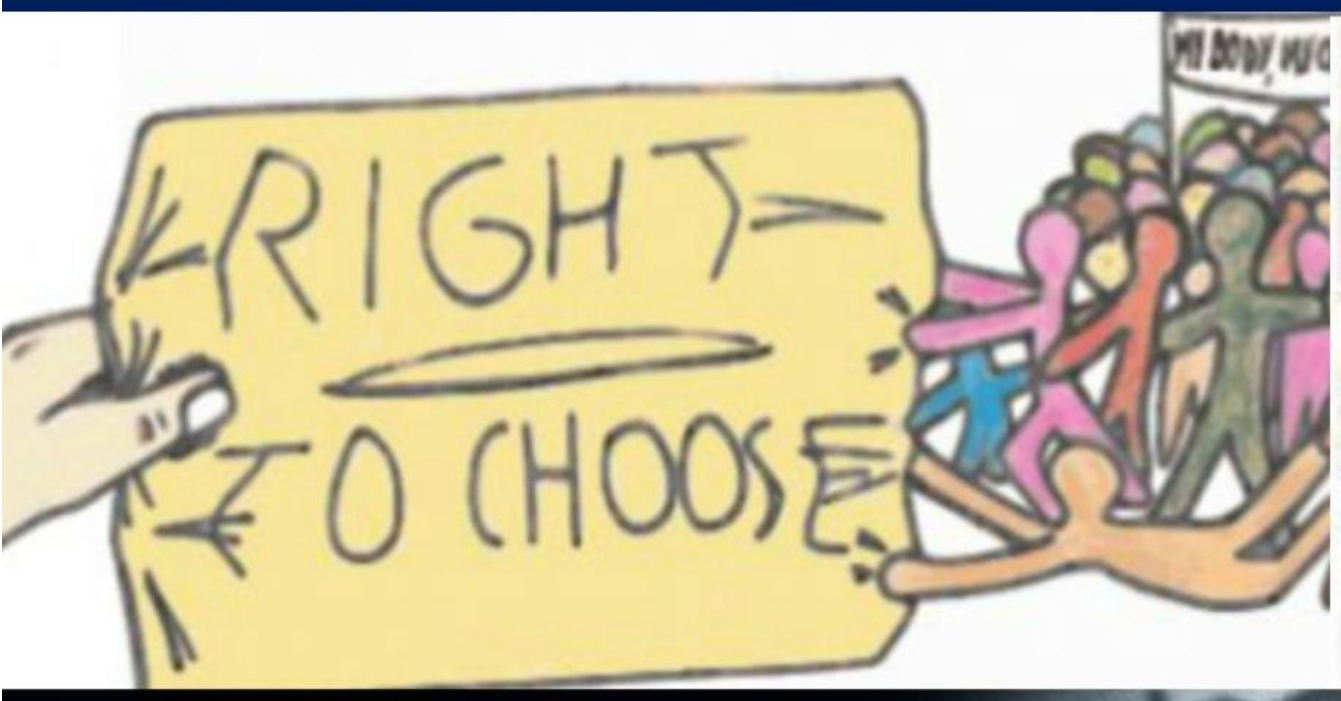
JUS WEEKLY



Highlights

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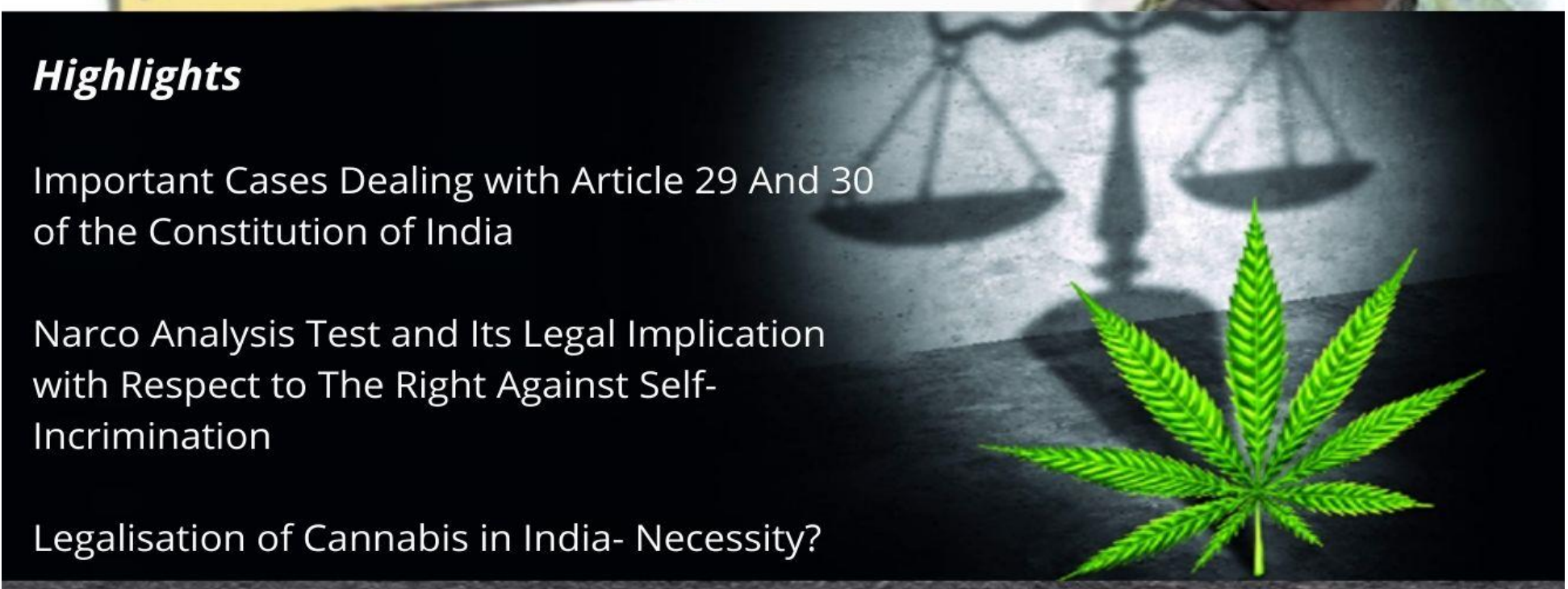

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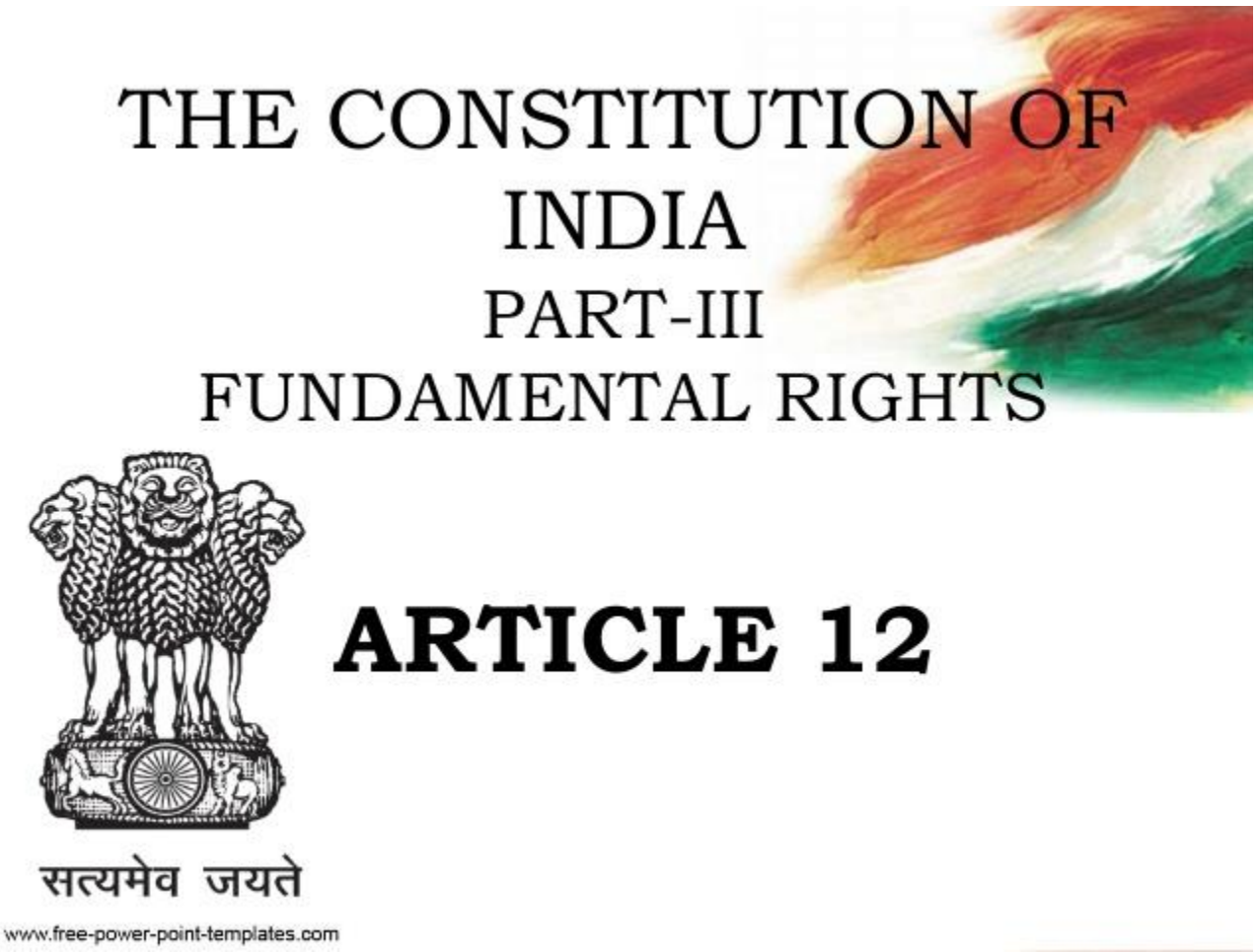
Have the Indian Courts provided an over-expansive definition of 'State' under Article 12 of the Indian Constitution?

- *Abhishrey Singh*



Thomas Green, the English philosopher once said, "It is the business of the State to maintain the conditions without which a free exercise of the human faculties is impossible". It is this 'State' that the constitution-makers sought to define in Article 12 of the Indian Constitution (the Constitution), where "the State" is defined as the Government & the Parliament of India, the governments of the federal states & all local or other authorities within or under the control of the government.[1]

The Fundamental Rights, as opposed to other legal rights enshrined in the Indian Constitution & other constitutions around the world, are claimed against the state[2], & hence the Constituent Assembly thought it wise to define the "State" while drafting the Constitution of India. It was commented during the debates of the Constituent Assembly on the Article, that it "was indispensable to enforce Fundamental Rights as it identified those authorities upon whom Fundamental Rights were binding."[3] However, the Article is plagued by unambiguity, for the term "other authorities" is a cause of perplexity in differentiating between the State, the State actors & non-State institutions. At this juncture of uncertainty in determining the "State", enters the Judiciary, & it is judicial interpretation of "State" which

[1] The Constitution of India, Art.12
[2] VN Shukla, *Constitution of India* (EBC, 13th edn) Pg.25
[3] 'Article 12-Definitions' (Constitution of India) <https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2012> accessed 8 May 2020

is the focus of this paper, & it is agreed that under the umbrella term "other authorities", the courts have provided an over-expansive definition of the term "the State" as envisaged by the Constitution.

"Other Authorities"

The term "other authorities" in Article 12 of the Constitution is the root-cause of any dispute which arises with respect to Article 12, for the term has been judicially interpreted in a variety of ways to increase jurisdiction of "the State" & attract judicial review, further making it amenable to the dictums of the courts. Historically as well, during the Constituent Assembly debates on the Article, the vague "other authorities" raised a few eyebrows, with members arguing that such a loose term would engulf every government instrumentality or agency. To quell such fears, "it was clarified that authorities would refer to that had the power to make laws or the power to have discretion vested in it"[4]. However, as time progresses from the foundation of the republic, the term is still the point of dispute in the courts.

The legal history of Article 12 can be divided into 2 phases: Post-Republic until the ruling in the case of *Rajasthan SEB v. Mohanlal*[5], a phase characterised by the limited restriction of the term "Other Authorities". Post-*Mohanlal*, the ruling of the courts hints at the desire of the courts to expand the scope of the "State" through a liberal interpretation of the contentious term, which progressively in recent times has become over-expansive in the jurisdictional terms, possibly hinting towards the dawn of legal interpretation of the term in scrutiny.

Up until the ruling of the court in the case of *Mohanlal*, the courts viewed the "Other Authorities" from a narrow viewpoint, ruling that the term would only refer to a government or legislature, essentially equating it to be an *ejusdem generis* with the elected institutions already mentioned in the wordings of the Article. The most notable case in which it became evident that the court was in the wrong with a restrictive interpretation of the "Other Authorities", was the 1954 case of ***University of Madras v. Shantha Bai***[6], in which the court mulled the question whether University can be held to be "local or other authority" as defined in Article 12. The Court held- "These words must be construed 'ejusdem generis' with Government or Legislature and so construed can only mean authorities exercising governmental functions. They would not include…instrumentalities of the Government…It (the University) is not charged with the execution of any Governmental functions; its purpose is purely to promote education…It is a State-aided institution, but it is not maintained by the State."[7] Thus, as is evident from the reasoning of the court, any instrumentality of the government or even any state-aided institution would not qualify as "the State" in the eyes of the Court in the nascent years of the republic.

However, the courts turned a proverbial page with the ruling in the case of *Rajasthan SEB v. Mohanlal* [8], where the Supreme Court adjudged that "Other Authorities" would be inclusive of all government institutions which had power conferred upon them by law. *Inter alia*, the SC also held that the doctrine of ejusdem generis could only be applied if there existed a distinct genus between the bodies mentioned in the Article before the term of dispute & thus, ruled the doctrine of ejusdem generis inapplicable to "Other Authorities" as mentioned in the Article.[9] This liberal interpretation of the term pervaded the legal authorities' judgements in varying questions involving 'statehood' hinged on "Other Authorities", further cemented & consolidated by the judgements of the Court in the cases-

i.) *Sukhdev Singh v. Bhagatram Sardar Singh Raghuwanshi*[10], where the issue before the

[4] 'Article 12-Definitions' (Constitution of India) <https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2012> accessed 8 May 2020
[5] AIR 1967 SC 1857
[6] AIR 1954 Mad 67
[7] Ibid
[8] AIR 1967 SC 1857
[9] VN Shukla, *Constitution of India* (EBC, 13th edn) Pg.27
[10] AIR 1975 SC 1331

Supreme Court was whether corporations established under statutes could be held to be "the State". It was held that public corporations were a instrumentality of the State to conduct its social & economic functions, & the State being an abstract entity, could undertake trade as envisaged under Article 268 of the Constitution, thus declaring public corporations to be the State.[11]

ii.) *Ramana Dayaram Shetty v. International Airport Authority of India*[12], where the Court held that the institutions who were instrumentalities of the government were subject to the same judicial scrutiny when enforcing Fundamental Rights against them.[13]

Having said that, the Court laid out in express terms, its guidelines in determining "the State" & doing away with incoherent & inconsistent judgements of the past in the case of *Ajay Hasia v. Khalid Mujib Sehravardi*[14], a case wholly entitled to be a legal milestone, wherein the SC ruled the various indicators to identify "the State", which are now a standard set of guidelines.

However, the SC again waded into muddied waters, when with the turn of the millennium, it pronounced two landmark judgements in the cases of *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*[15] wherein the Court held that the test formulated in the *Ajay Hasia* case was not rigid, & the discernment of the "State" would differ on a case-to-case basis. This was followed by the ruling of the SC in the *Zee Telefilms Ltd. v. Union of India*[16] case, where it curiously held that "the pre-requisite for invoking the enforcement of a fundamental right under Article 32 is that the violator of that right should be a State first".[17]

But, for the rulings of the Court in the last couple of decades are a testament to the ever-expanding definition of the "State" as provided by the Courts, & their inefficacy to correctly discern between the "State" actors & the non-state actors offering public services to the citizenry.

In recent years, the rulings of the Court hint to the fact that even if the corporations subscribe to financial assistance to the State & continue to perform private functions, the Court still makes them liable as a State instrumentality.[18] The judgement of the Court in the case of *Biman Kishore Bose v. United India Insurance Co. Ltd.*[19] was a step in the over-expanse of the "State", for the Court ruled that a company having a monopoly due to an act of legislature would be a State instrumentality, thus contradicting its own ruling set out in *Pradeep Kumar Biswas* case & indirectly upholding the test set out in the Ajay Hasia case. This was followed by the court in the landmark judgement of *Janet Jeyapaul v. SRM University*[20], where the SC ruled that deemed universities were amenable to the writ jurisdiction of the Courts, for the sole reason that they imparted a public service.

This may turn out to be erroneous on the part of the SC, for it may frighten the private actors to safeguard their interests in the era of globalisation & proof themselves from litigation, & it is hoped that the SC looks into the same moving forward.

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[11] VN Shukla, *Constitution of India* (EBC, 13th edn) Pg.28
[12] AIR 1979 SC 1628
[13] VN Shukla, *Constitution of India* (EBC, 13th edn) Pg.29
[14] AIR 1981 SC 487
[15] (2002) 5 SCC 111
[16] (2005) 4 SCC 649
[17] Ibid
[18] Dr. Mita Poddar, 'Expanding scope of Article 12 of the Constitution of India and recent developments' (2017) 3(6) *International Journal of Law* 10
[19] (2001) 6 SCC 477
[20] 2015 SCC OnLine SC 1321

Right Against Exploitation (Article 23 And 24) under Indian Constitution with Important Case Laws

-Pragya Jaishwal

Background

There was no connection to slavery or the prevalent custom of forced labour in every region of India when the Constitution was implemented. The National Independence Movement has been a driving power against such policies since the twenties of this century.

In the West of India, which during the pre-Independence days was the Princely States cluster, for example, workers who were working for a specific tenant were not permitted to leave him for employment elsewhere. There were, however, several areas of the country where the "untouchables" had been exploited by the higher class and the rich classes in various ways.

This restriction was very often so severe, and the dependence of the workers on the master was so absolute that in fact he was a slave. These practices were supported by local law.

Evils like the Devadase system, which dedicated women in the name of religion, to Hindu deities, to idols, worship objects, temples, and other religious institutions, under which women were the victims of lust and immorality in

certain parts of southern and western India, instead of living a life of dedication, self-renunciation, and piety.

Article 23 in The Constitution of India 1949

Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 24 in The Constitution of India 1949

Prohibition of employment of children in factories, etc

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7).

Article 23(1) does not impinge on a law that punishes a individual for failing to provide personal services on the grounds of caste or class alone.

Traffic in human beings: the term 'human trafficking' generally referred to as slavery means that sex beings are purchased and sold as though they were chattels, and this custom is legally abolished.

The term often refers to trafficking in women for unethical reasons

Forced Labour: *Exusdem generis* could be translated as "all types of forced labour in a related way" in Article 23(1). The type of "forced labour" discussed in this Report may have something to do with human or beggar trafficking.

There is one loophole to the ban against forced labour. The State can enforce a public mandatory service pursuant to Article 23(2).

The Supreme Court ruled in the Peoples Union for Democratic Rights v Union of India[21] that Article 23(1) targets forced labor, as it can manifest. It therefore prevented begar as well as all unwilling jobs, whether paying or not, from being overwhelmed. If a individual is compelled to operate, the sum of money received shall be immaterial.

Article 23 of the Constitution forbids slave labor and requires the crime to be punished in compliance with rule 4 for the violation of that prohibition. Although the prohibition against slavery is total, there is one exception that is made to the prohibition against forced labor; that is, if that service is required for public purposes the State can enforce a mandatory service.

After the constitution, the initial draft and the Constituent Assembly, led by Dr. B.R., is regarded as any exception. Throughout the sense of "pubic intentions," Ambedkar has followed subclause (2).

In *Bandhua Mukti Morcha v. Union of India*[22], the Supreme Court observed that the State was in violation of Articles 21 and 23 when it refused to recognize the bonded workmen, free them from slavery or rehabilitation

[21] AIR 1982 SC 1473

[22] AIR 1998 SC 3164

of them as contemplated under the 1976 Bonded Labour System[Abolition] Act.

Article 23 of the Constitution provides for forced labor and requires any violation of such a prohibition to be a criminal crime pursuant to law Although banning trafficking of human beings is absolute, the prohibition of force-work is subject to one exception, that is to say, if such service is required for a public reason, the State may enforce a compulsory service.

In the initial draft and after complete discussion, the Constituent Assembly led by Dr. B. R. was found to be an anomaly to the constitution. Ambedkar accepted clause (2) on "pubic intentions."[23]

Article 23 (2)

Clause (2), except clause (1), requires the State to enforce a compulsory public service. The State shall, however, not discriminate on the basis of faith, ethnicity , sex, gender or any other, when enforcing such a compulsory facility.

The word 'public intent' encompasses any goal or objective which explicitly and fundamentally concerns the common good and not the specific good of individuals. The priorities set forth in section IV of the Constitution concerning the Regulatory Concepts of Public policy would involve social or economic goals.

M.P. State in Devendra v Nath Gupta[24]. The Madhya Pradesh High Court ruled that, even though there was no allowance, teachers were expected to provide a service for "public purposes," including education surveying, family planning, list of electors, general elections, etc. that did not contravene Article 23.

The High Court in Calcutta, *Dulai Shamanta v District Magistrate*[25], Howrah observed that it was not prohibited for a public benefit, because it was not begar or trafficked by the State or was not enforced by the Constitution of Article 23.

In the same way, *Durbar Goala v Union of India*[26] holds that there is no forced labor, or begar, if a individual willingly decides to do work or to do extra work to gain other return benefits.

In *Raj Bahadur Case*[27]it was held that Article 23 specifically prohibits traffic in human beings or women for immoral purpose.

Article 24

This article, as laid down in Articles 39(e) and 39(f) of the State Principles of Directive, allows for the security of children's safety and power under the age of 14.

The Supreme Court in Peasants Union for Democratic Rights v. Union of India (AIR 1982 SC 1473) ruled that building work was unsafe in areas where children under the age of fourteen should not be working, and that the prohibition inherent in Article 24 should be extended to everyone, including State or private persons, unambiguously and unambiguously.

India is a federal republic, so child slavery is a subject that can be legislated over by the central and state governments. The most important regional regulatory changes are: the 1948 Factories Legislation: The Act bans the work in factories of children under the age of 14. The law also sets out guidelines for who should be working in a business of pre-adults aged 15-18 years.

In *M. C. Mehta v. Tamil Nadu Government*, M. Public Prosecutor. C. Mehta has submitted a PIL pursuant to Article 32 and has told the Court how Sivakasi Cracker Factories is engaged in the girls. While the Constitution bans the slavery and recruitment of children pursuant to

[23] De, D. J. The Constitution of India,1179
[24] AIR 1983 MP 172
[25] AIR 1958 Cal 365
[26] AIR 1952 Cal 496
[27] AIR 1953 Cal 496

Article 24, it also requires the State to provide them in compliance with Article 41 with free and mandatory schooling, although a substantial number of children are already employed in unsafe areas. In spite of several State Governments banning child labor, the problem of child labour persisted unsolved and is every day a danger to society, notwithstanding the Constitutional requirements and numerous legislation. It was held by Hansaria J. that-

"The children below 14 years cannot be employed in hazardous activities and state must lay down certain guidelines in order to prevent social, economic and humanitarian rights of such children working illegally in public and private sector. Also, it is violative of Article 24 and it is the duty of the state to ensure free and compulsory education to them. It was further directed to establish Child Labour Rehabilitation Welfare Fund and to pay compensation of Rs. 20,000 to each child."

In *People's Union for Democratic Rights v. Union of India*, some people including few children below the age of 14 were employed in the construction work of the Asiad Project in Delhi. It was contended that the Employment of Children Act, 1938 was not applicable in the case of children employed in construction work since construction industries were not specified in the schedule of the Children Act. Bhagwati J. held that-

"The contention given by the Government is not at all acceptable. The construction work is hazardous employment and therefore, the children below 14 years must not be employed in the construction work even if the construction work is not specifically mentioned under the schedule of the Employment of Children Act, 1938. The State Government is advised to take immediate necessary steps in order to include the construction work in the schedule of the Act and to ensure that Article 24 is not violated on any part of the country."

Conclusion

The poorer parts of society continue suffering some severe problems under Articles 23 and 24 of this Convention against trade in and child labor. Such actions are constitutionally prohibited by statute, as well as the ground rules and requirements laid down in the Protection to Slavery Legislation, which are also protected by judicial proceedings in Parliament in the context in Slave Labor Emancipation Act of 1976 which Child Labour Act of 1986.

They must all be conscious that child trafficking is unethical and this recognition will not only be limited to media commercials. This will be applied to the towns. For poor women and girls, groups of women should be formed. I believe that if we listen, we, the young, will make a huge difference. That is the only way for India to become a nation in which all its citizens live equal lives without fear of exploitation.

I feel that if one's life were subject and at the whim of another individual, the concept of equality before law, fair law rights, and any other basic right in the matter will have little sense. Whilst this constitutional right guarantees the security of the government's people , India also has a long way to go towards zero oppression.

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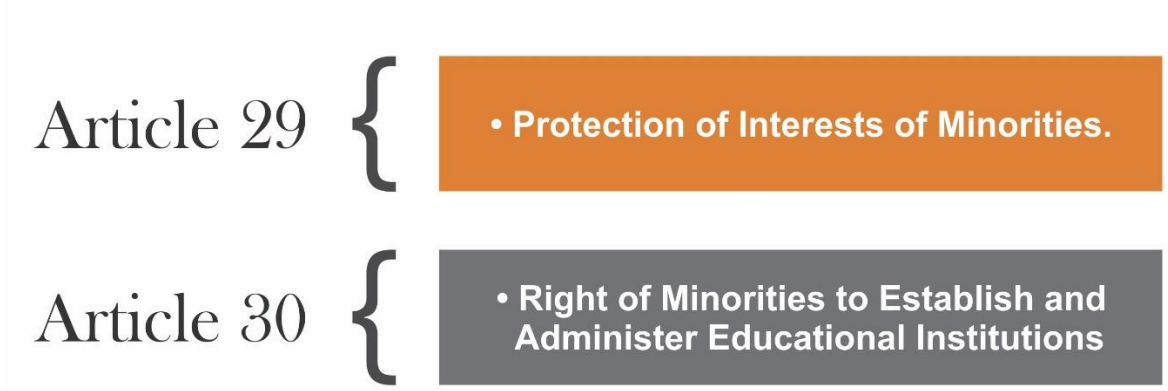
Important Cases Dealing with Article 29 And 30 of the Constitution of India

- *Garima Darda*



Introduction

Article 29 and 30 of the Constitution of India provide cultural and educational rights to religious and linguistic minorities in India to accommodate pluralism and embrace unity in diversity. These two articles further provide four different constitutional rights which are as follows:

Article 29(1) guarantees to the citizens of India residing in any part of India having a distinct language, script or culture of its own, the right to conserve the same.

Article 29(2) states that no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste or language.

The **Article 30(1)** grants the right to all the minorities whether based on religion or language, the right to establish and administer educational institutions. Two types of minorities: Religious and linguistic.

Article 30(2) prohibits the state in granting aid to education institutions to discriminate against any educational institution on the ground that it is under the management of Minority.

Distinction between Article 29(1) and Article 30(1) of the Constitution of India

1. 29(1) confers right on all sections of society, 30(1) – confers right only on minority based on language or religion.
2. 29(1) deals with three subjects: language, script and culture. 30(1) deal with minorities based on religion or language.
3. 29(1) provides right to conserve language, script or culture, 30(1) provides right of minorities to establish and administer educational institutions.
4. 29(1) does not deal with education. 30(1) deals with only the establishment and administration of educational institutions.

Important case laws:

S.P. Mittal v Union of India[28]: In this case, the validity of Auroville Act, 1980 was challenged. The court held that the benefit of Article 30(1) can be claimed by the community only on providing that it's a religious or linguistic minority and that the institution was established by it. Since Auroville is not a religious denomination, but only reflects upon the teaching of Aurobindo, it does not

[28] S.P. Mittal v Union of India, AIR 1983 SC 1.

constitute a separate religion by itself but only a philosophy.

State of Madras v Champakam Dorairajan[29]: In this case, an order by the Madras government fixing the proportion of each students that could be admitted into state medical and engineering colleges was challenged as it denied admission solely on the basis of religion or caste. It was held to be invalid violating Article 29(2) of the Indian Constitution. Subsequently, article 15(4) was amended by the 1st constitutional amendment empowering the state to make special provisions for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and Scheduled Tribes.

Difference between Article 15(1) and Article 29(2) are as follows:

1. Art 15 protects all citizens against state, whereas Article 29(2) protects against state or anybody else who denies the right conferred.
2. Article 15 protects against discrimination generally, whereas Article 29(2) protects against denial of admission into educational institutions.
3. Article 15 is general and wide, whereas Article 29(2) is confined to educational institutions maintained or aided by the state.
4. Article 15 prohibits discrimination on the grounds of sex or place of birth, whereas Article 29(2) does not mention these grounds.
5. Article 15 gives right to any member of the society, whereas Article 29(2) gives right to an individual.

State of Bombay v Bombay Educational Society[30]: In this case, an order was passed by the state government which provided that if Anglo-Indians want to maintain their educational institutions and teach in English, they should impart such education to Anglo-Indian students and if they decide to admit other Indians they would forfeit their aid unless they switched to Hindi as the medium of instruction. The Supreme Court struck down such order of the Bombay government banning admission of those whose mother tongue was not English into English medium schools because it denied admission solely on the ground of language and also held that minority educational institutions have the right to admit students of its choice, even if it receives government aid.

In *DAV College, Bhatinda v State of Punjab*[31]: In this case, the university had declared that the sole medium of instruction in the affiliated colleges would be Punjabi. The Petitioners had contended that the right of the minorities to establish and administer educational institution also included the right to have a choice of medium of instruction. However, the university's order was infringing upon their rights to be instructed in Hindi and it was violative of Article 22(1) and 30(1). The court agreed with the petitioners and granted them the relief to teach in whichever medium they wanted to.

Re Kerala Education Bill[32]: In this case, the supreme court held that the fundamental right given to all minorities under Article 30(1) to establish and administer educational institutions of their choice does not militate against the claim of the state to insist that in granting aid the state may prescribe reasonable regulations to ensure the excellence of the institutions. The court though said that the condition for granting aid should not be imposed in such a manner so as to take away the rights of minority guaranteed by Article 30(1). Thus, the rights conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Right to administer does not give rise to the Right of Maladministration. However, these regulations must satisfy the dual test which includes that such regulations must be reasonable and should be regulative of the educational character of the institution and are conducive in making the institution an effective vehicle of education.

[29] State of Madras v Champakam Dorairajan, AIR 1951 SC 226.
[30] State of Bombay v Bombay Educational Society, AIR 1954 SC 561.
[31] DAV College, Bhatinda v State of Punjab, AIR 1971 SC 1731.
[32] Re Kerala Education Bill, AIR 1958 SC 956.

St. Xaviers College v State of Gujarat[33]: In this case, the college was run by a Jesuit society of Ahmedabad with the object of giving higher education to Christian students. The validity of certain sections of Gujarat University act was challenged which provided for the administration of the college in effect to the government and the university through which the college is affiliated. The court held that these provisions abridged the right of the minority to administer the education institutions and therefore these provisions did not apply to minority institutions as the right to administer includes the right to 'conduct' and 'manage' the affairs of the institution.

St. Stephens college v University of Delhi[34]: In this case, the validity of admission programme and preference given to Christian students by the college was challenged as violative of Delhi University circulars for admission. The admission prospectus provided that there will be an interview prior to the final selection to college. The university stated that the college was bound to follow the university rules for admission and the college could not conduct an interview and had to take the students on the basis of their marks in the qualifying admission. The College filed a writ petition in the Supreme Court challenging the validity of the university circulars on the ground that they were violative of their fundamental right to manage their college under Article 30. The Supreme Court held that college was not bound by the university circulars because of their minority character and right under Article 30(1). The court also said that the right to select students for admission is an important facet of administration and thus is inherent in the right under Article 30(1). It further held that minority aided educational institutions may preserve 50% seats for their community candidates and are entitled to give them preference in admissions as it is necessary to maintain minority character of institutions.

T.M.A. Pai Foundation v State of Karnataka[35]: In this case, it was held that the state governments and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities but they can specify academic qualifications for students and make rules and regulations for maintaining academic standards and the same principle applies in the appointment of teachers and staff. The court held that minority educational institution does not lose its minority character simply because it receives aid from the government but at the same time made it clear that they would have to admit non-minority students whose constitutional rights under Article 29(2) are not to be infringed.

P.A. Inamdar v State of Maharashtra[36]: In this case the Supreme Court held that:

1. the private unaided professional institutions cannot be forced to accept reservation policy of the state as it is violative of Article 30 and 19(1)(g).
2. There is nothing wrong in having centralized entrance test being held for one group of institutions imparting similar education.
3. Every institution is free to devise its own fee structure subjected that there is no profiteering and no capitation fee directly or indirectly.
4. Charging of capitation fee is not permitted.

Bal Patil v Union of India[37]: In this case, it was held that the identification of a community as minority has to be done on a state basis and not all India basis. The central government has to exercise its powers for identification of minority groups not merely on the recommendation of the commission but on consideration of the social, cultural and religious conditions of the community in the state. It was further held that the Jain community is not a minority in the State of Maharashtra.

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[33] St. Xaviers college v State of Gujarat, AIR 1974 SC 1389.
[34] St. Stephens college v University of Delhi, (1992) 1 SCC 558.
[35] T.M.A. Pai Foundation v State of Karnataka, AIR 2003 SC 355.
[36] P.A. Inamdar v State of Maharashtra, AIR 2005 SC 3236.
[37] Bal Patil v Union of India, AIR 2005 SC 3172.

Protection of Endangered Species in India

- Shruti Bharti

Introduction

Endangered species are species that are at risk of extinction due to their small population size. It refers to species specifically listed as critically endangered, endangered and vulnerable.[38] It is noteworthy that out of the 96,500 species assessed by International Union for Conservation of Nature (IUCN) for the red list of threatened species, more than 26,500 species are threatened with extinction.[39] India, a biodiverse country, is home to approximately 6.5% of the world's wildlife species.[40] The Bengal Tiger, Red Panda, Ganges River Dolphin, Asian Elephant, Snow Leopard and Greater One-horned Rhinoceros inhabiting the Indian terrain are listed as threatened by the IUCN.[41]

Human interference has a catastrophic impact on the survival of the wildlife species. One of the primarily reason for wildlife becoming endangered is loss of habitat. There is no place on earth which is left untouched by human activity. Humans cause destruction of the natural habitat through its exploitative actions such as massive deforestation for purposes of agriculture or industrial activities. The Ganges river dolphin, native to the holy river - Ganga, is threatened due to alteration of its habitat by construction of various dams and irrigation

[38] Tom Stahl, 'What does endangered species mean' (World Wildlife) <https://www.worldwildlife.org/pages/what-does-endangered-species-mean> accessed 15 June 2020

[39] Tom Stahl, 'What does endangered species mean' (World Wildlife) <https://www.worldwildlife.org/pages/what-does-endangered-species-mean> accessed 15 June 2020

[40] 'India: Our endangered wildlife - a cause for concern' (UNODC) <https://unodc.org/southasia/frontpage/2012/june/our-endangered-wildlife-a-cause-for-concern.html> accessed 15 June 2020

[41] 'Dangers to the Endangered -What it means to be a 'vulnerable', 'endangered' or 'critically endangered' species' (WWF India) <https://www.wwfindia.org/news_facts/endangered_species/> accessed 15 June 2020

projects.[42] Another reason is poaching of animal species for economic exploitation. Animals are hunted for food, illegal trading and as a recreational activity. In 2018 alone, 155 leopards have been poached in India.[43] The increasing levels of pollution in the environment and climate change also pose a great threat to the survival of wildlife. The Bengal tigers in India are found in the mangrove forests of the Sundarbans and their only habitat is being threatened by the rising sea levels, a consequence of the climate change.[44]

Laws and Government Policy

Environmental protection was at the core of the Vedic culture and exploitation of nature by humans was deemed to be irreligious, unjust and against the ethics of environment.[45] Indian Constitution provides for environmental and wildlife protection. By virtue of 42nd Amendment in 1976, Article 48A and Article 51A(g) were inserted in the constitution. Article 48A puts a duty on the state "to protect and improve the environment and to safeguard the forests and wildlife of the country".[46] A corresponding duty is imposed on the citizens under Article 51A(g) "to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures".[47] IPC also punishes people who commit mischief by killing, poisoning, maiming or rendering useless any animal under Section 428 and Section 429. In *State of Rajasthan v. Salman Khan and others* (2012), the court held that damage caused to the wildlife is a loss to the ecology and public at large and therefore, by using fire arms for killing wildlife, the accused has committed an offence of mischief under Sections 425 and 429 of the IPC.[48]

The Central government has enacted a comprehensive legislation called The Wild Life (Protection) Act,1972 ("WPA") for the protection of wild animals, birds and plants. There was a desperate need for such a central act as the existing state laws and the Wild Birds And Animals Protection Act 1912, had become outdated. The act provides legal protection to the wild animals against hunting and commercial exploitation.[49] Section 9 states that " No person shall hunt any wild animals specified in Schedules I, II, III and IV."[50] However, hunting of animals is permitted for certain limited purposes listed under sections 11 and 12. The act also prohibits trade or commerce in trophies and animal articles derived from certain animals. Although, trade of trophies of scheduled animals is permitted under a license.[51] It also contains a provision for forfeiture of any property such as equipment, vehicle or weapon used for committing wildlife offences.[52] The act has been amended from time to time and made more strict by enhancement of punishments for offences under the act.

The Parliament has also passed several other legislations like the National Biological Diversity Act, 2002 and The Forest Conversation Act, 1980 for safeguarding threatened species and their natural habitat.[53] India is a

[42] 'Dangers to the Endangered -What it means to be a 'vulnerable', 'endangered' or 'critically endangered' species' (WWF India) <https://www.wwfindia.org/news_facts/endangered_species/> accessed 15 June 2020
[43] Ashwini Singh, 'Figuring Out the Enigma of Leopard Deaths in India: A Complete Analysis' (Ranthambore National Park, 8 February 2019) <https://www.ranthamborenationalpark.com/blog/reasons-leopard-deaths-india/> accessed 15 june 2020
[44] 'Dangers to the Endangered -What it means to be a 'vulnerable', 'endangered' or 'critically endangered' species' (WWF India) <https://www.wwfindia.org/news_facts/endangered_species/> accessed 15 June 2020
[45] 'Protection of endangered species at National & International Level' (Shodhganga, 18 October 2015) <https://shodhganga.inflibnet.ac.in/bitstream/10603/38074/8/08_chapter%203.pdf> accessed 15 June 2020
[46] The Constitution of India, Article 48A
[47] The Constitution of India, Article 51A(g)
[48] Avinash Basker, 'Offences Under The Wild life Protection Act,1972' (WPSI, December 2014) <http://www.wpsi-india.org/publications/Offences_under_WPA_%20Case_Law.pdf> accessed on 15 June 2020
[49] Print Information Bureau, 'Steps Taken for Protection of Endangered Species' (PIB, 11 April 2013) <https://pib.gov.in/newsite/PrintRelease.aspx?relid=94616> accessed 15 June 2020
[50] The Wild Life (Protection) Act 1972, Section 9
[51] 'Protection of endangered species at National & International Level' (Shodhganga, 18 October 2015) <https://shodhganga.inflibnet.ac.in/bitstream/10603/38074/8/08_chapter%203.pdf> accessed 15 June 2020
[52] Print Information Bureau, 'Steps Taken for Protection of Endangered Species', (PIB, 11 April 2013) <https://pib.gov.in/newsite/PrintRelease.aspx?relid=94616> accessed 15 June 2020
[53] 'Protection of endangered species at National & International Level' (Shodhganga, 18 October 2015)

party to various International Conventions on wildlife protection such as Convention on International Trade in Endangered Species (CITES), Coalition Against Wildlife Trafficking (CAWT) etc.[54] The government has established various Protected Areas all across the country which includes a wide network of 103 national parks, 535 wildlife sanctuaries, 26 community reserves and 66 conservation reserves.[55] They have also initiated several wildlife conservation projects such as Project Elephant, UNDP Sea Turtle project among others. Ever since 'Project Tiger' has been launched in 1972, there has been a significant hike in the numbers of tigers in the reserve areas from 268 in 1972 to more than 2000 in 2016.[56] The central government also extends technical and financial support to the states under the scheme of 'Integrated Development of Wildlife Habitats' and 'Recovery Programmes for saving critically endangered species'.[57] Certain agencies such as CBI and The Wildlife Crime Control Bureau have been empowered with a view to strengthen the law enforcement. [58]

Critique and Recommendations

In spite of the plethora of laws and projects for the conservation of wildlife in India, many endangered species still face the risk of extinction. There is no separate legislation specially enacted for the conservation of endangered species in India. WPA is a comprehensive act which embodies all wild animals, birds and plants. Special attention should be accorded to endangered species since they require additional protection and care. Under WPA, protection has been granted only against hunting and commercial exploitation. Moreover, not all hunting activities and trade of trophies are strictly prohibited. The statute only tackles direct forms of aggression against the animals and not indirect forms like destruction of habitat or pollution which also contribute substantially to the elimination of the endangered species.[59] Hence, there is a need for a more inclusive legislation.

Prosecution of the wildlife offenders is an another problem. The law should be amended to incorporate much stricter punishments and penalties so that they can deter the offenders. Some conservationists believe that increasing the penalties will not be very effective unless there is some improvement in the conviction rates and implementation of laws.[60] Conviction rates can fall as low as 5% in poaching cases, making it a rarity.[61] The drawback of increasing penalties is the tendency among the judicial officers to abstain from awarding higher sentences since that requires better quality of evidence in the courts.[62] The story of vanishing tigers from Sariska Tiger Reserve shocked the whole nation back in 2004. Almost overnight, all tigers from the reserve were found to be wiped out completely due to poaching. The man behind this debacle, the notorious poacher, Sansar Chand has been acquitted in several cases over the years for lack

<https://shodhganga.inflibnet.ac.in/bitstream/10603/38074/8/08_chapter%203.pdf> accessed 15 June 2020

[54] Sanchita Paul, 'Endangered Animal Species of India' (Maps of India, 13 April 2015) <https://www.mapsofindia.com/my-india/government/endangered-animal-species-of-india> accessed 15 June 2020

[55] Uthayaprithvi, 'Endangered Animals – A greed of Mankind' (Legal Services India) <http://www.legalserviceindia.com/legal/article-111-endangered-animals-a-greed-of-mankind.html> accessed 15 June 2020

[56] 'Wildlife Conservation Initiatives By Indian Government' (Ranthambore National Park, 25 May 2017) <https://www.ranthamborenationalpark.com/blog/wildlife-conservation-initiatives-indian-government/> accessed 15 June 2020

[57] Print Information Bureau, 'Steps Taken for Protection of Endangered Species' (PIB, 11 April 2013) <https://pib.gov.in/newsite/PrintRelease.aspx?relid=94616> accessed 15 June 2020

[58] Print Information Bureau, 'Steps Taken for Protection of Endangered Species' (PIB, 11 April 2013) <https://pib.gov.in/newsite/PrintRelease.aspx?relid=94616> accessed 15 June 2020

[59] M. Krishnan, 'The Wild Life (Protection) Act of 1972: A Critical Appraisal' (1973) 8(11) Economic and Political Weekly < https://www.jstor.org/stable/4362432 > accessed 15 June 2020

[60] Malia Politzer, 'Wildlife Protection – Nowhere to Roam' (Livemint, 2 November 2019) <https://www.livemint.com/Leisure/j8MPXyqIffH7rcP9KdUUxI/Wildlife-Protection--Nowhere-to-roam.html> accessed 15 June 2020

[61] Ashwini Singh, 'Figuring Out the Enigma of Leopard Deaths in India: A Complete Analysis' (Ranthambore National Park, 8 February 2019) <https://www.ranthamborenationalpark.com/blog/reasons-leopard-deaths-india/> accessed 15 june 2020

[62] Malia Politzer, 'Wildlife Protection – Nowhere to Roam' (Livemint, 2 November 2019) <https://www.livemint.com/Leisure/j8MPXyqIffH7rcP9KdUUxI/Wildlife-Protection--Nowhere-to-roam.html> accessed 15 June 2020

of evidence and prosecution's failure in proving the case against him.[63] Therefore, upliftment of the conviction rates is a necessity to induce some level of fear in the minds of the poachers and this requires better infrastructure for the investigation agencies.

Another cause of concern is the discrimination between different endangered species. Some animals like The Bengal Tiger or Asian Elephant occupy a more preferred status in conservation projects undertaken by the government. But species like the Pangolin which are one of the most poached mammal in India due to their scales are still greatly ignored.[64] Road and rail accidents have also resulted in deaths of animals across India. In a horrifying accident, seven elephants were killed after getting hit by a speeding cargo train in West Bengal.[65] But there is no provision in law that offers protection of animals against these accidents. Establishing natural corridors and avoiding construction of large infrastructural projects through critical wildlife corridors can minimise these accidents.[66] In Kerala, a pregnant elephant suffered a cruel death after consuming a pineapple filled with firecrackers. Therefore, a nation-wide awareness programme is needed to create awareness and sensitising the masses to prevent human-wildlife conflicts and animal cruelty.

The Supreme Court of India in the case of *Centre For Environmental Law WWF-1 v. UOI* (2013) has called for new standards to be set in the country for conservation of endangered species.[67] It stressed upon the need for a parliamentary legislation exclusively for the protection of endangered species as implementation of WPA has been unsuccessful in protecting them.[68] The Court talked about using an 'eco-centric approach' or 'species best interest standard' instead of an 'anthropocentric approach' for conservation of endangered species. It also said that all species have intrinsic worth and therefore a right to live irrespective of whether they are deemed worthy of protection by humans or not.[69]

In conclusion, the dwindling population of the country's wildlife has been somewhat restored due to the efforts of the government but still a lot remains to be fulfilled. The need of the hour is to offer protection to these endangered species in order to revive their numbers and conserve our ecosystem. This requires enacting improved and inclusive laws, implementing stricter punishments to wildlife offenders and enhanced co-operation between the government and the citizens.

Author Details: Shruti Bharti is a student at Jindal Global Law School.

[63] WPSI, 'Sansar Chand discharged in Tiger bone case', (Conservation India, 21 March 2010) <http://www.conservationindia.org/news/sansar-chand-discharged-in-tiger-bone-case> accessed 15 June 2020

[64] Kanika Sharma, 'India's endangered species nobody wants to save, or talk about' (Hindustan Times, 13 March 2016) <https://www.hindustantimes.com/more-lifestyle/india-s-endangered-species-nobody-wants-to-save-or-talk-about/story-1uc9mAcSh1BjdCPC5PVg2M.html> accessed 15 June 2020

[65] Malia Politzer, 'Wildlife Protection – Nowhere to Roam' (Livemint, 2 November 2019) <https://www.livemint.com/Leisure/j8MPXyqIffH7rcP9KdUUxI/Wildlife-Protection--Nowhere-to-roam.html> accessed 15 June 2020

[66] Ashwini Singh, 'Figuring Out the Enigma of Leopard Deaths in India: A Complete Analysis' (Ranthambore National Park, 8 February 2019) <https://www.ranthamborenationalpark.com/blog/reasons-leopard-deaths-india/> accessed 15 june 2020

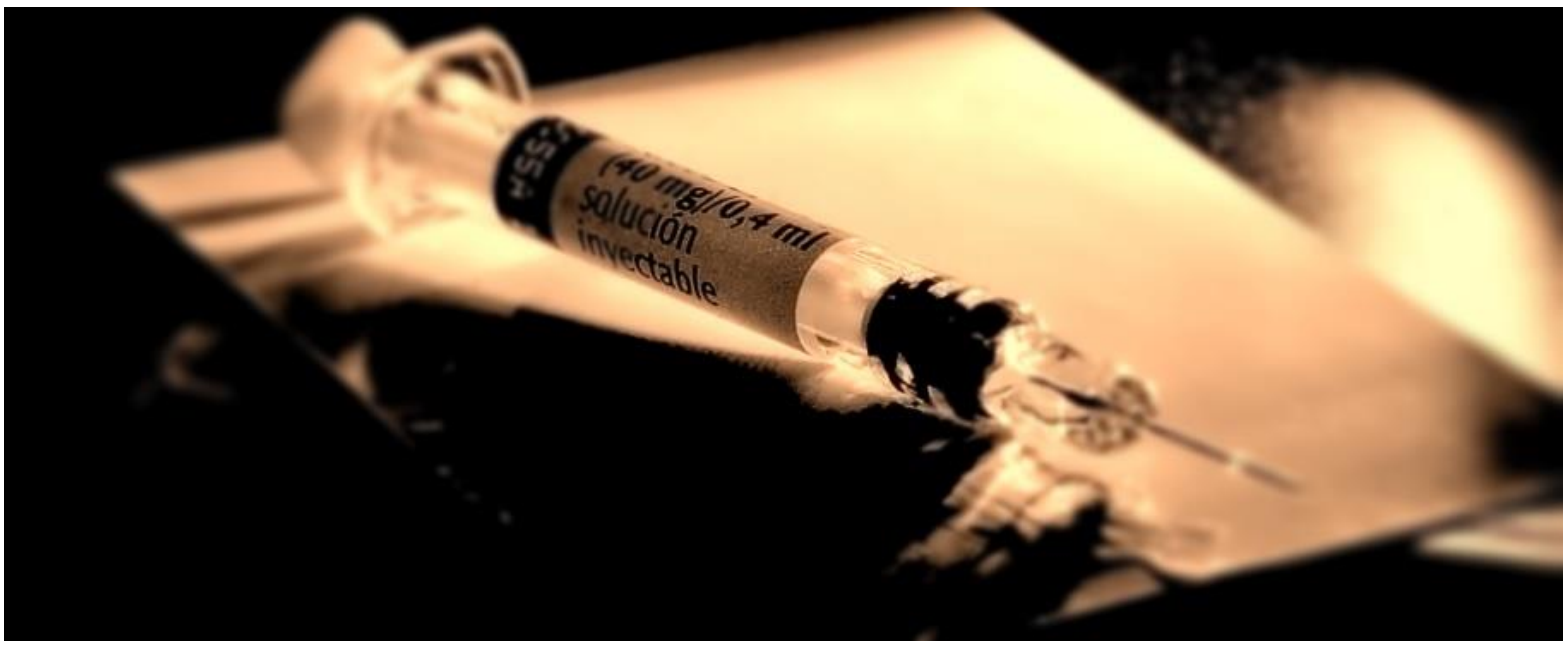
[67] Neha Singh, 'Supreme Court calls for new standards for endangered species conservation' (Conservation India, 4 October 2015) <http://www.conservationindia.org/articles/supreme-court-calls-for-new-standards-for-endangered-species-conservation> accessed 15 June 2020

[68] Neha Singh, 'Supreme Court calls for new standards for endangered species conservation' (Conservation India, 4 October 2015) <http://www.conservationindia.org/articles/supreme-court-calls-for-new-standards-for-endangered-species-conservation> accessed 15 June 2020

[69] Neha Singh, 'Supreme Court calls for new standards for endangered species conservation' (Conservation India, 4 October 2015) <http://www.conservationindia.org/articles/supreme-court-calls-for-new-standards-for-endangered-species-conservation> accessed 15 June 2020

Narco Analysis Test and Its Legal Implication with Respect to The Right Against Self-Incrimination

- Sourav Reddy Dodda



In modern times, with the rapid advancement in technology there is a constant need to elicit the truth from people who are involved in crimes. One topic which has been highly debated and scrutinized over the years is the Narco analysis test or the truth serum procedure which is administered to the accused to extract the truth during investigation. However, our constitution guarantees some fundamental rights against such practices which can be exercised by any individual who is a citizen of the country.[70] One such right is specified in Article 20(3) of the Indian Constitution which is a protective safeguard against the right to self-incriminate which reads "No person accused of any offence shall be compelled to be a witness against himself." The Evidence Act is completely oblivious of the perpetration of this scientific procedure upon the accused, whilst on the other hand our constitution talks about exercising fundamental rights. The Narco analysis test can however be administered only with the consent of the accused unless its an issue of national security and such.

What is Narco analysis? The term was coined in 1936 indicating the usage of narcotics to extract information during investigations. The term "Narco" has been derived from the Greek word "Narke" meaning anesthesia. [71]A Narco Analysis Test is a procedure whereby a mixture of Sodium Pentathol is dissolved in 2000ml of dextrose and is intravenously injected into the subject's body to get him to confess or tell the truth. Sodium Pentathol is generally used as an anaesthesia, but when administered in high dosages it sends the person into a trance which makes it difficult for them to lie and drives them into a state wherein they can only say something based on personal knowledge. Narco analysis tests raise a lot of questions at

[70] Article 20 (3) of the Constitution of India
[71] India, l. (2019). *Article 20 (3) of Constitution of India And Narco Analysis*. [online] Legalserviceindia.com. Available at: http://www.legalserviceindia.com/article/l375-Article-20-(3)-Of-Constitution-of-India-And-Narco-Analysis.html

the intersection of law, morality and medicine. People have been critical of this procedure since it is a clear infringement of a fundamental right although others claim it is pivotal for criminal investigation. Investigating agencies have been using this procedure to extract the truth from criminals although they know for a fact that these confessions are not admissible in court. Also, the main debate that arises from these tests is the use of abased methods to get criminals to confess, which nullifies the whole concept of fundamental rights. [72]This was clearly evident in the case Smt. Selvi and others vs State of Karnataka which talks about the involuntary administration of such serums to get the accused to confess. [73]In Dalmia vs State, the Madras High Court talks about how if the accused doesn't cooperate with the investigation process and the investigation isn't completed in a reasonable time the investigating agency can administer the procedure on the accused.

Legality

Questions about the legal validity of these tests keep arising with some people upholding the legality considering all the legal implications and principles wound around this issue while a few others unabashedly discard the whole concept on grounds of a Fundamental right violation of Article 20(3) of the Constitution.

1. It is the right pertaining to a person accused of an offence
2. It is a protective safeguard against compulsion to be a witness; and
3. It is a protective umbrella against such compulsion resulting in him/her giving evidence against themselves.

The privilege under clause (3) is confined only to an accused. A person against whom an FIR has been recorded by the police and investigation has been ordered by the Magistrate can claim the benefit of this protective safeguard. Such tests are not valid in a court of law since a confession given by a semi-conscious person is not admissible in court. [74]The court can however, grant limited admissibility given the seriousness of the offence and taking into consideration the circumstances. If the confession is derived from the accused under duress then the confession becomes invalid. The Right against forced

[72] *Selvi v. State of Karnataka* (2010) 7 SCC 263
[73] *Dinesh Dalmia v. State* (2007) 5 SCC 773
[74] India, l. (2019). *Article 20 (3) of Constitution of India And Narco Analysis*. Legalserviceindia.com. Available at: http://www.legalserviceindia.com/article/l375-Article-20-(3)-Of-Constitution-of-India-And-Narco-Analysis.html

Self-incrimination widely known as the Right to Silence is clearly against this practice and mentions so in the Constitution of India and in the CrPC as well. [75]It is well established that the Right to Silence has been granted to the accused by virtue of pronouncement in the case of Nandini Sathpathy vs P.L.Dani which specifies the fact that no one can forcibly extract statements from the accused, who has the right to keep silent during the course of interrogation. By administering these tests on the accused, forcible intrusion into one's mind is being restored to, thereby bringing into question the validity and legitimacy of the aforementioned fundamental right.

Narco analysis is being mainstreamed into investigations, court hearings, and lab reports in India lately. [76]The judgment of an eleven-judge bench in the case of State of Bombay v Kathi Kalu Oghad stressed on the fact that self-incrimination means conveying information based on personal knowledge of the person and can't just include the mechanical process of producing evidences and other paperwork in the court. [77]The Bombay High Court, in a significant but contradicting verdict in the case of Ramchandra Reddy and Others v State of Maharashtra, upheld the legality of the use of Brain Mapping and Narco analysis tests. The court also said that evidence procured through a narco analysis test is also admissible in a court of law. However, lawyers and human rights activists viewed that the narco analysis test was a very unsophisticated form of investigation and so was third degree treatment whilst also reminding everyone of the legal implications in interrogating the accused with the aid of narcotics.

Criticism of The Narco Analysis Test

Since it is sometimes very difficult to appropriate the exact dosage for a person these tests can be inaccurate. A lot of tangible factors like the physique, mental attitude and so on are to be considered and since it differs for different people, a perfect dosage cannot be decided upon. There have been prior cases of people lying on these tests. Furthermore, since the test is basically just a restoration of a concealed memory there is a high possibility for the accused to withhold information or give an untrue confession if the accused had forgotten completely about it. It is therefore better and advisable to conduct these tests with consent from the person concerned. [78]In contrast, in the case of Rojo George v. Deputy Superintendent of Police the court held that it was not an issue to administer these tests since modern technology has filled the void of unsophistication and primitivity. They further noted that the conventional methods aren't always decisive or fruitful. Furthermore, they stated that when such DDT tests are administered under strict supervision it isn't exactly encroachment of a fundamental right. [79]As a matter of fact, these tests have been pivotal in solving high profile cases like the Hyderabad bomb blast case in 2013 and the Mumbai serial train blasts. They have also helped curb other such catastrophes by extracting incriminating information from these terrorists.

Perpetration of The Truth Serum

The Ministry of Home Affairs published a set of rules in 2007 mentioning the prerequisites for administering such

[75] *Nandini Sathpathy v. P.L Dani* (1978) 2 SCC 424 10, 38
[76] *State of Bombay v. Kathi Kalu Oghad* (1962) 3 SCR 10: AIR 1961 SC 1808: (1961) 2 Cri LJ 856
[77] *Ramchandra Ram Reddy Vs. State of Maharashtra*, MANU/MH.0067/2004
[78] *Rojo George v. Deputy Superintendent of Police*, Crl WP No 6245 of 2006
[79] Math, S. (2019). Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane. [online] PubMed Central (PMC). Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3171915/

tests including a team of experts to look into the procedure.

- Anaesthesiology degree/diploma from a recognised medical college.
- Clinical/forensic psychologist or psychiatrist or MD/DPM in psychological medicine from a recognised medical college.
- Supporting nursing staff
- General physician, if needed
- Interpreter, if needed

Also, the physical and mental condition of the accused has to be checked thoroughly before administering any tests.[80] This seems like a far cry from the conventional third degree methods to extract information which has been criticised for being too inhumane and unconstitutional since third degree torture has been held to be illegal after the judgement of Sister Shirley v. Central Board of Investigation.

The Test from The Evidence Perspective

There is no specific law in the Evidence Act which talks about the admissibility of the Narco analysis test or any such tests. But courts allow these evidences in some cases like when there is no actual evidence to back up the circumstantial evidence. The confession made in the presence of a police officer is not admissible in court. The presence of a Magistrate is essential for recording the confession and the Magistrate is supposed to mention all the terms before the procedure. The only obstruction to this procedure are Sections 25 and 26 of the Evidence Act but if the procedure is conducted in the presence of a Magistrate then there is no obstruction. [81]In the case of State of Gujarat v. Anirudh Singh the court held that the accused is supposed to aid in interrogation. The Supreme court however, left open a possibility for and exception when they spoke about a 'voluntary' administration of the serum. The question that arises here is if the serum can harm the body and have some effect if administered voluntarily.

Conclusion

In today's time, when criminals are upgrading to tech savvy methods to commit crimes the Government can try and induce that same technology to elicit the truth from these people whilst keeping in mind the fundamental rights guaranteed by the Constitution and try to not violate these rights. The police, courts and other investigating entities can seek the help of medicine and science just to make sure proper justice is served to everyone. As aforementioned, when there is no proper evidence a last resort effort could be to administer these tests. Also since there is no specific provision for the DDT methods, the discretion should lie with the courts considering the seriousness of the crime and other such factors. [82]Narco analysis is still an infringement of a personal right guaranteed by the Constitution but in the case of Rohit Shekar v. N.D. Tiwari the Delhi High Court stated that when there is a question of individual right against a societal right, the societal right would prevail. While there are many countries which administer these procedures there a few which completely prohibit these procedures. If India could properly speculate the pros and cons of these procedures considering the various reasons why a country has banned or not banned these procedures, we could certainly come up with a viable recourse.

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[80] *Sister Sherly vs Central Bureau Of Investigation*, Crl.MC.No. 1218 of 2009

[81] *State Of Gujarat vs Anirudh Singh And Another*, AIR 1997 SC 2780, 1997 (2) ALD Cri 266, 1997 CriLJ 3397, 1997 (2) Crimes 82 SC, (1997) 3 GLR 2245, JT 1997 (6) SC 236, 1997 (4) SCALE 724, (1997) 6 SCC 514, 1997 Supp 2 SCR 234

[82] *Narayan Dutt Tiwari v. Rohit Shekhar*, (2012) 12 SCC 554

Force Majeure Clause and Impact of COVID-19 on Real Estate Sector

-Ruchika Baweja

Abstract

The ongoing Covid-19 epidemic has exposed mankind to several unprecedented problem and circumstances which are envisaged to have far reaching consequences on the social fabric of the society. The imposition of lockdown across the nations has a direct nexus with the slowdown of the economy as it is leading to difficulty of businesses to fulfill their contractual obligations and sustain operations. In the backdrop of this, the author has tried to analyze the impact of pandemic on real estate sector and the identification of this crisis as one of the categories of *force majeure*. The article also discusses the recourse available with the developers to bring back the working of the project at a normal pace in order to rejuvenate its economy.

Introduction

Today, the real estate industry is one most flourishing industry in India. The demand for residential and commercial property is emerging and consequently so is the number of builders and developers who plays a significant role in redevelopment of housing societies. At this time, the non fulfillment of contractual obligation which are currently in motion is one of the major areas of dispute between the developers and the buyers and the sudden outbreak of Covid-19 has tremendously added fuel to the fire. In exercise of powers conferred under Section 10(2)(l) of the Disaster Management Act, 2005, vide Order dated 24.03.2020[83], the Ministry of Home Affairs, Government of India issued certain guidelines under which all commercial and private establishments except for essential services listed therein were asked to remain closed for a period of 21 days with effect from 25.03.2020. However, this list of exceptions did not include construction services and hence all construction activities in respect of real estate projects have come to a grinding halt. The developers are not able to complete their projects within the vicinity of time frame as

[83] Order No 40-3/2020-DM-I(A) dated 24.03.2020.

mentioned in their contractual obligation with the buyers. One of the major reasons of such slow progress is the abandonment of labours who are the fundamental resource in making of the project are walking to their home towns due to lockdown restrictions. Also, many states have temporarily suspended the welfare provisions in order to cut down their cost and boost their investments and business that are hit hard by the pandemic. Even when the lockdown is lifted, quick starting of operations will be too difficult for almost all sectors especially for a labour-intensive industry such as real estate, the reverse migration is tantamount to the last straw on the camel's back. Apart from the Labour shortage, near-total restrictions on logistics and transport have immensely disrupted supply chains leading to scarcity of raw materials in this industry.

Is the Covid-19 Pandemic A Force Majeure Event Under RERA?

In light of this pandemic, it is important to understand the impact on performance of various contracts and statutory obligations and the applicability of the Force Majeure clauses. However, the concept of force majeure has neither been defined nor specifically dealt under the Indian statutes. Considering it from the contractual perspective, a force majeure clause provides temporary reprieve to a party from performing its obligations under a contract upon occurrence of any unforeseeable circumstances. To put it simply, due to any acts of god such as fire, flood, war, etc., parties are unable to perform their part as it is not reasonably within the control.

Section 6 of the Real Estate Regulation Act [84]has envisaged the force majeure condition and states that the registration granted may be extended by the Authority on an application made by the promoter in that regard due to force majeure. The Explanation provided to this section states that the expression "*force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project*. Therefore, the explanation to Section 6 which defines Force Majeure includes "any other calamity caused by nature". Calamity has not been defined under the Act. However, the Ministry of Finance of India has considered the COVID-19 as a natural calamity and a force majeure event. [85] It further clarifies that, "*a force majeure clause does not excuse a party's non-performance entirely, but only suspends it for a duration of the force majeure*" and it cannot be an ex-post facto event.[86]

Also , The Ministry of New & Renewable energy[87] has reiterated the occurrence of Covid-19 as a Force Majeure Event. Offering some relief to real estate developers, the Finance Minister in May 2020 extended six months registration and completion dates of all projects under Real Estate Regulatory Authority which will be applicable on all real estate projects expiring on or after 25 March, 2020.[88] Certain states have taken cognizance of the fact that the lockdown has severely affected the construction work in real estate projects and have made certain allowances in delay of the project. Such as Rajasthan Real Estate Regulatory Authority extended completion deadlines for under-construction projects by one year for the projects which were supposed to be completed on or after March 19, 2020[89], Maharashtra government extended the period of validity for registration of such projects by three months from 15th March 2020[90], Tamil Nadu Real Estate Regulatory Authority has extended the completion period (and as

[84] Section 6, the Real Estate Regulation Act, 2017
[85] Office Memorandum No.F. 18/4/2020-PPD dated 19th February 2020 titled 'Force Majeure Clause', issued by Department of Expenditure, Procurement Policy Division, Ministry of Finance, Government of India available at https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause-%20FMC%20.pdf
[86] Supra

[87] **Energy vide Office Memorandum bearing no. F. No. 283/18/2020-GRID SOLAR dated April 17, 2020 available at https://mnre.gov.in/public-information/current-notice**
[88] https://www.rera.tn.gov.in/homePageFiles/TNRERA-Circular-06042020.pdf
[89] http://rera.rajasthan.gov.in/Home/NotificationPDF
[90] MahaRERA Order 13 /2020: MahaRERA/Secy/25/2020: Revision of Project Registration Validity and Extended Timeline for Statutory Compliances, in view of COVID 19 Pandemic

such the validity of registration) of all registered projects by five months[91], The Uttar Pradesh Real Estate Regulatory Authority has opened the gates for the promoter to apply for further extension under section 6 of RERA act in addition to the automatic extension of registration[92].

Once the promoter triggers the force majeure clause in the agreement with the allottee, the present crisis will not frustrate the entire contract because there is no destruction of the subject matter which is one the grounds in frustration of contract[93] and operation will remain ongoing in future. It will not absolve the promoter of delivery of units but it will merely give the promoter an extension of time to perform the agreement. Hence, the promoter of a real estate project will get extension of time to handover the possession of the units forming part of the contract. The duration of such extension will depend on the impact of COVID-19 on the project which is likely uncertain considering the present circumstances.

Recourses Available with Developer

The covid-19 outbreak has stalled the construction of thousands of real estate projects, putting a stop on home sales and creating cash flow problems for most developers. The residential sector had already been reeling from a prolonged slowdown and the lockdown has only deepened the crisis. It will take a while for most of them to resume construction because lakhs of labourers have left cities and migrated back to their villages. In such uncertain and critical conditions, the only way developers and contractors could resolve the delay is by recruiting workers by offering them extra wages or incentives or perks, including safe working conditions. The delay in work will lead the buyers to be more reluctant to book under-construction flats, instead they will be opting for ready units leading to decline in the growth of this sector. The developers in case of financial distress can seek help from Special Window for Affordable and Mid Income Housing (SWAMIH) investment fund which has so far approved Rs 8,767 crore for 81 stressed residential projects.[94]India's largest mortgage lender Housing Development Finance Corp (HDFC) is also looking to invest in real estate funds to finance such projects.[95] The Rs 12,500-crore fund providing with the green-shoe option of additional Rs 12,500 crore, aims to provide financing to enable completion of stalled housing projects and ensure timely delivery of apartments to the troubled homebuyers.[96]

Conclusion

Though there is no doubt that the lives of people are important against the unparalleled threat posed by COVID-19 however a delicate balancing act is required whereby essential services and large-scale employment generating sectors such as agriculture and construction are authorized to resume operations. One has to also take this as a learning opportunity to explore commercially viable legal solutions to avoid a scenario where such health pandemic may lead to an economic pandemic.

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[91] https://www.rera.tn.gov.in/homePageFiles/TNRERA-Circular-06042020.pdf
[92] https://www.up-rera.in/pdf/prjext.PDF
[93] Taylor v. Caldwell (1863) 3 B & S 826
[94] Ankit Sharma, *Rs 8767 crore approved so far under SWAMIH for 81 'stressed' projects* , July 23, available at https://realty.economictimes.indiatimes.com/news/industry/finance-ministry-approves-rs-8767-crore-for-81-stressed-projects/77134310
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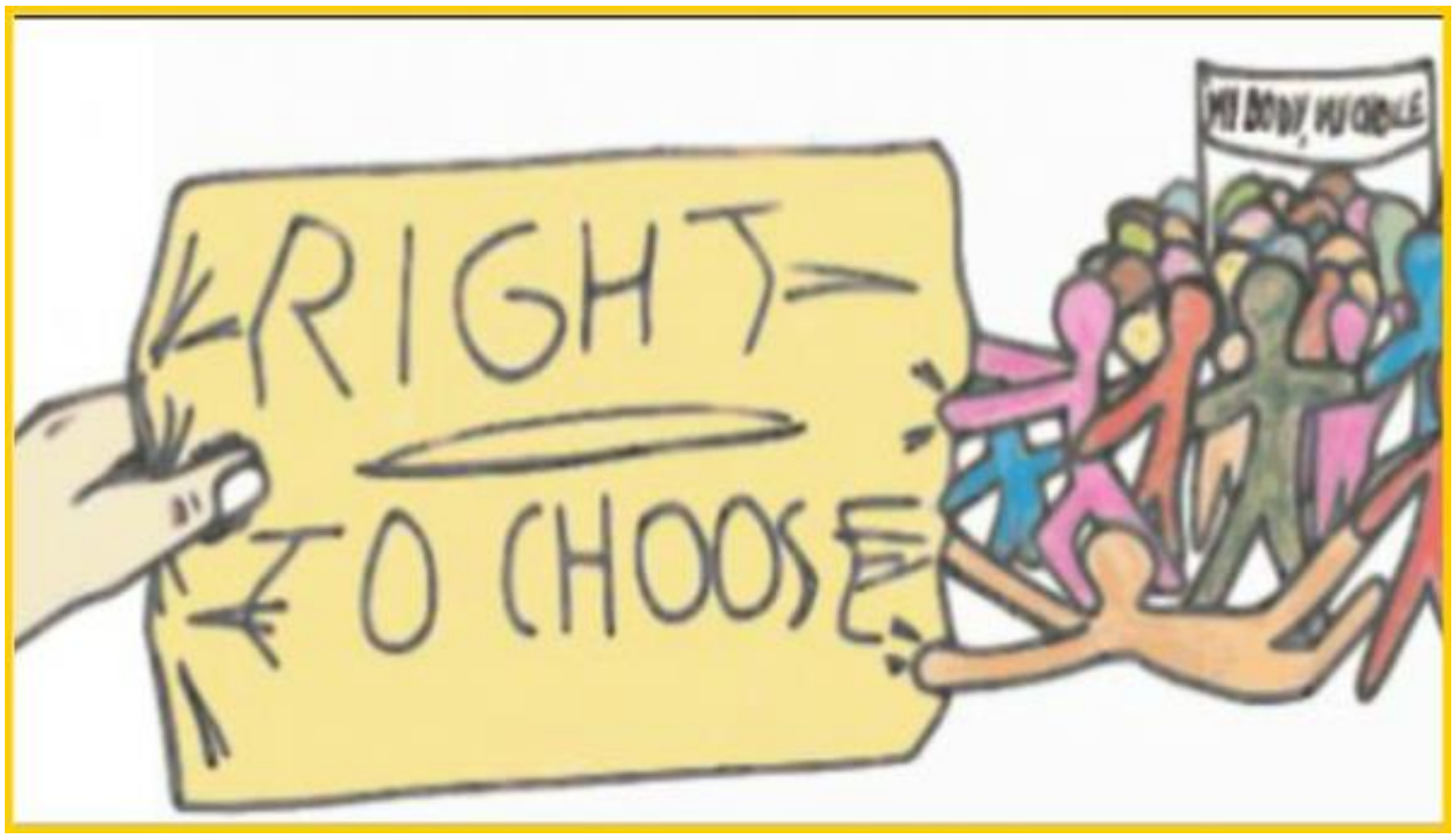
Abortion: A Choice

-Gopika Bansal



According to the *Guttmacher Institute report, Abortion Worldwide: A Decade of Uneven Progress,* approximately 42 million abortions transpire out of which half are effectuated by an unequipped individual. The *World Health Organization* also enumerates that roughly 70,000 maternal deaths are due to perilous abortion or one in eight women face pregnancy-related death.[97] Above all, more than 9 crore women of progenitive age are forbidden from accessing their reproductive rights in more than 26 countries. This article offers a critique of how these 'humanistic' countries contemplate sanctioning reproductive rights as the 'liberal' resolution. Countries like India dilating the law does not make them progressive as the law acknowledging this universal issue should be supportive to all and not to a particular section of people. Motherhood is entitled to reproductive right without any obstacle and condition.

No comprehensible and dependable grounds are dispensed from the medicine, theology, and philosophy as to in which phase the fetal development is postulated with the right to life. However, a study by the *University of California at San Francisco* admits that a fetus is incompetent to feel any suffering until the 29th or the 30th week of gestation. Also, according to a review by *Britain's Royal College of Obstetricians and Gynecologists*, the cortex is ineffective until the 26th week, which is obligatory to sense pain. Moreover, the other response visible in the fetus is mere reflexes rather than any sensation of feeling.[98] It is the society that

[97] (Cohen 2009) (Cohen 2009)

[98] (ProCon.org 2019) (ProCon.org 2019)

regards the fetus as the "special one" which overcomplicates the situation on moral grounds for the individual who may not consider the fetus with the same emotion[99].

The dispute if the fetus is a human being or not can be resolved by setting "personhood". To qualify it, the environment of the fetus should be parallel to the newborn. The fetus doesn't breathe like a human being. It is nourished variedly, and it cannot grow independently from its mother, making the fetus a part of the mother's body. Also, a person's age is not calculated from the time of conception but birth[100]. It clear-outs that a fetus cannot be a human being as the environment in which its progress is contrasting to that of humans. According to research, until the 30th week, a fetus cannot be called a human being. It may uncomplicate that a fetus is completely dependent on its mother and is inseparable until birth which gives the mother the right to choose. All these distinctions make practical reasoning superior to moral obligations.

The debate between the right to life and the right to choose inaugurates the Abortion law. *Article 2 Right to Life of the Human Rights Act,1998* says that no one including the government has the right to end an individual's life. It also states that the government has the responsibility of safeguarding the citizen's life by making laws[101]. The *Right to Choose* gives a person the right to be able to make its own decisions. However, the individuals preaching the rights of an unborn may think of a grown woman who without her consent has to carry the fetus for nine months and she still lacks the power to take decisions.

The pro-choice and pro-life neglects the extremity that the right these activists are upraising concerns for still holds the hesitation to call the fetus as a human being. However, a woman who has to validate the existence of the unborn child, who is a living person, her rights are still being scrutinized. The choice as to when to have children is a source of independence and aptness to settle for success. In *Planned Parenthood v. Casey, 1992* former supreme court *Justice Sandra Day O'Connor* said, "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."[102]. In *Gonzales v. Carhart, 2007,* Supreme Court *Justice Ruth Bader Ginsburg* highlighted her dissenting opinion that "undue limitations on abortion violates a woman's autonomy to shape her life's course, and thus to enjoy equal citizenship stature." Also, *Jeffry Toobin* who is a CNN senior legal analyst agreed to *Roe v. Wade's* judgment and said it was "a landmark of what is, in the truest sense, women's liberation."[103]

Legally accepting abortion will minimize maternal injury and death and will elevate access to professionally performed abortions. It is stated by the *chair of the Department of Obstetrics and Gynaecology, Daniel R. Mishell* at the *Kech School of Medicine, University of Southern California* that apart from unsafe abortionists, the women used knitting needles, coat hangers, or radiator flush to terminate their pregnancies. Also, women denied receiving abortion leads to mental health problems. A *peer-reviewed study* found out that 95% of the women felt that abortion was the right decision after a week of termination and the ones who were denied of their rights were more unhappy and regretful. Moreover, raising an unplanned child can lead to financial disadvantage and can interfere with the mother's planned educational and career goals. It was found by a survey by *Perspective on Sexual and Reproductive Health* that 73% of women could not afford a child and 38% faced interference in their goals.

Women should be sustained with the right to choose in case of abortion not only because comparing both the rights in this context is impractical and an ethical issue

[99] (BBC 2014) (BBC 2014)
[100] (Dabbagh 2009) (Dabbagh 2009)
[101] (Article 2: Right to life 2018) (Article 2: Right to life 2018)

[102] (ProCon.org, Should Abortion Be Legal? 2019) (ProCon.org, Should Abortion Be Legal? 2019)
[103] (ProCon.org, Should Abortion Be Legal? 2019) (ProCon.org, Should Abortion Be Legal? 2019)

but also because an infant setting foot to the world as unwanted can give him/her trauma. Birth of a child is a decision dedicated to consideration, preparation, and planning. An unwelcomed one can have risks like birth defects, maternal depression, low birth weight, delayed entry into prenatal care, lower educational attainment, increased risk of child abuse, high risk of physical violence during pregnancy and reduced rates of breastfeeding which the *Colorado Department of Public Health and Environment* has stated. Also, children born with profound abnormalities who may agonize discomfort in their life and cannot be treated because of financial constrain on parents, which can be an injustice to them. Promoters of banning Abortion need to perceive that the life of an unwanted child who may not be suffering from any health issues still has to face complications in life. The grief of a lack of love and affection and the difficulty the child may face is distressing. It's better to not have a child rather than to be an unwished child.

India comes along in the list with *Canada, China, Singapore, Vietnam*, etc. where feticide is an obtainable alternative. In India, the abortion law is called the *Medical Termination of Pregnancy Act, 1971 (MTP)* to preclude resistance from the socio-religious that are not compliant to the intention of liberalizing abortion. It was validated everywhere except *Jammu and Kashmir* under certain circumstances. The *Shah Committee* comprehended the situation for the Government and came to the consensus that legalizing abortion can prevent deaths of women on both compassionate and medical grounds[104]. However, as the recognition of women's rights, is increasing, the realization to amend the MTP act to sanction abortion for more than 20 weeks has also come into frame. The *Union Cabinet* on *January 29, 2020*, sanctioned the *Medical Termination of Pregnancy (Amendment) Bill, 2020* to amend the *MTP Act, 1971*, and stretch the length to 24 weeks. But to form a revised Act, the bill needs to be approved by the Parliament in the proceeding sessions.

While the amendment proposes to decode concerns that are inadmissible and facilitate smooth access to abortion, but it still is a continued failure to be the right-based legislation. It reflects to be doctor centric with condescending nature. *Union Cabinet Minister Smriti Irani* says "India will now stand amongst nations with a highly progressive law which allows legal abortions on a broad range of therapeutic, humanitarian and social grounds. It is a milestone that will further empower women, especially those who are vulnerable and victims of rape"[105]. However, it has time to be in the list of being a reformist, non-hetero domination, and an equivalent law.

The amendment gives unmarried women the autonomy to terminate the pregnancy due to contraceptive failure and reduces the unwritten and unsaid prejudice that the women undergo from menstruation to pregnancies without any legal or family support. However, this still excludes sex workers and other women as the knowledge of the law comes to an end on the failure of the contraceptive device within a 'partnership'[106]. Also, the framework of law should replace the word 'women' to person as pregnancy is extended to queer and transgenders also.

This amendment calls out to get a consultation from two registered medical practitioners (RMP) to terminate the pregnancy after 20 to 24 weeks and one RMP up to 20 weeks. Moreover, the appendage is only for a particular category of people and not in general. This is a challenge for women in rural area to get two practitioners to check. Moreover, women, struggle to persuade the doctor to abort, taking no notice of the gestation period as the misapprehension of abortion being criminalized under IPC sets out the terror of prosecution. The abortion is on the doctor's outlook and not on the women's choice and involving the court in this matter is a strenuous task as

[104] (Hirve 2005) (Hirve 2005)
[105] (SUBRAMANIAM 2020) (SUBRAMANIAM 2020)
[106] (Jain 2020) (Jain 2020)

time is minuscule and the Indian Judiciary is known for its delayed justice. Looking closely, this amendment seems to be a step back as the MTP Amendment Bill of 2014 allowed the termination on the request of the women[107].

The bill promotes termination of pregnancy after 24th week only in case of fetal abnormality that is detected in the later stage of gestation.[108] However, this criteria needs to expand its boundaries to uncertain situations like domestic violence, death or separation from the partner, etc. as it nullifies the notion of a person with a disability is not equal to a person without a disability.

There have been cases like *Niketa Mehta*, a rape survivor, appealed to terminate her pregnancy after the 20th week in the Supreme Court where she was allowed in the 31st week. However, there has also been a case where a victim woman has been rejected to abort in the 28th week[109]. A woman acquainting that she is pregnant later on should not cease her the right to choose. This absurdness manifests the proposal of removing any cap on the timeline to get an abortion. It can prevent women especially with fetus abnormalities who are subjected to repeated examination by the medical board that acts as a third party to diagnose the deformity. It also can serve justice without lack of confidentiality and denial of service on time as the medical board consists of diverse opinion which delays the process. It will reduce unsafe abortion which is the third leading cause in India for maternal deaths.

Another affair India deals with is sex determination which should not be inappropriately associated with each other as they both are independent and have discrete laws. The *Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994* prohibits the determination of sex that can be a cause for abortion**.** There have been suggestions to disallow abortion after the 12th week or disclose the identity of the women and the sex of the fetus. This was put forward by *Dr. Sabu George* and NGOs like *CEHAT* and *MASUM* in 2000 by filing a Public Interest Litigation (PIL) in the Supreme Court[110]. Experts have apprised that the MTP Act should not be amended. We should reckon that determination of sex is established by the 15th-16th week which Dr. *Nikhil Dutta, Gynecologist* agrees to and a woman seeking an abortion will not stand by after the 24th week. Any time foundation will only accompany illegal abortion and maternal death.

International Human Rights assures the *right to life, health, privacy, and non-discrimination* and makes the government accountable for inaccessible abortion services. Instruments like *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), International Covenant of Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of all Forms of Racial Discrimination (ICERD),* etc. reinforce it. It's the hour where we empower women by granting them the right they sustain without turning it into liberalism and broaching it as the fundamental right. The world demands harmony and the International Law approves of the same. The final say should be with the pregnant person and the society should accept it. Also, the legislation may have worked towards a progressive law but still, it does not compete with the parameter of being gender-neutral. Let's all act jointly to create a secure room for all.

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[107] (JAIN 2020) (JAIN 2020)
[108] (MTP AMENDMENT BILL, 2020 2020) (MTP AMENDMENT BILL, 2020 2020)
[109] (NDTV 2017) NDTV 2017)
[110] (Hirve, Abortion Law, Policy and Services in India: A Critical Review 2005) (Hirve, Abortion Law, Policy and Services in India: A Critical Review 2005)

Legalisation of Cannabis in India- Necessity?

- Daksha Chimote

Introduction

Cannabis have proven to be the most popular yet controversial form of drug in the world. Popularly known as Marijuana or weed, Cannabis is a psychoactive drug made up of Cannabis plant which is used for recreational as well as medical purposes. The Cannabis plant contains two important components- Tetrahydrocannabinol (THC), the main psychoactive component present in the plant for the intoxicating effect and Cannabidiol (CBD) which is non-inebriating and has various legitimate uses such as in beauty products, medication, excellence items, furniture and fuel. However, it's history of being illicit and a perverted drug, along with being widely used has brought upon a questionable restriction on its identity.

In India's religious texts, Cannabis has been described as one of the five most sacred plants. This highlights the importance of Cannabis in Indian and its usage can be traced in the various derivatives like bhang(seeds and leaves), ganja (flower), charas (resin),etc. Despite the association of Cannabis with ancient India, it is still considered illegal to use, supply or hoard in India today. Ironically, Cannabis used to be legal in India until 1985. Even though certain countries have legalised or advocated the use of cannabis in some form or the other, India still has not lifted its ban on use of cannabis recreational fields except for government approved purposes and research.

According to the UN, around 147 million of the world's population consume cannabis, which is high in comparison to any other drug. Whereas, data collected by the All India Institutes of Medical Sciences in 2019 state that approximately 7.2 million Indians had used or consumed cannabis in 2018 irrespective of the ban on the same. The ban on such cannabis have given rise to illicit supply and production of its variants as it is easy to grow and there is demand for it in the market. Cannabis can

have many benefits and more so for the country's economy once legalized.

Benefits of Marijuana:

Believe it or not, cannabis have turned out to be a great source of healing in psychological as well as physical aspects. Not only does it help to relive pain and anxiety but it also acts as a sleeping aid. Moreover, it is an apetite enhancher and helps to relax the muscles; which ultimately benefits those suffering from Anxiety disorders. Medically speaking, it helps to treat various diseases like epilepsy, cancer, glaucoma, and also delays the development of Alzheimer's in the body.

Recreational use produces the feeling of happiness and exhilaration as well as a sense of self awareness and creativity. An epidemiological study revealed that cannabis rarely lead to a source of addiction and is not as harmful as when a person gets clinically addicted to alcohol or any other drug.

Lastly, it is a medically proven fact that alcohol intake is more harmful than that of marijuana or cannabis. Every drug has its pitfall and so does the use of cannabis but not much research has been done in this aspect till now. Although, a few claims of it being a threat to the mental health of a person by leading to memory loss or brain damage if consumed in excess is said to be a major issue. Legalization of cannabis would solve this issue as it regulates the distribution of marijuana. Regulation ensures that every individual is only allowed to purchase or sell a limited amount.

Before discussing the current legal situation of marijuana, it is important to take a look at what preceded it.

Evolution of India and Cannabis:

Cannabis plant develops all through India's Himalayan lower regions and the connecting fields, from Kashmir in the west to Assam in the east. This openness and plenitude of cannabis presents India with the exceptional chance to bridle the plant for monetary development.

But there was an uprise in the illegitimate use of cannabis, which in hand was contributing to rise in crimes. Under diplomatic pressure from Western countries, including the US, the 1980s ban was enforced. The 1961 "Single Narcotic Drugs Convention" was the first ever international treaty to have clubbed cannabis (or marijuana) with hard drugs and placed a blanket ban on their development and sale, except for medical and scientific purposes. They were also strictly banned by two other major conventions,' the '1971 Psychotropic Substances Convention,' and the 'UN Convention against Illegal Trade in Narcotic Drugs and Psychotropic Substances, 1988.

Consequently, the central law governing the use, supply and possession of cannabis/marijuana in India came into being under The Narcotic Drugs and Psychotropic Substances Act, 1985. Under the NDPS Act, it is illicit for an individual to deliver/sell/produce/develop, have, sell, buy, transport, store, and additionally expend any opiate sedate or psychotropic substance. Any individual who negates NDPS Act will be confronted and be privy to punishment dependent on the amount of the restricted substance found with them. At the same time, different states have different laws regulating the issues revolving around cannabis. Hence, it is to be noted that use and possession of such drugs is prohibited and considered as a criminal activity in India. As per the NDPS Act, marijuana and hemp production and possession are banned. Although, states have the power to assign and grant licenses for cultivation of cannabis (only for medical or research purposes); in fact the states of Uttarakhand and Uttar Pradesh are the only two states who have been granted the license to do so in India with reasonable restrictions. Madhya Pradesh has also decided to legalise the cultivation of cannabis, hemp rather for medical and industrial purposes.

The Narcotic Drugs and Psychotropic Substances Act, 1985:

Section 2 (iii) of the NDPS Act, define cannabis and and bhang is excluded from the definition of the same thus not totally illegal. In India, under the NDPS Act, possession of banned drugs (weed or marijuana) is an offence. The amount of possessed substance determines the length and severity of the sentence. Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 covers charges related to the intake, possession, production, sale, purchase, import, export, and transportation, etc except for those related to medicinal or scientific purposes.

Usually, a sentence of 6 month to a year in jail along with a fine of Rs 10,000 is given if impounded with a lesser amount (upto 1000 gms for ganja, upto 100 gms for hashish). If found in possession of larger amounts for commercial use (1 kilogram or more for hashish and charas, 20 Kg or more for ganja, a sentence upto 20 years and a fine of 2 lakh could typically be given. For cultivation of cannabis, a fine upto 1 lakh and incarceration upto 10 years can be imposed Under Section 20 of the act. Moreover, an individual may be punished under section 20 of the act if an individual allows the use of their property with full knowlegde for offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 28 of the Act deals with drug attempts, abetment and criminal conspiracy. A repeated offender can be awarded 30 years of imprisonment at the discretion of the court. Minor or Child offenders are governed by the Juvenile Justice (Care and Protection of Children) Act, 2015. Hence, these are some noteworthy laws regarding the punishments for possession or sale or purchase of cannabis.

International Parlance on Marijuana:

Even with the legalisation of Cannabis being a debatable matter in India and various other parts of the world, there are countries which have realised sooner or later the significance of this industry in medical and recreational fields. Uruguay is the first country to legalise the use, production, cultivation and supply of cannabis in non-medical purposes. Although, stringent rules and policies have been put forth to regulate the cannabis market in the country, it is also not commercialised as a whole. This step has been taken to eliminate the drug trafficking and drug related crime in the country. Canada has been the second country to legally adopt the sale, manufacturing and possession of cannabis with certain restrictions of course. The Marihuana for Medical Purposes Regulations (MMPR) was a set of regulations put forth by the Canadian government which were later replaced with "Access to Cannabis for Medical Purposes Regulations" (ACMPR), which governed the extent to which the use of cannabis was lawful in terms of medical purposes. On the other hand, laws were formed taking in mind the safety of the public, especially the minors. These countries made legal provisions for punishment and rehabilitation for minors who break laws regarding cannabis. A cap on quantity of possession was made clear by the law. On the contrary, the commercialisation of cannabis is not legal in the state of Georgia whereas, possession and use of cannabis is legal. A rigorous law exists with barriers with respect to cannabis and its cultivation and refinement. Haleigh's Hope Act oversees the use of cannabis in medical field in the state.

Additionally, a High Court Judge in South Africa had ruled that the ban on personal and private use of cannabis is a violation for its citizens constitutional right to privacy and thus decriminalised the use, possession and cultivation of cannabis for adults in private. Consequently, issues have been raised regarding the Cannabis bill in South Africa regarding the quantity of possession for an individual, but the matter is still pending as of now. On the other hand UK ,Colombia, Argentina, Australia, Jamaica, Thailand, Chile, Peru, Croatia, Cyprus, Germany, Portugal, Israel, Italy, Jamaica, Lithuania, Norway, Croatia, the Netherlands, New Zealand, Peru, Greece, Poland, and Switzerland are some

nations that have approved clinical use of cannabis by law.

Need For Legalisation Of Cannabis/Marujuana :

A number of Non-profit Organisations along with activists are rallying to legalize cannabis in India, filing petitions to the court for the same. They argue that cannabis has proven medicinal properties that have many benefits. Moreover, india has ideal climatic conditions for its cultivation, which can possibly act a channel for the growth of the Indian economy along with generation of jobs for its citizens.

The most recent one being a writ petition filed by a Bangalore based NGO named Great Legalisation Movement in the honourable High Court of Delhi seeking legalisation of cannabis for medical and industrial use in the country. It further stated that the clubbing of cannabis with other drugs under NDPS Act was arbitrary, unscientific and unreasonable and pleaded that they were in violation of article 14, 29, 25, 21 and 19 of the Constitution of India. On top of that, a few legislators have also demanded that the legalisation or amendment to the NDPS Act since the law has miserably failed to fulfill its desired goals even after 35 years of its enactment. Infact, the UN had itself declared that the "War on Drugs" had failed but at the same time it has also led to formation of drug cartels, rise in crime and human rights violations. Furthermore, a valid argument put forth by activists towards the legalisation of cannabis is the prevalence of black market in the country and that legalisation would ultimately reduce the growth of it.

There are numerous perks of legalising the use of cannabis, but only if implemented in a restricted manner. Firstly, government revenue will increase as the tax on cannabis will be charged. Secondly, Employment rate will rise since cannabis plants can be easily grown and are abundantly found in India, especially in the Northern regions. It will bring about a source of income to farmers as well. Consumers appear to face a danger of exposure to unlawful / impure marijuana as illicit dealers do not request identification and sell uncontrolled and impure product. Legalization would increase the quality of marijuana sold to customers, as it also would lead to the establishment of rules and regulations for the cultivation and sale of the drug. Most importantly, even after prohibition on use of cannabis there hasn't been any significant difference in the production, sale and

possession as it is easily available to whoever wishes to consume it. An examination led by the German information firm ABCD found that Delhi and Mumbai were the world's third and 6th biggest cannabis-expending urban cities in 2018. Even with few proven harmful effects to the brain and body, it is still not as hazardous as alcohol or tobacco which are legal and easily ready for consumption.

Taking in consideration all of the above points, it is of prime importance for the lawmakers and government to understand the need to legalise the use, cultivation, sale and possession of cannabis in regulation. A step toward legalisation has to be taken in order to control illicit sale of cannabis, which causes more harm to the country and its citizens. Decriminalisation and legalisation of cannabis is necessary, however with them comes another problem of commercialisation which can be tackled with maximum legal restrictions. Hence, decriminalisation but stopping commercialisation will help the medical industry to boost.

That being said, policies have to be formed in a way that avoids usage by teenagers and minors while retaining liberal cannabis policies. Moreover, regulated production or cultivation of cannabis should be made for pharmaceutical industries and so as to take care that the general public can not avail the product for any other purposes. Taking in consideration the policies and laws of the countries who have legalised cannabis and altering them according to the needs and morals of the country could be one way of approaching the issue. Since the current law has not been able to make a difference, it is time to reformulate the laws regarding cannabis but with reasonable restrictions.

Conclusion:

With the movement to legalise cannabis on the rise, there is absolute need for Indian authorities to look into better policies and legal reforms with respect to Cannabis. The lifting of ban on Cannabis will help to revive the ever-collapsing economy and may give a boost to certain aspects in medicine development. Consequently, laws abiding with the use of cannabis must be framed for controlled and efficient use of the same.

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Fundamental Rights Simplified!

Category	Consists of
1. Right to Equality (Articles 14-18)	a) Equality before law and equal protection of laws (Article 14) b) Prohibition of discrimination on the grounds of religion, race caste, sex or place of birth (Article 15) c) Equality of opportunity in matters of public employment (Article 16) d) Abolition of untouchability and prohibition on its practice (Article 17) e) Abolition of titles except military and academic (Article 18)
2. Right to Freedom (Articles 19-22)	a) Protection of six rights regarding freedom of: i) speech and expression, ii) assembly, iii) association, iv) movement, v) residence, vi) Profession (Article 19) b) Protection in respect of conviction for offences (Article 20) c) Protection of life and personal liberty (Article 21) d) Right to elementary education (Article 21 A) e) Protection against arrest and detention in certain cases (Article 22)
3. Right against Exploitation (Articles 23-24)	a) Prohibition of traffic in human beings and forced labour (Article 23) b) Prohibition of employment of children in factories, etc. (Article 24)
4. Right to Freedom of Religion (Articles 25-28)	a) Freedom of conscience and free profession, practice and propagation of religion (Article 25) b) Freedom to manage religious affairs (Article 26) c) Freedom from payment of taxes for promotion of any religion (Article 27) d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28)
5. Cultural and Educational Rights (Articles 29-30)	a) Protection of language, script and culture of minorities (Article 29) b) Right of minorities to establish and administer educational institutions (Article 30)
6. Right to Constitutional Remedies (Article 32)	a) Right to move the Supreme Court for the enforcement of fundamental rights including the writs of i) habeas corpus, ii) mandamus, iii) prohibition, iv) certiorari, and v) quo-warranto (Article 32)