mrs. Indira Gandhi, the then-prime minister of India, who expressed her worry about the environmental imbalances, degradations, and pollution issue. India has so far been a Party to this Conference and has established several legislations to protect and better the nature in an effort to stop environmental degradation. After attending the conference of 1972, India has passed various major laws on environment, namely, Water (Prevention

and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, National Environment Tribunal Act, 1995, and National Green Tribunal Act, 2010.

V. CONSTITUTIONAL PROVISIONS AND SUSTAINABLE DEVELOPMENT IN INDIA

The Constitution of India recognises the importance of "sustainable development" in several ways. Firstly, the Constitution's Preamble states that one of the objectives of the Constitution is to secure for all citizens "justice, social, economic and political."[7] This implies that the Constitution recognises the significance of growth in economy that benefits all citizens, rather than just a select few.

Secondly, the "Directive Principles of State Policy in the Constitution (Part IV)" lay down the fundamental principles for governance in India. Among these, Article 48A provides that the concerned government is obligated to assure safeguarding and bettering the environment and to safeguard the forests and wildlife of the nation. Similarly, Article 51A(g) makes it a basic obligation of each citizen to better and safeguard the natural environment, including forests, lakes, rivers, and wildlife. Thirdly, the Constitutional law provides for the establishment of institutions and laws that promote sustainable development. For example, the National Green Tribunal (NGT) was established in 2010 under the National Green Tribunal Act to adjudicate environmental disputes and to ensure the enforcement of environmental laws. Similarly, the Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act were enacted to regulate and control pollution in the country."

VI. PRINCIPLES OF SUSTAINABLE DEVELOPMENT ADOPTED BY THE SUPREME COURT OF INDIA

"Sustainable development" has emerged as a key concept in modern times as it seeks to balance economic development with environmental protection. In India, the Supreme Court has performed a remarkable function in promoting sustainable development by recognising several standards or norms of environmental law in its judgments. These principles include "the precautionary principle, polluter pays principle, sustainable development, inter-generational equity, public trust doctrine, and principle of sustainable use."

(i) Precautionary Principle:

"The precautionary principle" is a fundamental principle of law relating to environmental preservation that requires decision-makers to take precautionary measures to prevent environmental harm, even if the scientific evidence is not conclusive. The principle is

7. The Constitution of India, 1950.

recognised globally and has been incorporated into the legal frameworks of many countries, including India. The Apex Court has performed as leading job in promoting this principle and ensuring that it is applied in environmental decision-making.

The precautionary principle was first recognised by the Rio Declaration 1992. The principle states that if there is apprehension of irreversible or grave injury to the environment, scarcity of adequate scientific mechanism cannot be made as a ground for delaying the efforts for preventing environment from getting degraded.

In India, the "precautionary principle" was first recognised by the Higher judiciary in the landmark case of *Vellore Citizens Welfare Forum*.[8] In this case, it was enunciated by the Court that the precautionary principle shall be applied to prevent environmental harm, even if the scientific evidence is not conclusive. The court recognised that the principle is a fundamental principle of law relating to environmental preservation and shall be adopted to protect the public health and precious environment.

In the case of *M.C. Mehta case*[9], the Apex Court issued direction for closure of industries that were polluting the air in Delhi, even though the scientific evidence was not conclusive. The court recognised that the precautionary principle must be applied to protect public health and that delay in taking preventive measures could lead to irreversible harm to public health.

(ii) Polluter Pays Principle:

The polluter pays principle is a fundamental principle of environmental law that requires those who cause pollution or environmental harm to bear the costs of remediation. This principle is recognised globally and has been incorporated into the legal frameworks of many countries, including India. The Supreme Court of India has played a significant role in promoting the polluter pays principle and holding polluting industries accountable for the harm they cause to the environment.

"The polluter pays principle" was first recognised by the Organisation for Economic Cooperation and Development (OECD) in 1972. It enunciates that people who produce pollution shall be responsible to pay costs of cleaning it up or mitigating its effects. This principle is premised on the idea that those who benefit from activities that cause pollution should pay the charges of addressing the resulting environmental damage.

In India, the "Polluter Pays Principle (PPP)" was first recognised by the Indian judiciary in the landmark decision of *Indian Council for Enviro-Legal Action*.[10] The court decided in this case that industries must compensate for the injury caused to the natural resources and compensate for the restoring the nature. The court recognised

8. *Vellore Citizens Welfare Forum* v. *Union of India* (1996) 5 SCC 647.
9. *M.C. Mehta* v. *Union of India*, AIR 1987 SC 1086.
10. *Indian Council for Enviro-Legal Action* v. *Union of India* (1996) 3 SCC 212.

that the "polluter pays principle" is a fundamental doctrine under the ambit of law relating to environmental preservation and shall be made applicable to hold polluting industries accountable.

Since this judgment, the Apex Court has consistently applied the "polluter pays principle" in environmental cases. For instance, in the case of *Vellore Citizens Welfare Forum,*[11] it was held by the Court that industries shall compensate for the remediation of pollution caused by their activities. The court also directed that industries must take preventive measures to prevent environmental harm, even if the scientific evidence is not conclusive.

In *M.C. Mehta,*[12] the Apex Court ordered the closure of factories in the region of Delhi that were polluting the air. The court recognised that "the right to a clean and healthy environment is a fundamental right and must be protected." It was remarked by the court that the polluting industries must bear the costs of remediation and that the public shall not be responsible to suffer the costs of degradation caused by private enterprises.

The Supreme Court has also applied the polluter pays principle in cases involving the pollution of rivers. In the case of *Kamal Nath,*[13] the court ordered the shutting of industries in the catchment region of the river Ganga. The court recognised that the Ganges is a national asset and must be protected for future people. It was enunciated that the polluting industries must bear the costs of remediation and that the government must take steps to prevent further pollution.

The Apex Court has also applied the PPP in cases involving the polluting of groundwater. In another case of *M.C. Mehta,*[14] the court directed that industries that were polluting the groundwater must pay for the remediation of the groundwater. The court recognised that groundwater is a precious resource and must be protected from pollution.

(III) INTER-GENERATIONAL EQUITY:

The "doctrine of inter-generational equity" is a fundamental principle of sustainable development that recognizes the necessity to have a balanced approach between requirement of the current generation with those of future generation. The idea of "inter-generational equity" implies that present generations have an obligation to preserve

11. *Vellore Citizens Welfare Forum* v. *Union of India* (1996) 5 SCC 647.
12. *M.C. Mehta* v. *Union of India* 1987 SCR (1) 819.
10. *Indian Council for Enviro-Legal Action* v. *Union of India* (1996) 3 SCC 212.
11. *Vellore Citizens Welfare Forum* v. *Union of India* (1996) 5 SCC 647.
12. *M.C. Mehta* v. *Union of India* 1987 SCR (1) 819.
13. *M.C. Mehta* v. *Kamal Nath* (1997) 1 SCC 388.
14. *M.C. Mehta* v. *Union of India* (2004) 12 SCC 118.

nature and the environment for future ones. The Apex Court has been significant in promoting the rule making the decision relating to environment and ensuring that the rights of future ones are protected.

The Apex Court has recognised the significance of the said principle in several landmark cases, including *Vellore Citizens Welfare Forum*[15], where it was concluded by the Court that "the principle of inter-generational equity is an essential element of the right to a healthy environment, which is a fundamental right under Article 21 of the Constitution of India." The Court further held that "the polluter pays principle and the precautionary principle are necessary for protecting inter- generational equity and ensuring sustainable development."

(IV) DOCTRINE OF PUBLIC TRUST:

"The doctrine of public trust" is a legal principle that has played a crucial role under Indian environmental regime. It holds that certain resources, such as natural resources, are held in trust by the government for assuring advantage to the people at large. This principle has been essential for protecting the environment and ensuring that natural resources are not exploited for short-term gains. In India, the higher judiciary has been a strong advocate for the "doctrine of public trust" and has incorporated it into several landmark judgments related to environmental protection.

The Supreme Court's application of the aforesaid doctrine has been significant in shaping environmental policy and governance in India. One such significant case is *Kamal Nath* case.[16]

In this case, it was enunciated by the Apex Court that "the doctrine of public trust applies to all natural resources and that the government has a duty to protect these resources for the benefit of the public." The Court held that natural resources are not the property of the government or private individuals but are held in trust by the concerned State for the advantage of both the current and future generation.

This case established the principle of public trust as a fundamental principle of environmental protection in India. The Court held that the government has an obligation to safeguard natural resources and that the public has a right to access these resources. The Court recognised that the environment is a shared resource and that the government has an obligation to safeguard it for the advantage of both the current and future generation.

(V) DUTY TO ASSIST AND CO-OPERATE

The issue concerning environmental preservation is not merely a national or private challenge. It is deemed as challenge prevailing at international level and it could be

15. *Vellore Citizens Welfare Forum* v. *Union of India* (1996) 5 SCC 647.
16. *M.C. Mehta* v. *Kamal Nath* (1997) 1 SCC 388.

curbed only after following the path of coo-operation and support of all. As per the 9th rule of "Rio declaration" the concerned parties are required to ensure co-operation with a view to build and improve the native capability to ensure growth in sustainable manner through enhancing the awareness and scientific mechanism by exchanging the adaption in technology and science, transfer and diffusion with respect to technologies involving innovation. As per 10th rule of the said declaration, it has been provided that the problems concerning environment are efficiently dealt by common participation at different phase. Likewise, 12th rule states that the concerned parties are obligated to ensure support and assistance and Sustainable Development in every nation, to deal the issues in better manner. Lastly, Principle 27 of the said declaration requires the parties and individuals to ensure co-operation and partnership in growth of international law pertaining to environment and Sustainable Development. So, duty to co-operate and aid is crucial principle of Sustainable Development.

(VI) ERADICATING POVERTY

The "doctrine of sustainable development" shall deal the issues of public who are suffering from poverty and thereby are unable to satisfy their requirement. In the 1972 Conference, Mrs. Indira Gandhi (ex- PM) stated that- "Of all pollutants we face, the worst is poverty." It has been aptly highlighted by the "Brundtland Report" that person's capability is diminished by poverty with respect to utilizing the available resources sustainably and thus it results into putting burden on the nature.[17] Majority of the developing nations are facing the challenge of poverty. So, it essential that development shall be restored among these nations as it connects the growth and condition of environment in direct manner.

"Earth Summit" of 1992 has sensitized the people regarding issues associated with growth and environment. It has been correctly mentioned that "poverty eradication is the most significant need for sustainable development, especially among the developing nations." The main thing to attain is get sustainability by addressing the poverty issues.

(vii) Economic support to Developing Nations

As provided earlier that the developing nations are subjected to the issue of poverty as pollutant. The population in these nations over use the resources present in nature with a view to satisfy the requirement. These nations lack latest technology and budget to achieve growth sustainably. Thus, the technology transfer and economic support from the developed countries to these countries is a necessary need if we want to attain the targets of environmental preservation and Sustainable Development. In reality, this was an essential need under Earth Summit of 1992 also.

17. Our Common Future- The World Commission on Environment and Development. 49-51(1987).

VI. DIMENSIONS OF SUSTAINABLE DEVELOPMENT

A multidimensional approach is more appropriate for the analysis of a divergent topic such as sustainable development. Some important facets of the dimensions of "sustainable development" are mentioned below:

(i) Geological Sustainability:

In order to escape the damaging or degrading alteration, development programs will need to be geographically sustainable. Dams, mining operations, land reclamation, canal command area development, port development, road and railway building, and other sorts of development activities bring long-term landscape changes. Our development strategy should be designed in a manner that interference with natural conditions is as minimal as possible.[18]

(ii) Ecological Sustainability:

Ecological sustainability is crucial, as nature cannot sustain through a single species. The elimination or extinction of species on our planet will devastate the biosphere. As a result, protecting living beings, plants, and fauna is critical. Nature and landscape protection are also critical for a healthy ecosystem. Restriction on utilization of fossil fuels and environmentally hazardous items, recycling, replacing non-renewable chemicals with renewable and benign compounds, and trash reduction initiatives can create wondrous results for ecological sustainability.

(iii) Social Sustainability:

The social environment may deteriorate if the natural environment deteriorates. Social sustainability essentially means development, which enables continual growth with significant equity in income and standard of living for the people. Development should not adopt tactics equity in income and standard of living for the people. Development should not adopt tactics that are employed solely for resource exploitation, destroying the present resource base, or displacing impoverished people under economic and political pressure.

(iv) Cultural Sustainability:

The blind acceptance of Western culture has surely introduced many unpleasant traits into our society. The materialistic way of life has only resulted in waste. Cheap clothing and electrical devices are being discarded in landfills, spewing toxins into the environment.

(v) Demographic Sustainability:

India is a densely populated country. 10% of the world's population occupies just 2.4% of the land area. The huge demography puts a strain on its resources,

18. Rajendra Singh and Dinesh Kumar Mishra, *Development and Environment Change in India* (APH Publications, 1996).

environment, and infrastructure. Safe drinking water is in low supply in both rural and urban regions. Waste management for such a huge population is also a difficult task. Innovative resource management is critical for the sustainability of India's demography.[19]

(vi) Economic Sustainability:

Economic pressures can overwhelm other considerations for "sustainable development." Economic compulsions can wreak havoc on the nature and exacerbate the situation. The sustainability principle argues for a more equal sharing of economic advantages among the population. According to John Stuart Mill, the environment can be subjected to unfettered economic growth, which will only lead to human misery in the long run.[20]

VII. ROLE OF JUDICIARY

The matter of *Rural Litigation Entitlement Kendra (RLEK)*[21] is a landmark case in Indian environmental law. The case was introduced before the judiciary in 1985 by RLEK, a non-governmental organization based in Dehradun, Uttarakhand, India.

The case was related to the mining activities carried out in the Mussoorie hills of Uttarakhand. The hills were being mined for limestone by private companies, causing damage to the environment, including deforestation and soil erosion. The mining was also causing damage to the water sources in the area, leading to a shortage of water for native population. The main issue was whether the mining activities in the Mussoorie hills were in violation of the provision relating to environmental preservation in India, and whether the Uttar Pradesh government was responsible for safeguarding the environment and the regional population.

The Apex Court, in its judgment in 1988, remarked that mining activities in the Mussoorie hills were in violation of the provisions concerning safeguarding environment. The court ordered the shutting down all mining activities in the region and directed the State to take measures to restore the ecology in the area. It further recognized the importance of the nature and the need to safeguard rights of the local population. This case was a landmark judgment in Indian environmental law, as it recognized the importance of environmental preservation. It also established the "principle of public interest litigation" in India, which allows citizens to approach the courts to seek redressal for violations of their rights.

The *Taj Trapezium Case*,[22] arose because of the increasing pollution levels in and around the Taj Mahal in Agra, India. The pollution was attributed to various sources,

19. S.A.K. Azad, "Sustainable Development and Environment" 28 (2 & 3) *Indian Bar Review* 172 (2001).
20. John Stuart Mill, *Principles of Political Economy* (D. Appleton and Company, New York, 1902)
21. *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, AIR 1987 S.C. 1037.
22. *M.C. Mehta* v. *Union of India*, AIR 1987 SC 1086.

including industrial activities, vehicular emissions, and mining activities in the nearby area.

The case primarily dealt with the issues related to the preservation of heritage sites and law related to environment. The main questions before the judiciary were:

a) Whether the mining activities in the Taj Trapezium area were causing significant injury to the ecology and heritage sites, including the Taj Mahal?

b) Whether the existing legal framework and administrative mechanisms were sufficient to prevent such environmental degradation and protect the heritage sites?

c) Whether the affected parties were entitled to adequate compensation and relief for the damages inflicted by the mining activities?

The Apex Court, in its landmark judgment, enunciated that the mining activities in the Taj Trapezium area were causing significant injury to environment and heritage sites, including the Taj Mahal. It further recognized the principle of 'polluter pays,' which means that the defaulting factories are liable for paying for the damages caused to the environment. The court directed the closure of several mining activities in the Taj Trapezium area and imposed several restrictions on the remaining ones to minimize environmental damage. The court also directed the establishment of a Taj Trapezium Zone Authority to regulate and monitor the industrial activities in the area and recommended several measures to strengthen the existing legal and administrative framework for environmental protection.

In the case of *M.C. Mehta,*[23] the petitioner, brought to the attention of the Apex Court the problem of air and water pollution done by the operations of several industries in and around Delhi. The pollution was adversely affecting the health and well-being of the residents in the area. The primary issue before the court was whether the industries were causing significant environmental pollution and whether they were following with the environmental protection laws. The court also had to take into account the government in regulating and monitoring the industrial activities and ensuring compliance with the environmental laws.

The Supreme Court, in its landmark judgment, held that the industries were causing significant environmental pollution, violating several environmental protection laws, & causing a serious threat to ecology and health of people. It was enunciated that the "fundamental right to life and personal liberty guaranteed under the Constitution included the right to a clean environment, and it was the obligation of the government to safeguard and conserve the environment." The court directed the closure of several polluting industries in the area and imposed strict guidelines and regulations for the remaining

23. *M.C. Mehta* v. *Union of India,* AIR 1987 SC 965.

ones. The court also directed the formation of a "Central Pollution Control Board and State Pollution Control Boards" to regulate and monitor the activities by factories and enforce the environmental laws.

"The case of *Indian Council for Enviro Legal Action*[24]" was pertaining to preservation of the Sundarbans mangrove forest, which is a World Heritage Site and one of the largest contiguous mangrove forests in the world. The petitioner alleged that the forest was facing threats from several industrial and developmental activities, including shrimp farming, pollution from industries, and setting up of embankments. The primary issue was whether the industrial and developmental activities in the Sundarbans region were causing environmental degradation and threatening the balance of the ecological area. The court also had to consider whether the government was taking adequate measures to conserve the forest.

The Apex Court, in its judgment, opined that the Sundarbans mangrove forest was an ecologically sensitive area and required special protection and conservation measures. The court observed that the industrial activities in the area were causing significant environmental degradation and had to be regulated and monitored.

The *Ganga water pollution* case[25], was related to the pollution of the Ganga River, which is considered sacred in the Hindu religion and is a primary source of water for drinking for millions of people in northern India. The petitioner, M.C. Mehta, alleged that the disposal of untreated sewage and industrial effluents into the water body (river) was causing significant pollution and adversely impacting the environment and health.

The primary issue was whether the disposal of waste and industrial effluents into the Ganga River was causing significant pollution and threatening the ecological balance of the river. The court also had to consider whether the government was taking adequate measures to control and regulate the discharge of pollutants into the river.

The Supreme Court of India, in its judgment, held that the discharge of untreated sewage into the Ganga River was causing significant pollution and threatening the ecology of the river. The court noted that the government had failed to take adequate measures to regulate the disposal of pollutants into the river and directed the Union and the State to take several measures to clean up the river.

VIII. CONCLUSION

The environmental imperative is ultimately a matter of public and private rights and duties and interests of future generations which are not available as negotiable commodities to be purchased at going-rate. Effective environmental protection and

24. *Indian Council for Enviro-Legal Action* v. *Union of India* (1996) 3 SCC 212.
25. *M.C. Mehta* v. *UOI* 1988 SCR (2) 530.

improvement is therefore a matter of legal rights and duties. It is necessary that the people should be sensitized of the adverse consequences of environmental pollution and they shall not only preserve and safeguard the environment but also ensure the compliance of anti-pollution laws and if need be, to take help of the judicial forum to enforce laws to ensure the ecological balance.

The issue of safeguarding the environment and maintaining the "sustainable development" seems to be problematic. The idea of "sustainable development" has developed from several international conventions. The actual task is the enforcement and giving effect to them. For fulfilling the same, there shall be an intent to safeguard the Earth from further degradation.

It can be concluded that our Constitution puts emphasis on environment protection. It is one of the fundamental obligations of each citizen to safeguard the natural assets concerning not only human being but also all living creatures including the wild life.

It is to be stated that fundamental duties incorporated under Article 51-A(g) of the Constitution are statutory duties and shall be enforceable by law. The relevant law will provide penalties to be imposed for failure to fulfil those duties and obligations. The link between the human life and environment is inherently unbreakable and if the attempt is made to delink directly or indirectly it would be dangerous not only to human beings but also all creatures. This phenomenon rather perception has been recognised at global level. The constitutional duty of State and its agencies are not to be discharged merely by incorporating statues. They are bound to bring environmental awareness among citizens.

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Systematic Injustice to India's Minorities-Evidence From Gujarat and Mapping The Communal Divides and Ghettoization

Dr. Narender Nagarwal[1]

I. PROLOGUE

The Indian state has invented the phrase "*Azadi ka Amritkal*" to commemorate the country's 75th anniversary of independence.[2] This phrase, which literally translates to "the nectarine era of independence," is intended to arouse feelings of hope and optimism for India's future. The ruling party, their leaders and government institutions have been applauding a purportedly extraordinary achievement of Indian democracy. Prime Minister Modi emphasized during a State visit to the United States in June 2023, that democracy is India's strength and we are a vibrant and successful democratic nation in the world.[3] Indisputably, India's democracy model has overcome many difficulties and hurdles to become a remarkable illustration of a functional democracy amongst third-world nations. Its capability to constantly strive for equality while tackling persistent inequalities has been a fascinating but complex journey. India's democratic system has made great progress towards constructing a fair and equitable society since attaining independence. It has, however, also had to deal with a number of inequalities that crop up in its social, economic, and political spheres. The essence of a functional democracy not about merely extending the right to vote and ensuring access to social and material resources but the equitable representation of deprived and vulnerable sections in social, economic and political spheres. The procedure entails

1. Dr. Narender Nagarwal, Assistant Professor, currently teaches at Campus Law Centre, Faculty of Law, University of Delhi, India.

2. Azadi Ka Amrit Mahotsav is a government-sponsored celebration and commemoration for India's 75th anniversary of independence as well as the illustrious past of its people, culture, and accomplishments. The official Azadi Ka Amrit Mahotsav journey began on March 12, 2021, beginning the 75-week countdown to our nation's 75th anniversary of independence. It will conclude on August 15, 2023, one year after it began. Please see: https://amritmahotsav.nic.in/

3. Times of India, New Delhi 24.06.2023 available at: https://timesofindia.indiatimes.com/india/with-14-mentions-democracy-emerges-as-leitmotif-of-modis-address-to-us-congress/articleshow/101226997.cms?from=mdr1.

a stronger dedication to advancing equal opportunities and actively addressing the inequalities that still exist in the country.[4]

However, there is a growing sense that Indian democracy is in decline.[5] There are numerous noteworthy indicators that questioned India's claim as a successful democratic nation-in the rise of majoritarianism, the abrasion of civil liberties, frequent attacks on minorities, a decline of press freedom, massive abuse of federal agencies against opposition and critics and the increasing polarization of Indian society.[6] Amongst them, the most distressing aspect is targeted violence, segregation of the communities on religious lines and ghettoization of the Muslim community-the largest minority group.[7]

As per the last census, Hindus are in the majority of Gujarat state. Hindu population constitutes 88.57% of Gujarat's population and it is a majority religion in 26 out of 26 districts of Gujarat state.[8] The Muslim Population in Gujarat is 58.47 Lakhs (9.67 per cent) of a total of 6.04 Crore and the Christian Population in Gujarat is 3.16 Lakhs (0.52 per cent) of a total of 6.04 Crore. Gujarat, a western Indian state, has historically had major caste and communal conflicts.[9] Communal violence, discrimination, and hatred have a dark history in the state, especially in relation to Muslims and Dalits. In this essay, the communal and caste divisions in Gujarat are examined, and how the state contributes to instigating hatred against these marginalised groups is highlighted. The process has led to the intense ghettoization of minorities which poses serious questions of functional democracy in a state where a substantial part of the population is denied democratic and constitutional rights, (Harsh Mandar 2021). Gujarat's political environment also exhibits communal division. Gujarat has been ruled by the Bharatiya Janata Party (BJP), which is regarded as a Hindu nationalist party, for the majority of the last two decades. The BJP has come under fire for its strategies for alienating Muslims and widening the ethnic gap.[10]

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4. Guha, Ramchandra (2017) "*India After Gandhi-The History of World's Largest Democracy*", Pan Macmillan Pub, India.
5. Sundar, Nandini, Aparna Sundar (2014), "*Civil War in South Asia-State, Sovereignty and Development*" Penguin India Pub, New Delhi, also see Indian Democracy under Threat (2022) The Oxford Debate, Asia Society, Switzerland.
6. NCRB Report (2021) Gujarat is highest in extra-judicial killings, please see: https://www.thequint.com/news/cyber-crime/88-custodial-deaths-in-india-gujarat-highest-for-second-year-national-crime-records-bureau-report.
7. Thapar, Karan (2021) "*Damage to Indian Democracy under Modi is Lasting*" The Wire, available at: https://thewire.in/rights/full-text-damage-to-indian-democracy-under-modi-is-lasting-pratap-bhanu-mehta.
8. Census of India, 2011, Ministry of Home Affairs, Govt. of India.
9. India Exclusion Report (2018-19).
10. Mandar, Harsh (2021).

II. FACTORS THAT CONTRIBUTE TO GHETTOIZATION AND SEGREGATION

Racial and religious segregation is a predominant issue in modern societies and such segregation can be easily found in societies like South Africa, Pakistan and China. In these countries, segregation and ghettoization largely contributed due to factors viz religious, cultural and race identities of the citizens.[11] In Pretoria and Johannesburg, segregation was the official policy of the white regime of South Africa, known as apartheid. As per the International Criminal Court Rome Statute, apartheid is a crime against humanity and now it is punishable.[12]

In China, the majority of Turkic-speaking Muslims known as Uighurs have long maintained a unique cultural, linguistic, and religious identity in the Xinjiang province, a western part of the People's Republic of China.[13] Owing to intense policy decisions and cultural reform programmes aiming to assimilate the Uighur into mainstream Chinese nationalism, a number of measures taken by the Chinese government in recent years have led to the ghettoization and marginalisation of the Uighur Muslims.[14] The concentration of ethnic minorities in Xinjiang province is due to apprehension of losing their religious and cultural practices under the communist wave led by Mao-Tse-Tung to Deng Xiaoping.[15] There have been numerous reports of human rights violations against Uighur Muslims, mostly concentrated in China's Xinjiang Uighur Autonomous Region. The widespread human rights violations against Uighur encompass unlawful detention, cultural repression, denial of democratic rights and religious persecution.[16]

The ghettoization of Uighur Muslims, where they are forcibly confined to certain locations and cut off from mainstream Han society, is one of the main features of this systemic oppression. A number of different ethnic groups have lived in the western part of Chinese land for millennia, giving the area a complicated history. According to Prof. Debashish Chaudhury, "taking international criticism seriously, the Chinese municipal administration has been working hard to re-integrate the Uighur Muslims into mainstream Chinese society", observed Chaudhury (Debashish Chaudhury 2017).[17]

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11. Deshingkar, Giri (1999), DL Sheth and Gurpreet Mahajan (Eds) "The State and Minorities in China": *Minority Identities and the Nation State*, Oxford University Press, New Delhi.
12. What apartheid means, available at: Cornell Law School https://www.law.cornell.edu/wex/apartheid
13. Gladeny, Dru C. (2016) "Islam in China-Accommodation or Separation" *Religion in China*, Austrian Academy of Sciences Press.
14. Leibold, James (2013) *Ethnic Policy of China*, East West Centre.
15. Inputs from Prof. B R Deepak, Professor of Chinese Studies, Jawaharlal Nehru University, New Delhi, author is grateful of Prof Deepak for providing insights about China's ethnic and minorities rights issues in Xinjiang province.
16. Wellens, Koen (2009) "*Negotiable Rights? China's Ethnic Minorities and the Rights to Freedom of Religion*" International Journal on Minority and Group Rights, Brill.
17. Chaudhury, Debashish (2017)

Repetitive media reports about human rights violation of Uighur Muslims in Xinjiang has also tainted China's unprecedented growth story of the last five decades. Further, the international community took the seclusion of Uighurs of Xinjiang as a kind of state-sponsored segregation and questioned China's development model wherein a large population especially minorities denied their religious and cultural rights, also facing economic hardship.[18]

The story of Pakistan is a little harsh as Hindu minorities have been forced to live in adverse conditions and the community is still struggling to have minimum human rights. Due to profound discrimination, state-sponsored violence and sporadic attack on the habitants and places of their worship, the state has been subjected to intense criticism from global rights bodies and United Nations as well.[19] The Hindu community in Pakistan is a small minority group, accounting for approximately 1.96 million people, or 1.2 per cent of the total population. The vast majority of Hindus (96 per cent of the entire Hindu population in Pakistan) live in rural Sindh. The districts of *Sanghar* and *Tharpakar*, which border India, have a significant number of Hindus. There are also small Hindu communities in Baluchistan and Punjab. Hindus in Pakistan, particularly those living in Sindh or Baluchistan, are primarily Dalits, the Scheduled Caste Hindus. Many of the Dalits (low caste) are landless labourers, working on the land of big Sindhi *jageerdars*. The Hindus of the urban area have a menial standing and are largely employed in low-key occupations.[20]

Pakistan's government efforts to suppress ethnic and religious identity and promote a unified Islamic state have significantly contributed to the ghettoization of the Hindu and Sikh community in the areas surrounding Karachi, Lahore, and Rawalpindi. Since there are few prospects for social mobility and widening economic gaps among Pakistan's Hindu and Sikh communities the minorities of the Islamic state preferred to settle within their own community. Such socio-economic imbalance has been brought by the political class as they portray minorities as 'otherness' and adopt politically motivated and discriminatory policies, legislations and schemes, such as blasphemy law, preferring Muslims in job and educational opportunities. Though, the Constitution of Pakistan provides reservations for the Hindu minority in the political process aiming to assimilate the minorities in the Pakistan political process.[21] The fact that the Hindu

18. Lundberg, Maria (2009) "*Regional National Autonomy and Minority Language*" International Journal on Minority and Group Rights, Brill
19. Malik, Iftikhar Haidar, (2002) "*Religious Minorities in Pakistan*" Minority Rights Group Int. University of Michigan.
20. See Poor and Desperate Hindu Embrace Islam, The New York Time, 04.08.2020 https://www.nytimes.com/2020/08/04/world/asia/pakistan-hindu-conversion.html
21. Article 51 of the Constitution of Pakistan-1973, provides reservation of ten seats for religious minorities in the National Assembly and twenty-three seats in each of the four-provincial assemblies under Article 106. According to their representation in the legislature, political parties are allotted

and Sikh populations are concentrated in particular places with restricted access to resources and opportunities furthers the ghettoization of these populations.[22]

The Muslims in India, the country's largest minority community, have been subjected to widespread human rights violations, including forced internment, religious persecution, and frequent police violence (Abdulrahim P. Vijapur 2010).[23] One of the most visible manifestations of this systemic subjugation is the ghettoization of minorities, in which they are forcibly segregated in specific places, isolated from the rest of society in small pickets and enclaves, and denied socio-economic and cultural rights.[24] Though the segregation of Muslims in Indian civil society is considered a matter of deep concern but social scientists have not made any sincere attempt to resolve this problem. Ghettoization, segregation and social division on religion and caste lines can be seen in most parts of North India but the situation of Gujarat, a western state of the Indian union is really outrageous.[25] Segregation and racial profiling of religious minorities in Gujarat have taken various forms and the state has played a scandalous role in the realisation of this community profiling on religion, caste and community basis. The ghettoization of Muslims in various parts of the country has recently increased proportionally, but the situation in Gujarat is horrendous and needs immediate intervention. In one line, the segregation can be defined-the communal split of Gujarat based on religion and caste is a tragic manifestation of the state's oppressive policies and conduct.[26]

Putting minorities especially Muslims in the category of 'others' is one of the most common strategies for excluding them from society as a whole. Unfounded anti-Muslim Islamophobic propaganda also contributes significantly to alienating Muslims from mainstream society which also facilitates the government's agenda of segregating people based on religion. The 'good Muslim-bad Muslim' dichotomy, which originated in the US, has been adapted under Indian circumstances. The 'Good Muslims' are not stereotyped as being wealthy, educated and influential, whereas 'Bad Muslims' are seen as lacking these attributes.[27] It is significant to point out that elite Muslims of Gujarat viz Bohra Shi'ite have also contributed to this narrative because they have maintained a distance from the downtrodden strata of the larger Muslim community. It has been observed that the elite Muslims have avoided taking a stand on pertinent issues that affect the community viz the controversial Citizenship Amendment Act

22. Narayanan, Yamini (2015) "*Religion and Urbanism*", Routledge Pub, New Delhi.
23. Vijapur, Abdulrahim P. (2010), "*Minorities and Human Rights: A Comparative Perspective of International and Domestic Law*", DL Sheth and Gurpreet Mahajan (Eds), Minority Identities and the Nation State, Oxford University Press, New Delhi, India.
24. Sachar Committee Report (2006).
25. Varadrajan, Siddharth (2002), "*Gujarat-The Making of Tragedy*", Penguin India.
26. *Ibid*
27. Mamdani, Mahmood (2005), "*The Good Muslims and Bad Muslims*", Penguin India

2019[28], the stalled National Register of Citizens[29], the discontinuance of Maulana Azad Minorities Fellowship and the attack on Jamia Millia Islamia University etc. In all the above-stated issues, the Muslim elites remain silent and avoided coming publicly to condemn or criticise the government's apartheid policies. Thanks to the structural adjustment, the Muslims who have advanced further in terms of wealth accumulation, business growth, and educational advancement have distinguished themselves from the haphazard masses. The distinctions in Gujarat were not previously based on class or identity.

Apart from that, security concerns, cultural assimilation efforts, financial disparity, spatial segregation etc. contribute to the marginalization and isolation of minorities, particularly Muslims. Segregation, ghettoization and community division on the religious line has a wide range of implications on the democratic setup and societal interests, from severe human rights violations to social fragmentation and psychological suffering.[30] The state of Gujarat, to a large extent identical to Muslim inhabitants in numerous enclaves in Ahmedabad, Surat, Rajkot, and Baroda, is connected with the figure of the menacing Muslim and is subject to denial of democratic and constitutional rights by the state.

III. GHETTOIZATION AND COMMUNAL DIVIDES IN GUJARAT

Primarily, the ghettoization of Muslims in certain locations is due to the fact that their desire to enjoy religious and cultural freedom without any hindrances. Additionally, they perceive safety factor is relatively high in their own localities as no fear of frequent riots, discrimination and targeted violence. The ghettoization process in Gujarat should be understood in terms of how the state has constructed an extremely odd and hostile environment against the Muslims, hence ghettoization is not by choice but by compulsion. Muslims tend to stay in their own periphery in the old area of the city,

28. Citizenship Amendment Act 2019: The CAA facilitates the citizenship of non-Muslim immigrants from India's neighbours, Pakistan, Bangladesh, and Afghanistan. Though it isn't explicitly stated in the Act, the exclusion of Muslims is highlighted by the fact that it allows only Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians who are subject to religious persecution in the three countries to apply for Indian citizenship. According to the Act, instead of 11 years earlier, refugees from the six communities will receive Indian citizenship after living in India for five years. The Act is discriminatory and was passed against the fundamental tenets of the Indian Constitution, including democracy, secularism, equality, and liberty.
29. National Register of Citizens (NRC): A special drive of national census called the NRC will be conducted throughout India in order to add or remove names of persons form the census record and voter list who are dubious citizens or not having valid document to prove their nationality. If someone wants to add their name to the NRC, a select number of documents have been designated for acceptance. The NRC will be the most recent form of discrimination Muslims in India have experienced in recent years.
30. Jamil, Ghazala (2017), *"Accumulation by Segregation"*, Oxford University Press, New Delhi, India.

which is less developed, with minimum to negligible civic amenities and apathy from the local administration. The apparent causes of the marginalization of Indian Muslims have long been put up as the administration's continuous and wilful disregard towards their civic duty to the area where minorities are concentrated, unfair treatment of local administration, and their own sense of insecurity.[31]

Segregation of communities along religious and caste lines in Gujarat has revealed an agonising truth of India's boast to be the world's largest and finest and functional democracy. This study found certain noteworthy characteristics of Gujarat society where minorities, particularly Muslims, are compelled to live in ghettoization. Apparently, religious segregation is an official state policy, as the political leadership and administration has never endeavoured to secularise society and perform its constitutional obligations (Gayer and Jeffrelot 2012).[32] The most intriguing finding of the present study was the profound and widespread perception that Muslims were not welcome outside of so-called Muslim localities. Muslim traders, tenants, unskilled labourers, and even educated persons are forbidden to acquire or obtain decent housing in any Ahmedabad neighbourhood. The study also reveals, many Muslims who are students, teachers, and government officials are aware of housing discrimination against them and believe it is pointless to even try to acquire a home in some locations. This type of sectarian behaviour against Muslims is prevalent not only in Ahmedabad, but also in Surat, Rajkot, and Baroda.

The changing social geography of Gujarat in India which has been wrecked by communal violence has been well documented (Sabrang-2002; Manoj Mitta-2014; Asghar Ali Engineer-2003). Especially after the 2002 genocide in Gujarat, the number of Muslim and Hindu-dominated residential enclaves has proliferated. This is a result of both self-segregations, where people have sought the physical safety and psychological security of their own communities, and a growing culture of suspicion that denies Muslims access to mixed housing, whether it is rentals or ownership (Rana Ayyub, 2016).[33] The Muslim population of Ahmedabad city and other parts of Gujarat display a consistent decrease their presence in the city's prominent residential area. Following the Gujarat Genocide of 2002, the city population experience a considerable decline and minorities have concentrated in some parts of the old city and locations outskirts of Ahmedabad.[34]

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31. Gurmat, Sabah (2023) "*Forbidden Transaction between Hindu and Muslims in Gujarat*" The Revealer.
32. Gayer Laurent and Christophe Jeffrelot Eds (2012), "*Muslims in Indian Cities-Trajectories and Marginalization*", Penguin India.
33. Ayyub, Rana (2016)

Ahmedabad and other cities of Gujarat has turned into the most religiously divided state in modern India.[35] The situation of Mumbai, Delhi and Uttar Pradesh is also not satisfactory, but the level of segregation, hostility, and prejudice in Ahmedabad and other cities is unprecedented, turning the city into an adobe of a Muslim ghetto. The city is also known for the decline of Muslims' relevance in political, social, and economic prominence, as well as a surge in violence and cultural obliteration.[36] Ahmedabad exhibits even a stronger manifestation of ghettoization than Delhi, Mumbai, and Uttar Pradesh due to a variety of factors, especially how political class and administration promote majority dominance in civic and local governance and sidelined minorities' interests.[37]

As Jaffrelot and Varshney (2012: 21) have argued the discourse of the 'minorities ghettoization' should not be concentrated in Gujarat alone rather it has now common parlance across India. In Delhi, the Muslims largely concentrated in Okhla, Jamia Nagar and Abu Fazal Enclave and some parts of the trans-Yamuna area viz Seelampur, Moujpur and Shahdara. Almost the same situation has prevailed in Bhopal, Jaipur and Aligarh.[38] However, it needs to be subject to greater scrutiny to lend it analytical value rather than treating it as a 'folk concept'. It would be prudent that in order to enhance its analytical value we need to go beyond the spatial definition of the ghettoization to consider what might be termed the ghettoization effect. Does one encounter ghettoization only within its spatial confines? What are the other sites where one encounters ghettoization as a trace, as a deterritorialized effect? This is not a study of the effect of the ghetto on the lives of people who live within it. Rather it is to understand and track to the extent possible the suspicion and antagonism that has produced the ghetto as a socio-geographically delimited space but has also spilt beyond it and asserted itself as a more generalized effect. The ghetto effect can be conceptualized as a pervasive mentality, a disposition that structures interactions with the 'other', and even an aspect perhaps of the habitus of Ahmedabad dwellers.[39]

This study also poses pertinent issues whether the ghetto effect is intensified in urban spaces of Gujarat or also affected in rural part. How does the density that characterizes a metropolis like Ahmedabad play out in relation to the fleeting encounters that characterize urban life? How do everyday interactions with Muslims, necessitated by their preponderance in the informal economy of the city, relate to their treatment by non-Muslims as the 'internal enemy'?

35. Fact-finding Report of Himmatnagar and Khambhat Riots (2022), Centre for Study of Society and Secularism, Mumbai, please visit: https://csss-isla.com/fact-finding-reports/fact-finding-report-of-himmatnagar-and-khambhat-riots-in-gujarat/
36. Robinson R (2005) "*Tremors of Violence: Muslim Survivors of Ethnic Strife in Western India*". New Delhi: SAGE.
37. Gayer & Jaffrelot (2012)
38. Jaffrelot, Christophe (2021)
39. Bobio, Tommaso (2015) "*Urbanization, Citizenship and Conflicts in India*" Routledge Pub, India

IV. IS STATE ENCOURAGING SEGREGATION?

Majoritarianism, Hindutva, and Communalism are three key elements that aptly characterize Gujarat's political trajectory and its administrative standpoint towards Muslims.[40] While it's crucial to acknowledge that Gujarat is home to an assortment of communities, including Muslims. The state has over the years seen numerous instances of prejudice and gaps in Muslims' socioeconomic standing amongst the communal segregation, ghettoization and socio-economic boycott are prominent.[41] These variations may be related to the fair distribution of resources, employment opportunities, and educational access. Additionally, the consequences of communal conflict can affect the security and overall well-being of minority groups.[42]

It is possible to measure inequalities in socio-economic development, employment prospects, and educational access through some surveys and research projects, but ghettoization of the neighbourhood is hardly ever brought up by any substantive research.[43] Regardless of the political stance of the local leadership, the local administration, police, and judiciary have a duty to uphold constitutional values and enforce the rule of law. However, the administration has played a bigoted role and occasionally continues to remain dubious and silently supported the discrimination, violence, and attack on minorities. Contrarily, the state government has designed certain policies and programmes to target minorities and police, local administration and even the judiciary endorsed them. Herein, the following are the instances of how the state promotes religious profiling, ghettoization and community segregation.[44]

(i) Targeted hate propaganda by local and mainstream media:

Indian media under the current regime is heavily biased against Muslims.[45] The so-called mainstream media have almost dissociated itself from press ethics, human rights and truthful reporting standards. The news and analysis programmes of loyal media outlets are nothing but campaign-producing hate and inciting violence against Muslims.[46]

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40. Engineer, Asghar Ali (2002), "*Gujarat Riots in the Light of History of Communal Violence*" Economic and Political Weekly, Dec. 2002
41. Times of India (16.02. 2007) *"The uprooted caught between existence and denial-A Document on State of Internally Displaced Persons in Gujarat"* Centre for Social Justice, Ahmedabad
42. Suroor, Hasan (2014) *"India's Muslims Spring"* Rupa Pub New Delhi
43. *Ibid*
44. Desai, Darshan (2022) "*Gujarat Civic Authorities Target Egg and Non-Egg Vendors*", Outlook News Magazine, April 2022, available at: https://www.outlookindia.com/national/bjp-civic-bodies-target-eggs-non-veg-stalls-street-vendors-fight-back-in-high-court-news-193090
45. Farouqui, Ather (2009) "*Muslims and Media Images-News versus Views*", Oxford University Press, New Delhi, India.
46. Nagarwal, Narender (2018) "*Media and Minorities-Understanding the Ethical Issues of Press Freedom in the Context of Rule of Law*" National Journal of Comparative Law, India.

In most of their news programme, these channels sometimes justify mob lynching against Muslims, destruction of places of worship of Muslims and running unsubstantiated Islamophobic programmes aiming to please their political masters. The steps in this manufacture and circulation of violent propaganda often involve both mainstream and social media. Notorious journalists and anchors known to support the ruling party and the Hindutva cause raise apparently legitimate doubts in their programme that further divide the society and communal segregation seems inevitable. The news analysis on the subject like Lord Rama temple after the destruction of a historical mosque in Uttar Pradesh, numerous instances of mob lynching and how they portray the Tablighi Jamaat are a few instances of their abhorrent propaganda against Muslims.[47]

A parallel set of memes, questions, photographs, GIFs, and political speeches are simultaneously flooded into their various groups and online spaces by dispersed IT cells, followers of Hindutva groups, and supporters of the ruling party on WhatsApp and other social media platforms. This further casts doubt on the loyalty of Muslims as citizens and people by accusing them of being COVID "super-spreaders" and linking them to a nefarious scheme to infect Hindus by spitting on food and infiltrating respectable middle-class settings through their employment as salespeople, cooks, chauffeurs, or watchmen.[48]

The Indian media has earned a reputation as the most untrustworthy media industry in the world, due to unbridled ruthless hate campaigns and the dissemination of unverified, fake news mainly targeted against Muslims and Dalits, observed Gurmat (Sabah Gurmat 2023). According to a survey published last year by the World Press Freedom Index, India's performance in the Global Press Freedoms rating has been steadily declining. The World Press Freedom Index rated India at 150th out of 180 countries, down eight spots from its position of 142 the year before. According to the report, India is "one of the world's most dangerous countries for the media," with journalists being at risk of physical assault from police violence, political activist ambushes, and lethal retaliation by criminal organisations or dishonest local officials.[49]

The local and mainstream media never highlight the police violence against Dalits and Muslims, the hate campaign of politicians and their workers and the highhandedness of hundreds of Hindu vigilante groups active across the state and their prime targets are to identify the Muslims employed in non-Muslim trade, business or locality. The feeling of insecurity among Muslims ran so strong that forced Muslim individuals to

47. Banaji, Shakumtala and Ram Bhat (2020) "*How anti-Muslim disinformation campaign in India have surged during Covid-19"*, London School of Economics, published paper Please visit: https://blogs.lse.ac.uk/covid19/2020/09/30/how-anti-muslim-disinformation-campaigns-in-india-have-surged-during-covid-19/
48. Reddy, Raghunandan (2010), "Trial by media-A critique from human rights angle" *Nyaya Deep*
49. Gurmat, Sabah (2023)

hide their identity aiming to work in non-Muslim establishments.[50] Since minorities have lost their faith in the press and media hence only option available to the victims is alternative media i.e. social media.

Gujarat is not an exception when it comes to the local and mainstream media propagating far-right xenophobic propaganda in the form of *Love Jihad* or *Land Jihad* throughout the country. The *Love-Jihad* and *Land Jihad* type hate xenophobic propaganda is prominent in states like Uttar Pradesh, Rajasthan and Madhya Pradesh but the situation of Gujarat is worst as the state and its entire structure and wings endorse such vilification and stigmatisation of Muslims. Such forms of xenophobia campaigns by right-wing political parties are part of their election strategy to polarise the society as well as prevent Muslims from owning property in non-Muslim localities. Gujarat's narrative might be a portent of things to come in India as a whole due to this growing discrimination against Muslims in spatial segregation.[51] The India Exclusion Report of 2018-19, the study on Ahmedabad explains various layers of ghettoization of Muslims and constitutional and democratic paradoxes. The city's political map and trajectory showcase that India's Muslim localities are spaces with fierce internal contestations and socio-economic differentiations, and suffer some of the basic amenities from the administration.[52]

(ii) Administration apathy towards minorities:

Due to constant discrimination by the local administration to certain enclaves where Muslims are largely concentrated the social activists and residential associations have decided to opt legal route to end their civic problems. Approaching the Gujarat High Court with a petition to stop discriminatory and neglecting treatment against Minority concentrated localities and provide all civic amenities. For example, the Association for Juhapura Vikas Samiti filed a complaint with the Gujarat High Court accusing the Ahmedabad Municipal Corporation of failing to provide adequate basic infrastructure and civic amenities such as street lights, traffic control, roads, removing stray cattle, etc. The Ahmedabad Municipal Corporation was told by the High Court to make sure that Juhapura receives basic amenities like roads, traffic maintenance, and a solution to the cattle menace. Despite the loud and clear court's direction to the municipal

50. Sethi, Gagan, Centre for Social Justice, Ahmedabad-The author is thankful to Sh. Gagan Sethi for his insightful detail of communal divide in the cities of Gujarat.
51. Zuberi, Fahad (2021) Indian Express Dt 11.06.2021
52. India Exclusion Report-2018-19

authority of the city, the authority remained sloppy in its attitude and failed to redress the larger grievances of the people of the ghettoization suburb of Ahmedabad.[53]

While confirming the reality of structural State neglect and exclusion, the India Exclusion Report 2018-19 by Sharik Laliwala, Christophe Jaffrelot, Priyal Thakkar, and Abida Desai also finds that there is a vast diversity of class, sect, and gender within the ghetto, which creates its own tensions, exclusions, and opportunities. They claim that the most religiously separated city in contemporary India is Ahmedabad. The majority of Gujarati Muslims—59%—live in cities. Only Juhapura is home to half of Ahmedabad's 7.5 lakh Muslims, who suffer from both deliberate state neglect and social humiliation.[54]

These baffling characteristics of Gujarat's long-standing Hindu nationalism are not distinct from Ahmedabad, Surat, Rajkot or Baroda's political economy. The Disturbed Areas Act is largely to blame for the real estate bubble in the ghetto. Recently, in October 2020, the President of India consented to the revisions to the Disturbed Areas Act that permit the state government to halt property deals between willing parties if it anticipates a disruption in the "demographic equilibrium."[55] Now, those who break the legislation risk spending three to five years in prison. In fact, this legislative strategy to encourage Muslim ghettoization in the name of thwarting "land jihad" would make the future of minorities in concentrated area much more difficult.[56]

(iii) Systematic police violence against minorities:

Police violence, malicious prosecution and extra-judicial killings of minorities especially Muslims make them fearful to settle in the area outside the Muslim-dominated localities.[57] As per the NCRB (National Crime Record Bureau), Gujarat has remained on top in all kinds of extra-judicial killings, police violence and custodial torture. Unfortunately, a large segment of victims are Muslims.[58] The Gujarat Prevention of

53. Ahmedabad's citizen nagar was developed by the Kerala based NGO to rehabilitate the victims of 2002 riots. Twenty years after being displaced from Naroda Patiya, the site of the worst massacres of the Gujarat riots, Muslim families live near a mountain of trash on the outskirts of Ahmedabad, battling disease and an unsanitary way of life. The locality at the outskirts of Ahmedabad struggles to have minimum basic amenities i.e. water, sanitation, roads, and trash on the streets. As the government in the state fails to clear the landfill, the riot survivors say the colony where they went to start a new life had devolved into an "unlivable" ghetto filled with toxic chemicals and smoke. Please visit: https://article-14.com/post/20-years-after-gujarat-riots-muslim-survivors-from-naroda-patiya-live-near-a-mountain-of-trash—63c080d93c6ea
54. *Ibid*
55. Dhar, Damyanti (2018) *"The Disturb Area Act-1991 (enacted in 1986): A Tool to Discriminate Against Muslims"* Please see: https://thewire.in/rights/disturbed-areas-act-in-gujarat-a-tool-to-discriminate-against-muslims
56. Annual Report of Citizen for Justice and Peace, Gujarat (2018)
57. Ziyauddin, K M and Eswarappa Kasi (2009) "*Police Biasness Against Minorities-Dimension of Social Exclusion: Ethnographic Exploration*", Cambridge Scholars Pub.
58. Chatterji R and Mehta D (2007) *"Living with Violence: An Anthropology of Events and Everyday Life"* New Delhi: Routledge.

Anti-Social Activities Act, 1985 (henceforth referred as 'PASA')[59] authorises the government to incarcerate individuals without charge or trial for up to a year. The law was initially passed to target bootleggers, dangerous persons, traffic violators, and land grabbers. However, it has becoming more frequently used to imprison Muslims, particularly since the violence in Gujarat in 2002. The PASA has been enforced unlawfully against Muslims for a variety of reasons.[60]

First of all, because the statute is so broad, the government is able to imprison people for a variety of reasons, including "acts prejudicial to the maintenance of public order." This allows the government a great deal of latitude in deciding whom it can imprison, and it has been applied to the detention of Muslims for even relatively minor offences like taking part in demonstrations or criticising the government.[61]

Second, it is highly tough to challenge a PASA detention. Detainees must go through a special court that is frequently filled with pro-government witnesses. Only if the court determines there is no "reasonable ground" to assume the detainee would participate in anti-social behaviour in the future may it order the release of the person. It is incredibly challenging for prisoners to reach this extremely high threshold.

Third, without even giving Muslims a chance to challenge their incarceration, the government frequently detains them under PASA. Detainees have occasionally been taken into custody under PASA without ever being informed of their detention's purpose. An obvious violation of due process has occurred here. PASA's abuse against Muslims has resulted in a lot of harmful outcomes.[62] It has weakened the rule of law and fostered a culture of intimidation and fear among Muslims. Additionally, it has made it more challenging for Muslims to be participating in society. The Gujarat High Court found in 2012 that PASA had been abused by the government to imprison Muslims. But the administration has persisted in targeting Muslims with the law. The Supreme Court of India declared in 2020 that PASA detainees may not be held for longer than

59. The Gujarat Prevention of Anti-social Activities Act (PASA), 1985, provides for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their dangerous activities prejudicial to the maintenance of public order. It has been observed that Act was heavily misused against the Muslims of Gujarat and certain provisions of the Act give unlimited power in the hands of police to detain/arrest any person on the suspicion ground.

60. Please see: Live Law Report (2020), Such Tactics Need to Be Nipped In The Bud': Gujarat HC Criticizes Police For Misusing PASA Act To Settle Personal Disputes Between Parties: https://www.livelaw.in/news-updates/gujarat-hc-criticizes-police-for-misusing-pasa-act-to-settle-personal-disputes-between-parties-172076?infinitescroll=1

61. Singh, Natasha (2021) "Gujarat Preventive Detention Law is a Free Pass for Police to Act without Evidence" *The Wire*, Sept 2021, Please visit: https://thewire.in/government/gujarats-prevention-of-anti-social-activities-act-a-free-pass-for-arbitrary-detentions

62. Report by Sanchita Kadam, "Gujarat's PASA Act: A long-running saga of misuse and abuse", Citizens for Justice and Peace (2021), please visit: https://cjp.org.in/gujarats-pasa-act-a-long-running-saga-of-misuse-and-abuse/

six months without being charged. The administration has nonetheless discovered a way to get around this decision.[63]

V. WHAT THE CONSTITUTION SAYS ABOUT GHETTOIZATION

The Indian Constitution provides comprehensive safeguards against the ghettoization, communal segregation and racial profiling of citizens irrespective of religion, caste and class.[64] Constitutional ethos fosters social cohesion and harmony by preserving the ideals of secularism, equality, and respect for the rights of minorities.[65] To prevent segregation or marginalization of Muslims in India, it is essential that these constitutional safeguards are effectively put into practice. State administration, civil society, and the general public have a collective obligation to work towards a more inclusive and diverse society where everyone, regardless of religious affiliation, has equal rights, opportunities, and dignity.[66] Regardless of faith, caste, or creed, the Indian Constitution provides equal rights to all individuals. This includes the freedom of movement and the capacity to live and settle in any location inside India. These fundamental rights would be violated if Muslims were to be ghettoized or segregated.[67]

A sizable Muslim population lives in India, being a heterogeneous state with a rich cultural tapestry it is imperative to preserve the nation's multiculturalism, diversity and secularism. Treating all religions equally and defending the rights of linguistic and religious minorities are essential components of secularism. To protect citizens' fundamental rights and liberties, regardless of their faith and religion, the state must maintain its neutrality and objectivity. This does not mean that religion should be eradicated from public life, adopting secularism signifies a multicultural, inclusive, and peaceful society where everyone can live in harmony and prosper together.[68] In a diverse society, it is crucial to make sure that every citizen is treated equally and with respect, regardless of their religious beliefs. Regrettably, there have been occasions where the ghettoization process has negatively impacted Muslims in India, causing societal splits and marginalisation and state, administration and judiciary have remained there as mute spectators. Though the Constitution of India contains various provisions that support inclusivity, equality, and the protection of minority groups and these provisions are hardly implemented to avoid communal division and preserve minorities'

63. Kadam, Sanchita (2021) Report of Citizens for Justice and Peace, Please see: https://cjp.org.in/gujarats-pasa-act-a-long-running-saga-of-misuse-and-abuse/
64. Rao, B. Shiva (1968), "*The Framing of India's Constitution-Select Documents*" Indian Institute of Public Administration
65. Jain, M P (2018) "*The Constitutional Law of India*" Lexixnexis Pub, India
66. Khosla, Madhav (2016) "*The Oxford Handbook on Indian Constitution*" Oxford University Press, India
67. *S.R. Bommai* v. *Union of India,* AIR 1994 SC 1918
68. Chandhoke, Neera (2019) *"Rethinking, Pluralism, Secularism and Tolerance-Anxieties of Coexistence",* Sage Pub. New Delhi India

rights. The Indian Constitution is built on a foundation of secularism.[69] The Constitution's Preamble makes it clear that India is committed to ensuring that its inhabitants have "justice, social, economic, and political; liberty of thought, expression, belief, faith, and worship; and equality of status and opportunity." The secularism concept assures that the state is impartial towards all religions and that all citizens are treated equally before the law, regardless of their religious beliefs.[70] By encouraging interfaith harmony and societal inclusion, it prevents the ghettoization of any religious group, including Muslims.[71]

The Constitution contains a number of clauses that particularly protect Muslims from segregation and ghettoization. According to Article 14, all citizens are guaranteed equality before the law. As a result, Muslims cannot be denied the opportunity to reside in any area of India due to their faith. By ensuring that minorities are treated equally under the law and are not subject to discrimination or prejudice, Article 14 significantly contributes to protecting minorities from community segregation and racial profiling. All people, especially Muslims, are guaranteed the same level of legal protection and respect under Article 14. This means that no individual or group can be barred from or segregated based on their religion or community. Any rule or policy that oppresses minorities or promotes segregation of such groups would be deemed unconstitutional.

Article 21 read with Article 15 of the Constitution of India forbids discrimination on the grounds of caste, sex, religion, or place of birth.[72] Article 21 of the Constitution of India is a fundamental right that guarantees the protection of life and personal liberty to all citizens which also promises a dignified life to all individuals including minorities. While it does not explicitly mention protection from ghettoization, economic boycott, or communal violence, the Indian judiciary has interpreted Article 21 in a broader sense to encompass the protection of minorities from such threats. Minorities are protected under Article 21 read with Article 15 against challenges like ghettoization, communal segregation and discrimination based on religion. Since the Supreme Court of India has affirmed the right to dignity and equal treatment in social and economic life are guaranteed and these provisions of the constitution play a vital role in preventing minorities from being confined to specific geographic locations. The dignity of minority communities is deeply offended due to the ghettoization process, which frequently results in the denial of access to state facilities and basic necessities.[73]

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69. Bhargava, Rajeev (1999) "*Secularism and its Critics*" Oxford University Press, India
70. *S R Bommai* v. *Union of India*, AIR 1994 SC 1918, in this case J. Sawant held that religious tolerances and equal treatment of all religious group and protection of their life and property and of places of their worship are an essential part of secularism enshrined in Constitution of India
71. Sen, Ronojoy (2019) "*Articles on Faith-Religion, Secularism and Indian Supreme Court*" Oxford University Press
72. *Narasappa* v. *Shaik Hazrat*, AIR 1960 Mys 59
73. *Kharak Singh* v. *State of Uttar of Pradesh*, AIR 1964 SCR (1) 332

VI. CONCLUDING REMARKS

The Constitution of India contains provisions related to the rights of minorities and these rights can't be stripped by the state actors or non-state actors.[74] Additionally, the preamble of the Indian constitution stresses on idea of a welfare state and social justice which signify that state is under obligation to protect the Minorities and Dalits and their socio-economic upliftment.[75] If we examine the term "social justice," we could say that it refers to the structuring of society in a way that the material and moral benefits accrue to every individual, especially the minorities, vulnerable, and depressed sections of society so they enjoy the same opportunities as the privileged citizens of the society. In order to achieve the goal of substantive equality, the state can initiate specific programmes and schemes that can ensure the actualisation of equality rights to certain vulnerable groups of society where inequalities exist. Instead of providing minorities community with a sense of security, equality, and protection of their religious and cultural practice, the state has inched towards more fanatic and majoritarianism, observed leading political scientist Pratap B. Mehta.[76]

Continuing ghettoization, targeted violence, and human rights abuses against Muslims in Gujarat will have serious ramifications on the country if not tackled on time. The far-reaching effects on the nation would be intense, including societal, political, and diplomatic fallout. If the government and policy-makers are serious about protecting the social fabric, democracy, and the country's global reputation, they must intervene as the problem is serious and brooks no delay. The nation could descend into an unparalleled civil war, become diplomatically isolated in international affairs, and have other dire consequences if such problems directed at a certain community won't stop. The concentration of Muslims in certain defined zones restricts their socio-economic interaction with other communities, and denial of the right to occupation, trade and profession is nothing but a blatant violation of the Constitution of India and its core philosophy of welfare state and social justice.

The minorities in India have experienced profound isolation almost in every aspect of social and economic interaction. In this discourse, the psychological effects of ghettoization on minorities cannot be overlooked because segregation has a negative impact on minorities' mental and emotional health. An environment of psychological

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74. Article 25 of the Constitution of India-1 950 protects religious freedom of all citizens, including religious minorities. Article 29 and 30 of the Indian Constitution protect the cultural and educational rights of various social groups including minorities. The depth and specifics of their protection varies between the two. Both strive to defend the rights of minorities. These two clauses also at times resemble an expansion of the rules relating to the right to equality.
75. Shukla, Subhash (2014), "*Social Justice in India-Constitutional Vision and Thereafter*", Indian Journal of Political Science
76. Mehta, Pratap Bhanu (2020)

discomfort and trauma is created by constant surveillance, the threat of arbitrary detention, and the suppression of religion and cultural practices enough to put a community on edge. The main concern of minorities is the extinction of religio-cultural identity and disconnection from their roots further exacerbate feelings of alienation and hopelessness.

It's critical to stress that political class, administration, and minority rights groups must collaborate to promote tolerance, respect for human rights, and fair treatment of all individuals, regardless of their religion or ethnicity. On the whole, the Indian state has made no concerted efforts to preserve democracy and its tenets, rather the state has tainted the constitutional safeguard that protects minorities' rights, secularism, and the rule of law. Under the current circumstances, where the environment of intolerance, uncontainable hate speeches, mob-lynching of Muslim youths and enactment of legislation that legalised communal segregation, the minorities are fully justified in feeling insecure, discriminated against and relegated to the status of second-class citizens. This bleak image undoubtedly does not support India as a genuine democratic nation, but a warped democratic state.

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3

Threads of Justice: Upholding the Right to Clothing

Dr. Satarupa Ghosh[1]

I. INTRODUCTION

The right to cloth is associated with elementary human rights, ensuring that individuals have accession to adequate clothing to protect themselves and maintain their dignity. This right may be addressed in numbers of international human rights documents and national statutes.

The right to clothing is often seen as a cardinal characteristic of human dignity and well-being. It encompasses access to appropriate clothing for protection from the elements, maintaining personal hygiene, and participating in socio-cultural activities. This right is recognized under international agreements, including the Universal Declaration of Human Rights, which emphasizes the right to an adequate standard of living, including clothing. Additionally, in some states there are specific laws or policies aimed at ensuring access to clothing for people like the homeless or those living in poverty.

The clothing right intersects with wider human rights principles like the right to work, the health right and the educational right. Adequate clothing is essential for individuals to engage in these aspects of life effectively. For example, appropriate attire may be necessary for job interviews, accessing healthcare services, or attending school. Additionally, access to clothing that reflects cultural or religious norms is essential for conserving cultural recognition and ensuring inclusivity within societies. Efforts to promote the right to clothing often involve collaborations between governments, non-governmental organizations, and international agencies to address issues such as poverty, inequality, and lack of access to resources.

Indians have always had a distinctive sense of fashion and this concept is very old as the textile industry itself. The fashion industry of India has developed and now

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people are not afraid to experiment with fusion designs that give them the base of Indian as well as western styles.

Indian designers are being recognized internationally for their creativity and innovative designs. The World now looks forward to fashion week and fashion fairs where Indian designer showcase their works. In keeping with this increased fashion consciousness of the people various International brands are on their way to established their footing in India. Indian fashion business has crossed a long distance and achieved many mile stones.

But clothing is not merely a matter of fashion or culture, it also a subject of basic perquisite of human being but in India still a large number of poor people are facing deficiency of adequate clothing as their rudimentary requisite. With the other two elementary human rights of food and shelter the right to cloth yet not been addressed to its level sought for.

II. HISTORY OF CLOTHING IN INDIA

Indians have known for the art of weaving and dying since time immemorial and glimpses of their skill with clothes is been witnessed in the textures and artefacts dating back to the Indus valley civilization.[2]

In Indus Valley civilization both men and women used to get dressed in colourful robes. The clothing of Aryans was initially made up of animal skin but as they got settled and started their occupation their clothes began to be made up of cotton.[3]

In the Vedic period pieces of cotton clothing were worn like wraparound skirts to cover the bottom of the body.

During the Mourya period both male and female wore three unstitched garments called Antalaya, muraja and uttariya. It was an unstitched cloth draped around the hips in a kachcha style. Kaseyyaka made of silk and the dark red woolen blankets of Gandhara were said to been carried good luck. Material like khinkhawab was in high demand and been exported to other countries as well. The fine muslins used to decorated in purple colour and gold and also a fine transparency been observed which was compared to the morning dew.[4]

Gupta period compared to any previous age clearly define garment for North India which gradually become the garment preference even in contemporary India. The Gupta age was rich in availability of finest textiles in printed, painted, dyed and richly patterned embroidery clothes.

2. Ms. Ayman Satopay, "History of Indian Costumes", Textile Value Chain, Feb 2020.
3. *Ibid.*
4. *Ibid.*

In this period, it is easier to trace the influence in male costume rather than in women costume. Antariya which was 18 to 36 inches wide and 4 to 8 yards long was drapped as kachha or as a lehenga.

In the Medieval period the cloths were being exported to the East. In fact, the demand for Indian muslin in Rome was so great and the cotton fabric made up the main portion of the shipments carried by the Arabs. Silk was also exported by the Silk Road. Reference of textured Silks were also found in early Indian text. Indigo had a highly commercial value and was imported in large quantities by the Dutch, English, Partians, Mongols and Americans.

Owed to the English influence, the Victorian Era witnessed particular trend wherein the blouses were fashioned to completely cover the hands as well as the belly.

Indians have always had an innate sense of fashion. The world now looks forward to Fashion Week and Fashion fairs where Indian designers showcase their works. In keeping with this increased fashion consciousness of the people, various international brands are on their way to establish their foothold in India.

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Thus, it can well be said that the Indian fashion industry has come a long way and achieved many milestones.

The dark part of Indian clothing history includes the cloth crisis in West Bengal during the period of famine of Bengal in 1943. During the period of cloth famine the poor people been forced to be clothed in waste materials and also suffered from during the winter.[5,6] Almost all the clothes in India are being consumed by the Military force of Britishers as they bought them at a minimum rate.[7] The remaining part of the production was acquired by the businessmen for selling to the Indian nationals.[8] It was obligatory for the Industries to sell clothes to the military persons on due payment and at minimum prices.[9]

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5. Janam Mukherjee, *Hungry Bengal: War, Famine and the End of Empire*, (Oxford University Press, New York, 2015).
6. Madhusree Mukerjee, *Churchill's Secret War: The British Empire and the Ravaging of India During World War II*. (Basic Books, New York, 2010).
7. Government of India Report on Bengal: Famine Inquiry Commission (May 1945).
8. Government of India Press, Famine Inquiry Commission Report on Bengal (May 1945).
9. Sugata Bose, "Starvation amidst Plenty: The Making of Famine in Bengal, Honan and Tonkin, 1942–45", 24 MAS 699-727 (1990).

Nevertheless, industries were being allowed to impose any price as per their decision in the national market for selling the remaining part of the clothes. Because of that the industries delivered cloth for stitching uniforms of the British military charged a high amount in national markets.[10] Many women confine themselves inside a closed door for the whole day and wait for their chance to use the single attire mutually being shared with other female members of the family".[11]

During the period of 1942 and 1943, the charges of clothes had hiked tripled and quadrupled compared to the pricing of pre- World war period.[12] Most of the remaining cloths for inhabitants use were also been obtained by entrepreneurs.[13] Because of this situation by the year 1943 to 1944 intake of cotton clothes by Indians went down by more than twenty-three percent.[14]

The history of the right to clothing in India traces back to various social, legal, and policy developments. At the British period, there were no specific laws or policies guaranteeing the right to clothing. However, traditional Indian society had community structures and practices to support those in need, including providing clothing assistance through charity and religious institutions.

After gaining independence in 1947, India's leaders emphasized the need to address poverty and inequality. The Constitution, adopted in 1950, laid down the foundation for a welfare state and included principles aimed at promoting justice, which indirectly supported the right to clothing.

Overall, the history of the right to clothing in India reflects a combination of constitutional principles, legal frameworks, social activism, and international obligations aimed at promoting social justice and guarantees the elementary requirements for all citizens.

III. RIGHT TO CLOTHING

The right to adequate clothing or the right to clothing is a very significant right. Various International Human Rights instruments recognized this right as a human right along with the right to food and the right to residence as a part of the right to an adequate standard of living as recognized under Article 11 of the International Covenant on Economics Social and Cultural Rights and Article 25 of the Universal Declaration of Human Rights.

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10. *Ibid*.
11. M.S. Natarajan, Some Aspects of the Indian War Economy (Padmaja Publications, Baroda, 1946).
12. Ibid.
13. Madhusree Mukerjee, Churchill's Secret War: The British Empire and the Ravaging of India During World War II, (Basic Books, New York, 2010).
14. Saugata Mukherji, "Agrarian Class Formation in Modern Bengal, 1931–51" 21 *Economic and Political Weekly* (1986).

The right to clothing is an integral portion of the right to an adequate standard of living and considered as very significant to ensure the prevention of poor people from living below the poverty line. Individuals attire is symbol of their economic status. Adequate clothing is utmost necessity for the protection of beggars, the homeless, the drug dependent and the neglected, the elderly, the invalidated, the street kid or just plain poor from severe cold or scorching heat.

The absence of positive conversation regarding the clothing right makes the ambit and requirement of the right uncertain. A minimum level of clothing is prerequisite to be provided and of supreme importance, as it signifies a question of survival at the grassroots level. The importance of minimum or adequate standard of clothing is also being highlighted in various international reports. The reports like UN committee on the rights of child and a report from the consortium for Street children, along with a number of general comments from the Committee on Economic Social and Cultural Rights regards the elderly, disabled, and workers. Though no clear standard is being specified to determine the minimum or adequate standard of clothing but exceptionally the Committee on Economic Social and Cultural Rights are urged all state parties to secure the right of clothing of its citizens.

Lack of academic initiatives has also been noticed regarding the clothing right of refugee's necessity of protection of. Refugees should have right to choose adequate clothing according to their climate and also suitable for their work they wish to undertake. Additionally, any clothing should not be compelled to wear that would lead to social stigma or causes discriminate them as foreigners. However, the rights of refugees to wear clothing that is representative of their culture, country of origin or society must be protected under Article 27 of the International Covenant on Civil and Political Rights. The Committee on Economic Social and Cultural rights has taken initiatives towards specification of standards of adequate clothing in its general sense which has not yet been considered.

Domestically recognition of the clothing right has been for millennium in several countries but paid a very little recognition on the international scene. Although the reason of lack of recognition is not clear but there is a lack of elaboration because of the diversified culture regarding housing and health. Although the right to clothing is specifically included in the Covenant but has had little consideration either from the committee or independent academicians. The health, dignity and lives of poor, aged and weak people can be at risk when they are not adequately clothed.

India produces different quality of clothes for different classes of people. But quality of clothes manufactured for poor class people should be improved that the minimum quality of product can be maintained.

Perception of quality differs from individual to individual and it varies with the change in the socio-economic status of the people. Because of their higher income level and availability of variety the urban people are more quality conscious as comparing

to the rural people. Hence quality in most cases has a close connection to the income. Also it is generally perceived that higher the cost more the quality is. This makes quality directly proportional to price with which comes the concept of affordability.

Low income is one thing because of which people compromise on quality and the other one is family liability. Most of the people generally compromise on quality when they have to buy for the entire family. To improve the living standard superior quality products must come in an affordable price range.

It can also be said that the people belongs to the middle class are less quality conscious and for them quantity matters more than quality. As the number of middle class and their income in hand is increasing so does the awareness regarding quality and brand. People even poor visiting one shop to another for quality and choice. Everyone wants to buy the best out of what is available in his or her price range.

IV. RELATIONSHIP BETWEEN THE RIGHT TO CLOTHING AND OTHER HUMAN RIGHTS[15]

In India, while there are no such specific laws solely focused on the right to clothing. The right to clothing has been addressed within the broader framework of fundamental rights and human rights. The right to wear cloth is a fundamental aspect of humankind is directly connected with other human rights contained under various Human Rights instruments. Following are few instances where clothing right has been considered as a part of fundamental right:

1. **Right to Life and Personal Liberty and Right to clothing**: The Constitution of India guarantees the right to life and personal liberty under Article 21, which has been interpreted expansively by the judiciary. Judiciary in several occasions, have acknowledged that the right to life includes the right to a dignified life, which encompasses access to basic necessities such as food, shelter, and clothing. Therefore, any denial of clothing that threatens the dignity and well-being of individuals may be challenged under Article 21.

   Without adequate clothing people are more exposed to the environmental hazards. Warm clothing is an elementary requirement of survival from cold during the winter season, similarly extreme warm clothing can also cause heat stroke, dehydration and exhaustion during summer. Additionally, insufficient clothing could rise the chances of exposure to ultraviolet rays and aggravate allergies.

15. Stephen James, "A Forgotten Right? The Right to Clothing in International Law", paper presented at 15th Annual Conference of Australian and New Zealand Society of International Law held on

2. **Right to Equality**: The Constitution of India under Article 14 ensures equality before the law and equal protection of the laws. Discrimination in clothing or access to clothing could be challenged under this provision.
3. **Right to Education**: The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) mandates that every child has the right to free and compulsory education. Adequate clothing is also considered as an essential for attending school, and any barriers to accessing education due to lack of clothing could be challenged under this provision.
4. **Child Welfare Legislation**: Various laws and regulations aimed at protection of the rights of children in India address the rules regarding basic necessities, including clothing. The Juvenile Justice (Care and Protection of Children) Act, 2015, emphasizes on the need to provide care and protection to children, which includes ensuring access to clothing.
5. **Right to freedom of expression:** Right to choose suitable clothing as per one's choice is recognized under article 19 of the Universal Declaration of Human Rights. Denial of appropriate dressing for persons with serious disability is also denial of their desired expression. Likewise, to wear filthy dresses and even extremely old-fashioned clothing may cause mockery and causes embarrassment.
6. **Right to freedom from discrimination:** By the attire of the people number of things can ascertain about a person like their religious attachments, social and cultural background, countrywide or civil character, ethos or their race. This symbol of poverty or inferior economic status can be a cause of discrimination and of humiliation. Furthermore, culturally distinctive clothing denotes religious connection could incite discrimination and causes denial of social, economic, or political openings.
7. **Right to freedom from cruel, inhuman or degrading treatment:** One can be rendered exposed to cruel, inhuman, or degrading treatment under Article 5 of the UDHR when he is deprived of suitable clothing – specifically indispensable clothes, like undergarments. Such exposure would include taking off clothes by force, particularly in context of confinement and in prisons.

While these examples do not represent specific case laws, they highlight the legal avenues through which the right to clothing can be protected and enforced in India. Additionally, there may be instances where access to clothing or issues related to clothing have been addressed within the context of particular cases involving human rights violations, poverty, or discrimination.

V. JUDICIAL DECISIONS

While there may not be specific judicial decisions solely focused on the right to clothing in India, but there are several instances where judiciary addressed access to clothing and rights related to clothing right under the ambit of fundamental rights and human rights. Here are a few examples:

1. **Dignity of Prisoners**: In the case of *Hussainara Khatoon* v. *State of Bihar*[16], the Supreme Court of India emphasized the significance of ensuring the basic needs of prisoners, including adequate clothing, as part and parcel of their right to live with dignity.
2. **Right to Shelter and Clothing for Homeless**: In the case of *Olga Tellis* v. *Bombay Municipal Corporation*[17], commonly known as the "Pavement Dwellers" case, the Supreme Court acknowledged the right to shelter and basic amenities, including clothing, for homeless people living on the streets. The court's decision emphasized the state's obligation to provide for the basic needs of vulnerable populations.
3. **Right to Education and Uniforms**: While not directly related to the right to clothing, various judicial pronouncements have addressed issues related to school uniforms as an important part of the right to education. In the case of *Mohini Jain* v. *State of Karnataka*[18], the Supreme Court held that denying admission to a student because of their inability to afford a school uniform violated their right to education.
4. **Uniforms for Public Servants**: In some cases, judicial decisions also focused on the issue of providing uniforms or appropriate clothing to public servants as in close connection of their working conditions. While not explicitly framed as a right to clothing, these decisions underscore the importance of ensuring decent working conditions, including appropriate attire.

   These cases illustrate how Indian judiciary have focused on the access to clothing or associated matters within the broader context of fundamental rights, human rights, and the constitutional framework. While there are no specific case laws solely dedicated to the clothing right, the principles established in such cases contribute to the protection and promotion of this right indirectly.

16. AIR 1979 SC 1369.
17. AIR 1986 SC 180.
18. AIR 1992 SC 1858.

VI. INTERNATIONAL PERSPECTIVE ON RIGHT TO CLOTHING

The right to clothing is not explicitly codified as a standalone provision in international law. However, it is often understood as part of broader human rights conventions that encompass the right to an adequate standard of living, which includes clothing, under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These instruments emphasize the right to a standard of living adequate for health and well-being, which encompasses access to clothing. Additionally, various regional human rights instruments and national laws may further elaborate on this right.

Certainly. While the right to clothing is not explicitly articulated in international law, it is implicitly protected under several human rights instruments. Here are a few key points:

1. **Universal Declaration of Human Rights (UDHR)**: Article 25 of the UDHR states that everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food, clothing, housing, and medical care. This declaration sets a foundational standard for human rights, which includes access to clothing.
2. **International Covenant on Economic, Social and Cultural Rights (ICESCR)**: Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. This covenant obligates states parties to take steps to ensure the realization of these rights.
3. **Convention on the Rights of the Child (CRC)**: Article 27 of the CRC emphasizes the right of every child to a standard of living adequate for their physical, mental, spiritual, moral, and social development, which includes the provision of adequate clothing.
4. **Regional Human Rights Instruments**: Various regional human rights instruments, such as the European Convention on Human Rights and the African Charter on Human and Peoples' Rights, also address the right to clothing indirectly through provisions on the right to an adequate standard of living.

   While these instruments recognize the significance of clothing as part of a dignified standard of living, the specifics of implementation and enforcement vary among countries and are depending on domestic legislation and policy. Therefore, while the right to clothing is acknowledged in various international human rights instruments, the scope of protection and realization depends on the actions of individual states.

VII. RATIONING OF CLOTHING IN INDIA

In India, although there isn't any system of rationing specifically for clothing like there is for essential commodities such as food grains, but there are efforts taken to provide subsidized clothing to economically disadvantaged populations.

One such initiative is the National Textile Corporation (NTC) scheme, which provides subsidized clothing to economically weaker sections of society through various outlets across the country. These outlets offer garments at discounted rates, making them more affordable for those with limited financial means.

Additionally, various government welfare schemes, like Integrated Child Development Services (ICDS) and the National Rural Livelihood Mission (NRLM), include provisions for providing clothing assistance to vulnerable section of society including children, women, and marginalized communities.

Furthermore, during times of natural disasters or emergencies, government agencies and NGOs often undertake relief efforts that include distributing clothing among affected populations.

While there isn't a formal rationing system for clothing in India, these initiatives aim to ensure that economically disadvantaged individuals and communities can afford clothing, thereby addressing their basic needs and promoting social inclusion.

Another significant initiative in India related to clothing is the distribution of uniforms to schoolchildren. Many state governments in India have implemented schemes to provide free or subsidized uniforms to students in government schools. These uniforms primarily helps to ensure that children have appropriate clothing for attending school and also contribute to a sense of identity and equality among students.

Additionally, various government programs aimed at promoting entrepreneurship and self-employment, such as the Prime Minister's Employment Generation Programme (PMEGP) and the Start-Up India initiative, include support for the textile and apparel sector. By encouraging the growth of small-scale textile businesses, these programs indirectly contribute to the availability of affordable clothing options in the market.

Furthermore, initiatives like the Handloom and Handicrafts schemes promote traditional textile crafts and support artisans engaged in handloom weaving and handicraft production. These efforts on the one hand preserve India's rich cultural heritage and also provide employment opportunities and promote sustainable practices in the textile industry.

Overall, while there isn't a formal rationing system for clothing in India, various government schemes and initiatives aim to ensure access to affordable clothing for different segments of the population, promote employment in the textile sector, and preserve traditional craftsmanship.

Another significant facet of clothing provision in India is the involvement of non-governmental organizations (NGOs) and social enterprises. Several NGOs and social enterprises in India work to provide clothing assistance to marginalized communities, including those living in urban slums, rural areas, and disaster-affected regions.

These organizations often collect donations of new or gently used clothing from individuals and corporations and distribute them to those in need through community outreach programs, clothing drives, and distribution events. Additionally, some NGOs and social enterprises operate thrift stores or clothing banks where low-income individuals can access affordable clothing options.

Furthermore, there are online platforms and mobile applications in India that facilitate the donation and redistribution of clothing, allowing individuals to connect with those in need directly or through intermediary organizations.

Overall, the collaborative efforts of government initiatives, NGOs, social enterprises, and community-driven initiatives play a vital role in ensuring that clothing reaches those who need it most in India, thereby addressing issues of poverty, inequality, and social exclusion.

VIII. CONCLUSION

The right to adequate clothing is an important part of the right to an adequate standard of living in international law. The health, dignity and very lives of a range of vulnerable people (including the poor, the mentally and physically ill, the elderly, the disabled, the drug-dependent, and those in detention or otherwise institutionalized) can be under threat when they are not adequately clothed. A thorough analysis should be undertaken on the relevant international, regional, national and local laws and policies that affect the apprehension of the right to clothing.

Clothing is not merely an elementary requirement but also plays an important role in expressing one's identity, culture, and dignity. Therefore, ensuring access to clothing is essential for upholding human dignity and preserving cultural diversity. Few suggestions been put forward in this regard herewith:

1. **Vulnerable Groups**: Special attention must be paid to vulnerable groups such as refugees, internally displaced persons, asylum seekers, and those living in extreme poverty, who may face barriers in accessing adequate clothing due to their circumstances. International organizations and humanitarian agencies often provide assistance to these groups to ensure their basic needs, including clothing, are met.
2. **Environmental Sustainability**: In current years, there has been a emergent emphasis on the environmental sustainability of clothing production and consumption. Efforts to promote sustainable and ethical fashion practices

align with the broader goals of human rights, together with the right to a healthy environment.

3. **Corporate Responsibility**: While the primary responsibility for protecting and fulfilling the right to clothing lies with governments, businesses also have a role to play. Corporate social responsibility initiatives can promote ethical sourcing, fair labor practices, and environmental sustainability within the fashion industry.
4. **Access to Education**: Adequate clothing is also crucial for accessing education, as many schools have dress codes or uniform requirements. Appropriate clothing of children can facilitate their participation in educational opportunities, which is indispensable for the realization of their rights.

Overall, while the right to clothing may not be explicitly outlined in national and international law, it is inherently connected to broader human rights principles and is essential for ensuring the dignity, well-being, and participation of individuals and communities in society.

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4

Patient's Care and the Right to Health: A Theoretical Study

Lucy Haque[1]

I. INTRODUCTION

As recipients of healthcare services, patients have the right to good health, a right that requires examination and consideration as a matter of human rights. Within the framework of patient care, a wide and serious array of human rights breaches take place that infringe on not just the right to health but also several civil and political rights. Instead of receiving the compassionate and suitable medical treatment that patients anticipate, they often experience a range of mistreatment that violates human dignity and puts their lives at risk. The range of abuses includes both widespread violations of patients' rights to informed consent, non-discrimination, privacy, and confidentiality, as well as more severe abuses such as cruel, inhuman, and degrading treatment.

The difference between the human rights of patients and the right to health is that the latter includes additional rights beyond patient's care. Beside healthcare delivery, the right to health also encompasses human rights that significantly influence health outcomes. These "determinants of health" encompass not only social and economic rights like housing, water, and food but also civil and political rights like freedom from violence, censorship, discrimination, and torture, which can have serious health consequences. Patients' rights, on the other hand, relate to rights in health care settings—hospitals, clinics, etc.— that health care providers ensure for patients. The concepts of human rights for patients and the right to health overlap, with the former covering health situations, including patient care, and the latter covering general rights that promote health.[2]

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2. Tamar Ezer and Jonathan Cohen, "Human rights in patient care: A theoretical and practical framework" Vol. 15, No. 2 *Health and Human Rights* 7–19 (2013).

II. HEALTH: A HUMAN RIGHT CONSTRUCT

Health is a basic human right. A person can work, learn or enjoy life only to the extent their health permits. The International Bill of Human Rights has acknowledged the right to health as a fundamental human right, as stated in Article 25[3] of the Universal Declaration of Human Rights and Article 12[4] of the International Covenant of Economic, Social and Cultural Rights.

Health represents more than just the absence of disease; it is a condition of complete physical, mental, and social wellbeing. This definition has helped nations redefine the concept of health as more than just a physical condition. The WHO's utopian definition of health has garnered widespread criticism. A complete sense of wellbeing is unachievable. A complete well-being requires more than just access to better healthcare, such as nutritious food, clean water, a clean environment, and the abjuration of violence and war. Thus, the definition becomes more of a political and moral statement than a scientific one. We cannot quantify it, and it is impractical for implementation purposes.[5] In 1978, the International Conference on Primary Health was convened in Alma Ata, Kazakhstan, to address the disparities in healthcare standards between rich and poor, with the goal of achieving 'health for all' by 2000. The Alma Ata Declaration, reaffirming the WHO definition as a goal, circumscribes the definition as 'highest possible level of health'.[6]

The preservation of human life is undoubtedly the most critical of society's fundamental principles. Article 21 of the Indian Constitution is the source of all basic rights that protect human life. The state is obligated to protect the right to life, which is granted to both citizens and foreigners, as emphasized in Article 21 of the Constitution.[7]

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3. Article 25, Universal Declaration of Human Rights, 1948: *"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services…."*
4. Article 12 of the International Covenant of Economic, Social and Cultural Rights, 1966:
   1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
   2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
      (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
      (b) The improvement of all aspects of environmental and industrial hygiene;
      (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
      (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."
5. Fabio Leonardi, "The Definition of Health" Vol. 48 No. 4 *International Journal of Health Services* 735-748 (2018).
6. Declaration of Alma-Ata, (September 1978).
7. The Constitution of India, art. 21: *"No person shall be deprived of his life or personal liberty except according to procedure established by law."*

A meaningful life assumes a life that is marked by dignity, freedom, health, and welfare. The Indian Constitution does not explicitly include health as a basic right. The Supreme Court of India has expanded the reach of Article 21 to encompass a multitude of human rights standards that enhance the significance of life. One of these is the right to health.

In the 1996 case of *Paschim Banga Khet Mazdoor Samiti*[8], in an accident, one individual sustained serious injuries. The government hospital denied him admission due to bed shortages. Therefore, he sought treatment at a private hospital. His treatment cost considerable money. He filed a writ petition for compensation, claiming that the state had denied him his right to life by depriving him of vital medical treatment. The Supreme Court awarded Rs. 25000. The court noted that the Constitution calls for a welfare state, where the government's main responsibility is to provide proper medical care. To fulfill this commitment, the government operates hospitals and health clinics to provide medical care to individuals in need. The state must protect everyone's right to life under Article 21. A government or hospital's failure to give timely medical treatment to a person in need violates his right to life under Article 21. The court ruled that the state cannot claim the absence of financial resources to fulfill its responsibility. The Supreme Court acknowledged in *Common Cause v. Union of India*[9], the significant inadequacies in blood collection, storage, and transmission by various blood centers in the country, particularly with regard to the outbreak of HIV-infected patients. The Supreme Court issued numerous directions to both the Centre and the States in this case, one of which required all blood banks to register under the Drugs Control Act. In the PIL, *Vincent v. Union of India*[10], the petitioner sought an order to force Central and State Government agencies to maintain medicine standards, restrict importing, manufacturing, and selling, and ban "harmful and injurious" medicines. This case relied on Article 21 of the Constitution, which provides the right to life, "which includes medical attention and a life free from diseases." The Supreme Court emphasizes the importance of a healthy body as the foundation of human activities. As a state duty, Article 47[11] prioritizes public health and prohibits harmful substances. Public health maintenance and improvement are critical to the community's physical well-being and the Constitution's vision of society. In the case of *Novartis*[12], where the Supreme Court denied ever-greening of patents on pharmaceutical drugs, held that Article 21,

8. *Paschim Banga Khet Mazdoor Samiti v. State of West Bengal*, AIR 1996 SC 2426.
9. AIR 1996 SC 929.
10. (1987) 2 SCC 165.
11. The Constitution of India, art.47 : *"Duty of the State to raise the level of nutrition and the standard of living and to improve public health.— The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."*
12. *Novartis AG v UOI*, (2013) 6 SCC 1.

the "right to life" includes affordable access to essential medicines. The price of medicinal items should not exceed certain limits.

III. DYNAMICS OF THE DOCTOR-PATIENT RELATIONSHIP

The one-to-one relationship between patient and doctor is at the center of healthcare practice. The Hippocratic Oath, a code of conduct for physicians, transformed the concept that 'disease is an act of god and a physician is a priest' in ancient Greece. In 1948, the World Medical Association published the Declaration of Geneva, which is an updated rendition of the Hippocratic Oath. The Declaration serves as the foundation for many national codes of ethics, and it underwent its most recent amendment in 2017.[13]

Ethics is a system of principles that helps people discern the appropriate course of action. Bioethics is the field of ethics that specifically addresses dilemmas related to medical practice. There are two primary branches of ethical philosophy: deontology and consequentialism. Deontology focuses on the inherent moral correctness or incorrectness of an action. It is indifferent to the result of an action. An obligation must be fulfilled, irrespective of its outcome. Immanuel Kant's theory of the 'categorical imperative' asserts that moral duty can be determined via the application of reason. Kant proposed that we should not treat people as mere instruments, but rather as inherently valuable entities in their own right. Hence, it is imperative to uphold the integrity of an individual and refrain from exploiting it for personal gain. Deontology is the foundation of individual autonomy.

On the other hand, consequentialism is concerned only with outcome of an action. Utilitarianism is the most famous form of consqeuntialism. According to utilitarianism, an act can be judged on the basis of the maximum happiness or maximum pain, it creates. Jeremy Bentham is the classical proponent of this theory. The theory of utilitarianism is practically used to decide where to allocate the health budget in order to benefit the most people.[14]

The Nuremberg Trials of 1947 revealed the horror of Nazi doctors' in humane experiments. Following the trials, a global community felt the need to re-examine the fiduciary relationship between doctor and patient. Four principles were distilled from the available ethics codes that apply regardless of social, religious, or cultural context. These four are now key elements of any newly minted ethical framework.

13. WMA Declaration of Geneva (Sept., 1948) available at: https://www.wma.net/policies-post/wma-declaration-of-geneva/ (last visited on 2/8/ 2023).
14. Anna Smajdor, Jonathan Herring, *et. al.*, *Oxford Handbook of Medical Ethics and Law* 15-21 (Oxford University Press, UK, 1st ed., 2022).

a) Autonomy: This means allowing someone to make their own decision by providing them with all the necessary information. It is synonymous with self-determination.

b) Beneficence: The doctor's primary concern should be the patient's benefits. If there is a conflict between the patient's autonomy and beneficence, autonomy should be prioritized.

c) Non-malfeasance: The principle of non-malfeasance is depicted in the phrase *'primum non nocere'* meaning 'first, do no harm'. Since few medical procedures have minimal risk or side effects, we must balance this principle against beneficence.

d) Justice and Fairness: It means treating patients on the basis of non-discrimination, equality, and fairness. There should be an equitable distribution of resources and accountability in its management.[15]

Negligence is characterized as nonfeasance rather than malfeasance. Nonfeasance refers to the act of omitting or failing to do a mandatory lawful action, while malfeasance refers to the act of committing an unlawful action. Negligence implies a lack of care. The act of failing to perform something that a reasonable person ought to do or doing something that a reasonable person ought not to do constitutes negligence. The involving three constituents of negligence are:

(a) A legal duty to exercise due care towards the plaintiff.

(b) Breach of the said duty by the defendant.

(c) Plaintiff suffered resultant damage.

For an action in negligence there can be civil liability a s well as criminal liability. Civil negligence is concerned with the amount of damage caused whereas criminal negligence is concerned with the amount and degree of negligence. Criminal negligence involves greater degree of negligence. The essential ingredient of a crime *'mens rea'* is absent in civil negligence. *'Mens rea'* in criminal negligence does not imply that the offender has intention to cause harm but a state of mind of recklessness or disregard for probable consequence.[16] The Indian Penal Code punishes causing death by negligence under Section 304A.[17] Under Section 304A, the death must have been caused by the accused's rash and negligent act and must have been the proximate cause without intervention by another's negligence.[18] In the case of *Dr. Suresh Gupta*[19], the doctor

15. Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (Oxford University Press, New York, 7th ed. 2013).
16. Dr. R.K. Bangia, *The Law of Torts* 220-256 (Allahabad Law Agency, Faridabad, 23rd ed., 2014)
17. The Indian Penal Code, 1860 (Act 45 of 1860).
18. Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap,* 4 Bom LR 679.
19. *Dr. Suresh Gupta v. Govt. of NCT of Delhi*, AIR 2004 SC 4091.

performed a simple operation on a patient with a nasal deformity. However, because of the doctor's carelessness during the procedure, the patient dies. The court held that the degree of recklessness is not so gross to make the doctor criminally liable for negligence but still can be held responsible under tort. The decision has been criticized[20] as the degree of negligence has to be gross is nowhere mentioned in the penal provision. An action for tort of negligence by a professional, i.e., a person professing a special skill, is judged on the basis of two conditions: first, whether the person possesses that skill; and second, whether the skill is exercised with due care. The skill doesn't have to be the pinnacle of that profession, but rather one that regular professionals in that field exercise. This test is called the Bolam test.[21]

Criminal charges are only brought in cases of negligence when the patient dies, and civil remedies available can be long-drawn and expensive affairs. The Medical Council of India may suspend or deregister the erring doctors for violations committing professional misconduct[22]. There is a possibility that doctors who have committed offenses may escape punishment because they will only be evaluated by their colleagues.[23] This scenario was remedied by the enactment of the Consumer Protection Act of 1986. Medical services were brought under the purview of Section 2(1)(o) of the Act defining service. Grievances against medical professionals can be filed in the Consumer Forum on the grounds of deficiency of service. The inclusion of medical service under the COPA of 1986 was unsuccessfully challenged in the case of *Indian Medical Association v. VP Shantha*[24]. The three judges on the on the bench held that the doctor gives medical service to patients for consideration and is not in the nature of personal service as implicit in the master-servant relationship. However, COPA will not apply in the case of charity.

IV. RIGHTS OF PATIENTS

Laws commenting on patients' rights can be found in various instruments, including the Constitution of India, the MCI Code of Conduct of 2002, the Consumer Protection Act, the Clinical Establishments Act 2010, and judgments of the Supreme Court. The National Human Rights Commission prepared a Charter of Patients by crystallizing these provisions with the International Human Rights Conventions.[25] In 2019, the

20. *Jacob Mathew v. State of Punjab* AIR 2005 SC 3180.
21. McNair J. in *Bolam v. Friern Hospital Management Committee*, [1957] 1 WLR 582 "…The test is the standard of the ordinary skilled man exercising and professing to have that special skill ... A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."
22. The Indian Medical Council Act, 1956 (Act 102 of 1956), s. 20A.
23. David Annoussamy, "Medical Profession and the Consumer Protection Act" 41 *Journal of the Indian Law Institute* 460–66 (1999).
24. AIR 1996 SC 550.
25. NHRC, Charter of Patients' Rights, *available at:* https://nhrc.nic.in/sites/default/files/charter_patient_rights_by_NHRC_2019.pdf (last visited on 5/7/2023).

Ministry of Family and Health Welfare (MoFHW) directed all states and union territories to implement the Charter of Patients' Rights, as health is a state subject. The State/UT Government should publicly display the Patients' Rights Charter in both public and private healthcare institutions, as well as on their health department websites. They should also provide funds for promoting the charter and establish a framework for addressing patient grievances, as advised by the NHRC.[26] Some of these rights are discussed below.

4.1. Right to Be Treated

A patient has a human right to obtain medical care and treatment. The majority judgment in the case of *C.E.S.C. Ltd. v. Subhas Chandra Bose*[27] stated that the protection of health and strength of workers is an elemental part of right to life. The government is mandated to protect the health and strength of workers. Here, the apex court illustrated medical care is essential not only to alleviate sickness but also to maintain healthy manpower in the economy. As per the *Bhibuti Nath Jha*[28] case, the right to be treated is also extended to prisoners. The Supreme Court while taking note of the hardship of women prisoners and their children in *R.D. Upadhyay v. State of AP*[29], issued guidelines for procuring healthcare to the prisoners by setting up medical camps. *Paschim Banga Khet Mazdoor Samity*[30] is a groundbreaking case where the Supreme Court for the first time held that the right to emergency medical treatment is part of the right to life. In the case of *State of Punjab v. Mohinder Singh Chawla*[31], it was held that the state has an obligation to provide reimbursement for hospital expenses for out-of-state emergency medical treatment for government employees. In *Kumar Mukherjee v. Ruby General Hospital*[32], treatment was denied for failing to deposit medical fees. The consumer court held that a doctor is duty bound to provide care and treatment until the patient draws his last breath.

4.2. Right to Privacy

A patient has the right to expect that a doctor will keep information about his wellbeing and what he confides in him confidential and not share it with anyone else. Privacy, or confidentiality, in a doctor-patient relationship is one of the basic tenets of the Hippocratic

26. Government of India, Charter of Patients' Rights, (Ministry of Health and Family Welfare 2022) *available at:* https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1797699 (last visited on 8/6/2023).
27. (1992) 1 SCC 441.
28. *Bibhuti Nath Jha v. State of Bihar,* (2005) 12 SCC 286.
29. (2007) 15 SCC 537.
30. *Paschim Banga Khet Mazdoor Samity v. State of WB,* (1996) 4 SCC 37.
31. (1997) 2 SCC 83.
32. 2005 CPJ 35 (NC).

Oath. Confidentiality is an aspect of privacy. Privacy refers to limited access to or information about an individual. It is a legal entitlement as well as an ethical requirement, and it is borne out of equity law and implied contracts.[33] However, in certain circumstances, doctors are required to disclose such information. According to the World Medical Association's International Code of Medical Ethics and Declaration of Geneva, it is the duty of a doctor to preserve a patient's confidentiality, but there is an exemption to such a duty when (i) the patient consents to it or (ii) there is a real and imminent danger of bodily injury to the patient or another person. Chapter 7 (7.14) of the Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Rules, 2002[34], barred a registered medical practitioner from disclosing information about his patients unless a) it is required by law, b) possess serious risk to others, or c) have communicable disease.

In the case of *Mr. X v. Hospital Z*[35], The respondent hospital filed an appeal against the hospital for breaching confidentiality under medical ethics and violating privacy under Article 21 of the Indian Constitution by disclosing the appellant's HIV positive status. The court ruled that this disclosure serves the public interest and does not violate any law. If there is a conflict between the right to health and the right to privacy, the former shall prevail over the latter. In today's technological world, the electronic transformation and storage of health records on internet-connected computers often result in data breaches, leaks, and misuse. The IT Rules of 2011[36] designate medical records and histories as sensitive personal data or information. The nine-judge bench in *Justice K.S. Puttaswamy v. Union of India*[37] unanimously recognized the right to privacy as a fundamental right. The present data protection regime includes the IT Act, 2000, and the newly passed Digital Personal Data Protection Act, 2023. In the case of *Surupsingh Hrya Naik v. State of Maharashtra*[38], the Bombay High Court held that the public interest can override the confidentiality clause of the IMC Regulations, 2002. Here, an RTI was filed against a convict who spent most of his prison sentence in the hospital.

4.3. Right to Informed Consent

The paternalism nature of doctor-patient relationship is outdated where doctor's choice of treatment was given priority over patient's wishes. Paternalism is being replaced by informed consent. Before opting for a treatment a patient must consent to it. Consent

33. *W v Egdell*, [1990] 1 All ER 835.
34. Code of Ethics Regulations, 2002.
35. AIR 1999 SC 495.
36. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.
37. AIR 2017 SC 4161.
38. AIR 2007 BOM 121.

means agreeing on the same thing in the same sense.[39] Consent becomes informed consent when:

(a) It is voluntarily given, free of coercion, undue influence, fraud, misrepresentation, and mistake.

(b) Patient has the capacity and competence to give consent.[40]

(c) Patient has knowledge about the nature of the treatment, side-effects, success rate and alternative treatment[41]. Justice Cardozo in *Schoendorff v. Society of New York Hospital*[42] famously stated that any adult mentally competent person has the right to decide what should be done to his body, and a surgeon performing an operation without the consent of his patient has committed the tort of assault and is liable to pay damages. According to the Code of Ethics Regulation 2002, the following rules apply:

  (a) Written consent of the patient, spouse of patient or parent/guardian in case of minority.

  (b) Non-disclosure of any information about the patient by which they are identifiable.

  (c) Written informed consent from the patient, spouse, and donor is required for IVF or artificial insemination.

  (d) The patient's consent is required for any trial involving a new drug or therapy.

In Section 88 of the Indian Penal Code, it is stated that if an act (for example, a surgical operation) is done in good faith for the benefit of a person who is over 18 years of age with his consent, i.e., he has knowledge of the risk undertaken, no offense is committed, even if there is intention or knowledge of probable harm not amounting to murder. If the person is a child under 12 years of age or a person of unsound mind, then consent has to be obtained from his parent or guardian. As per Sec. 90 of the IPC, consent cannot be given out of misconception and fear. If a person performs an act in good faith and for their benefit, such as life-saving surgery, and there is no time to obtain consent, no offense is committed even if harm occurs (Sec. 92).[43]

4.4. Right to Dignity, Respect and Non-discrimination

Throughout their medical treatment, vulnerable patients such as children, women, the elderly, the disabled, indigenous peoples, refugees, migrants, and sexual, gender, and

39. The Indian Contract Act, 1872 (Act 9 of 1872) s. 13.
40. The Indian Contract Act, 1872 (Act 9 of 1872) s. 11.
41. *Samira Kohli v. Dr. Prabha Manchanda* AIR 2008 SC 1385.
42. (1914) 211 NY 125.
43. The Indian Penal Code, 1860 (Act 45 of 1860).

ethnic minorities have the right to receive dignity and respect. There should be no discrimination against an HIV-positive person.[44] In addition to providing high-quality healthcare that adheres to current standards of care and treatment recommendations, the hospital administration and attending physicians must also ensure that there are no instances of medical negligence or deficiencies in the service delivery system.[45] Section 15 of the Transgender Person (Protection of Rights) Act, 2019 provides for accessible health facilities for transgender people.[46]

V. CONCLUSION

Health equality means providing the same services and care to patients without any bias. It is based on the principle that there is no special privilege. Health equity means recognizing the social and economic barriers to accessing healthcare and taking action accordingly. The principle of equal treatment only applies when the circumstances are equal. Doctors, or medical care providers, are mainly responsible for promoting both health equality and health equity. In cases of disadvantage and vulnerable populations, providing similar information or treatment is not enough. The doctor must also recognize that limited access to nutritious food, hygiene, or social taboos may affect their care regimen and modify their approach accordingly. The responsibility for the patient's care falls on the doctors. They can fulfill this duty only when their rights as professionals are respected. They have the right to a safe working environment, due process when accused of malpractice or negligence, freedom of association, and freedom from the compulsion to work against ethical principles.

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44. Annexure 8 of Standards for Hospital level 1 by National Clinical Establishments Council set up as per Clinical Establishment Act 2010, available at: https://www.clinicalestablishments.gov.in/WriteReadData/147.apdf (last visited on 6/7/2023);
The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (Act 16 of 2017).
45. *Supra Note* 25.
46. The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019).

5

State Autonomy During the Covid-19 Pandemic: Migrant Crisis and Institutional Failures

Akansha Singh[1]

"Dictatorship often starts in the face of a threat"

– Joseph Cannataci

I. INTRODUCTION

During the past two years, the entire global regime is battling the deadly infection of Covid-19. India was insulated from the clutch of the virus for the first few months, after the first breakout was reported in a fish market in Wuhan city in China in December 2019. But not for long. It took months for this virus to creep into the Indian boundaries when the first outbreak was reported on January 27, 2020, in the Thrissur district of Kerala; a few weeks to engulf all the states, and just days to spread across our vicinity, at quite a progressive pace. By September 2020, India was witnessing the peak of the spread of this brutal virus with around more than a lakh reported cases across the States. Indian efforts to combat the virus in the first wave were lauded globally. Any country's strategy to combat such a calamitous state of the pandemic is a complicated process that involves the consideration of the country's health infrastructure, the capacity of manual labor and automated technologies to lower the infection rate, vaccination procedures to develop herd immunity, and the feasibility of the country's economy to undertake pressure during a Nation-wide lockdown. On a global comparison, India seemed to cope well with an early announced Nationwide lockdown, lower number of reported cases and death toll, availability of hospital beds and pharmaceuticals, diagnostic and research facilities, as well as easy home quarantining facilities. While other countries like Italy, China, Brazil, USA were among the worst hit countries, India managed to firmly stand to the unprecedented challenge in 2020. However, these statistics saw a complete reversal in the subsequent year marred by the second wave of the virus. 2021 saw the collapse of the public health system, innumerable reported and unreported deaths, and a slump in the economy. From one of the least affected Nations, India became known to be reporting the highest number

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of covid cases and the associated deaths, after the USA. Almost every individual has borne the brunt of this virus one way or the other-some physically, some mentally, and others financially. A lot of intertwined factors, some controllable while others uncontrollable, played their roles in this mass suffering. This paper would primarily deal with the role of the State and its institutions in governing the country during the advent of the pandemic era as well as during its peak.

The Directive Principles of State Policy, as enshrined in the Indian Constitution, states India is a Welfare State and by virtue of it, the State has the highest responsibility to keep up the welfare of the citizens, to uphold their dignity, and to protect their rights politically, socially and economically. This nature of the State becomes more prominent in times of crisis faced by the Nation than in normal times. State, here, is not a single absolute entity. It should neither be understood only in its traditional sense, that is, commanding obedience of the ruled through power, coercive forces, and violence, nor in Weberian terms which conceptualize the State as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory…The state is considered the sole source of the 'right' to use violence"[2]. State summates a lot of functions and structures, and hence is a collectivity of sub-systems such as the government, political parties, bureaucratic apparatus, law, and justice system, *et cetera*. They together govern society and bring social change. The state is embedded in society, but that does not mean that the state and society can be conflated together. The interests of the state can converge as well as diverge with the interest of society, at large. This brings forth the discourse on the autonomy of the state. Autonomy refers to the ability of the state to choose its own preferences, whether they converge or diverge with societal interests. It refers to how far the State can use its inherent power to convert the diverging preferences of the society into its own political preferences. The goal formation of states can happen independently of societal demands and pressures. States may differ in the image and in practice. It is not always necessary that the state's original plan converts into the intended actions. In times of crisis and emergencies, the autonomy of the states becomes a critical matter of discussion. The following paper would lay the groundwork for understanding the exercise of autonomy by the Indian state in the period of crisis, and the questions it poses on the limits of the State during such time.

II. THE TIMELINE

A few days after the discovery of the virus in Wuhan, India reported its first case in Kerala on 27th January 2020[3]. On the same day, the World Health Organisation declared coronavirus a "global emergency of international concern". India's cases were largely

2. Max Weber, *Politics as a Vocation* 1864-1920 (Hassell Street Press, 1919).
3. M.A. Andrews, Binu Areekal, *et.al.*, "First Confirmed Case of Covid-19 Infection in India: A Case Report" *Indian Journal of Medical Research* 490–492 (2020).

in two digits during that period. Gradually, when the cases started rising, early in March, WHO declared the spread of viral infection as a "pandemic" that grappled the whole world. India did report its first death during this period. The state of Maharashtra surpassed the number of infected cases in Kerala, becoming a major hotspot of infections. On the 25th day of March 2020, the historic 21-days long and stringent lockdown was imposed pan-India.

This came as something new and totally unanticipated for the residents of India. India and Indians were not at all prepared for the unprecedented lockdown that was asserted to be the "world's most stringent lockdown" by the University of Oxford. There are many questions and debates that emerge from the imposition of the lockdown after the sudden announcement by the Prime Minister. According to a report based on the RTI pleas[4], prepared by BBC, the Indian Prime Minister neither consulted with the concerned ministries nor discussed and deliberated in the Parliament or with any key committee before announcing the total shutdown of India. It was an autarchic decision, which was based on the complete autonomy of a single ruler ruling the State and its Institutions. This needs to be problematized. Is the State's rationality always superior, even without the requisite expertise in all the domains?

Another critical question that emerges is about the emergency to impose lockdown in such haste. The comparative analysis of countries, as per the Aura Vision data, from various continents (as in 2020) reveals the following: The lockdown in different states of the USA was imposed between 24th March and 25th March, when the covid positivity rate (percentage of people turning positive out of the total numbers being tested) rose to 16%. While in Pakistan, the lockdown was imposed on 24th March, when its positivity rate surged to 16%, for Argentina and Morocco (as of 19th March), it was 15.6% and 19.23% respectively. Italy was in a distressed state during the first wave of the pandemic, albeit it imposed a lockdown on 9th March when its positivity rate surged to 21.91%. What is surprising was the lockdown by the Indian State on 25th March when its positivity rate was just a meager 4.17%.

According to expert opinion, the shutdown was done to buy some time for the Government and health agencies to prepare for the impending crisis, and to boost up the methods of testing, tracing, and treating, along with preventing the spread of the virus in the community. However, the State mechanisms failed to foresee the havoc this lockdown brought with it. The larger question is- was the State able to boost up the methods or stop the virus from surging at the cost of the havoc caused?

4. "India Covid-19: PM Modi 'Did Not Consult' Before Lockdown", *BBC News*, Mar. 29, 2021, *available at*: https://www.bbc.com/news/world-asia-india-56561095 (last visited on Dec. 18, 2023).

III. LOCKDOWN AND MIGRANTS' CRISIS- FIRST WAVE

The aftermath of the immediate lockdown was catastrophic. India was not just fighting with the rising infection rates and hospitalizations, but also on other fronts. The shops were closed, factories were shut down, public transport was halted, and every other service which was deemed to be "non-essential" was stopped. This entire gamut of regulations put a huge dent in many lives, specifically of the poor, the marginalized, and the vulnerable sections of society. Uncertainty and chaos became the hallmarks of the then society.

As soon as the news of the closure spread throughout the country, the laborers, peddlers, hawkers, street vendors, domestic helpers, and other migrant workers started rushing back to their families and hometowns in far-off villages. They had all lost their jobs without prior notice, without even knowing the period of re-joining[5]. Fake news got rumored around the media which created panic among people. The anticipated scarcity of resources caused anxiousness among people residing away from their homes. This precariousness caused rush and stampedes at bus stops. Those who could not avail of any public transport hurried to their homes by taking the journey on foot or bicycles, carrying their spouses, children, and baggage on their heads. Some were seen climbing the oil tankers and water tankers, without any regard for their safety. The highways were clustered with people scurrying back to their homes. One of the studies[6] conducted by a Canadian researcher called out India as the biggest source of misinformation on Covid. This included home-based remedies such as lemon juice killing the virus, vaccinations generating magnetic properties in human beings, or the drinking of sanitizer would kill the germs inside the stomach, and the list is endless.

According to the Ministry of Labour and Employment, around 1.04 crore migrants were in transit during the period of the lockdown, maximum towards Uttar Pradesh, followed by Bihar and Rajasthan (as per the centralized database of the Government, as presented by the Labour Ministry on the first day of the Monsoon session of Lok Sabha).[7] The reporters and onlookers could do nothing but only feel the plight of the migrants, en route to their hometowns, hundreds of kilometers away, as they all suffered through starvation, bereft of food and water for many days at a stretch. It was a mass exodus, and many people lost their lives mid-way.

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5. Shilpa S Ranipeta, "Covid-19 Impact: A List of Companies that Have Laid off Employees Amid the Pandemic", *The News Minute*, May 25, 2020, *available at*: https://www.thenewsminute.com/news/covid-19-impact-list-companies-have-laid-employees-amid-pandemic-125473 (last visited on Dec. 18, 2023).
6. Chandrima Banerjee, "India World's Biggest Covid Misinformation Source: Study", *The Times of India*, Sept. 15, 2021, *available at*: https://timesofindia.indiatimes.com/india/india-worlds-biggest-covid-misinformation-source-study/articleshow/86229400.cms (last visited on Dec. 18, 2023).
7. Damini Nath, "Govt. Has No Data of Migrant Workers' Death, Loss of Job", *The Hindu*, Sept. 14, 2020, *available at*: https://www.thehindu.com/news/national/govt-has-no-data-of-migrant-workers-death-loss-of-job/article32600637.ece (last visited on Dec. 18, 2023).

The Government of India has no specific data to numerically establish the death of migrants. The statistics from the newspapers and reports show the death toll to around 971[8], of which the maximum happened due to starvation, financial distress, exhaustion, lack of medical care, road-train accidents, and suicides. Many parts of the country also witnessed cases of class-based discrimination. In one such incident that happened in Bareilly, Uttar Pradesh, a group of lower-class workers and migrants were sanitized in the most inhuman way possible. There were cases of the use of force and violence to regulate the conduct of migrants in an effort to reinstate law and order in society. This act by the State agencies is reflective of Niccolo Machiavelli's[9] thoughts on the infringement of conventional morality by a ruler as long as the the need and interests of the State are being fulfilled. This class-based treatment highlighted the failure of the State in maintaining the dignity of people, as guaranteed under Article 21 of the Indian Constitution. Citizens of the country became the "subjects'' in the hands of the State Authorities and were expected to display obedience by surrendering their rights for the greater welfare of the country[10]. This entire gimmick of lockdown became a humanitarian crisis.

The present Governmental regime did nothing to ferry them home safely. The Shramik Trains only started at the beginning of May, but already a huge death toll preceded this measure. The Ministry of Railways reported 80 deaths in Shramik Trains, due to the non-availability of food and water for the travelers. This poses a huge question on the capacity-cum-intention of the entire State system.

The media, which is called the fourth pillar of democracy, played a prominent role in creating panic among people, which led to extreme repercussions[11]. A small study by Bapaye and Bapaye[12] state that around 31% of the surveyed population used WhatsApp as a way to consume information on Covid, and less than 50% actually re-checked the authenticity of the information and forwarded the same information to the wider public. Fake posts, misleading data, and statistics, doctored videos, morphed images, multiple conspiracy theories on the origin and spread of the virus, hate-filled propaganda-oriented WhatsApp forwards, targeting minorities and marginalized groups

8. Swan, "No Data, No Problem: Centre in Denial About Migrant Worker Deaths and Distress", *The Wire*, Sept. 16, 2020, *available at*: https://thewire.in/rights/migrant-workers-no-data-centre-covid-19-lockdown-deaths-distress-swan (last visited on Dec. 18, 2023).

9. Niccolò Machiavelli, *The Prince* 1469-1527 (N.Y. :Penguin Books, New York, 1981).

10. Kiran Kumar Gowd, Donthagani Veerababu, *et.al.*, "Covid-19 and the Legislative Response in India: The Need for a Comprehensive Health Care Law" 21 *Journal of Public Affairs* (2021).

11. Katharina Buchholz, "Covid-19 and WhatsApp Fuel Surge of Fake News in India", *The Wire*, June 10, 2021, *available at*: https://thewire.in/tech/covid-19-and-whatsapp-fuel-surge-of-fake-news-in-india (last visited on Dec. 18, 2023).

12. Jay Amol Bapaye and Harsh Amol Bapaye, "Impact of WhatsApp as a Source of Misinformation for the Novel Coronavirus Pandemic in a Developing Country: Cross-Sectional Questionnaire Study." *JMIR Preprints* (2020).

through wild rumors, etc. were some of the various ways through which media was used to spread deluge of misinformation and scare the masses.

What is more intriguing is the discrimination between the efforts taken to bring back the citizens of the nation who were stranded abroad under the "Vande Bharat Mission", and the deficit of attention towards the ones who were stranded within the country. This is reflective of the idea that Skocpol, an American sociologist and political scientist, argued about the autonomous decisions of a State in order to stand the competition amongst the host of other States in the international system[13]. Skocpol has also argued how the State starts controlling the people and territory without any concerns towards the demands of the social groups and the society, at large. Moreover, in the Indian context, there was absolutely no thought given by the makers of the regulations about the potential threat of infections that the migrant travelers would be carried to their respective villages, thus increasing the overall positivity rate of the country. The lockdown proved to be a unilateral futile decision, which bore more losses than serving benefits, in terms of proportionality.

IV. FALL OF HEALTH SYSTEM- SECOND WAVE (DELTA VARIANT)

The year 2020 witnessed a surge and, subsequently, a fall in cases towards the end of it. Just when the economy and society were trying hard to revive themselves, multiple variants through the mutation of the virus started emerging all around the world- The alpha variant (first emerged in the United Kingdom), the Beta variant (in South Africa), the Gamma variant (in Brazil). The most deadly of all the mutations were the Delta variant that emerged in India in October 2020. However, the identification and publicization of this variant were delayed to a great extent by the Indian State, which brought disastrous effects not just in India but across the globe.

There had been multiple issues at the end of Government in the management of the outbreak. The early signs of the infection were ignored and treated with normalcy. In the wake of self-sufficiency as emphasized under the 'Atmanirbhar Bharat Abhiyan', the present regime failed to import many important compounds for genome sequencing. Consequently, the laboratories lagged behind in intimating the spread of the new variant. The other reason cited is the political management of the image of the country, which could have been ruined if numerous cases of the deadly variant had been reported at the beginning itself. As per the Bloomberg report, India's sequencing efforts were hurt by *"bureaucracy, politics and a sense of exceptionalism that we have conquered Covid and there is no need to worry about variants."*[14]

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13. Theda Skocpol, Dietrich Rueschemeyer, *et.al.*, *Bringing the State Back In* (Cambridge University Press, 1985).
14. Chris Kay and Dhwani Pandya, "How Errors, Inaction Sent Deadly Delta Variant Around the World in 2021", *The Print*, Dec. 29, 2021, *available at*: https://theprint.in/health/how-errors-inaction-sent-deadly-delta-variant-around-the-world-in-2021/790512/ (last visited on Dec. 18, 2023).

The flu spread like a wildfire in an open woody forest. Only after the hospital beds started getting occupied to a large extent, and almost every household started reporting the virus, did the Government announce to the world the situation in the country. This time no total lockdown was imposed, keeping in view the heavy economic damage that India underwent during the first wave. Cases were at their peak during the period of April and May, and the fatality rate rose to an all-time high. What became problematic was the mismanagement of this whole scenario by the State authorities. Lack of hospital beds, shortage of ventilators, non-availability and overpricing of essential medicines such as remdesivir and HCQs, overburdened medical staff, and unavailability of ambulances on time were some of the major problems that caused distress amongst the masses. Amidst all these issues- a host of election rallies with mass gatherings brought the statistics of the virus to lakhs of cases in a single day with thousands dying because of the lack of immediately required services. The health infrastructure and the entire system failed by not being able to provide something as basic as oxygen. Dead bodies queued up the cremation and burial grounds and many were found floating on the River Ganges. It was a nightmare marked by helplessness, the magnitude of which can not be compared with any other country-rich or poor.

V. THE QUESTION OF DIGNIFIED DEATHS

The highest form of injustice was not just meted on the ones who could not access the healthcare institutions, but also to the ones who lost their lives as a repercussion of a mismanaged system. When the Union Minister of the State for Health publically denied any death due to lack of oxygen during the second wave, it was a mockery of the deceased and of the emotions of their surviving family members[15]. It not only raised the issue of denial of something as important as a person's life, but also the lack of accountability on the part of the State for the restricted oxygen supply. It is a question on the "welfare state" model that India apparently claims to follow, where every citizen has a stake in the affairs of the State, and the State is expected to be committed to the welfare of each individual.

During the proceedings of Rajya Sabha, the RJD MP Prof. Manoj Kumar Jha[16] appealed for a public apology on National television on behalf of the entire assembly to the ones who suffered an undignified death owing to the misgovernance during the pandemic. He raised a very pertinent question in the Assembly. What is the failure of the system? Nothing, but the failure of the people behind the system! Not even

15. Ruben Banerjee, "Oxygen Deaths: Reality is the Biggest Casualty in Govt Denial", *Outlook*, July 21, 2021, *available at*: https://www.outlookindia.com/website/story/opinion-denial-of-oxygen-deaths-is-disrespect-to-those-who-died/388923 (last visited on Dec. 18, 2023).

16. Abhishek Anand, "Deaths During Second Wave Remains a Living Document of Our Failure: Manoj Jha in RS", *The Leaflet*, July 27, 2021, *available at*: https://theleaflet.in/deaths-during-second-wave-remains-a-living-document-of-our-failure-manoj-jha-in-rs/ (last visited on Dec. 18, 2023).

acknowledging the COVID deaths is the utmost brutal definition of "undignified death", and is the "living document of our failure".

Not just the failure to provide something as basic as oxygen, but the State also failed to dispose of the dead bodies in a dignified manner. The infected dead bodies of the patients were found lying around the hospital premises, unattended, and not taken care of[17]. This brutal treatment was worse than the treatment meted out to the animals. There were no cremation or burial grounds available, bodies kept on piling over each other with little regard towards the sentiments of their loved ones. The Constitution of India recognizes the "Right to dignified life" as an important Fundamental Right under Article 21, but on the same grounds, it also recognizes the "Right to Dignified death" (Common Cause (A Regd. Society) v. Union of India & Anr.)[18] as an equally important fundamental right, which was seen to be violated during this period.

Professor Jha expressed his grief by asserting, "the floating bodies in the Ganga…If there's a need for dignity in life, there's an even greater need for dignity in death. We have witnessed undignified deaths. And if we don't address this, our future generations will not forgive us."

While death is a natural outcome of some pandemics or disasters, it is also important to note that State Institutions have a role in protecting the rights of a person, which do not end at the death of a person itself. Violating the basic right of decent burial or cremation of the deceased is the utmost kind of injustice that can be meted out to a person. State institutions must mitigate the damage, failing which the State involves itself in "passive injustice"[19] to its citizens, as argued by Judith N. Shklar. She states that "..we must recognize that the line of separation between injustice and misfortune is a political choice."[20] Such political choices are needed to be made by the Authorities and the citizens as a part of their responsibilities in dealing with the suffering of others. This was clearly lacking on the part of the State.

The question that emerges out of this discussion is- what were the reasons for the breakdown of India's health system? Plenty of reasons came forward such as lack of health coverage for more than half of the Indians, under-funded primary health institutions, over-priced private hospitals, overworked doctors, nurses, and sanitation

17. Murali Krishnan, "Covid-19 patients treated worse than animals, bodies found in garbage: Supreme Court",*Hindustan Times*, June 12, 2020, *available at*: https://www.hindustantimes.com/india-news/covid-19-patients-treated-worse-than-animals-bodies-found-in-garbage-supreme-court/story-hQFignge7R9PKvpoRjW3kM.html (last visited on Dec. 18, 2023).
18. Devina Srivastava, "The Right to Die with Dignity: The Indian Supreme Court Allows Passive Euthanasia and Living Wills" *Oxford Human Rights Hub* (2018).
19. Murali Krishnan, "Covid-19 patients treated worse than animals, bodies found in garbage: Supreme Court", *Hindustan Times*, June 12, 2020, *available at*: https://www.hindustantimes.com/india-news/covid-19-patients-treated-worse-than-animals-bodies-found-in-garbage-supreme-court/story-hQFignge7R9PKvpoRjW3kM.html (last visited on Dec. 18, 2023).
20. Judith N. Shklar, *The Faces of Injustice* (Yale University Press., 1990).

workers, black marketing of essential pharmaceuticals, and the list goes endless. Despite the boastful marketing of Universal Care and the Ayushman Bharat scheme, the larger concern is that the Indian State could not fulfill its duty during an event of a crisis. In fact, the Indian Budget gives more funding and primacy to defense infrastructure over the health infrastructure. Protecting the borders of the country captures the primary place, and the protection of the residents takes a backseat. In the larger context, the failure of the health system showcases the failure of the entire State machinery that exposed the deep fault lines present in the system.

VI. STATE MODEL- SUCCESS/ FAILURE?

The success and failure of any model depend not only on the policy-making and implementation but also on the outcome of the policies. As Skocpol argues that the idea of policymaking involves not only 'deciding' but also 'knowing'[21], the policymakers are required to know about the aspirations of the people who are going to be governed by those policies. Only then should they decide on the feasible course of action for collective welfare. This aspect of governance was largely missing in policy formulation during the course of the pandemic. There were no guidelines issued, no policies prepared, and no preparations made before the imposition of a "junta curfew", followed by a National lockdown.

The migrant crisis not only caused social disruptions but also economic disruptions. While most of the privileged section of society was busy with banging plates, lighting candles, and taking part in the 'ceremonial pomp and shows', as encouraged by the leader of the Nation, there were people who were starving and dying in some "unchartered territory", away from the consciousness of the State. It was a collective failure of society, as a whole. If a Bollywood celebrity could arrange hundreds of buses for easing the travel of migrants[22], the State, which has the capacity to deploy its resources manifold times, could have ferried the migrants to their respective hometowns in a very easy and safe manner, had the proper planning been done before imposing a sudden lockdown. The question that needs to be asked in the context of the casual behavior of the Government toward its vast workforce is- whether the State had intentions to follow such conduct or whether the State was complete of its own will.

The statistics published by the Government were considered to be manipulated by many health agencies and experts. If the situation in the first wave, as highlighted by

21. Theda Skocpol, Dietrich Rueschemeyer, *et.al., Bringing the State Back In* (Cambridge University Press, 1985).

22. Priyanka Sharma, "NewsEntertainmentBollywoodSonu Sood Organises Buses for Migrants Stuck in Mumbai Premium Sonu Sood Organises Buses for Migrants Stuck in Mumbai", *The Indian Express*, May 24, 2020, *available at*: https://indianexpress.com/article/entertainment/bollywood/sonu-sood-organises-buses-for-migrants-stuck-in-mumbai-6404751/ (last visited on Dec. 18, 2023).

the statistics, was so perfect, why was the same strategy of lockdown not deployed during the second wave of the Delta variant when India became the most infected country in the world surpassing the USA, China, and Italy, in tally. Why were the citizens left unprotected and abandoned in death? Did the sagging economy become more important than the health and lives of the citizens? Why were the National decisions made keeping in mind the international standing of our country, rather than taking a cue from the domestic sufferings? Was there a challenge to the sovereignty of the Indian State from the Global World which itself was grappling with the pandemic? These are the pertinent questions that need concrete discussions but are simply being ignored, citing the Government protocols. Many laws were superseded at the cost of the welfare of the citizens. The boundaries of separation of power among different organs of the government were blurred. The Prime Minister was answerable for all these questions as the head of the country, and he acknowledged on 28th March 2020, in his "Mann ki Baat" radio program, by responding that, "*the lockdown had affected our lives, especially the poor people, but tough measures were needed to win this battle.*"[23] for which he asked for an apology – but did we actually win this battle, or is society being falsely made to believe so?

The SARS Commission of Ontario published a report after the 2003 outbreak of the Severe Acute Respiratory Syndrome (SARS) virus, highlighting its major learnings and recommending certain lessons for the future. The final report of the SARS Commission, published in the year 2006, highlighted the debilitated and neglected public health system during the 2003 SARS outbreak[24]. The absence of any pandemic plan, and the lack of adequate resources, compounded by the total neglect of the safety of workers led to the mistrust of citizens in the capability of the State to safeguard their lives and livelihoods. The question is- did we learn from history? Accountability is established when we know whom to be on the lookout for and where during times of crisis. We clearly had a missing accountability and responsibility system.

The Department-related Parliamentary Standing Committee on Health and Family Welfare presented its 123rd Report on the subject "The outbreak of pandemic Covid-19 and its management" in Rajya Sabha on 2nd February 2021 (way before the delta variant cases spiked). The Report clearly highlighted (chapter 2, para 37 and 38) the need to cap the pricing of non-invasive oxygen cylinders as well as, encouraged the Government to ensure more production of oxygen to cater to the requisite demand of

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23. "I Apologize for Taking These Harsh Steps, but These Tough Measures are Needed to Win This Battle: PM Narendra Modi on Mann Ki Baat", *OpIndia*, Mar. 29, 2020, *available at*: https://opindia.com/2020/03/mann-ki-baat-pm-modi-apologise-lockdown-harsh-measures-necessary-coronavirus-covid-19/ (last visited on Dec. 18, 2023).

24. Health Canada. SARS Epidemiologic Summaries: April 26, 2003. SARS among Ontario health care workers.

the hospitals[25]. Despite this recommendation by the committee, why did the Government not make adequate arrangements for the production and supply of oxygen when the entire Nation faced scarcity?

In the sixth chapter of the same report that dealt with the management of post-covid complications, the Committee suggested the Government open up rehabilitation centers ("multi-disciplinary care service system") for treating post-covid symptoms of the patients. However, there is no tangible or intangible evidence to display the acceptance of this suggestion by the policy-makers. The unilateral decisions of the Government, in the phase of the breakdown of the health system, pose some serious questions about whether the sovereignty of India lies in its Supreme Law of the Land or in just one organ of the Government, acting on behalf of the entire system.

Despite the breakdown of the health system in the year 2021, the 2022-23 budget has only made a mere 0.2% increase in the total budgetary allocation to the Ministry of Health and Family Welfare[26]. The role played by AYUSH (comprising of alternative treatments such as Ayurveda, Yoga, Unani, Naturopathy, Siddha, Sowa-Rigpa, and Homoeopathy) system in treating the symptoms of the virus during covid and post-covid has been critical, and was acknowledged by the aforementioned Committee as well. However, natural treatment has not been given its due share of credit, neither in this year's budget allocation to the Ministry of AYUSH, nor in the Research and Development of traditional medicines as a whole.

The larger question that should be flagged is whether this battle had skewed consequences, and did we actually "win the battle" or not. Citizens were asked to follow "covid-appropriate behavior", but what was the covid-appropriate behavior for the State- no regulation or statute described that. Did the State enjoy complete autonomy to the extent of becoming an authoritative State which ultimately succeeded in repressing the needs of society? Why was the PM CARES Fund constituted despite the Prime Minister's National Relief Fund (PMNRF)[27] in place? Even if the new Fund account was opened to expand the capacity of the State in terms of financial resources, why were the actions of the Government kept outside the ambit of audits and approval? Was the Federal Government and the Local Government given their deserved autonomy to make decisions or the idea of "cooperative federalism" was allowed to get

25. Rajya Sabha. "THE OUTBREAK OF PANDEMIC COVID-19 AND ITS MANAGEMENT." *Rajya Sabha*, 2 Feb. 2021, *available at* https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/14/142/123_2021_2_13.pdf.

26. Demand Numbers 46 and 47, Demand for Grants, Ministry of Health and Family Welfare, Union Budget, 2022-23; PRS.

27. Amrita Nair, "PM Cares Must Be Accountable to Rigorous Scrutiny Like Others; Modi Govt is Avoiding Transparency", *National Herald*, Dec. 18, 2021, *available at*: https://www.nationalheraldindia.com/opinion/pm-cares-must-be-accountable-to-rigorous-scrutiny-like-others (last visited on Dec. 18, 2023).

compromised? Was the congregation of thousands during *Maha Kumbh mela* given an equal status of being a "covid hotspot" as was done for Tablighi Jamaats who assembled at Nizamuddin Dargah? Why were the election rallies permitted even during the strict restrictions on people's mobility? On what basis did the Government of the day try to manipulate the statistics by stating that no lives were lost due to the lack of oxygen in the Nation or by under-reporting the deaths? Did the emergency-like imposition on the people of India reflect the country's fragile democracy which got uprooted in the testing times such as this crisis?

These questions need to be addressed by something more than manipulated statistics, ceremonial and cultural rituals, and the silence of the Government in the name of protocols. To establish India as a democratic state of checks and balances, these questions need to be answered on public platforms, because the right to information cannot be deprived of the people of a constitutionally democratic state.

The idea of governance needs to be substantially problematized here. The Central Government, through its Union budget for 2021-2022, highlighted its notion of "minimum government and maximum governance". However, it massively failed to stand on its own philosophy during the cataclysmic period of the pandemic. The aspect of good governance, characterized by transparency, accountability, rule of law, responsiveness, public participation, equity, and inclusiveness, was misplaced. Instead of being a facilitator, the State turned into an arbitrary decision-maker. The decisions taken were skewed towards capitalistic and political preferences. In choosing these preferences, as Nordlinger[28] argues, the State authorities were either willing to let go of the support of society or did not expect any societal action to be used against them. This is how the State capitalized on the inherent capacity to maneuver social preferences into its own policy preferences.

The State's role during a period of crisis is indispensable and cannot be underestimated. State actions cannot be fully devoid of any personal interest, as argued by Skocpol. However, the State's actions cannot be absolutely autonomous. It will always have to strike a balance between the interests of the capitalist class and the general interest of society, to validate its service towards the National interests. Otherwise, the democratic state transforms into a tyrannical state. The entire episode of single-handedly trying to manage the pandemic showcased the extreme level of unchecked centralization of power and India's 'high statelessness, as conceptualized by J.P.Nettl.[29] It has rightly been observed that this course of the pre-pandemic era began with the "Social Contract" theory of Locke which was based on the trust between the ruler and the ruled, passed through the "General will" of Rousseau for

28. Eric A. Nordlinger, *On the Autonomy of the Democratic State* (Lightning Source, 2010).
29. J.P. Nettl, "The State as a Conceptual Variable" 20 *World Politics* 559–92 (1968).

collective welfare, and ended up with the theory of Hobbes stating the wilful submission of the citizens to the sovereign, in the milieu of fear inflicted by the pandemic.

VII. CONCLUSION

The period between the end of 2019 and the beginning of 2022 was marked by havoc and global disruption caused by the COVID-19 Pandemic. Steve Matthewman and Kate Huppatz[30] brought our attention to how the entire discourse on the pandemic is produced and the vulnerabilities are created. For some, it becomes a game of opportunities, known as "disaster capitalists", while others suffer the gravest consequences owing to their marginalized position in society. A case brief Justin Pickard et. al[31] mentions how the pandemic affected the marginalized community, which largely went invisible in the whole trajectory of the different waves of Covid. This pandemic got compounded by various other problems such as cyclones, floods, heatwaves, and other disasters. This pandemic got communally colored within no time when people started fighting amongst each other. This further accentuated the social and cultural bias in the already devastated society. Justin Pickard et. al mentions the slow eradication of democracy by stating how access to justice was hampered, the police got immense power over the people, the State apparatus got legitimacy to become surveillance machinery, the voice of the minorities was suppressed, dissent had no place and those who tried were sent to prisons under the extraordinary preventive detention laws. Policies were skewed and power equations came to prominence.

The entire phase of covid showcased the dearth of institutional dynamism, a culture of servility towards the Government and State agencies, the "medical-industrial complex" in India, the blurred lines of authority and accountability, and the failure of the entire system which worsened the living conditions of the vulnerable class and further polarised them from the upper privileged section. The Oxfam Report on India named "The Inequality Virus" explicitly stated that informal workers were hit the hardest during the pandemic and the unskilled laborers of India would take at least 10,000 years to earn what India's elite capitalists like Mukesh Ambani earned in an hour during the pandemic.

In fact, the experts in their respective fields of health, management, and policy development could not raise critical questions for fear that they would end up thwarting their careers. Autonomy of the state is reflected in the areas where the State enjoys an exclusive role. When a country is crumbled down by a crisis of such intensity, then the onus of resurrection falls on the entire system- which comprises the Government,

30. Steve Matthewman and Kate Huppatz, "A Sociology of Covid-19" 56 *Journal of Sociology* 675–683 (2020).

31. J. Pickard, S.Srivastava, *et.al.*, "In-Focus: Covid-19, Uncertainty, Vulnerability and Recovery in India" *Social Science in Humanitarian Action* (2020).

the bureaucracy, the civil society, the social groups, the public, and the individuals. By the virtue of this reasoning, the Government had no exclusive and absolute autonomy to make decisions simply based on a single institution's rationality. Instead of determining the course of actions unilaterally, it ought to have involved all the stakeholders including the states and the Union Territories of the Nation, thus upholding the sanctity of the Quasi-federal nature of the Indian Constitution.

The right to health enshrined under article 21 of the Indian Constitution should have been practiced not just in words, but also in spirit. The absence of this spirit and the glaring lapses in the management of public health emergencies of such magnitude should be acknowledged first, and then should be taken as an opportunity to limit the autonomy of the State, with a special focus on its informal workers, vulnerable classes and the overhaul of the entire health infrastructure system. A famous quote by George Santayana should be noted that "*those who do not learn from the past are doomed to repeat it*". This harrowing experience of the pandemic calls for strengthening the capacity of the State in terms of rules, policies, legislations, proper coordination and communication, adequate surveillance, the capacity of laboratories, preparedness of hospitals, management of human resources and logistics, capacity building, and risk-communication. Only then can we begin to dream of an India being established on the principles of Constitutional Democracy in its truest sense.

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6

The Legalities of Modern Medical Emergency Service in India and The Role Played By the Medical Professionals

Prantik Chakraborty[1]

I. INTRODUCTION

Healthcare as a sector plays a pivotal role in our society. It provides the wellbeing of people through diverse services rendered by medical professionals from even before a child is born out of a mother's womb till the final goodbye to the world. The vast array of services includes health check-ups, diagnostics, treatment meted out through oral and intravenous medicines, surgeries and various forms of therapies. The entire process involves humans and humans by their very nature, is bound to prone to conflicts and when there is a possibility of conflicting situations, the law comes into the picture. Thus, healthcare as a profession is governed by various laws to ensure that the high standards of medical needs are maintained and sustained. It is also indispensable that both the doctor's and the patient's interests are secured. It is this nuisances of the laws in India aided by the responsibilities of medical practitioners, the landscape of the medico legal path is created.

The "Indian Medical Association' administered "Doctor's Oath" that is administered to each and every qualified doctor in India makes a doctor solemnly pledge to "consecrate their lives to service of humanity." When someone pledges to dedicate their lives to humanity, they are nothing but incarnations of God on earth saving lives on a real time basis in intensive care units, in labour rooms and on surgery tables each and every day.

II. LAW, ETHICAL STANDARDS & MEDICAL PRACTITIONERS

The legalities governing medical services in India are vast and intricate. Some of the key legal instruments in India include the Indian Medical Council Act 1956, The Drugs and Cosmetics Act 1940, The Medical Termination of Pregnancy Act 1971, The

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Transplantation of Human Organs Act 1994, Mental Healthcare Act 2017, and the Clinical Establishment Act among others.

The Indian Medical Council Act primarily regulates professional conduct and promotes ethical standards. It empowers the Medical Council of India (MCI), which establishes guidelines for medical education, provides professional registrations, and monitors medical ethics.

The Drugs and Cosmetics Act sets regulations for the import, manufacture, distribution, and sale of drugs and cosmetics. The Act protects patients from spurious and substandard drugs and ensures they receive products of assured quality.

Medical services related to reproductive health are largely regulated by the Medical Termination of Pregnancy Act and the PC & PNDT Act whereas such Acts control abortion practices, prohibit prenatal sex determination to prevent female foeticide, and regulate IVF clinics.[2]

The Clinical Establishments (Registration and Regulation) Act, 2010 is a central legislation in India that aims to regulate and standardize the registration and functioning of clinical establishments.[3] The Act provides a framework for maintaining minimum standards of healthcare services, patient safety, and accountability across various types of healthcare facilities.

The Mental Healthcare Act aims to protect the rights of persons with mental illness and promote their access to mental healthcare. Medical professionals operate within this legal framework. They have an ethical obligation to understand and follow the legislation related to their practice, ensuring the best standard of care. Medical professionals adhere to the guidelines outlined by the MCI, ensuring high ethical standards and patient care. The MCI's code of ethics stipulates principles like patient autonomy, confidentiality, beneficence, and non-malificence, which guide a medical professional's interaction with patients. Despite the comprehensive legal framework, challenges persist. The physician-patient ratio in India is still not at par with WHO recommendations[4], leading to healthcare access disparities. Medical negligence cases highlight the need for stronger enforcement of ethical standards. The rise of telemedicine, digital health records, and AI in healthcare also necessitates legal adaptations to address privacy, data security, and ethical issues.

Nonetheless, the role of medical professionals in navigating this complex legal landscape cannot be underestimated. They are pivotal in ensuring the adherence to the

2. D. Sudhir, *The Pre-Conception & Pre-Natal Diagnostic Act* (Asia Law House, Delhi, 7th edn., 2023).
3. The Clinical Establishments (Registration and Regulation) Act, 2010 (Act 23 of 2010).
4. Raman Kumar and Ranabir Pal, "India achieves WHO recommended doctor population ratio: A call for paradigm shift in public health discourse" 7(5) *Journal of family medicine and primary care* (2018).

law, promoting patient safety, and delivering the highest standard of healthcare services in India. As the medical field evolves, so will the legal framework guiding it, and the professionals who uphold it.

In an emergency, prompt and high-quality healthcare might be the distinguishing factor between life and death. Article 21 of the Indian Constitution of 1950 guarantees everyone the right to life. This includes the right to receive emergency medical care. All governments of states have a responsibility to protect the lives of individuals seeking medical treatment. Furthermore, all medical experts and doctors in public as well as private hospitals have an obligation and duty to the community's health. The Indian Supreme Court has ruled that the right to life guaranteed by Article 21 includes the right to health and medical care.[5] The right to life includes the right to live a healthy life and to use all of the human body's facilities.

III. LEGALITIES & JUDICIAL DECISIONS IN EMERGENCY MEDICAL CARE BY MEDICAL PRACTITIONERS

No patient can be denied emergency medical care because they cannot afford it. Emergency medical attention should be made mandatory, and all levels of quality and care must be maintained. Doctors cannot risk a patient's life while waiting for expenses to be paid. A physician shouldn't deny treatment to an individual arbitrarily. It is only possible if the doctor lacks the expertise to treat the ailment, in which case the doctor must send the patient to a different qualified doctor. While referral is permissible in most cases, in an emergency, the physician ought to treat the patient. A doctor is free to treat whoever and when he wants. However, in a situation of emergency, he has to act when summoned. Doctors ought not to disregard or withdraw from a case without providing prior and proper notice to the patient's carers.[6]

The Supreme Court of India examined medico-legal cases for the first time in the case of Pt. Parmandand Katara vs. Union of India and Ors[7]. In this case, an outraged citizen filed a Public Interest Litigation under Article 32 of the Indian Constitution of 1950.[8]

The petition was submitted in reaction to a news article about a scooterist who had been struck by a car and died as a result of a lack of medical attention. Following the collision, the scooterist was rushed to the nearby hospital, but was turned away and transferred to a facility 20 kilometres distant that was licenced to handle medico-legal situations. While being taken to the second hospital, the scooterist dies. In this judgment, the Supreme Court of India declared for the first time that Article 21 of the

5. *Paschim Banga Khet Mazoor Samity v. State of West Bengal* AIR 1996 4 SCC 37.
6. Y. V. Rao, *Law Relating to Medical Negligence* (Asia Law House, Delhi, 3rd edn., 2019).
7. AIR 1989 SC 2039.
8. *Ibid*

Indian Constitution encompasses the right to emergency medical care and explained the significance of the golden hour. The court also held that the right to medical treatment is a fundamental right under Article 21 of the Indian Constitution, and it is the duty of every hospital, whether government or private, to provide immediate medical aid in emergency cases. The court emphasized that the right to life cannot be denied on account of administrative or jurisdictional technicalities.

The Supreme Court has ruled that it is both the citizen's right and the state's obligation to protect life, and doctors at government hospitals are thus compelled to provide medical help to save life. This was the Supreme Court of India's first move to preserve people' rights under Article 21 of the Constitution.

In *Paschim Banga Khet Mazdoor Samity* v. *State of West Bengal* (1996)[9], a laborer injured in an accident was denied medical treatment due to an ongoing strike by doctors. The court held that the right to life under Article 21 includes the right to emergency medical treatment, and doctors cannot abandon their professional obligations, even during strikes or protests. The court emphasized that the right to strike should not infringe upon the right to life and directed the state government to take necessary measures to ensure uninterrupted medical services.

The Supreme Court ruled in *Consumer Education and Research Centre* v. *Union of India*[10] that prompt medical help is an intrinsic aspect of the right to life under Article 21. Social justice, as a means of ensuring that life is meaningful and viable with human dignity, needed the state to give workers with the means and chances to achieve a basic standard of health, economic stability, and dignified living. The Court stated that the worker's health and strength were an essential aspect of the right to life. Denial of it deprives the workers of the finer aspects of life, in violation of Article 21.

Following the above mentioned serious issue was brought before the Supreme Court of India in *Paschim Banga Khet Mazdoor Samiti* v. *State of West Bengal*, in which the victim, an agricultural labourer, fell from a train and was denied emergency medical aid in five public hospitals before being admitted to a private hospital where he had to pay exorbitant fees. The victim subsequently sued the Supreme Court, claiming damages for being denied medical help by public hospitals, which amounted to a violation of Article 21 of the Indian Constitution. The Supreme Court was asked to rule on the accessibility of amenities in government hospitals for the treatment of those who had suffered severe injuries. During the pendency of this writ case before the Supreme Court, the State Government decided to conduct a thorough investigation by constituting an Enquiry Committee. As a result, when such bad situations occur, human beings are unable to fix them. The Supreme Court ruled that denying emergency medical attention violates Article 21 of the Indian Constitution. As a result, it is the

9. Supra Note 5

10. M P Jain, *Outlines of Indian Constitutional History,* (Lexis Nexis, Chennai, 8th edn., 2022).

people' fundamental right to get immediate medical attention without any conditions. The Supreme Court added that there is no doubt that finances are required to provide these facilities. Nonetheless, it must be overlooked that the State has a constitutional commitment to provide basic medical care to the people. Whatever is required for this objective must be completed. In the midst of this, the Supreme Court advised the state to establish a Central Bed Bureau to assure that there is of a bed in an emergency. This service should be maintained in state-run hospitals, where a centralised communication system would be established. This method will ensure that patients are instantly referred to a hospital equipped with treatment-related beds. Most deaths in India might be avoided if this is done, because many patients die due to a lack of beds or refusal of emergency medical assistance.

According to a report of the Central Government, the leading cause of mortality in India is cardiovascular disease, which accounts for approximately 23.3% of all deaths. Several reports have emerged during this epidemic that many patients are being denied emergency medical care whether they have suffered a stroke or are in critical need of dialysis, chemotherapy, or any other emergency medical care.[11] This has serious repercussions, such as death or chronic bodily impairment. This pandemic has undoubtedly brought everyone to their knees around the world, but the medical condition in India has been affected the most as it is still not legislated.

In this context, the Consumer Protection Act of 1986 includes doctors. The Indian Medical Association was adamantly opposed, arguing that doctors should not be included by the Consumer Protection Act of 1986. Though it is the doctor's prerogative to treat whomever he wants, it is his moral duty to provide emergency medical care to anyone who is in urgent need of it.[12]

The Supreme Court of India eventually decided this question in the case of *Indian Medical Association* v. *V. P. Shanta*,[13] holding that patients who seek medical care are included in the definition of the Consumer, and healthcare is defined as a Service under the Consumer Protection Act. Though including healthcare services within the scope of the Consumer Protection Act does not fulfill the objective because there are situations when the patient does not have a guardian to look after them and requires emergency medical care. As a result, emergency medical care is denied.

In another noted case *Sebastian M. Hongray* v. *Union of India & Ors* on 23 April, 1984,[14] involving the denial of medical treatment to Sebastian Hongray, a tribal person who was bitten by a snake and required immediate medical attention. The court held

11. Registrar General, India, *Causes of Death in India 2010-2013, available at*: https://censusindia.gov.in/vital_statistics/causesofdeath.html, (last visited on Oct. 8,2023).
12. R K Bag, *Law of Medical Negligence and Compensation* (Eastern Law House, Delhi, 3rd edn., 2019).
13. Supra note 6
14. Supra note 12

that it is the duty of the state and its agencies to ensure the availability of essential medical facilities, particularly in remote areas. The court emphasized that the right to life includes the right to access healthcare, and any denial of medical treatment constitutes a violation of fundamental rights.

These case laws highlight the significance of providing timely medical treatment to individuals in emergency situations. They establish the duty of hospitals and healthcare professionals to prioritize patient care over administrative formalities, jurisdictional issues, or strikes, emphasizing the right to life and the duty to save lives in medical emergencies.

Emergencies also exist in sexual violence cases. The law mandates immediate medical treatment to child victims who have experienced sexual violence. This should be delivered within 24 hours after receiving the report. A hospital, doctor, or other medical establishment offering such care cannot seek a legal order before beginning treatment. It is the doctor's responsibility to protect the child's privacy and personal information. Furthermore, all therapies must be attended by a guardian or parent whom the child trusts.

In the event of adult victims of sexual assaults, all hospitals, public or private, must give free first-aid or medical treatment. Failure to observe these regulations is punishable by up to a year in prison and/or a fine. The presence of a woman throughout therapy and the consent of the individual receiving treatment or her legal guardian are required whenever medical practitioners are dealing with a sexual assault survivor.

IV. DOCTOR'S PROTEST & STRIKES

In recent years, the state of West Bengal, including its capital Kolkata, has witnessed several instances of doctors' strikes and protests.[15] These strikes have been primarily aimed at highlighting concerns related to the safety and security of doctors, as well as addressing other grievances within the healthcare system. While I don't have specific information on the most recent events as my training data only goes up until September 2021, I can provide a general understanding of the situation.

The primary reasons behind doctors' strikes in West Bengal have included:

13. Theda Skocpol, Dietrich Rueschemeyer, *et.al., Bringing the State Back In* (Cambridge University Press, 1985).
14. Chris Kay and Dhwani Pandya, "How Errors, Inaction Sent Deadly Delta Variant Around the World in 2021", *The Print*, Dec. 29, 2021, *available at*: https://theprint.in/health/how-errors-inaction-sent-deadly-delta-variant-around-the-world-in-2021/790512/ (last visited on Dec. 18, 2023).
15. West Bengal doctors' strike live: IMA declares nationwide strike on Monday; doctors refuse Mamta's offer of talks,*Times of India*, June 14,2019, *available at*:https://timesofindia.indiatimes.com/city/kolkata/west-bengal-doctor-strike-live-agitation-continues-mamata-banerjee-alleges-bjp-conspiracy/liveblog/69771287.cms (last visited on Oct.8, 2023).

1. Violence against Doctors: One of the key triggers for doctors' strikes in the state has been incidents of violence against healthcare professionals. Instances of attacks on doctors by patients' families or attendants have led to widespread outrage within the medical community.
2. Lack of Security: Doctors have raised concerns regarding the lack of adequate security measures in hospitals, making them vulnerable to attacks. They have demanded increased security provisions to ensure their safety while delivering medical services.
3. Better Working Conditions: Doctors have voiced grievances related to long working hours, excessive workload, and inadequate infrastructure in hospitals. They have called for improvements in the overall working conditions and facilities available to them.
4. Medical Negligence Allegations: Doctors have sometimes gone on strike in response to legal action or allegations of medical negligence against them. They have demanded protection from frivolous complaints and a fair mechanism to address genuine cases of negligence.

During doctors' strikes, medical services in the affected hospitals and healthcare institutions are often disrupted, leading to inconvenience and distress for patients. Efforts are made by authorities to resolve the issues through dialogue and negotiation with the striking doctors' associations.

The state government and concerned authorities have taken various measures to address the concerns raised by doctors. These include the implementation of stricter laws against violence on healthcare professionals, enhancing security arrangements in hospitals, and initiating dialogues with doctors' associations to find amicable solutions.

It is important to note that strikes by doctors have implications for patient care and can pose significant challenges in the healthcare system. It is crucial for all stakeholders, including the government, healthcare professionals, and patients, to engage in constructive dialogue to address the concerns and ensure the provision of quality healthcare services while safeguarding the rights and safety of doctors.

Medical emergencies demand immediate and specialized care to save lives and prevent further harm. In India, where the population is vast and diverse, doctors play a crucial role in responding to emergencies and ensuring prompt and effective treatment. We are now exploring the significant responsibilities and challenges faced by doctors in medical emergencies in India, emphasizing their vital role in providing timely and life-saving interventions.

1. Expert Medical Assessment: Doctors possess the knowledge, skills, and experience necessary to assess and diagnose medical emergencies accurately. Their expertise allows them to quickly evaluate the severity of the situation,

identify the underlying causes, and make critical decisions regarding the appropriate course of treatment. By applying their medical knowledge and clinical judgment, doctors play a pivotal role in promptly and accurately assessing emergencies, ensuring that patients receive the appropriate care.

2. Decision-Making Under Pressure: Medical emergencies often occur in high-stress environments where time is limited, and quick decisions must be made. Doctors face the challenge of making critical decisions while considering the patient's condition, available resources, and potential risks. These decisions can involve selecting the most appropriate treatment options, administering life-saving interventions, or coordinating the transfer of patients to specialized facilities. The ability of doctors to make informed decisions under pressure is vital in optimizing patient outcomes during emergencies.
3. Coordination and Team Leadership: In medical emergencies, doctors are responsible for leading and coordinating a multidisciplinary team of healthcare professionals. They collaborate with nurses, paramedics, and other medical staff to provide efficient and coordinated care to patients. Doctors must effectively communicate with team members, delegate tasks, and ensure that everyone works together seamlessly to deliver timely interventions. Their leadership and coordination skills are essential in managing complex emergency scenarios and optimizing patient care.
4. Emergency Medical Procedures: Doctors are trained in various emergency medical procedures that are critical for saving lives. From cardiopulmonary resuscitation (CPR) to airway management, defibrillation, and advanced life support techniques, doctors possess the expertise to perform these interventions swiftly and effectively. Their proficiency in emergency procedures enables them to stabilize patients, provide life support, and initiate further treatment until the patient can be transferred to appropriate facilities for specialized care.
5. Communication with Patients and Families: Effective communication is crucial in medical emergencies to provide information, reassurance, and support to patients and their families. Doctors play a vital role in explaining the situation, treatment options, and potential outcomes to patients or their caregivers. They must display empathy, compassion, and clarity in their communication, considering the emotional stress and anxiety experienced by those involved. Doctors' ability to establish trust and effectively communicate fosters a sense of confidence and facilitates better decision-making during emergencies.
6. Continuity of Care and Post-Emergency Management: Beyond the immediate response to a medical emergency, doctors also play a role in ensuring continuity of care and managing post-emergency phases. They coordinate with other

healthcare providers, specialists, and rehabilitation services to facilitate a smooth transition for the patient from the emergency setting to further treatment or recovery. This involves follow-up care, monitoring, and providing necessary medical guidance to ensure the patient's long-term well-being.

V. ROLE OF HEALTHCARE INSTITUTIONS IN PROVIDING EMERGENCY MEDICAL CARE

In India, hospitals play a crucial role in providing emergency medical care and saving lives. The legal framework governing the role of hospitals in medical emergencies is based on various statutes and guidelines. We are exploring the key legal provisions that define the responsibilities and obligations of hospitals during medical emergencies in India.

1. Duty to Provide Emergency Medical Care: Under Indian law, hospitals have a legal duty to provide emergency medical care to individuals in need, regardless of their financial status, caste, religion, or any other discriminatory factors. This obligation is derived from the constitutional right to life and personal liberty guaranteed by Article 21 of the Indian Constitution. The Supreme Court of India, in various landmark judgments, has emphasized the duty of hospitals to provide prompt and adequate emergency medical care.
2. Public and Private Hospital Obligations: Both public and private hospitals are obligated to provide emergency medical care. Public hospitals, being funded by the government, have an additional responsibility to provide free emergency treatment to those unable to afford it. Private hospitals are required to establish an Emergency Medical Services (EMS) system and ensure that it operates efficiently to respond to medical emergencies.
3. Standard of Care: Hospitals are expected to maintain a reasonable standard of care when providing emergency medical services. This includes employing qualified medical personnel, having appropriate medical equipment and facilities, and following accepted medical protocols. Hospitals must exercise their professional judgment and take necessary steps to stabilize the patient's condition before transferring them to a more specialized facility, if required.
4. Consent and Confidentiality: In emergency situations, hospitals may provide medical treatment without obtaining explicit consent if the patient is unable to give it due to their medical condition. This is known as implied consent. However, hospitals should make all reasonable efforts to obtain consent from the patient or their legal representative as soon as practicable.

   Moreover, hospitals have a legal duty to maintain the confidentiality of patient information, including their medical records, during and after emergency treatment.

5. Liability and Negligence: Hospitals can be held liable for negligence if they fail to provide reasonable emergency medical care or act negligently in the course of treatment. The legal principles of medical negligence, as established by the Supreme Court, apply to cases involving medical emergencies as well. Hospitals may be liable for compensation if their negligence causes harm or death to the patient.

Hospitals in India have a crucial role to play in medical emergencies, and they are bound by legal obligations to provide prompt and adequate emergency medical care. The constitutional right to life and personal liberty, along with specific legislation and guidelines, establishes the legal framework within which hospitals must operate. By understanding and adhering to these legal provisions, hospitals can ensure that they fulfill their responsibility of saving lives and protecting the health of individuals in times of medical emergencies.

In recent years, the state of West Bengal, including its capital Kolkata, has witnessed several instances of doctors' strikes and protests. These strikes have been primarily aimed at highlighting concerns related to the safety and security of doctors, as well as addressing other grievances within the healthcare system. While I don't have specific information on the most recent events as my training data only goes up until September 2021, I can provide a general understanding of the situation.

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VI. EMERGENCY MEDICAL CARE DURING THE COVID-19 PANDEMIC

In India, a National Lockdown was declared on March 24, 2020, under the Disaster Management Act of 2005, and was periodically prolonged till a partial opening on June 8, 2020.[16] The government encouraged residents to stay at home by providing them with all conceivable assistance to preserve their health and well-being. Many disputes and discussions surround governments' ability to deliver on their promises. As a result, raking up concerns that are repeated 24 hours a day would be pointless.

Nonetheless, one issue that has been overlooked in all of the debates is the pain of people suffering from ailments other than COVID 19. In the aftermath of COVID 19, hospitals, which have a solemn duty to serve patients, began turning away such patients by declining to offer emergency medical treatment. Incidents published by reputable mainstream media outlets about the refusal of emergency medical assistance to persons with life-threatening disease upset even the most casual observer. The lack of affordable emergency healthcare compelled them to consider themselves in a comparable predicament, leading to mass migration. Hospitals refused to save the lives of patients suffering from medical situations other than COVID-19, resulting in the loss of the golden hour.[17] The flimsy arguments given by these facilities for rejecting treatment ranged from shielding other COVID-19 patients to the fact that they exclusively treat COVID-19 patients. COVID kind of showed us the sham our emergency medical

16. Government of India, Ministry of Home Affairs, *available at*: https://www.mha.gov.in/sites/default/files/MHAOrder_23032021_0.pdf (last visited on Oct.9, 2023).
17. Farheen Hussain,"4 crore Indians reported long Covid symptoms", *Times of India,* June 17, 2022, a*vailable at*: https://timesofindia.indiatimes.com/city/bengaluru/4cr-indians-reported-long-covid-symptoms/articleshow/92265392.cms, (last visited on Oct.10, 2023).

infrastructure is for the crores that live in the country, nonetheless, thankful and grateful to the doctors without whose unabated support we would not have made it.

In the realm of medical emergencies, doctors in India bear significant responsibilities that are crucial in saving lives and minimizing the impact of critical conditions. Their expertise, quick decision-making abilities, coordination skills, and compassion play a vital role in providing immediate and effective care. By recognizing and supporting the pivotal role of doctors in medical emergencies, India can further enhance emergency response systems, improve patient outcomes, and strengthen the overall healthcare infrastructure.

VII. CONCLUSION

Medical emergencies present unique challenges that demand swift and decisive action. Prioritizing life above the law in these situations aligns with the ethical principles of healthcare, recognizes the urgency of critical conditions, and enables healthcare professionals to fulfill their duty of care. By understanding the significance of immediate intervention in medical emergencies, societies can establish a framework that balances the need for life-saving measures with subsequent legal considerations, ensuring the preservation of life while upholding the rule of law.

In India, the issue of emergency medical services is fragmented. This component of the Constitutional Rights is not governed by any specific statute. During the COVID-19 pandemic, this is a major problem. A 14-year-old child died because dialysis was not delivered while a Covid19 negative certificate was awaited.

Though a person's life and liberty are very much safeguarded under Part III of the Constitution (under Art. 21), and though there have been appropriate guidance passed by the Hon'ble Supreme Court that in all accident and emergency cases, regardless of the reason, it is considered the fundamental duty of the hospitals to take care of patients and ensure their safety and well-being, the said directions are unfortunately not followed and are being brazenly brushed aside.

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7

Protection of the Rights of Internally Displaced Persons: A Legal Study

Soumyadeep Ghosh[1]

I. INTRODUCTION

Darwin's "survival of the fittest" is a phrase that originated as a part of his evolutionary theory as a way which would describe the way as to how the selection of individuals will be made. In all civilizations, the acceptability of Darwin's theory of survival has a place and acceptability too, what was not accepted was the fact there could be a problem where the people concerned might not be given a chance to prove their merit of survival without their active part in the reason of what might have caused the problem in the first place. In the modern era, this is one problem which needs attention but is not recognized wholly. The citizens who are forced to flee their habitats but remain within the sovereign boundary of their states face the problem stated and are termed as invisible citizens as well as Internally Displaced Persons (IDPS).

In every era possible, there has been a quest of land for power, generating labour revenue or to be precise for commerce, and evidently this has been a reason for migration. But where the possible difference lies is in the crossing of the border, now when they cross the border they are termed as the Refugees and not IDPS. Besides the basic human needs of food and clothing, shelter is also an essential fundamental requirement of a human being. If we look at history, conflicts of all probable sorts have had provoked displacement of many types, such as exile of population, exoduses and mass expulsion.

Basically, the nineteenth (19^{th}) century is referred to as the "mass migrations" century and complimentary to that, twentieth (20^{th}) century was the "refugee" century. In the result of the two world wars, there were almost 100 million people who had lost their ecology, habitat and established relationship, and not before the 20^{th} century was the system of passports and visa were created for a smooth functioning of the system. It has been a basic instinct of human nature to adapt to the conditions as he is put in, but even the fact that the longer the person stays in a place creates a lot about

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his character, his network, his habitat and many other ideologies required to lead his life. It is deduced that with the time that is spent on a certain neighbourhood creates a deep connection with the people around and also creates an identity of culture and even the way the neighbourhood lives.

Most people today subscribe to the idea of democracy, which is ironical. However, most contemporary theorists of democracy simply take for granted that the boundaries and powers of a political community have already been settled with the language policy. IDPS have become one of the most pressing Geo-political concerns of the twenty-first century. There are currently the IDPS worldwide due to conflict, state collapse and natural disaster. Now when the world with its own deductions and fragmented boundaries of nation which changes with time, force people to move out of their certain neighbourhood of which the people concerned are not even part of the problem, it is at times the world leaders or the rulers or the Government or the International organization who has failed to comply with the basic living conditions to be given to the people. And other conditions including climate change, natural disaster, war, greater autonomy, invasion and sometimes local issues are reasons why there is a forced displacement of people leaving their habitat, identity and culture to a place of hardship losing all the stability they had. Whenever there is a possibility of formation of a new state thereby creates an automatic body to decide the geographical boundaries. This kind of problem was also a problem in India, especially after the world war and the independence era. And even when the events such as that of nuclear bomb affected the population, the natural disaster, the ethnic crisis, communal violence and competition for different natural sources forms a problem.

The people affected by natural disasters are often neglected; they may also turn into internally displaced. It is also known that disasters create new possible human right role for the administration and also then it turns out to be the responsibility of the state to look forward to the protection of the internally displaced and their human rights, with the able guidance of the human rights organizations.

II. INTERNALLY DISPLACED PERSONS

Internally displaced persons or IDPs[2] are people who are forced to flee; they have to leave their homes for conflicts or persecution like that of refugees. But there is a fundamental difference with the refugees, IDPs do not cross the border, some stay back in the hope that circumstances might change and others simply do not have the means. The number today is twice that of refugees. The policy level can well be very versed for the talk shows but the separation from every day practices, social disruptions and material dispossession is going to haunt the very human nature.

2. K. Newland, *No refuge: the challenge of internal displacement* 22 (Office of the coordination of Humanitarian Affairs, United Nations, 2003)

The concept of IDPs had started after the cold war in the 1980s, but to make a prominent statement as a "category of problem (humanitarian crisis)" it took a decade. The very fact of debate whether they should gain the status of "refugees" as to have the benefits is still in the preliminary. UN Secretary General's Representative, Francis Deng have had told the fortune to bring forward a definition of Internal Displaced persons which is still on the count and is now referred in the Guiding principles of the United Nations. The main reasons after the cold war for the growing problems regarding the IDPs are that of the strict international migration policy. According to the UNITED NATIONS office for the coordination of the humanitarian affairs (OCHA), The Greek government in the year of 1949 have made a firm statement regarding the international aid to the IDPS. In another instance, India and Pakistan have had been very vocal about their stand on IDPS. There has been certain debates surrounding whether IDPs and refugees should be grouped as a single category, and simultaneously both of them should be held accountable under the same institution, this argument was first brought forward in the pages of 1998 and 1999 editions of Forced Migration Review (FMR), there have been constant efforts from the human rights advocates to extend the protection of refugees to the IDPs and that may be counter-productive, as it would be detrimental to the traditional asylum option and could possibly increase containment.

In the 1990s the growing number of internal conflicts has led to the strict international migration regimes. Then, the UNITED NATIONS office for the coordination of humanitarian affairs (OCHA) has been argued by the Greek government that though they did not need international protection but at least they (IDPS) should have the access to international aids same as refugees. There have been types of internal displacements[3], such as Conflict based displacement, development based displacement and environment based displacement.

a) DEVELOPMENT BASED DISPLACEMENT

The growth and development are hand in hand in today's time, one cannot go with the other, but in recent times it has been found that the developments caused due to the growth of the society is leading to displacement of the people from their own neighbourhood. The very example of development based displacement is that of the Narmada project and the slums that are being abolished for the making of towers, societies and other infrastructures.

b) ENVIRONMENT BASED DISPLACEMENT

The creation of the SEZs has created a lot of problems in the recent past. 35000 hectares of land were already allotted by the government for the creation of the special

3. Romola Adeola, *National protection of Internally Displaced Persons in Africa: beyond the rhetoric 11* (Springer, New York cit, 1st edn., 2021)

economic zones and other 90000 hectares were still in process due to some government formalities for the creation of the other portion of the zone.

The UNHCR in the preventive protection approach is more concerned with the "root causes" of forced migration, and with preventing refugee flows before they cross the border. In a natural way of putting words, it emphasizes on "the right to remain" instead of "right to leave" and "the right to seek asylum". And when concerned with that of sovereignty, "right to remain" has been a policy of question because it toes upon the former. The World Bank has asked the institutions to follow the no specific institutional set-up, which is a cluster approach meaning if one of the institutional agencies fail, then the work be distributed to the whole group to perform.

There has been a list of factors that could possibly be the reasons of IDPS movement. But can we not say that economics eventually play a part in it. The economics of recent world survey gives a brief about the fact that mostly the countries that are cornered as third world countries have the problem of crime and eventually IDPS. There is also a particular flow-chart that can be drawn from these countries is that the maximum percentage of money belongs to a certain peer group of people, making a huge difference between the people[4]. The pressure of earning bread and butter for their livelihood for the lower class people have had often taken away their lives even. In the world of 21st century, where even a hate speech is not taken into consideration and retaliated against, these people (IDPS) are traumatized and humiliated to death for even a meal in certain parts of the world. If there is a possible score of even less than a balanced world, there will be less instances of arm conflict, power struggle and may be the IDPS count will decrease from time and hence.

It has been reported in the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) on 10th May 2019, Geneva that Tropical storms, monsoon floods, conflict and violence displaced 13.4 million people across East and South Asia and the Pacific last year. It is true that the IDPS[5] face a lot of challenges on the movement of turning into invisible citizens, and when doing so they get into a lot of problems relating to their health and other basic issues of life. The women and the children are also made victims of bonded labour, sexual rackets and human trafficking.

However, in the case study of India, it is not simply left to the government and other officials to look after the matter of the IDPS because the constitution has given the rights to the population and the court has been made the watchdog for the safeguarding of the rights. Therefore, it can be said that the judiciary plays an active role in the country and will be able to bring back things on track, even that of IDPS. It is fact that the judiciary has given a very wide scope to the article 21 while delivering

4. ibid
5. Janie Hampton, *Internationally Displaced People: A Global Survey*, (Routledge, 2nd edn., 2002)

many judgements and making it the shield and even at times sword of the people and using it in their favour and also the state is made duty bound to obey the constitutional mandate. There are few judgements considered by the apex court such as *Kharak Singh* v. *State of Uttar Pradesh*[6], *Narmada Bachao Andolan* v. *Union of India and others*[7] and *Francis coralie Mullin* v. *The Administrator, Union Territory of Delhi and Ors*.[8].

III. INTERNAL MONITORING DISPLACEMENT CENTRE

Inter-agency standing committee (IASC) states that durable solutions to displacements can be achieved only when displaced persons have no longer assistance and protection that are required to be provided to them in respect of their displacement but are very much enjoying their human rights without any sort of discrimination. So to add to this, though they return to their place of origin, they face a lot of challenges; the ground reality seems pretty different from that scripted in the rule book. With respect to the above conditions, the IDMC since 2017 have had been trying to figure out and research the challenges as to why this problem is faced by the IDPS and any ways if possible to overcome the challenges.[9]

The work of the IDMC is mainly concerned with the situations of particular concern, as in the problem faced by the IDPS on their return, their safety and other progress reports towards durable solutions. There have been two assignments till date, one was related to the living conditions of the IDPS in different countries and the second one happened at the end of the 2020, which was also more or less concerned with the living conditions of the IDPS, but the main concern was that of the follow-up, the research that is pre dominantly taking place to provide measures to premature returns and providing safety measures on the return and hence working on the returning policies.

IV. BACKGROUND OF THE GUIDING PRINCIPLES OF UNITED NATIONS ON INTERNAL DISPLACEMENT

The guiding basically were notions regarding the refugees and had a basic dilemma regarding the concept of internal displacement in the international regime and also the community's response to it. After some guidelines, research and time, though they have come on board but are still not exactly in a position to help[10]. The persons who are forced to flee their homes and cross the international borders are "refugees" and

6. AIR 1963 SC 1295
7. AIR 1999 SC 3345
8. AIR 1981 SC 746
9. iDMC, *available at* https://www.internal-displacement.org/ (last visited on April 14, 2023).
10. Dan Sarooshi, *International Organizations and Their Exercise of Sovereign Powers* 151 (Oxford University Press, New York, 2005)

cover their legal status and other protections required for them to carry their lives throughout the span and also not to come back to their homes for persecution, whereas the persons who are also force to flee their homes but are just not crossing the borders are called IDPS and are not entitles to any other benefits available to the refugees. A very commendable workforce of United Nations agency and the High commissioner refugees are available to address the issues of the refugees and hence the problem of the refugees has a rationale in the international arena compared to that of the IDPS. However, in the 1951 Refugee convention, an encouraging framework to balance the rights of IDPS has emerged.

After the UN secretary appointed Francis m. Deng in 1992 to look after the matters related to the IDPS, he then formed a committee to look after the legal norms and there have had been a thorough study by the legal experts in the manner concerned in 1993 and was presented in two instalments of 1996 and 1998. The representative then introduced a specific instrument could be made only to go on with the problem of IDPS. And after the scrutinization of the norms the representative was asked to make a legal framework as to the protection of the Internally Displaced Persons.

Hence the United Nations Guiding Principles were introduced in 1998 were the first guidelines to be developed in the context of human rights law and international humanitarian law to address the problems of internal displacement and development induced displacement. It is also to be mentioned that the guiding principles are neither customary nor binding international law. The Guiding Principles go on with the advisory role stating that the project authorities should also explore all the possible remedies and alternatives in order to avoid the displacement altogether, and in any condition in which the displacement is totally unavoidable the principle 7 is to be used which minimizes the adverse effects of the displacement. Such remedies may include financial assistance and also alternate accommodation possible of value. Hence, it is figured out that the Guiding Principles to the internal displacements provide a framework for further developments of their living conditions by providing legal framework and also assisting them financially with compensation and relocation.

VI. KEY FINDINGS

a) There are many reasons as to internal displacement; one of them has been that of armed conflict and communal violence due to which thousands of people have been forced to flee from home, and there are other reasons to displacement too which are natural disasters and development activities, but the durable solutions are not available to them.

b) The new group that forms when the internally displaced persons move to the new places of living, it is still not evident that whether there is a previous enmity within the group or if there was, how do they confront or deal with the problem after displacement.

c) The fact of question is that whether the people who have been displaced stay back where they were sent to during displacement or tend to come back to their native place.

d) The researcher also points out the problems where the life and existence of some vulnerable groups are a concern. But the governments or the institutions responsible for their better living are not taking any responsibility.

e) The procedure or the process of displacement is in itself the failure of the government and the policy makers. And to not be responsive to this is an utter disgrace to the state itself. The state is more into the development goals which results into the land being alienated from the people and hence making invisible citizens. The acts are then made justifiable with the making of projects like highways, dams, military cantonments in the name of national interest.

f) Most importantly, the provision of the international organizations relating to the human rights provide specific relief or framework about right to life, and eventually the international humanitarian law also considers measures regarding the displaced persons at the time of conflict like that of an armed rebellion.

g) Though there is an agency IMDC (Internal Monitoring Displacement Centre) monitoring the number of displacement worldwide, but to what extent the data provided is exact in the numbers is a point of discussion.

h) It is better in keeping that in mind and in conscience to eventually provide necessary aid to the IDPS but also not to sabotage the needs of certain other groups in the process.

VII. MAGNITUDE OF THE PROBLEM

States do have the opportunity in taking a leading role regarding the IDPS as there are no certain law that are made and this is a burning issue which needs attention. It is pretty clear that the main problem of the countries involved lies in the fact that there is not much protection, food or medical aid available to be given to the IDS. It is an integral part of the research today to study the countries like Asia, Africa, America, Middle East and Europe and the study should be accompanied with the criminalization of the polity. Civilians in many parts of the world are internally displaced due to internal armed conflict and ethic and communal violence, as well as other differences of opinion but the states concerned are never able to look forward to the problem and bring a solution to the problem, because the countries has not come up with policies to deal with the problem. In the agenda of rehabilitations and resettlement the internally displaced are yet to be at a place. As the official count is increasing, the future is going to see more of internally displaced persons than that of the refugees. In the light of it, the research has studied that the problem lies in providing the very basic amenities to

lead life like that of food, medicine and shelter[11]. The problem faced by the internally displaced during their process of displacement should be a state responsibility and the study might be of sound help to provide for assistance in figuring out the problem and also the ideas reflecting the solutions in the near future.

VIII. CONCLUSION

There are considered to be three durable solutions to the situations of displacement, i) voluntary repatriation, ii) resettlement in a third country (or third location), and iii) local settlement (also known as local integration). Structural barrier such as their own decision making, at times stop them from the overall growth, though there are many repercussions as to the fact that they have been stocked out of their neighbourhoods and livelihoods, but out of all this, the only positive is that they learn new survival strategies and their study provides structural and societal remedies to the problem. The study has been a part of extensive parts of west Bengal and certain other parts in India, the overall approach of the Internally Displaced Persons are as such that if they survive in the future with the little proximity of power then they might even not care about the societal balance and can be a powerhouse of future destructions and as they pretty much nothing to lose from their lives they might just be an unstoppable force to deal with.

There is no idealness to the problem of the Internally Displaced persons, but the governments, international organizations with the help of the already research materials and to add to it, the research covered by the researcher should take this into account and take care of the problem before it becomes a so big problem that it cannot be dealt with. Furthermore, the numbers of the IDPS are increasing at a very rapid pace and should be contained immediately. Self –determination has always been prescribed as a right, in the words of Woodrow Wilson, "every people has a right to choose the sovereignty under which they shall live" and hence problems concerning at the very grass root level, should be the concern of the very government to look after the issues of the Internal Displacement.

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11. Astrid J.M. Delissen and Gerard J. Tanja, *Humanitarian Law of Armed Conflict: Challenges ahead,* (Martinus nijhoff publishers, Netherlands, 1991)

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Protection of Health under the Constitution of India: A Critical Study

Avinash Kumar Tiwari[1]

I. INTRODUCTION

Good health is sine quo non for quality of life. According to World Health Organization "Health is a state of complete physical, mental and social wellbeing and not mere absence of disease." Development and enjoyment of life is very near to impossible in absence of good health. That's why right to health is recognize as fundamental right in various international conventions. These are several provisions inserted under Part IV of Constitution of India which direct state to protect the health of public at large. Right to Health is declared as fundamental right and integral part of Right to Life and Personal Liberty under Article 21 of Constitution of India. Apart from it government has passed various policies to protect Right to Health like National Health Policy (1983, 2002, and 2017). Despite of those all public health service is not satisfactory in India especially in rural areas. Health is a most valuable asset of a person. Good health plays an important role for enjoyment and development of human being. The quality of life depends on health of human and every human being entitled for Right to Health, but unfortunately humans are struggling for good health and quality life since their existence. In the ancient time the concept of "Survival of the fittest" prevailed, but now in public welfare domain we are working on survival of weakest. That's why Right to Health is recognize as basic and fundamental right under various International and National legal regime. Here we analyze the concept of health care and constitutional jurisprudence towards improvement and implementation of right to health for people in India.

II. CONCEPT OF HEALTH AND HEALTH CARE

It is very difficult task to define the term health. World Health Organization try to define the health. The preamble of WHO Constitution (1946) defines health as such manner- "A state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity. Health can be classified as public health and private

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health[2]." The UN Committee on Economic Social and Cultural Rights has given a very fruitful interpretation of "right to highest attainable standard of health as "It is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as access to safe and portable water and adequate sanitation, an adequate supply of safe food, access to the health related education and information including sexual and reproductive health[3]."

Health Care – Health care is an activity or policy which can be characterized by improvement in life expectancy, quality of health and life and reduction in death ratio. It is starts from individual level and extended to the local, national and international level[4]. As development in law, right to health became fundamental right therefore state is under duty to protect it.

The following components are essential for a good health care services;

(a) Availability - The concept of Right to health is very wider. It includes right to safe drinking water, right to shelter, right to adequate nutrition and hygienic food, right to healthy working condition, right to safe environment, confidentiality about once health condition, right to access essential medicines etc. so for enjoyment of this right the medical facilities like qualitative medical practitioners, essential medicines and other medical equipment's should be available for everyone without any kind of discrimination. These facilities should also be available not only in cities but also in village and remote areas.

(b) Accessibility: The second thing needed for successful implementation of this right is, these medical facilities should be in the reach of every individual and every individual should be informed from where these facilities are available and how can they acquire it.

(c) Acceptability and Quality: The medical equipment's and medicine should be of good quality. The patient should be satisfied with these services[5]. The health care services should be ethically and culturally acceptable, it will not of such manner which adversely affects people on the ground of age, gender, disability etc.

Level of Health Care:

The level of health care may be categorized in three categories-

(i) Primary health care – This is the basic health care provided at primary level to the person or the family of the person.

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2. Lily Srivastav Law and Medicine 25 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2nd edn., 2013)
3. General comment no. 14 is on Article 12 (2000) of ICESCR
4. Lily Srivastava Science Technology and Human Rights 164 (Thomson Reuters, Legal, 1st edn Gurgaon)
5. *Id*. at 165-166

(ii) Secondary health care- It belongs to intermediate level of health care where special facilities are provided to deal with complex health problem.

(iii) Tertiary level- It is highest level of health care where a special treatment and therapy are provided by special skilled doctors[6].

III. RIGHT TO HEALTH IN INTERNATIONAL SCENARIO

The Right to Health as evolved rapidly under International legal regime after Second World War and it is because of emergence of various disease as result of environment pollution. Health issues may be biological, natural or by external factor. The Right to Health firstly incorporated under WHO Constitution (1946) as the enjoyment of highest attainable standard of health is one of fundamental rights of every human being. WHO is the International Organization working towards ensuring Right to Health for all[7]. These international organisations issued number of guidelines for improvement and proper enforcement of this right.

(a) Right to Health under UDHR 1948

Universal Declaration on Human Rights is first universal declaration which recognize certain basic rights as Fundamental or Human Rights and these right are available to every human being regardless religion, race, colour, caste and nationality. Article 25 of this declaration deals with Right to health as follow- "Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family including food, clothing, housing, medical care, necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control."

(b) Right to Health under International Covenant on Economic, Social and Cultural Rights

According to Article 12(1) of this convention "State parties to present convention recognised right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

12 (2) Parties of covenant should take effective and efficient step for implementation of this right. The following step should be taken by parties of this covenant:

(a) The provision for the reduction of the still birth - rate and of infant mortality and for healthy development of child.
(b) The Improvement of all aspects of the environment and industrial hygiene.
(c) The prevention, treatment and control of epidemic, endemic occupational and other diseases.

6. M.P. Gupta *Heralth and Law: A Guide for Professionals and Activists* 14 (Kanishka Publisher, Distributers, New Delhi 2002)
7. Aart Hendriks "The Right to Health in National and International Jurisprudence" 5 *Eur. J Health Law* (1998).

(d) The creation of condition which would assure to all medical services and medical attention in the event of sickness.

Same as above Article 7 of this convention provide as follows;

"The State parties to the present convention recognize the right of everyone to the just enjoyment of just and favorable conditions of work, which ensure, in particular safe and health working conditions."

IV. RIGHT TO HEALTH UNDER THE CONSTITUTION OF INDIA

Provision related to health is not expressly incorporated under Part III of Constitution, but some articles of part III deals with health rights. Art. 21 is itself Magna Carta of all the fundamental rights and protection of health care is not exception of it. The Supreme Court in its number of decisions declared this right as part of right to life. After this, Art. 23 and 24 is also related with protection of health. Art. 23 protect persons from human trafficking and forced labour. Human trafficking are occurring for several reasons such as organ selling and slavery. Forced and excessive labour may leads to serious health issues. Art. 24 prohibit every on to not engage the children of 14 years into dangerous occasion. This article also protects the health of children below the age of 14 years. Provisions related to Health care has been mentioned in Part IV as Directive Principles of State Policy. Although DPSP are not enforceable by law but it's like the duty on the state to consider these policies while making the rules regulation and law for governance.[8]

(i) Right to Health as Fundamental Right under Part III of Indian Constitution

Part III belongs to Article 12 to 35 and there is no direct provision under this part which deals with right to health. The concerning article is 21 which guaranteed Right to Life and personal liberty. The term life further explains in various judgment where life means not mere a life like animal but life means life with human dignity and life with human dignity consists various rights as right to clean Environment, Right to livelihood and Right to health etc. Right to health is now become fundamental right under article 21 by the judicial interpretation.

(ii) Role of Judiciary in Establishing Right to Health as Fundamental Right

Judiciary play a vital role to develop Right to health as fundamental right in India as it was not incorporated at the drafting time of constitution. Supreme Court held that Right to Life has a very broader scope which includes right to livelihood, better standard of life, hygienic conditions in the workplace and right to leisure. Therefore Right to Health is essential part of dignified life.[9] "Right to healthy food, clothing and pure environment is necessary for healthy life"[10]. Honourable Apex court held that, although

8. Indrajit Khandekar, et al., "Right to Health Care" 34 *J. Indian Acad. Forensic Med.* (2012).
9. *Francis Coralie Mullin* v. *The Administrator, Union Territory of Delhi* AIR 1981 746
10. *Shantishar builders* v. *Narayanan Khimalal Tomate (1990)1 SC 520*

DPSP are not binding but hold persuasive value yet they should be implemented[11]. Court pronounced that "every doctor of government hospital or private hospital has professional obligation to extend his services with due expertise for protection of life of patient but unfortunately private hospital become commercialized"[12]. Supreme Court held that Right to health and medical aid to protect the health and vigor of a worker, both while in service and post-retirement, is fundamental right under Article 21[13].

In a case where petitioner was injured due to fallen from train and brought to various government hospitals but couldn't admitted as bed was not available then he admitted into private hospital where he was charged with 17000 rupees. Apex court directed the state to pay 25000 Rs. to the petitioner. Further court stated that it is responsibility of the government of welfare state to provide adequate medical aid to every person[14]. The Honourable Supreme Court held that it is right of HIV positive patient not to be declare his status in public by doctor[15]. After realizing the adverse effect of smoking on general people Supreme Court of India issued direction to Union of India to state governments to take effective actions for prohibition of smoking in public places.[16]

The apex court held that Right to health and clinical consideration is integral part of Right to life and personal liberty.[17] As well as Supreme Court of India also decided that it is duty and obligation of civil society to ensure that medical professionals are not unnecessary harassed or humiliated by which they can perform their duty freely[18].

The scope of health care right imposes primary duty on state to update the public health care system[19]. "Right to health as part of article 21 not only prohibit state obtained from doing such act which interfere from this right but also its direct state to take needful steps for making available to health care facilities"[20]. "Health right as part of art 21 is very basic rights of workers during their service and after their retirement"[21].

Right to health has very broader aspect. It includes following rights;

(a) Right to Medical-Aid: - This right includes right to access medical-aid. Proper medical facilities should be provided to ill and sick person. In the case of accident and emergency, the importance of first medical aid cannot be denied. It includes availability of treatment, medicines, medical equipments etc. either on free of cost or at very low cost.

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11. *Bandhua Mukti Morcha* v. *Union of India,* AIR 1984 SC 812
12. *Parmanand Katara* v. *Union of India,* AIR 1989 SC 2039
13. *Consumer Education and Research Centre* v. *Union of India,* AIR 1995 SC 922
14. *Pachim Banga Khet Mazdoor Samity* v. *State of West Bengal* (1996) 4 SCC 37
15. *Mr. X* v. *Hospital Z,* AIR 1999 SC 495
16. *Murli S. Deora* v. *Union of India,* AIR 2002 SC 40
17. *State of Punjab* v. *Mohinder Singh Chawla,* AIR 1997 SC 1225
18. *Kusum Sharma* v. *Batra Hospital and Medical Research Centre,* AIR 2010 SC 1067
19. *Vincent parikulagara* v. *Union of India* (1987) 2 SCC 165
20. *Navtej Singh Johar* v. *Union of India (2018) SCC 1*
21. *LIC of India* v. *Consumer education and Research Centre (1995) 5 SCC 117*

(b) Right to Safe Environment: - Human health is very much depending on Clean and safe environment. Court held "Right to health is right to live in a clean, hygienic and safe environment is right flowing from Article 21. Clean surrounding leads to healthy body and healthy mind. But, unfortunately, for eking out a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its breath from the directive principles of state policy, particularly clauses (e) and (f) of Article 39, 41 and 42. Those articles include protection of health and strength of workers and just the human condition of work[22]." Right to breath qualitative and not compelled to breath polluted and unhealthy air also covered under this right.

(c) Right to Reproductive health: After passing the time, need to protection of reproductive health and reproductive right has been felt. Reproductive health means "the capability to reproduce and freedom to make informed, free and responsible decision. It also includes access to a range of reproductive health information.[23]"

(d) Right to get affordable treatment: Right to health doesn't only include the treatment but also includes treatment on bearable cost. The court has issued the direction to the government to take the appropriate action for ensuring affordable treatment for all[24]. In a country like India, this direction is very much needed because many people died due to incompetency to bear the cost of hospital. There is no control or restriction on them; they have fixed the rate for treatment and testing according to their own desire. This direction plays a very important role in bringing a strict law for regulation of such mala practices in the field of medical health care services.

(e) Right against Medical Negligence:

"Every patient has a right to be treated with reasonable care, best skill and knowledge"[25]. The apex court held that a person who hold himself ready for giving medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge[26] for that purpose and medical practitioner can be sued under Law of Tort for his/her Medical Negligence and this practice fall in Section 2(1)(o) of the "Consumer Protection Act, 1986."

(iii) Provisions Related to Protection of Health under Directive Principles of State Policy

The following articles of part IV, direct the state to secure the health of it citizens –

22. *Occupational Health & Safety Assn.* v. *Union of India* (2014) 3 SCC 547
23. *Bandhua Mukti Morcha* v. *Union of India* (1997) 10 SCC 549
24. SUO MOTU WRIT PETITION (CIVIL) NO.7 OF 2020, Supreme Court of India
25. *Dr. L.B. Joshi* v. *Dr. T.B. Godbole and others,* AIR 1969 SC 128
26. P.S. Narayana, *The Law Relating to Medical Profession and Medical Negligence* 325 (Gogia Law Agency, Hyderabad 1st edn., 2016, Reprinted in 2018)

Article 39(c)[27] relates to security of health of workers. According to Article 41[28] direct state to giving open help to old age person, sick, disable person. Article 42[29] basically talk about human condition for working and maturity relief. It ensures the health of new born child and their mother, for example providing maternity benefits. Article 47[30] imposed responsibility on state to raise the level of nutrition and the standard of living and improve public health. This article direct state to prohibit of intoxicating drinks and drugs except for medical purposes, and Opium is a drug which is injurious to health and it should be prohibited[31]. Selling the liquor is no one's legal right and state has authority to control the selling of the liquor. This control may be regulatory and prohibitory[32]. From time to time prohibition policies has been adopted by the state and held constitutional by the court[33]. Bihar has been also prohibited the selling of liquor in Bihar state. The Apex court imposed restriction on consumption of intoxicating drink and drugs through Bombay Prohibition Act for the protection of health of people[34], validated by court in the name of medical purposes, selling of intoxicating drinks and drugs can be prohibited under this section[35].

For proper implementation of this Article court directed to the Food Corporation of India to be ensure that food grain should be suitable for consumption and be duly upgraded by it and after testing their suitability and found satisfactory food should be released for consumption. The state is under duty to take the necessary step for availability of highest quality of health for people subject to it's economic capabilities. The right enshrined in art 21 caste duty on state to reinforce art 47. It is duty of state to secure health of its people. Although government has opened number of hospitals but need to updated it and ensure it is in the maximum reach to the public by allocation of more funds[36]. While resolving the health issues of workers court observed that state is under obligation for protection to the health rights of workers not only because it is part of art 21 but it necessary for securing social justice[37].

27. See art. 39 (c), that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
28. See art. 41, The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
29. See art. 42, The State shall make provision for securing just and humane conditions of work and for maternity relief.
30. See. Art. 47, The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
31. *Arjun Das Duggal* v. *State of Punjab*, AIR 1958 Punj 400
32. *Ghuo Mall and Sons* v. *State of Delhi*, AIR 1956 Punj 97
33. *Razak Bhai Issak Bhai Mansuri* v. *State of Gujrat*, 1993 supp(2) SCC 659
34. *State of Bombay* v. *F.N. Balsara* AIR 1951 SC 318
35. *L. Col. Pritpal Singh Rattan Singh* v. *Chief Commissioner of Delhi*, AIR 1966 Punj 4
36. *State of Punjab & Ors* v. *Ram Lubhaya Bagga* (1998) 4 SCC 117
37. *C.E.S.C Ltd & Other* v. *Subhash Chandra Bose*, AIR 1992 SC 573

V. THE EVOLUTION OF CONCEPTS OF STATE'S DUTY TO PRESERVE HEALTH RIGHT

After independence and emergence of concept of public welfare state, the very first goal of our constitution maker was, to make such kinds of provisions under the constitution which make bound the upcoming governments for working for welfare of public. Part III and Part IV are enshrined for welfare of public and it impose responsibility on government to work for protection and promotion of rights of individuals. Basically health care facilities are provided by both government as well as private individuals in our nation. The Constitution of India imposes obligation on the state to protect the right to life[38] of everyone and doctor of governmental hospitals are bound to extend their medical assistance for safeguard of life. State is under duty to protect health services[39] against hazardous drugs[40]. The Supreme Court directed the state on regulation of blood banks and availability of blood products[41]. Providing adequate medical facilities for people is essential part of public welfare state. For this government are running hospitals and health centers which provide medical care to people but in country like India having such vast population, it is very difficult to cover every people. For providing treatment in every kind of diseases free of cost, it requires huge resources. Resources are big issue for developing country like India therefore dependency on private hospital become necessary. The number private hospital is running in our nation. But problem with private hospital are charging very much for treatment which is not affordable for common man. It is also duty of state to frame policy for regulating private hospitals.

VI. CONCLUSION

Health is essential part of human personality on which human development and quality of life rely. The quality of life is depending on quality of health. Right to health declared as fundamental right in various international conventions and declarations. Unfortunately, in our Constitution Right to health is not directly incorporated as fundamental right but through judicial interpretation it become fundamental Right now. As the concept of right there should be corresponding duty for every right so it lies duty on state to provide health care to its citizens and specially to those persons who are unable to bear his/her medical expenses. Due to unawareness, illiteracy and poverty, large number of population are affected from various kinds of diseases in our nation, for that our Government has established hospitals where doctors are providing health facility on very nominal cost and various Acts has been enacted to regulate to health care system

38. The Constitution of India, 1950, art. 21.
39. Supra note 36
40. *Vincent* v. *Union of India,* AIR 1987 SC 990
41. *Common Cause* v. *Union of India and Others* AIR 1996 SC 929

in India but health care system are not efficient and adequate especially in rural areas. We all are witness of issues in health care system especially at the peak time of COVID-19. Rajasthan become first state to pass "right to health act" in 2022 for effectively enforcement of health right with in the state. Like Rajasthan other states should also pass "right to health act" as soon as it is possible. Parliament should make a direct provision under the fundamental right part, and the Central Government should increase the health budget, which is allotted only 2% of the total budget for the present year, as well as develop strong supervisory mechanisms for the implementation of health care in the country.

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9

Legislative Provision Relating to Climate Change in India: A Critical Analysis

Akanksha Dubey[1]

I. INTRODUCTION

The Environment plays a pivotal role in human life and also in the development of society. With growing technological advancement and industrialization, the purity of the environment has been threatened to an appalling extent. The need to enhance and safeguard the precious environment is so compelling for the peaceful survival of mankind and other forms on planet Earth that right to environment has emerged as a human right. The nomadic human beings fulfilled the essential necessity of food, water, shelter and air by utilizing natural resources.

Generally, it is acknowledged that human activities especially in the industrialized countries release a number of gases mainly Carbon-Dioxide, CFC's, Methane and Nitrous Oxide that slow the release of infrared radiation, that is, heat from the surface of the earth into space. It is assumed that due to increased emission of greenhouses gases earth will warm up at an average of nearly 2 degrees Fahrenheit by 2025 and 5 degrees by 2100. This may not be too much. However, we cannot ignore the fact that the earth has warmed up only by 9 degrees since the last ice age 18,000 years ago. Moreover, it is predicted that the range of increase during the next 100 years will be over 0.5 degrees during per decade, which is far faster than any climates change recorded in history. It is estimated that such a warming process might result in change in monsoon patterns which may cause frequent draught and floods, heat waves and storms, and rise in sea levels.

The 1970s is identified as the reformatory phase which altered the basic law by incorporating various provisions aiming to safeguard the precious environment. By virtue of the said modification, Article 51A and 48A was added, which seeks to ensure improving and preserving the natural resources and environment. As number of legislations have been effectuated, and appropriate initiation was made by the legislature. The dramatic alteration in environmental history initiated from the land mark decision

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rendered by the Hon'ble Apex Court at various phases. These precedents were based on Article 21 of the Constitution which guarantees safeguarding of personal freedom and life.

II. INTERNATIONAL INSTRUMENTS RELATING TO CLIMATE CHANGE

1. Kyoto Protocol to the United Nations Framework Convention on Climate Change

This Conference of the Parties (third session), Kyoto held from 1st December to 10th December, 1997. The parties to this Protocol are parties to the UN Framework Convention on Climate Change. The objective of the Convention as stated under Article 2, recalling the provisions of the Convention, being guided by Article 3 of the Convention pursuant to Berlin mandate adopted by decisions of the Conference of the Parties to the Convention pursuant to Berlin mandate adopted by decisions 1/CP.1 of the conference of the parties to the convention at its first session, have agreed as follows:

(i) To stabilize the amount of greenhouse gases in atmosphere to an extent which will avoid anthropogenic intervention with change in climate within an adequate period for permitting the ecology to adjust normally to the climate change.

(ii) To ensure that manufacture of food is not prejudiced; and

(iii) To ensure growth in economy to be progressed sustainably.

2. The Johannesburg Declaration on Sustainable Development, 2002

The World Summit on 'sustainable development' was convened at Johannesburg, South Africa in 2002. The Summit was called to reaffirm commitment to sustainable development. The Preamble emphasized that this world is the inheritance of children and it is everybody's to create world free of poverty, indignity, indecency and unsustainability.

The Johannesburg Declaration proclaimed the following commit towards sustainable development:

a. Emphasis on collective strength- Constructive partnership is the way forward to change and achievement of the common goal of sustainable development.

b. Inter-country Cooperation – The promotion of dialogue and cooperation among the countries are essential for sustainable development. Human solidarity to the common cause is desirable.

c. Timely Access to Basic Requirement — Access to basic requirements such as clear water, sanitation, adequate shelter, energy, health care, food security and

the protection of bio-diversity is the need of the hour for fulling the commitment to sustainable development.

d. Attention on Priority Sector — The world must give priority attention to the fight against the world wide conditions that pose severe threats to the sustainable development of every person. These conditions are chronic hunger, malnutrition, foreign occupation, armed conflicts, illicit drug problems, organised crime, corruption, natural disasters, illicit arms trafficking; trafficking in persons, terrorism, intolerance and incitement to racial, ethnic, religious and other hatreds; xenophobia, and endemic, communicable and chronic diseases, in particular HIV/AIDS, malaria and tuberculosis.

e. Gender Equality — This summit resolved to ensure that gender equality and women's empowerment are integrated in all activities.

f. Optimal Use of Available resources — The countries must use the available natural resources for positive purpose only.

g. Role of Developed Nation — The developed countries must render official assistance to the developing countries for its development endeavours.

3. The Delhi Ministerial Declaration on Climate Change and Sustainable Development

The 8th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change was held at Delhi, India. The Conference address the delicate issues of climate and how a changing climate is affecting sustainable development. The measures undertaken by the delegation are as follows:

a. Each Party should be integrate sustainable development policies with national development programmes, taking into account that economic capability of the country to bring change.

b. Effective and result-based measures should be supported for the development of approaches at all levels on vulnerability and adaptation, as well as capacity-building for the integration of adaptation concerns into sustainable development strategies.

c. Emphasis should be put on international cooperation and dissemination of information relating to energy, investment and, market-oriented policies.

d. Liberal approach should be adopted towards technological transfer and develop relevant sectors, including energy, transport, industry, agriculture, forestry and waste management, and the promotion of technological advances through research and development, economic diversification.

4. Durban Climate Change Conclave, 2011

The issues discussed in this Conclave are:

This is the final opportunity to preserve the sole instrument rooted in fairness and past accountability that effectively mitigates emissions. Developed countries commit to refraining from implementing emission reductions under the agreement beyond 2012 and aim to render it ineffective until a new global agreement is approved.

It is widely acknowledged that a new global agreement including obligations to reduce emissions encompassing all countries is necessary in the future. Rich countries want negotiations to commence in Durban, which would enable them to abandon Kyoto and connect their carbon reductions to developing economies, therefore neglecting their historical accountability. Most nations participated in the Kiekstant conversation after 2015, following the adoption of Kyoto objectives by wealthy countries. A formal evaluation revealed the extent to which their commitments have been met or not.

Developed nations pledged a sum of 100 billion dollars commencing in 2020 for impoverished countries in favour of the Green Climate Fund. Although developing countries are attempting to justify their contribution to loans from existing development funds and private investments by citing recession, they seek accountability and transparency to ascertain the true nature of the additional monies provided by the industrialised world.

The developed world focusses on the future emissions of emerging economies while neglecting to consider its past emissions, which persistently restrict the available atmospheric space for the impoverished world to promote growth.

Should nations impose sanctions on the United Nations process and should technology be transmitted with the same Intellectual Property Rights (IPR) to the impoverished world?

III. CONSTITUTIONAL PROVISIONS AND LEGISLATIVE PROVISIONS IN INDIA

A. Constitutional Provisions

At the beginning, the Preamble of Indian Constitution specifies that our nation is premised on socialistic aspect wherein the government seeks to address the social issues of a person. The primary purpose of socialism is to ensure decent life to everyone, which is possible only in a clean and healthy environment. "Pollution" is treated as social challenge and the "State" is mandated under Constitution to deal and solve the social issued and proceed forward in achieving the objective of just social order.[2] The Preamble further seeks to declare the nation as Republic and Democratic. In democracy, public are entitled to take part in governmental decision. Further, citizens have right to seek information and know and government scheme which is quite significant for the proper implementation of environment initiatives. The other aim as enunciated under

Preamble are liberty, justice and equality under Part III of the Constitution providing about the fundamental rights.

Environmental protection has found a special mention in the Indian Constitution. In fact, the environment protection has been given a constitutional status in the Indian Polity. The Constitution being the fundamental law of the land has a binding force on citizens, non-citizens as well as the state. The fundamental rights and the "Directive Principles of State Policy" underline our national commitment to protect and improve the environment. The Courts in India have also given a new interpretation to the constitutional provisions touching the environmental perspectives.

Article 21 of the Indian Constitution establishes that "no one can be deprived of their life or personal liberty" unless it is done in accordance with a legally recognised procedure. The right to life contained in Article 21 encompasses not just the mere physical existence of life, but also the standard of living experienced by inhabitants. Article 21 also addresses the right to an pollution free environment and the requirement to preserve and safeguard nature's treasures. This right includes a diverse range of other rights, including the safeguarding of wildlife, woods, lakes, ancient sites, fauna-flora, clean air, mitigation of noise, air and water pollution, and preservation of ecological equilibrium. Furthermore, the Superior Courts have noted that life encompasses all aspects that provide significance to an individual's existence, such as their customs, culture, and legacy, and the safeguarding of that legacy to the fullest extent.

Article 48A was included into the Constitution in the chapter titled "Directive Principle of State Policy" by the 42nd Amendment Act of 1976. The clause addressing the protection and betterment of the environment states that "The State shall make efforts to protect and enhance the environment and to safeguard the interests of the Country." Furthermore, the Amendment added part IVA to the Constitution, which outlines the essential responsibilities of the citizens. In relation to the environment, Article 51A addresses the fundamental duty. It is the responsibility of every Indian citizen to save and preserve the natural environment, including forests, lakes, and wildlife, and to show empathy towards all living beings.

Aside from these, there are constitutional remedies provided under Article 32 and 226. A petitioner may now assert their right to clean environment against the state via a writ petition to either the Supreme Court or High Court. The Supreme Court has already recognized the judicial acceptance of the right to a wholesome environment as inherent on Article 21. Once the jurisdiction under Articles 32 and 226 is asserted, the Courts typically issue writs of mandamus, certiorari, and prohibition in environmental cases. Nevertheless, it can be argued that the writ powers of the Supreme Court and the High Court, as outlined in Article 32 and 226, go beyond the issuance of a particular writ. They also include the authority to provide directions and orders to protect the petitioner's rights, grant relief, issue injunction.

According to Article 253 of the Indian Constitution, the Parliament has the authority to enact legislation for the entire or a specific area of India's territory in order to enforce any treaty, agreement, or convention with other countries, as well as any decision reached at international platforms.

B. **Legislative Provisions**

a) In the year 1986, EPA which is a small piece of legislation which is regarded as a protective and progressive enactment. It is consisting of twenty-six sections, divided into four chapters. It gives ample power to central govt. to take measure necessary for protection and improvement of environment. Even the abatement of the environment pollution has been made a punishable offence.

b) Water is considered most important element of the nature. Water pollution is one of the major problem facing the humanity. There are various causes of water pollution. Industrial effluents directly entering into stream or through a municipal sewer or through discharge on land meant for irrigation results in water pollution. Hence the 'Water Act'[3] was enacted.

c) With the increasing industrialization and the tendency of the majority of industries to congregate in areas in which are already heavily industrialized, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily industrialized areas which are also densely populated. In the UN Conference on the Human Environment held in Stockholm in June, 1972, in which India participated and on the basis of the decisions in the Conference India has taken appropriate steps for the preservation of the natural resources and safeguarding the environment. The Central Govt. has decided to implement these decisions of the said Conference in so far as they relate to the preservation of the quality of air and control of the air pollution 'Air Act'[4] was enacted.

d) The forest resources are threatened due to over-grazing, human encroachment and other forms of over exploitation, both for commercial and household need in large part of forests, natural regeneration is inadequate due to excessive grazing of livestock whose population is estimated to be 450 m. The over-exploitation and loss of habitat constitute a threat to the rich forests cover and biological diversity available in the country. The forest policy and management was introduced by the British Govt. and enacted the Indian Forest Act.[5]

e) The National Forest Policy specifically and clearly recognized the multiple use of nature, rights of local population including the inadvisability of protecting forest

3. The Water (Prevention and Control of Pollution) Act, 1974.
4. The Air (Prevention and Control of Pollution) Act, 1981.
5. The Indian Forest Act, 1927.

resources without their active participation and role that forest play in the survival strategy of the poor. The task of regenerating the degraded forests and lands adjoining forest areas and other protected and ecologically big areas and implementation of eco development programme is being undertaken by the national afforestation and eco-development board. Major Schemes in the wild life sector concentrate on the conservation, protection and development of wildlife and its habitat. Therefore, the central Govt. has enacted the Forest Act.[6]

f) Plants are of enormous importance for the mankind. According to the WHO, more than billion people rely on herbal medicine to some extent. The notion that a plant collected from the wild is more efficacious than the cultivated one possess problem for plant conservation. Preservation of wildlife is important for maintain the ecological balance in the environment and sustaining the economic change. The rapid decline India's wild animal and birds one of the richest and most varied in the world has been a cause of grave concern. Keeping in mind to protect wild life, the Wildlife Act[7] was enacted.

g) In order to achieve the objective of Article 21, 48A, and 51A (g) of the Constitution of India by means of fair, fast and satisfactory judicial procedure Law Commission in its 186th Report recommended for the establishment of Environment Courts. After long time, the Central Govt. has enacted the NGT[8] Act in the year 2010.

h) "Hazardous Wastes (Management and Handling) Rules", 1989/2000/2003 define hazardous waste as "any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger or is likely to cause danger to health or environment, whether alone or when on contact with other wastes or substances. " In Schedule 1, waste generated from the electronic industry is considered as hazardous waste. Schedule 3 lists waste of various kinds including electrical and electronic assemblies or scrap containing compounds such as accumulators and other batteries, mercury switches, glass from cathode ray tubes and other activated glass and PCB capacitors or contaminated with constituents such as cadmium, mercury, lead, polychlorinated biphenyl or from these have been removed to an extent that they do not which possess any have of the constituents in Schedule 2. Some other rules are "MoEF Guidelines for Management and Handling of Hazardous Wastes, 1991", "Batteries (Management and Handling) Rules, 2001", "Bio-Medical Wastes (Management and Handling) Rules 1998", and "Municipal Solid Wastes (Management and Handling) Rules, 2000 and 2002".

6. The Forest (Conservation) Act, 1980.
7. The Wildlife (Protection) Act, 1972.
8. The National Green Tribunal Act, 2010.

i) India issued its "National Action Plan on Climate Change" (NAPCC) on June 30, 2008, as part of its voluntary climate change efforts. The National Action Plan encourages climate change adaptation and ecological sustainability in India's growth journey. The National Action Plan emphasizes that rapid growth is necessary to improve the living conditions of most Indians and reduce their climate change vulnerability. The Action Plan identifies actions that support sustainable development and combat climate change. The National Solar Mission, National Mission on Enhanced Energy Efficiency, National Mission on Sustainable Habitat, National Water Mission, National Mission for Sustaining the Himalayan Ecosystem, National Mission for Sustainable Agriculture, and National Mission on Strategic Knowledge for Climate Change are the core of the National Action Plan and represent multi-pronged, long-term, and integrated strategies for achieving key goals in the context. In addition to the 8 missions, the NAPCC lists 24 initiatives that promote technologies and actions in energy generation, transport, renewables, disaster management, and capacity building that will help address climate change when integrated into ministry development plans. India's Five-Year Plans include a low-carbon sustainable growth approach. The 11th Five-Year Plan proposes a 20% energy efficiency increase by 2016-17. The Ministry of Power's National Mission on Enhanced Energy Efficiency, through the Bureau of Energy Efficiency, pursues this goal.

IV. IMPACT ON CLIMATE

A great deal of the important factors that determine health are influenced by climate. In addition to causing extreme weather and violent weather events, it also causes a recurrence of disease vectors, it has an impact on the quality of air, food, and water, and it threatens the stability of the ecosystems that we as humans rely on. There is the potential for climate change to have both direct and indirect effects on human health. Alterations in temperature patterns can have indirect effects, such as disrupting natural ecosystems, altering the evolution of infectious illnesses, causing damage to agriculture and fresh water sources, increasing the levels of air pollution, and causing a large-scale rehabilitation of plant and animal.

The natural water cycle in forests also helps to mediate climate. Trees pump vast quantities of water from the ground. The water evaporates from their leaves, releasing moisture into the atmosphere, which then falls to the ground as rain. In tropical forests, roughly one-third of the rain is water that evaporates from tree leaves. Not only does this maintain a constant source of clean water, it also cools the Earth's surface. Computer simulations of areas in which forests are converted to agricultural landscapes suggest that conditions in deforested areas are hotter and drier.

Rain is a natural occurrence takes place when the heat from the sun's rays on the surface of bodies of water, such as rivers, lakes, and oceans, causes precipitation to

evaporate. In the course of the process, water vapour is produced, and it eventually reaches a point where it condenses into moisture. If the conditions of the environment are favourable, it will fall as rain. Vapours, on the other hand, are able to reach the atmosphere, where they condense and react with gases in the atmosphere such as sulphur dioxide and nitrogen oxides. These contaminants in the atmosphere are deposited on the ground, the surface water and reservoirs whenever it rains. In the end, the deposition causes harm because of the acidity of the contaminants. Rainwater that is acidic releases mercury from the soil, which can be detrimental to the development of the brain all through the process of foetal development. Birds and people that consume fish are able to acquire mercury through the consumption of fish that contain high concentrations of the metal. Consequently, the fish consume bacteria, which in turn consume mercury that has been released into the water as a result of acid rain. Moreover, aluminium and cadmium are released when acid rain falls. In addition to contributing to the development of lesions in the outer layer of the kidney, cadmium can also be responsible for renal diseases. Aluminium, on the other hand, is not good for renal health. It enters the bloodstream immediately without first having gone through the regular protective barriers that are present in the body during the process of dialysis, which is the process of cleaning the blood when the kidneys are not functioning properly. Damage to the brain and skeleton might result from this. It is also possible that it causes Parkinson's disease and Alzheimer's disease. Concentrations of substances that are known to be harmful to human health, such as sulphur monoxide, nitrogen oxides, and suspended particulate matter, are increasing as a result of rising levels of traffic and exhaust emissions, as well as industrial emissions. A rise in temperature causes an increase in the concentration of ozone at ground level as well as other air pollutants, and it also speeds up the beginning of the pollen season. Allergens in the air, such as pollen and other allergens, stimulate and exacerbate respiratory conditions such as asthma and cardiovascular disease.

There is a high probability that the impact of climate change on the availability of water will be among the most significant influences on the health of communities. The rate of evaporation of surface water is increasing at a faster pace as a result of higher temperatures, which in turn reduces the amount of fresh water that is available. Hygiene is compromised when there is a lack of fresh water, which leads to an increase in the number of cases of diarrhoeal sickness. Flooding, on the other hand, is a source of pollution for freshwater sources since it causes an excessive amount of water to be present. Cholera outbreaks are a potential consequence of extreme occurrences such as rising sea levels, which can be accompanied by higher storm surges and floods along the shore. The disturbance of natural ecosystems, which offer a variety of services that ultimately sustain human health, is likely to be the most significant threat to human health that will be posed by climate change over the long run.

India is a huge developing nation that has about 700 million rural inhabitants that are directly dependent on climate-sensitive industries (such as agriculture, forestry, and fisheries) and natural resources (such as water, biodiversity, mangroves, coastal zones, and grasslands) for their means of subsistence and livelihoods. From 1980 to 2003, India was responsible for just 3.11 percent of the total global CO2 emissions. This contribution is considered to be quite low. As a result, India's share in the carbon stock in the atmosphere is relatively very small when compared to the population. India's carbon emissions per person are twenty times lower than those of the United States and ten times lower than those of the majority of Western Europe and Japan. Climate change is likely to have an impact on all of the natural ecosystems as well as socioeconomic systems, as demonstrated by the National Communications Report of India to the "United Nations Framework Convention on Climate Change".

The majority of the states in the northern region, such as Punjab, Haryana, Rajasthan, Uttar Pradesh, Madhya Pradesh, and the North East, are reliant on river water that originates in the Himalayas. It is expected that urban centres in emerging nations, such as India, would be more affected as a result of the rapid speed of growth, the expanding industrialisation, and the growing amount of motor traffic. The disruption of the ecosystem's services that are necessary for human health and livelihood will be caused by these climate changes, which will also have an effect on human health care systems. The Intergovernmental Panel on Climate Change (IPCC) forecasts a rise in malnutrition and the diseases that result from it, which will have ramifications for the growth and development of children. There is a possibility that the disturbance in rainfall patterns would result in an increase in the burden of illnesses that are transmitted by vectors and those that cause diarrhoea. According to estimates provided by the World Health Organisation (WHO), the very minor climate change that has taken place since 1970 is responsible for the loss of 150,000 lives every year. The current and emerging climate change-related health risks in Asia, including India, include heat stress, water, and food borne diseases (e.g., cholera and other diarrhoea] diseases) associated with extreme weather events (e.g., heat waves, storms, floods and flash floods, and droughts); vector-borne diseases (e.g., dengue and malaria); respiratory diseases due to air pollution; airborne allergens, food, and water security issues; malnutrition; and psychosocial concerns from displacement.

V. CONCLUSION

The alteration of the global climate caused by the excessive production of greenhouse gases would inevitably lead to significant changes in the ecosystem, living conditions, human health and hygiene, and economic activity. The climate change is a major obstacle faced by India as well as the whole world and the Indian legal system is playing a significant role in addressing these challenges by the implementation of laws

and policies aimed at mitigating and adopting to the adversarial effects of climate change. The India is actively taking initiatives to promote sustainable development and protect the environment and ensuring a safe and healthy future for its citizens.

Providing accurate and thorough evaluations of risk vulnerabilities for cities that are at risk and sharing this information with others is important to prepare for climate change. Development of early warning systems and evacuation plans, along with emergency preparedness and neighborhood response system can reduce the fatalities during disaster. Enhanced effectiveness in the management of the water supply and enhancing the capacity of health education and institutions is must for managing urban environments. Implementing measures to facilitate the acquisition of secure and well-constructed housing in safe locations for low-income groups, including regularizing property rights for informal settlements are some innovative measures in action.

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10

Indian Legal Framework on Anti-Terror Laws: An Overview

Aniruddha Sarkar[1]

I. INTRODUCTION

To ensure human rights by taking positive measures to protect the people and also to bring the perpetrators to justice India has always given utmost priority to maintenance of peace and harmony. With the emergence of grave security threats, the remedy available under the regular criminal laws was found to be inadequate. Accordingly, to combat this issue, the government has passed stringent laws protecting national security and countering terrorist threats. There has been a long and historical debate around national security of a state on one side and protection and promotion of human rights on the other side. India has made significant efforts to strengthen the legal, constitutional, and institutional framework to protect, promote and institutionalize human rights since independence. The Indian judiciary, particularly the Supreme Court of India, supported the efforts through numerous judgments by limiting the powers of government-including police and other enforcement machinery-while simultaneously expanding the notions of freedom and liberty. Passing certain laws under the guise of protecting national security in India offers an occasion to examine the human rights understanding in a constitutional sense. These Anti-Terror laws granted vast powers to the Indian executive, thus providing greater opportunity for abuse of human rights and violation of fundamental rights and civil liberties that is guaranteed under Part III of the Constitution. The contemporary reality of Indian executive governance demonstrates the weaknesses and inadequacies on the principle of human dignity and civil liberties of the citizens.

This research paper addresses the issue of Anti-Terror laws and the efforts to combat insurgency and terrorism while protecting human rights. Firstly, it provides an overview of the Anti-Terror security laws giving backdrop of the laws since India started working as a democratic republic. Secondly, it evaluates the human rights

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consequences of these laws with the intent to examine them critically. Cracking down political dissent, muffling the voices of human rights activism in the guise of security issue is not new issue in India. This paper on its third objective would highlight some recent issues where the laws attracted severe criticism on human rights violations like, arbitrary use of law, broadening the horizon of the executive control and its subsequent impact. Lastly, the paper shall give its suggestions and recommendations on the issue of protection and preservation of fair trial, due process and above all showing respect to human rights instruments in working of the democracy.

II. SPECIAL LAWS ON TERRORISM

Prior to mentioning any law enactment passed by the relevant legislature, it is important to note that terrorism has long been a threat in India and takes many different forms. Earlier to this issue was localized in nature. The then legislature had considered the nature of the issue and passed the essential arrangements while maintaining the modus operandi, etc. However, as time went on, the issue of terrorism evolved into one facing global civilization and was turned into "international terrorism." The steps that the international organizations had advocated were reflected in the legal measures that the involved authorities enacted in response to the newly created scenario. In addition to national and international legislation, there has also been the issue of terrorism in a different form, which takes the form of "organized crimes" that interfere with the interests of a specific State. Each State has passed legislation to address this issue. The following part presents the legal framework surrounding this organized crime.

2.1. The Preventive Detention Act, 1950

In 1950, the Preventive Detention Act (PDA) was enacted as a temporary action to address problems including violence and violence-related relocation. This Act gave the government the right to hold people without charging them for a maximum of one year. The Act was a piece of temporary legislation with a "sunset clause," which means that it was created with a specific objective in mind and will expire when that objective is fulfilled. The Parliament was required to evaluate the law once a year. The Act has drawn a lot of criticism for going against the principles of natural justice and due process of law that the Indian Constitution guarantees. The Act was examined, extended, and allowed to expire in 1969.[2] A second Preventive Detention Act was judged to be necessary in 1971, this time with the goal of "maintaining internal security." This was the infamous Maintenance of Internal Security Act, 1971. It was abused to silence any political dissent during the emergency (1975–1977). The Supreme Court noted that the Act granted the executive exceptional powers, the misuse of which was

2. Bhamati Sivapalan & Vidyun Sabhaney, "In Illustrations: A Brief History of India's National Security Laws", *THE WIRE*, July 21, 2019. available at: https://thewire.in/law/in-illustrations-a-brief-history-of-indias-nationalsecurity-law (Last Visited on 21.12.2023).

observed by the Supreme Court as an engine of oppression posing threat to democratic way of life.[3]

2.2. The Armed Forces (Special Powers) Act, 1958

The second piece of statutory law pertaining to matters of national security is the Armed Forces (Special Powers) Act, 1958 (AFSPA). In certain designated "disturbed areas," the military was given the authority to work with the police. This Act Approved military forces typically to have more authority than law enforcement to use force against people. It was passed in response to Nagaland's separatist movements. But by 1972, it had been expanded to include all seven of the North East India region's states. Punjab implemented a version of the AFSPA between 1977 and 1983. Later, in 1990, the turmoil that pervaded the Kashmir valley prompted the Act to be expanded to include the state of Jammu and Kashmir.

The AFSPA has been under criticism from the start for providing institutional impunity for violations of human rights. In Jammu and Kashmir and other North Eastern states, this Act sparked both peaceful and violent protests. Manipur-based anti-AFSPA activist Irom Sharmila went on to an indefinite hunger strike to protest and for the policy's removal. Even if the international community supported her words, it seemed that her effort was in vain because the administration was unaffected. The AFSPA is still widely used in many parts of the various Indian states, and its definition of "disturbed areas" is periodically reviewed and added to or removed.

2.3. The Unlawful Activities (Prevention) Act, 1967

The Nehru Government faced significant criticism for the PDA's continuous extension until 1969, despite its stated one-year expiration date. In the meantime, the Unlawful Activities (Prevention) Act, 1967 (UAPA) was enacted. The UAPA's background must be understood in light of two wars, one with China in 1962 and another with Pakistan in 1965, as well as separatist demands within India.[4] The purpose of this Act is to effectively prevent specific illegal activities by people and organizations. The principal aim of the Act was to suppress terrorism by designating illicit actions that jeopardize the territorial sovereignty.[5] According to this Act, if it is discovered that a person is involved in any type of terrorism that poses a risk to India's sovereignty or integrity, the Central Government may declare or designate that person as a terrorist.[6] According

3. Bankat Lal v. State of Rajsthan, AIR 1975 SC 522
4. Rishika Singh, "Explained: A short history of the demand for 'Dravida Nadu', and its evolution" *INDIAN EXPRESS*, Jul. 8, 2022. Available at: https://indianexpress.com/article/explained/explained-a-short-history-of-thedema (Last Visited on 21.12.2023)
5. Mrinal Satish, "State Monopoly over Legitimate Force and Solutions to Terrorism,"58 (2) *Indian Police Journal* 11(2011).
6. The Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967), s.15

to the Act, any inspector rank officer of the National Investigation Agency may look into any illegal activity with permission from the relevant authorities in terrorist incidents. The officer in charge of the investigation may also conduct search and seizure as long as he notifies the designated officer of the state within 48 hours of carrying out such raids.[7]

An "unlawful association" is any group whose members engage in unlawful action, which promotes or assists others in engaging in unlawful activity, or which has unlawful activity as one of its goals. The UAPA authorized the government to declare an organization "illegal" and then to significantly limit and control members of such an organization. This law was criticized in many points from the beginning. The term "illegal" is very vaguely defined in the law. The law expanded the spectrum of criminalization of organizations and their activities, which seems inconvenient for the government. The UAPA contains some provisions on bail which are contrary to the principle "Bail is the rule, Jail is the exception".[8] The operation of the law has shown repeatedly that bail under the UAPA is difficult to obtain. Under this law, an accused can be detained for six months without charge-sheet. The severity of this can be compared to a case of murder, where an accused murderer can be freed after three months of detention if the case is not fully disclosed to the prosecution. In addition, the law also places the burden of proof on the accused.

The Act's provisions restrict citizens' fundamentally given right to free speech, which also groups in collective freedom to express their opinions. The UAPA primarily targets this right.[9] Second, arrestees under the UAPA may be detained in custody for up to 180 days without the filing of a charge sheet, in violation of Article 21 of the Constitution, which guarantees fundamental rights.[10] Thirdly, the Government is granted extensive discretionary powers under the UAPA, which are being used to intimidate and harass dissenters, endangering public discourse and press freedom as well as making it illegal to exercise civil rights.

2.4. The Maintenance of Internal Security Act, 1971-1977

In order to combat terrorism and threats to national security, as well as to quell civil and political unrest in India, the Indian parliament passed the controversial Maintenance of Internal Security Act (MISA) in 1971, giving the government and Indian law enforcement agencies extremely broad powers, including the ability to wiretap, search and seize property without a warrant, and detain people indefinitely without charge.

7. Surtax, "Striking a Balance between Terror Laws and Human Rights Jurisprudence", 2(6) *Criminal Law Journal* 172(2012).
8. State of Rajasthan v Balchand @ Baliay, A.I.R.1977 S.C.2447
9. Mithul, "Transnational Terrorism and Need for International Cooperation," 45 (34) *Journal of Constitutional and Parliamentary Studies* 159 (2011).
10. Sarovar Manas, "Tolerating Death in a Culture of Intolerance," 50 (12) *Economic and Political Weekly* 11(2015).

During the ensuing national emergency (1975–1977), the statute was altered multiple times and applied to suppress political dissent. When the Janata Party won the 1977 Indian general election and Indira Gandhi lost, it was finally repealed in 1977.[11]

Other coercive laws, such as the Essential Services Maintenance Act, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act were enacted to prohibit smuggling and black-marketing in foreign exchange.[12] The National Security Act (1980), the Terrorism and Disruptive Activities (Prevention) Act (TADA, 1985–1995), and the Prevention of Terrorism Act (POTA, 2002) are controversial laws that arose in response to similar legislation. These laws were criticized for granting disproportionate authority without providing protections for civil liberties in the name of combating political violence and domestic and international terrorism.[13]

2.5. The Terrorist and Disruptive Activities (Prevention) Act, 1985

The Terrorist and Disruptive Activities (Prevention) Act, or TADA, was an anti-terrorism statute that was implemented nationwide in India between 1985 and 1995 (with modifications made in 1987), coinciding with the uprising in Punjab. The goal of this Act was to put an end to the Punjab-based armed Sikh separatist movement known as the Khalistani Movement. Later on, it grew to include additional states. The Act featured a sunset clause that would expire on May 24, 1987, two years after it was enacted. The Act's lifespan could not be extended while Parliament was not in session. However, an ordinance in force from the Act's expiration date preserved the requirements. The Terrorist and Disruptive Activities (Prevention) Act, 1987 eventually superseded this ordinance. Additionally, there was a two-year sunset clause starting on May 24, 1987. After numerous accusations of abuse, it was extended in 1989, 1991, and 1993 before being allowed to expire in 1995 as a result of growing unpopularity. Under TADA, bail requirements were strict. TADA prisoners were detained for extended periods of time in jails[14]. Possibly the most notable change to date stands to be the one made to the law of evidence since TADA granted the confessions made to the police having evidentiary status. This was the first government-enacted anti-terrorism law designed to identify and combat terrorist activity.

2.6. The Prevention of Terrorism Act, 2002

The Indian Parliament approved the Prevention of Terrorism Act, 2002 (POTA) in 2002 with the intention of bolstering counterterrorism efforts. The enactment of the

11. Ganguly Sumit, Diamond, Larry, Plattner Marc F, *et.al.* (eds.), *The State of India's Democracy* 130 (JHU Press, Baltimore, 2007).
12. Harding, Andrew, Hatchard, John, *et.al.* (eds.), *Preventive Detention and Security Law: A Comparative Survey* 61 (Martinus Nijhoff Publishers. London, 1993)
13. Singh Ujjwal Kumar (ed.) (6 January 2009). *Human Rights and Peace: Ideas, Laws, Institutions and Movements* 246 (SAGE Publications, New Delhi , 2009).
14. Arun Mishra, "Not by Guns Alone: Soft Issues in CT Strategy," 58 (2) *Indian Police Journal* 49(2011)

Act was prompted by multiple terrorist attacks occurring within India, particularly in reaction to the attack on the Parliament. The governing National Democratic Alliance supported the Act, which superseded the Terrorist and Disruptive Activities (Prevention) Act (TADA) (1985–1995) and the Prevention of Terrorism Ordinance (POTO) of 2001. In 2004, the coalition government known as the United Progressive Alliance abolished the Act. The Act gave the investigating authorities specified under the Act special powers and defined what constituted a "terrorist act" and who was considered a "terrorist". Special safeguards were incorporated within the Act to guarantee that the discretionary powers granted to the investigating authorities were not abused and that human rights abuses were not committed.

Following the Act's enactment, numerous accounts of its egregious abuse emerged. It was reported that political opponents were singled out for abuse of POTA. Hundreds of persons had been arrested countrywide under the Act by state law enforcement officials in just four months after it was passed, and the figure was still rising. In just eight months, almost one thousand persons had been arrested in seven states where POTA was in effect; at least half of them were incarcerated. Under the statute, a number of well-known people, including Vaiko, were detained. POTA altered the UAPA treatment of an organization. As a result, the Government was released from the obligation to provide an explanation for the restriction. POTA defines terrorism as an act committed with the intention of threatening sovereignty, unity, or integrity or causing terror. It is punishable by death, a maximum term of life in jail, and imprisonment of at least five years.

2.7. The National Investigation Agency Act, 2008

Establishing an investigation agency at the national level to look into and prosecute offenses affecting India's sovereignty, security, and integrity; security of the state; friendly relations with other states; and offenses under acts enacted to implement international treaties, agreements, Conventions, and resolutions of the United Nations, its agencies, and other international organizations, as well as for matters related or incidental thereto, is the aim of the National Investigation Agency Act, 2008.

The terror attacks in Mumbai have compelled the government to amend the anti-terrorism laws significantly. Additionally, the Supreme Court mandated the creation of a statutory body to deal with terrorism on an impartial basis in Prakash Singh v. Union of India[15]. The Unlawful Activities (Prevention) Act of 1967 was amended and Special Courts were established to hear cases involving terrorism. These were the significant modifications made to combat the threat of terrorism. Following this, Parliament passed the National Investigation Agency Act, 2008 (NIA Act) in order to handle the intricate legal issues that local police departments and investigative agencies had to cope with

15. (2006) 8 S.C.C. 13.

when handling the investigation and prosecution of the remaining terrorism cases.[16] The authority of the SHO in charge of any affected police station will be extended to NIA personnel ranking higher than Sub Inspector. The NIA would have special prosecutors and daily trials for the terror suspects would take place in special courts. The Unlawful Activities (Prevention) Act would be amended to extend the 15-day police remand period for terror suspects to 30 days.[17] The entire scope of the Act specifies that terrorist acts shall be classified as scheduled offenses and that the NIA shall be tasked with conducting an investigation into them.[18]

By outlining the operational duties of the Director General and the authority and functions of the political executive, the law enforcement agency offered a chance to address this predicament. The Director General should have the final say about whether an offense calls for NIA involvement. The establishment of a new law enforcement agency often raises suspicions, many of which could have been avoided if the possibility of illegal political intervention had been reduced as opposed to increased. Rather, section 6(3), which stipulates that the Central Government must decide within 15 days whether the offense is a Scheduled Offense, makes it more likely that political factors likely to affect the investigative decision-making process.[19]

III. VIEW OF INDIAN JUDICIARY TOWARDS ANTI-TERROR LAWS

Few cases pertaining to preventive detention statutes had been reported prior to independence, which is when the judicial activism to combat the threat of terrorism got its start. The constitutionality of Defence of India Act, 1915 was contested in numerous cases, including the legitimacy of these laws has been maintained by constitutional courts.[20] In the majority of instances in the genre of constitutional review pertaining to anti-terrorism laws, the Supreme Court has ruled that the Indian Parliament possessed all authority to enact the anti-terrorism legislation, including the ability to enact the specific section that is under issue.[21]

The Supreme Court has significantly influenced the interpretation of vague constitutional provisions, hence influencing the nature and extent of these provisions.

16. R. Bhanu Krishna Kiran, "The Role of NIA In the War on Terror: An Appraisal of National Investigation Act, 2008" 4 *Journal of Terrorism Research* 9(2013).
17. David L., *Policing Terrorism: Research Studies into Police Counterterrorism Investigations* 202, (CRC Press, Florida, 2016)
18. The National Investigation Agency Act, 2008 (Act No. 34 of 2008) s.6(3).
19. Chomsky Noam and Veltche Andre (eds.), *On Western Terrorism: from Hiroshima to Drone Warfare* 192 (Pluto Press, London, 2013).
20. K.R.Gupta, *Anti-Terrorism Laws: India, the United States, The United Kingdom and Israel* 156 (Atlantic Publications, New Delhi, 2002).
21. Jaesam Lee, "Legal and Policy Proposal for The Technology: A Study on The Institutional Improvement Plan for Prevention of Terrorism Activities Under the Anti-Terrorism Act" 12 *Gan chon Law Review* 11(2018).

But when it comes to evaluating anti-terrorism laws, the court retreats from its activist interpretation and sticks to making other kinds of rulings.[22] These days, new risks and challenges are developing as a result of scientific and technological advancements, which have drastically altered the face of terrorism. This is why terrorism has grown to be a serious threat to the country's security and tranquillity.[23] The terrorists were able to organize terrorist strikes by communicating with one another thanks to the rapid advancement of technology.[24]

When it comes to the pre-independence legal interpretations of terrorism, the courts have always interpreted legislative prohibitions strictly, leaving little room for appeal options. Strict interpretations of the law to protect state security demonstrate rigidity and a lack of flexibility. Regarding Ameer Khan's case[25], the court has granted the detainee the ability to defend himself in court. Preventive detention rules were passed in response to the contentious Bhagath Singh case[26] with the aim of giving the Crown policy in India greater sway than it had previously had. In this instance, the accused was not granted the opportunity to appeal in the event of a death sentence. The majority in Emperor v. Sibnath Banerjee case[27] concluded that as the statute was passed with the express purpose of preserving a state's peace and security, the Parliament had the ultimate jurisdiction over preventive detention. However, the minority, which was led by Justice Kania, J., asserted that a person in custody may contest the basis for his detention and argue that his liberties have been restricted. The Court found that the grounds for preventive custody had to be related to the orders for preventive detention, drawing further support from the case of Machinder Shivaji v. The King[28].

POTA has generated debate in a number of situations. In the Kartar Singh v. State of Punjab[29] case, the constitutionality of section 15 of the TADA which accepts confessions to the police as admissible was contested by two of the five-member court. The Court affirmed TADA's constitutionality and noted that Parliament should pass legislation that distinguishes between regular citizens and terrorists. In this sense, it serves as a classic illustration. The Supreme Court heard arguments challenging the constitutionality of TADA on the following grounds:

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22. Suvendrini Perera & Sherene Razack (eds.), *At the Limits of Justice: Women of Colour on Terror* 619, (University of Toronto Press, Toronto, 2014).
23. Roman Grime Teshome, "The Fight Against Terrorism as A Contemporary Challenge to International Humanitarian Law: Rendering the Law of War Obsolete," 23 *International Journal of Legal Studies and Research* 90 (2013).
24. Ohlayan, S.K., "Fundamental Rights: A Constitutional Perspective to Contain Terrorism" 12 *Maharishi Dayanand University Law Journal* 29(2000).
25. Re Ameer Khan, (1870), 6 Beng.L.R.392:
26. Bhagat Singh v. Emperor, (1931) 33 Bomb L.R 1950.
27. (1943) A.I.R FC 75: 1945 P.C.l56).
28. A.I.R 1950 S.C 27.
29. (1994) 3 S.C.C. 569

1. In light of the insurgency scenario in the State of Punjab, Parliament lacked the legislative authority to pass anti-terror legislation such as TADA, which was established in 1985.
2. A police officer's confession that was allowed to be admitted into evidence in court under Section 15 of the TADA violates the fundamentals of criminal justice.
3. It is not in the best interests of a fair and quick trial to deny the conventional right of appeal and to allow for a direct appeal to the Supreme Court.
4. It is also against the norms of criminal justice to exclude the benefit of anticipatory bail under Section 438 Cr. P.C. and to provide an executive magistrate the authority to issue bail under Sections 167 and 164 of the Cr. P.C.

Nonetheless, the Supreme Court upheld the Parliament's authority in passing antiterrorism laws like TADA. The Court provided additional justification for its ruling, stating that offenses categorized as "public order" and falling under entry 1 of the State List are thought to be of a lesser severity. The Supreme Court made sure that the strict terms of TADA were not abused in R. M. Tewari v. State of Delhi[30]. It also mandated that any cases where the application of TADA was deemed to be unnecessary should result in the appropriate corrective action. The court concluded in Usmanbhai Dawoodhbai v. State of Gujarat[31] that the TADA is an extreme remedy to be used in situations where the police are unable to resolve the matter in accordance with general law. In the case of Hitendra Thakur v. State of Maharashtra[32], the court decided that, in accordance with section 3(1) of TADA, criminal action must be committed with "intention" and that no crime may be classified as terroristic. In State of Maharashtra v. Sanjay Dutt[33] The burden of proof rests with the accused to demonstrate that the items were intentionally obtained without authorization and were not utilized for terrorist purposes. TADA detainees may be categorized into four groups according to Shahin Welfare Association v. Union of India[34], which granted bail: hard-core undertrials whose release would pose a threat to society; undertrials arrested under TADA provisions; undertrials roped under sections 120-B and 147 IPC; and undertrials found in possession of incriminating articles under section 5 of TADA.

The Prevention of Terrorism Act, 2002 was contested constitutionally in the Delhi-Bomb explosion case, People's Union for Civil Liberties v. Union of India[35], on the grounds that Section 20 of the Act infringes upon human rights. The Court held that stopping terrorism is crucial to defending and advancing human rights. The Court

30. 1996 Cri.L.J. 2872 (S.C).
31. 1988 (3) S.C.R. 225.
32. A.I.R 1993 SC 8.
33. (1994) 5 S.C.C. 410.
34. (1994) 6 S.C.C. 731
35. (2004) 9 S.C.C. 580.

maintained this, stating that "the mere possibility of abuse cannot be a ground for declaring a statute unconstitutionally discussed or for denying the vesting of powers." The Court has the authority to overturn the presumption of guilt, but there must be restrictions on when this can happen. This becomes significant when the same set of offenses are covered by both the ordinary and special laws, but their procedures differ. The special law's process works against the accused and deprives him of his fundamental right to life. It was decided in Maneka Gandhi v. Union of India that every method must be reasonable, just, and fair with no room for interpretation.[36]

Given that law and order is a matter of state concern, there have also been concerns raised regarding the validity of the Armed Forces Special Powers Act of 1958 (AFSPA). In the Naga People's Movement of Human Rights Union of India case from 1998, the Supreme Court affirmed the validity of the AFSPA.[37] The Supreme Court reached several conclusions in this case, including the following:

(a) The Central Government may make a suo-motto declaration; however, it is preferable that the State Government be consulted before making the declaration;

(b) AFSPA does not confer arbitrary powers to declare an area as a "disturbed area";

(c) The declaration must be made for a limited period of time and subject to periodic review after six months.

(d) The authorized officer shall exercise the powers granted to him by AFSPA with the least amount of force necessary to carry out his duties;

(e) The authorized officer shall closely adhere to the army's "dos and don'ts."[38]

Nonetheless, law cannot violate an individual's rights in the sake of state security. Throughout the case, the Court has emphasized that strong restrictions are necessary due to the current state of affairs in the country, and they are appropriate even if they infringe section III rights. Its goal has always been to defend the State's interests against those of the people. This was demonstrated in the PUCL v. Union of India[39] case, in which the Court affirmed POTA's legality.

In Thwaha Fasal v. Union of India[40], the Court while interpreting section 38 of UAPS has observed that it is possible for someone who violates Section 38 to be a member of a terrorist group or not. Should the defendant be a part of a terrorist group

36. A.I.R 1978 S.C 597.
37. AIR 1998 S.C 431.
38. Pallavi Bedi, "All You Wanted to Know about AFSPA", available at: https://www.prsindia.org/media/articles-by-prs-team/all-you-wanted-to-know-about-the-afspa-51(LastVisitedon 27.12.2023).
39. (2004) 9 S.C.C.580.
40. (2021) SCC Online SC 1000.

that engages in acts of terrorism covered by Section 15, severe offenses covered by Section 20 may be drawn. In Vinod Dua v. Union of India[41], the Court has also observed that if the petitioner's statements are interpreted in the context of the Kedar Nath Singh decision and the circumstances surrounding their creation, they can only be described as a protest against the Government's and its officials' actions, which prevented the situation from being resolved effectively and swiftly. They most definitely didn't intend to agitate people or display a propensity to use violence to stir up chaos or disturb the quiet in the community.

IV. CONCLUSION AND SUGGESTIONS

The laws against terrorism and the Indian judiciary's response are covered in this Article. Examining the constitutional guarantees and provisions for individual protection is the first step in this section. The Article then goes on to analyse every piece of legislation that the Indian parliament has put up to combat terrorism. Based on the judgment from the previous debate, the following conclusion is reached.

The laws grant the police and security forces extraordinary powers, some of which have been widely abused or misused. These powers include the ability to search, seize, forfeit, compel confession, shoot at sight, and preventively detain people. These powers have raised serious concerns. The broad rule that designates an organization as terrorist and thereby establishes a status offense whereby any affiliation with the organization is considered unlawful has consistently been called into question in multiple instances. In addition, the clause allowing for special courts to try violations of the legislation and the restriction on the judicial scrutiny of acts committed in violation of these laws have had unanticipated negative effects on Indian residents. It should be mentioned, though, that the court has been asked to rule on numerous occasions over the Central Government's legislative authority to pass such laws.

However, the Court maintained the constitutionality of the laws. The legitimacy of anti-terrorism laws is contested due to its infringement on people's basic human rights, liberties, and fundamental rights. The judicial restraint approach has been regularly followed by the courts. Nonetheless, the Supreme Court emphasized the necessity of striking a balance between the conflicting interests of individual civil liberties and national security. In order to prevent the subjective pleasure of the relevant officials being abused, the Court has been demanding procedural safeguards regarding the task of evaluating executive activity under the anti-terrorism legislations. From a more general standpoint, it may be said that the courts have consistently taken a hands-off stance when confronted with issues pertaining to larger legislative structure and policy.

41. 2021 SCC Online SC 414

On the other hand, the Court has looked into specific situations to make sure the administration did not go beyond the authority granted by the legislature.

Over time, a great deal of evidence and criticism of TADA's violations of human rights accumulated, leading to the TADA's repeal in 1995. In 2001, the Prevention of Terrorism Act (POTA) came into effect. It has the same destiny. The UAPA of 1967 was revised by Parliament. With a few minor additions, changes, and dilutions, the amendment included some sections from the previous POTA and TADA into the UAPA.

Nearly all democracies have counterterrorism policies and regulations that inadvertently violate citizens' and residents' human rights, particularly the rights of civil society organizations, media outlets, journalists, and human rights advocates. Some of the rights that the counterterrorism strategies failed to address were the right to life, the dignity of the human person, privacy, a free and fair trial, freedom from all forms of discrimination, unlawful detention, torture, association and expression, and the presumption of innocent until proven guilty.

Owing to the international nature of terrorism and its wide-ranging consequences, numerous conventions have been established by international organizations. These organizations have also urged governments to implement the principles outlined in their legislative instruments. Since India is a state that upholds the dualistic theory of international law, in order to give effect to the principles of each international instrument, the national government must establish enabling legislation.

Since the fight against terrorism has taken on a transnational dimension, it will be necessary to take a far more integrated and interactive strategy when interacting with foreign law enforcement agencies. The Indian authorities would need to make sure that there is efficient cooperation between them and their international counterparts. If there is currently any kind of cooperation in place (such as Joint Working Groups, Interpol, etc.), it must be further developed and energized. Real-time intelligence sharing, cooperative operations, and cooperative investigations of transnational terrorist activity are a few of the areas that need careful observation.

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BOOK REVIEW

HEALTH LAW (2019) By Ishita Chatterjee, Central Law Publication Darbhanga Castle, Allahabad, Pp. 532, Price: Rs. 450, ISBN: 978-93-88267-26-7

Health is the state of being physically, mentally, and socially healthy as well as the absence of sickness. Health legislation is becoming to represent this comprehensive idea more and more. Policies like India's National Health Policy are intended to ensure access to preventative treatment, promote healthy lifestyles, and address mental health concerns. Since health law promotes both individual well-being and a healthy society, it is crucial in establishing a nation's health landscape. The primary objective of this book is to bridge the gaps in the policy and offer a multi-sectoral platform for doing so.

Health Law book is a comprehensive volume with VI Units organized into various chapters and 532 pages that deal on patients' rights, the role of health professionals, healthcare funding, rationing, public health, occupational health, and environmental health. The book includes international and Indian human rights and commercial law on a variety of issues. The book adheres to the social-individual rights dichotomy, addressing healthcare access difficulties, patient-financier and health professional-financier connections, and individual healthcare rights.

Unit 1, of the book is divided into 4 chapters, comprehensively dealing with the meaning and concept of health and health law. The author in the book correctly points out that the health is 'what we have in our mind', and it is our right to enjoy highest attainable physical and mental health. Health care institutions also play a crucial role in improving community health. The book points out that the country lacks health insurance. Healthcare providers can improve health through patient care and community health promotion. The author points out the factor affecting health which are namely adult obesity, binge drinking, smoking, drug abuse, poverty and household income, employment statues of the person, lack of education, minimum access to health care facilities, and effects of pesticides on human health. Followed by India's National Health Policy (NHP) which was enacted in year 1983 and 2002 (revision of 2001) to improve healthcare access and quality for its citizens. The author of the book has also shown the functioning of State with respect to health care of the entire nation.

The author has divided Unit II into 6 Chapters putting the light on various International Law and its concept on Health Law. The author here points out the significance of International Institution and laws like World Trade Organisation (WHO), Universal Declaration of Human Rights, 1948, United Nation Declaration on the Rights

of Mentally Retarded Person, 1971, Declaration on the Right of Disable Peerson, 1975, ALMATA and TRIPs agreement on health care where all of this institutions and law is trying to attain its only objective as to help attain by all the people highest level of health possible and to recognised the right to an adequate standard of living for health and well-being and to constantly work with various countries government and support partnership in order to achieve its set goal. The author also emphasising on the access to proper medical care and physical therapy as a fundamental right in overall Unit.

The author of the book in the Unit III has divided the chapters into 5 parts comprehensively dealing with Right to Health enshrined in Indian Constitution under article 21 of Fundamental Rights and Art. 38, 39, 41, 42, 48 A, and 51 A of Directive Principle of State Policy. The author also put a significance of Health care under Schedule VII, Preamble of India, as well as the importance of State Government in regulating the Trade and Commerce for securing Health of people with compromising people right to confidentiality and right to access to medical records as provided under the Right to information Act, 2005.

In the next Unit IV, which the author has divided into 4 Chapters emphasis on the public awareness of medical negligence in India, the author of this book has clearly distinguished between the civil and criminal negligence and also explain the liability that occur when it comes to medical negligence and gross negligence is done by hospital and professionals . Author also put the role of consent in medical practice be it implied consent, explicit consent, tacit or anticipatory consent. More importantly the author highlighted the important questions that 'Is Medical Negligence a civil wrong or criminal wrong'? To which she pointed out that "Medical Negligence of simple lack of care as such will constitute civil liability and Negligence of only severe or high degree shall constitute criminal liability".

The author separated Unit V into three chapters to provide an understanding of the intricate web of legal domains concerning medical negligence. Such as the Consumer Protection Laws and the Law of Torts, which offer a framework for civil suits and allow patients to seek compensation when health care providers violate their legal obligations and cause loss or damage. Criminal laws, on the other hand, are saved for the most dire situations in which a medical professional's carelessness is so egregious that it amounts to a crime against the state and carries a sentence that goes beyond simple restitution.

In the last Unit VI, which the author has meticulously breakdown into 9 chapters briefly explaining about the various legislations. In order to prevent exploitation, the Transplantation of Human Organs Act, 1994 forbids commercial transactions and

regulates the removal, storage, and transplantation of human organs. In order to prevent female feticide, the Pre-Conception and Pre-Natal Diagnostic Techniques Act of 1994 established regulations for sex determination processes and guaranteed the moral application of prenatal diagnostic technology. Patient rights and confidentiality are among the guidelines for doctors worldwide provided by the International Code of Medical Ethics. Education and practice requirements for Indian systems of medicine and homeopathy are governed by the Indian Medicine Central Council Act of 1970 and the Homeopathy Central Council Act of 1973, respectively. Dental practice registration and requirements are governed by the Dentists Act of 1948. The 1940 Drug and Cosmetic Act regulates the import, manufacture, distribution, and sale of drugs and cosmetics in India. The Drug Control Act of 1950 regulated the production, distribution, and management of drug misuse. Patient rights are protected, and mental health services are provided by the Mental Health Act of 1987. Collectively, these laws preserve moral principles, control medical procedures, safeguard patient rights, and guarantee the security and effectiveness of medical care in India. Additionally, the author purposefully draws attention to the gaps and shortcomings in the aforementioned act and suggests that they be fixed.

For readers interested in health and health law and reforms, the book under review is a useful and concise reference that draws heavily from many statutes and legislations for its structure and subject framework.

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HEALTH AND LAW A GUIDE FOR PROFESSIONALS AND ACTIVISTS (2002). By M.C.Gupta, Madan Sachdeva, Kanishka Publishers, 4697/5-21A Ansari Road, Daryaganj-110 002, New Delhi Pp.viii+434 . Price Rs. 895/-

Access to good health and a healthy lifestyle constitutes a fundamental right for individuals. In India, laws ensure that citizens are entitled to receive the best medical facilities available. Medical professionals, guided by both legal mandates and ethical principles, are committed to delivering treatments aimed at promoting long-term health and well-being. This ensures that individuals can access necessary medical care that supports their pursuit of a healthy and fulfilling life. The book under review aims to provide valuable insights into the intersection of health and legal frameworks. Through its exploration, it seeks to illuminate the intricate relationship between health outcomes and the regulatory environments that shape medical practices and policies.

The objective of the writer of this book is to address the critical need within the fields of law, medicine, and social activism. As a medical practitioner, the author recognized the necessity for a comprehensive resource bridging the gap between medicine and law. To fulfill this need, the author undertook the task of learning the intricacies of law in addition to their medical expertise. This book serves to educate both medical professionals and legal practitioners on the essential intersections between their respective fields. Understanding the convergence of law and medicine is imperative for future lawyers, who must navigate both medical terminology and legal frameworks. Prior to this publication, there existed a notable absence of literature addressing these lacunae. Therefore, the author took it upon themselves to fill this void and provide a valuable resource for scholars and professionals alike.

The first part of this book delves into the Basics of Law, Health, and Activism. Each section is divided further into their respective fundamentals. Beginning with the Basic of Law, it elucidates the concept of law as a comprehensive set of rules, both written and unwritten, derived from custom and judicial precedents, Supreme Court decisions binding within a community or state. It encompasses various components such as the Constitution of India, legislative acts passed by Parliament and state legislatures, delegated legislation, and personal laws. This chapter comprehensively covers criminal, civil, public, and private laws, along with substantive and procedural laws, recognizing the distinct legal systems and laws of different countries. Secondly, on Basics of Health, the concept of health is precisely defined, elucidating its multifaceted dimensions. Health is portrayed as not merely the absence of disease but as a state of complete physical, mental, and social well-being.

In the third chapter, "Basics of Activism," the fundamental role of the state in upholding the rule of law is underscored as its primary responsibility. The concept of

judicial activism, aimed at ensuring justice, is explored within the context of social activism, emphasizing the pivotal role of the judiciary. Through an in-depth analysis of these legal frameworks and judicial interventions, the chapter sheds light on the symbiotic relationship between law, activism, and societal progress. This section addresses general laws pertaining to health. Chapter four, delves into Constitutional Provisions concerning health. Articles collectively address health and environmental, drinking water, family welfare, sanitation concerns, as well as the livelihoods of individuals.

Chapter five delves into the intersection of Criminal Law and Health, elucidating the substantive and procedural legal frameworks governing health matters within the Indian Penal Code, 1860. A detailed analysis of various provisions of IPC encompass diverse definitions crucial to understanding aspects such as good faith, intoxication, bodily injury, drug adulteration, poisoning, culpable homicide, miscarriage, grievous hurt, rape, and sexual intercourse within the ambit of health jurisprudence.

This section pertains to health laws, which comprise eight chapters in total. Chapter six of the book delineates medical laws. It is imperative for all citizens to be cognizant of their rights and legal recourse concerning any lapses in health matters, thus affording them the opportunity to seek justice. Concurrently, medical practitioners must acquaint themselves with their legal responsibilities and regulations to ensure a productive practice.

Chapter seven focuses on food laws, primarily addressing The Prevention of Food Adulteration Act, 1954. While this act is discussed within the chapter, the treatment of its content lacks elaboration. Chapter eight focuses on the intersection of environment and law, a fundamental aspect of public health. Within this chapter, various dimensions including environmental pollution, environmental development, health implications, and international laws are comprehensively examined. Chapter nine concentrates on occupational health laws, an area where the World Health Organization (WHO) and the International Labour Organization (ILO) play pivotal roles. Their joint efforts emphasize ensuring the safety and well-being of both employees and employers across mental, physical, and social dimensions. Chapter ten of the book explores population laws, with a particular focus on the National Population Policy 2000.

Chapter eleven is dedicated to the Consumer Protection Act, 1986, examining its scope, structure, definitions, and key concepts. Chapter twelve focuses on child health laws, intricately linked with constitutional provisions and existing legislation concerning the health of unborn, infant, and young children. Notably, this chapter extensively discusses the nature of child feeding, including legislation regarding bottle feeding, as well as prenatal and postnatal care of infants, infant milk, and substitutes.

The final chapter of the book, Chapter thirteen, focuses on women's health laws, encompassing provisions outlined in the Constitution of India as well as medical legislations. Additionally, this chapter addresses guidelines concerning sexual harassment in the workplace, laws pertaining to immoral trafficking and rape, among other pertinent issues. The final section of the book comprises appendices.

In conclusion, this book serves as a valuable resource for law students seeking to familiarize themselves with medical terminology and legislation pertaining to health and medicine. However, it is important to note that the last edition was published in 2002, rendering it outdated in light of subsequent legislative changes and emerging guidelines such as those issued by the Indian Council of Medical Research (ICMR) and specific to the Covid-19 pandemic. Furthermore, the absence of recent updates means that the book may lack crucial information on amended laws and new case precedents. While it may offer a foundational understanding for general readers, its utility for law students and medical professionals is limited, as it fails to provide comprehensive coverage of contemporary legal issues in healthcare. Thus, an updated edition is imperative to ensure its relevance and usefulness in academic and professional contexts.

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Pramod Kumar Singh, PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (A to Z Section Wise Topically Arranged Commentary) (Law and Justice Publishing Co. Delhi, Edition 2023). Pp.478, Price 995/-

In order to protect children from sexual assault, harassment, and pornography, the Protection of Children from Sexual Offenses Act, 2012 (POCSO) was passed. Its goal is to defend children's interests throughout the entire legal process. The Act specifically aims to give child-friendly procedures and a child-friendly framework for evidence reporting and recording, investigation, and a prompt trial of offenses through specially specialized courts. The statute outlines and specifies the penalties that can be imposed on an accused person for a number of offenses. It also makes acts of immodesty against children illegal and acknowledges new types of penetration outside penile-vaginal penetration. In order to give students, attorneys, judges, and other interested parties comprehensive knowledge of the POCSO Act, the author has made an effort to present to the esteemed readers the contents of the Act along with pertinent case-laws and related law. The author has made an attempt to writing a complete book covering all the aspects of protection of children from sexual offences in India and deeply focuses on meaning, definition, forms, punishment as well as the role of judiciary to protect the children from sexual abuses. The book under review has IX chapters and it is a commentary on the POCSO Act, 2012 containing 478 pages.

Chapter I deal with the Preliminary part where the object, scope, applicability of the Act (POCSO) Act, 2012 has been discussed. Special focus has been given to the definition part of the Act for the better understanding of the terminologies used under the Act. Also highlighted the offence of rape of children as an offence against humanity. It leaves a permanent scar on the life of a child.

Chapter II deal with the heading "sexual offences against children". The author has described the various forms of child sexual offences as per the sections of the POCSO Act, 2012 such as Penetrative sexual assault and its punishment under section 3 and 4 and its aggravated form. The author has mentioned various landmark cases where different fact and circumstances of the case has been referring in a simple language to be understood by every reader. The author tried to add all the circumstances which can be called sexual offence under the Act such as rape and murder of a minor girl, unnatural offences, rape under threat of putting her parents to death, sexual assault etc. The relationship between the victim and the accused has also been taken into consideration. Sole testimony of victim could form basis for conviction if her deposition was inspiring and trustworthy.

Chapter III under the heading "using child for pornographic purposes and punishment thereof" describe about the new form of child sexual offences inserted under the provisions of the Act and its terminologies used there. Also, gives a description about the punishment for storage of pornographic material involving a child by adding landmark case laws.

Chapter IV deal with "Abetment of and attempt to commit an offence". In this chapter, inter alia, it was also highlight a case where the court quashed the conviction of the accused person due to the non-fulfilment of the essential elements of the offence of kidnapping.

Chapter V focuses on the Procedure for reporting of child sexual abuses cases. This chapter gives a brief idea about the place of filing a case if there are any child sexual abuses are apprehended. Also, put an obligation to media, studio and photographic facilities to report cases. Many landmark judgements have been highlighted to make clear understanding of the terminologies used in the POCSO Act, 2012.

Chapter VI under the heading 'Procedure for reporting statement of the child' gives an idea about where and how the recording of statement of child should be recorded. This chapter also gives an idea about the mandatory medical examination of victim's child preferably lady doctor if the victim is girl child. The provisions of the Act have been nicely interpreted by the author by referring judicial pronouncements.

In Chapter VII the author has highlighted about the constitution of Special Courts and its establishment on each District court for the speedy trial of the cases provided by Section 28 of the POCSO Act, 2012. The author discusses about the constitutional mandate and its importance by referring a case laws. In this chapter author has also discussed that the Parliament has conferred powers under the State Government to designate a Court of Session to be a Special Court and the person conducting shall be deemed to be a Public Prosecutors.

Chapter VIII deals with the Procedure and Power of Special Courts and Recording of Evidence. In this chapter author has mainly focus on section 33 to 38 of the POCSO Act, 2012. In this chapter it was discussed that no Court can act as a Special Court without any notification as provided under section 28 of the Act. Few important cases such as Alakh Alok Srivastava v. Union of India (2018) for the clear understanding of the readers about the genesis of the provisions. It was also clearly discussed that the trial should be strictly conducted in camera by the Special Court and the child should not be exposed in any way to accused person while recording his/her statement. The author also added that the objective of the POCSO Act, 2012 is to protect the child from many aspects so that he/she does not feel a sense of discomfort or fear or is reminded of the horrified experience and further there has to be a child friendly atmosphere.

In Chapter IX, the author has discussed about the Miscellaneous portion of the Act. Here, the author has focuses about the guidelines for child to take assistance of experts such as NGOs, experts etc. to assist the child. It was also discussed about the concept of Double Jeopardy, that if accused person is found guilty under the Act as well as under the provisions of IPC, then the accused shall be liable for the punishment according the law which has provided greater punishment so that the accused shall not be convict twice. In the same chapter the author also highlighted about the duty of the Central and State Government to spread awareness about the provisions of the Act.

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