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E-governance: A Conceptual Analysis

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Abstract

Evolution of E-Governance is a complex process involving a number of dimensions. Before the era of e-governance, government delivery of services was manual and opaque which caused great difficulties to the citizens. It appeared that the focus of employees was more on corrupt practices than on citizen's service delivery. E-Governance is the new methodology of governance using information and communication technology (ICT) all over the world. The efforts towards popularizing the use of ICT, IT Act, 2000, Right to Information Act, 2005 and implementation of effective e-government should be undertaken without losing more time. There is now a noticeable progress in the delivery of e-governance services in both developed and developing countries at the International level. The establishment of e-Governance requires a good knowledge of the needs that exist in the society and that can be offered using ICT. The government approved the National e-Governance Plan (NeGP). The main object of this plan is to improve delivery of government services to citizens and business establishments and also to make all government services accessible to the common man in his locality.

Keywords: E-governance, Information and Communication Technology, Good Governance.

Introduction

Today, Information Technology revolution is regarded as of great significance in the 21st century. E-governance is an evolving process. In India, government programmes are largely for E-government and business and industry is racing to make the best use of Information and Communication Technologies (ICT) gradually ushering in the era of E-commerce. Lexicographically, 'Governance' is derives from the Latin word 'Cybern' which means 'steering', the same root as in Cybernetics, the science of control[1]. Thus, governance is concerned with the ability of the human institutions to control their societies and economy. Word Bank defines governance as the "exercise of political authority and the use of institutional resources to manage society's problems and affairs"[2]. E-governance is a tool for good and transparent administration with e- democracy backed by e-government with e-commerce business acting as a prime mover for economic growth. E-Governance is the other name of good governance because it intends to provide quality services to the citizens and stakeholders. It is also needed for equity, poverty alleviation and enhancement of quality of life of all the citizens. E-governance includes integration of several stand-alone systems and services between Government-to-Citizens (G2C), Government-to-Business (G2B), and Government-to-Government (G2G) as well as back office processes and interactions within entire government framework. The overall objective of such a catalogue is to enable the administration to provide services with affordable cost and optimum time to the end user.

Concept of E-Governance

The term 'governance' may be described as the process by which society steers itself. In this process, the interactions among the State, Private Enterprise and Civil Society are being

[1] Jon Perre and B.Guy Peter, Governance, Policies and the State, Mac Millan Press Ltd., London, 2000, p.23
[2] Ibid.

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Cyber Crime against Women: Indian Perspective

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Abstract

In the digital era, Information and Communication Technology (ICT) is benefiting billions across the world by bridging certain gaps and multiplying human potential in every walk of life. Digital services provision that is being developed for our society has enormous positive potential. The world of internet provides every user all the required information fastest communication and sharing tool making it the most valuable source of information. With the numerous advancement of internet, the crime using internet has also widened its roots in all directions. Few sections of The Information Technology Act, 2000 and Information Technology (Amendment) Act, 2008 has provided cyber crimes and its punishment. The cyber-crimes pose a great threat to individuals. It is a global phenomenon and women are the soft targets of this new form of crime. Such crimes are emerging as a challenge for national and economic security. Cybercrimes have emanated from development of computer network. Internet in the present millennium has become all pervasive and omnipresent. Various issues related to crimes against women and kinds of cyber crimes that are discussed in this paper are: Cyber Stalking, Cyber Pornography, Cyber Defamation, Morphing, and Email Spoofing against women.

Keywords: Cyber crimes, Women, ICT, IT Act, 2000, IT (Amendment Act), 2008, Internet.

Introduction

In India, cyber crime against women is relatively a new concept. The term cyber crime against women in India is mostly used to cover sexual crimes and sexual abuses in the internet, such as harassing women with sexually blackmailing or harassing mails or messages on face book, Watt-sap, Telegram etc., morphing the picture and using it for purposes of pornography or cyber stalking. Although Parliament has passed Information Technology Act, 2000, but it turned out to be a half baked law as the operating area of the law stretched beyond electronic commerce to cover cyber attacks of non-commercial nature on individuals as well. The cyber crimes specially targeting women are cyber stalking is the use of the Internet or other electronic means to stalk or harass an individual, a group of individuals or an organization. Most of the women who are falling prey to cyber crimes are illiterate women. Another disturbing factor is the alarming rate of divorce in the country, which is also fuelled by some of the cyber crimes committed on women. Moreover the problem against women such as Harassment via e-mails, Cyber-stalking, Cyber pornography, Defamation, Morphing, Email spoofing, etc. are also treated of the same nature worldwide.

Cyber Crime

Cyber-crime is a major issue facing society today. The cyber-crime is the crime, which occurs in the cyber space. In cyber-crime, computer is used as a tool, a target, as incidental, and as associate. Cyber-crime also known as computer crime can be defined as -Criminal activity directly related to the illegal use of computer and a network, for unauthorized access or theft of stored or on-line data that can be used for several criminal activities against a victim In the globalized era, internet is one of the fastest-growing areas of technical infrastructure development in all nations. Individuals use the internet because they can gather and share information very easily with other individuals no matter where on the globe they are located. Cyber crimes may be identified with 'criminal activities that make use of computers or networks'. Nowadays, in online processing, maximum information and details are online and prone to cyber threats. In every creation there are both good and bad sides but when a new one

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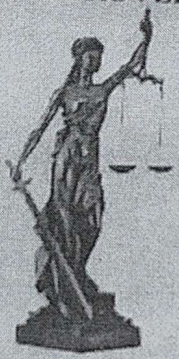

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THE CONCEPT OF ZERO FIR

Dr. S. K. Chaturvedi*

Introduction:

In our Country, the capital itself is known to be one of the most dangerous cities to live in. Many protests took place all over the country against the lame status of law and order. After that, the ruling body came up with provisions to set the motion of justice favouring the victim. Alas! The tragedy lies in unawareness of masses regarding their rights and on the part of government failing to spread awareness, as well. Zero FIR is one such provision, which might help the victim to appeal for investigation without wasting time. But, many times the victims are denied the right to file a FIR by police authorities because the area of crime took does not fall under their jurisdiction. There is a concept of "Zero-FIR". It means that a FIR can be filed in any police station whether it has jurisdiction or not and the same can be later transferred to the appropriate Police Station. However, policemen usually deny knowing about "Zero FIR" and direct the complainant to concerned Police Station. This provision is for everyone. The provision of Zero FIR was introduced in the recommendation in Justice Verma Committee Report in the new Criminal Law (Amendment) Act, 2013.

Zero F.I.R.: Meaning and Concept

First Information Report:

There is no any specific definition of first information report is given under any statutory provision however the information given to a police officer and reduced to writing as required by Section 154 of the Code of Criminal Procedure, 1973 is known as the first information and the corresponding report is known as the first information report(FIR).The first information report means information recorded by a police officer given either by the aggrieved person or any other person to the commission of an alleged offence. Section 154 of the Code of Criminal Procedure, 1973 defines as to what amounts to first information. Every FIR has serial no, date of occurrence, time of occurrence, place of occurrence, contents of complaint etc. and it is lodged because of commission of cognizable offence[1] . The purpose of a Fir is only to set the criminal law in motion.

Zero FIR:

As per the concept, Zero FIR is a FIR that can be filed in any police station regardless of the place of incidence or jurisdiction. The same is later transferred to the l Police Station having competent jurisdiction after investigation and filing with a magistrate. What distinguishes Zero FIR from Ordinary FIR is that in the latter, FIR is registered by a serial number in police station but in the former one an FIR is instituted at any Police Station other than the jurisdictional Police Station concerned, that is the place where incident took place, and such an FIR is registered but not numbered. Such unnumbered FIR simply then forwarded to the concerned Police Station where it gets numbered and further acted upon. Hence those FIR's are known to be Zero FIR's. For example an Offence of rape is committed within the jurisdictional limit of 'A' police station & FIR is lodge at 'B' police station. Then by the procedure, if it is revealed that the offence is committed within the jurisdiction limit of the other police station the FIR will be channelize to that police station as ZERO number FIR. The Police Station registering the Zero number FIR is required to make some prelude investigation into the case before directing it to the concerned Police Station.

The concept of zero FIR came after the Nirbhaya case of December 2012, on January 18, 2013 after strong protests by the citizens. This is a landmark move made by the Government. S.154 of Code of Criminal Procedure governs F.I.R. It is the first information in point of time regarding the commission of a cognizable offense that is given to the police and is recorded as the provisions of S.154. The entire territory is divided into various police stations that exercise jurisdiction over a particular country. Initially, F.I.R can be registered in the police station that has jurisdiction over the place where the offence has allegedly been committed. Various police stations may fall within the territorial jurisdiction of a particular Magistrate's Court. The officer-in-charge of a police station can investigate a cognizable case if the Court within whose local jurisdiction that police station lies has the jurisdiction to try that case[2]. The concept of Zero FIR is basically a free jurisdiction FIR. Its main object is to bring up in order to avoid the delay in filing the crime and to avoid wastage of time that adversely impacts the victim and gives a free way to offenders getting an opportunity to escape from the clutches of the law.

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[1] Section 2 (c), Code of Criminal Procedure,1973.

[2] S.156 of Code of Criminal Procedure.

Secularism and Minority Rights in India

Dr. S.K.Chaturvedi[*]

Introduction:

Secularism plays a major role for the protection of the state order. The concept of Secularism plays an important role in India. It is not negative in nature, it is not anti-God. Indian secularism recognizes the importance of religion in human life. It believes that no religion has the monopoly of philosophical wisdom it allows all religious to discharge their function within their legitimate bonds. A secular state can be described as "a state whose population enjoys fundamental rights completely without any discrimination of race, colour, creed, and life and property of all citizens is safe in that state." It treats its citizens as equal irrespective of religion, caste and creed. The purpose of good and effective government is to bring about the security, welfare and happiness of the people India is a democratic country and the basic objects of a written constitution are three fold. Firstly, to establish the framework structure of government. Secondly, to delegate the powers to various organs of the government and third is to restrain the exercise of those powers in order to preserve individual rights. If citizens want to worship their God, Indian secularism recognizes the need and right for such prayer and worship. It does not prescribe the practice of any particular religion. Complete freedom of religion is assured in our constitution.

It, in fact, stimulates genuine religious autonomy and encourages blooming of diverse cultures without fear with the hope that it may pave the way for a fusion of shared values and goals among its citizens, accelerating the evolution of common Indian culture as a source of national unity and identity. The protection of minority therefore, under the Indian Constitution, is as stronger as India's commitment to preservation of secularism, social justice and the rule of Law Indeed, India is the only democratic and social country in the world where the state has been building linkages between the majority and minority communities without undermining their status as distinct religious groups by welding them together to reduce polarization and maximize socio-political interaction between such groups in order to bring them within the mainstream of national life. The Constitution guarantees cultural and linguistic diversities of minorities and supports pluralism based on religion, language, culture, etc, and at the same time strives unity and fusion between all the elements so that interests of minorities or majority communities no more remain separate or fragmented but assimilated into one composite culture. Therefore, the Constitution nowhere defines what constitutes "minority" for the founding fathers were more concerned about their culture and language rather than number.

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Role of Skill Development in Generation of Employment Opportunities

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Abstract

Generation of employment opportunities is a common challenge faced by the countries world over. The challenge is more pronounced in case of developing countries with large informal sector and with problems of unemployment and underemployment. Skill in any field is an indispensable requirement for any field. Skill is directly proportional to the Employment opportunity. Economic growth accompanied by urbanization along with foreign direct investment has fuelled a demand for skilled workers in India. Rural Population has limited access to education and training, and most find work in the informal sector. Skill Development acts as an antibiotic curing the issue of non-employability on account of skill deficiency. It facilitates a cycle of high productivity, increased employment opportunities, income growth and development. Rapid industrialization has brought with it complex processes which require specific skill, which can only be attained if some sort of skill development programmes are pursued at the educational institute level itself. It will cater to the need of moulding the youth with necessary skills required to discharge their work and compete in this global world. This paper shall focus on the role that Skill development programmes has to play in enhancing the employment opportunities of the youth.

Keywords: Employment, Skill Development.

Introduction: Concept of Skill Development

Skills and knowledge are the driving forces of economic growth and social development for any country. Skill development may be defined as process where the labour force acquires the necessary skills that are necessary for his performing the job in which he is engaged in a proficient manner. Skill becomes very important when the job is of a technical nature that demands that everyone who is engaged in it must possess those skills while discharging the requirements of that particular job. Skill development has become very important in the present scenario owing to the fact that today every sphere of economic life and activity has become technical, if not fully then to a considerable limit. Skill development is one of the essential ingredients for India's future economic growth as the country transforms into a diversified and internationally-competitive economy. Skill development is going to be the defining element in India's growth story. It is imperative for economic growth and social development of any country. India is undergoing a phase of demographic transition, making it imperative to ensure employment opportunities for more than 12 million youths annually. In order to enable the youth to be employment ready they need to be equipped with necessary skills, training and education required by the businesses. Skill development programs aims at creating a workforce empowered with the necessary and continuously upgraded skills, knowledge and internationally recognized qualifications to gain access to decent employment and ensure India's competitiveness in the dynamic global market. It aims at increasing the productivity and employability of workforce (wage and self-employed) both in the organized and the unorganized sectors. It seeks increased participation of youth, women, disabled and other disadvantaged sections and to synergize efforts of various sectors and reform the present system with the enhanced capability to adapt to changing technologies and labour market demands.[1] According to *International Labour Organisation* skills development can help build

[1] Available at: http://www.sylphedu.com/skill-development-meaning-and-focus (accessed on 08 Jan, 2019 at 04:06 PM)

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FORMATION OF GOVERNMENT CONTRACT AND OBLIGATION OF STATE

*Alok Kumar Yadav** *Prof. A.K. Pandey***

Introduction : The executive power of Government extends to carrying on of any trade or business or to acquisition, holding and disposing of property and it has to perform various welfare functions, which makes it necessary for the Government to enter into contract with private individuals.[1]

How, if at all, do principles of public law affect government contracting by the Central or state governments in India? The short answer seems commonly to be assumed to be 'not much'. If that was ever right, it is time to reconsider. It is time to ask at least three more particular and basic questions. What boundaries are there to the kinds of contract (or contractual promise) which Indian governments can make? What processes must Indian governments follow when making a contract? Which organs of Indian governments must be engaged to make contracts that are binding?[2]

The beginning line of the subject and details of Government contracts in India is to be found in Articles 298, 299 and 300 of the Constitution. As mentioned above Articles lays down that for the purpose of carrying out the functions of the State, Government can enter into contracts. Under Article 298 the Government can enter into a contract in the exercise of its executive power and so no statutory authority is necessary for this purpose. Further, Article 299 provides essential requirements which a contract made in exercise of the executive power of the Centre or of the State must fulfill. And Article 300 provides the manner in which suits and proceedings against or by the Government may be instituted. However, the procedure of making contract is not in the Constitution itself, therefore, it is supplemented by the provisions of the Indian Contract Act, 1872. Thus, a Government Contract in order to be valid besides satisfying the requirements of Article 299 must also fulfill the requirements of Section 10 of the Indian Contract Act, 1872 dealing with the essentials of a valid contract.[3] In the same manner Sections 73, 74 and 75 are also applicable in case of Government Contract.[4]

It is time to reconsider how principles of public law affect government contracting not only because governments are making larger and more complicated contracts but also because the contracts that are made may have national and international consequences. Large resource and infrastructure developments provide obvious examples of circumstances in which the contracts that developers make with government may be very important domestically. Inevitably, the larger the contract and the more complicated its terms, the more likely it is that the contract will provoke legal and political controversy. And, if the developer is not an Indian entity, free trade agreements and other international arrangements will often give the contract an important international dimension.[5]

Nature of Government Contract : Regarding nature of Government contracts, the court felt that reasonable meaning must be given to it and held that contracts which were not in proper form could be ratified by Governments.[6] Bose J. observed: "We do not think the provisions of Article 299(1)

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CHANGING DIMENSIONS OF STANDARD FORM OF CONTRACTS

Mr. Alok Kumar Yadav*
Prof. A. K. Pandey**

Introduction

The law of contract has in recent time to face a problem, which is assuming new dimensions. The problem has arisen out of the modern large scale and widespread practice of concluding contracts in standardized form. People upon whom such exemption clauses or standard form contracts are imposed hardly have any choice or alternative but to adhere. This gives a unique opportunity to the giant company to exploit the weakness of the individual by imposing upon him terms, which may go to the extent of exempting the company from all liability under contract. It is necessary and proper that their interests should be protected. The courts have therefore devised some rules to protect the interest of such persons. The principle of natural law postulated the individual freedom to contract and according to the doctrine of *laissez faire* the law should not intervene in the individual matters as far as possible and the individual should decide himself as to what type of relations he wants to establish. The function of law is to enforce the intention of the parties. If the requirements which are given under Section 10 of Indian Contract is fulfilled then that contract will be enforced. It means the contract must not be caused be coercion, fraud, misrepresentation etc.

One of the most important developments for the law of contract has been appearance of the standard form of contract.[1] Many large size organizations have to enter into thousands of contracts everyday with individuals such as Life Insurance Corporation of India, has to issue thousands of insurance covers every day.[2] Similarly, the railway administration of India has to make innumerable contracts of carriage. It is very difficult for such large scale organization to enter into a contract with every individual. An easy solution to this problem is to have a

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1 The standard form of contract is sometimes, following the French, referred to as a contract of adhesion: Saleilles, De la De'claration de la Volonte'(1901). See Beatson Sir Jack, "Anson's Law of Contract" 29th Edition, Oxford University Press pp. 171.

2 L.I.C of India V. Consumer Education & Research Centre, AIR 1995 SC 181.

uniform set of terms and conditions printed forms of contract in advance. These are also called as standard form of contracts. Lord Diplock pointed out that :

Standard forms of contracts are of two kinds. The first of very ancient origin are those which set out the terms on which mercantile transactions of common occurrence are to be carried out. Examples are bill of lading, charter parties, policies of insurance, contract of sale in the commodity markets. The standard clauses in these contracts have been settled over the years . Such Standardized Contracts contain the terms and conditions printed in the form of contract. In the complex structure of modern society the device of the standard form contract has become prevalent and pervasive. The use of standard terms and conditions is not, however, confined to contracts made with consumers. Many contracts business people- indeed, perhaps the majority of such contracts- are today entered into on the basis of one person's standard form of agreement or on the basis of a standard form of document, such as an order form, confirmation of order, catalogue or price list, put forward by one party.[4] The French, though not The English lawyers have a name for it.

The term contract d'adhesion is employed to denote the type of contract of which the conditions are fixed by one of the parties in advance and are open to acceptance by anyone. The contract, which frequently contains many conditions is presented for acceptance en bloc and is not open to discussion.[5]

This development emphasis that to make a contract may no longer be purely private act. Standard Form Contracts have been variously described 'compulsory contracts' they being a kind of imposition.[6] "Contract of Adhesion", which means that the individual has no choice "but to accept; he does not negotiate but merely adheres."[7] and "Private Legislation", they being a kind of code of bye-laws on the basis of which the individual can enjoy the services offered.[8]

Effect of Standard Form Contracts

A person who signs a document which contains contractual terms is normally bound by them. But in many cases, standard form contracts are not required to be signed by the consumer or customer. But there are some exceptions of this general rule. In **L. Strange V. Graucob Ltd.**[9] L signed a printed agreement for the purchase of a cigarette vending machine, without reading the terms and conditions printed on the agreement. One of the terms printed on the agreement form was "any express or implied condition, statement or warranty, statutory or otherwise, is hereby, excluded." The machine was totally defective and L sued to avoid the contract. It was held that the contract was binding on L.

Schroeder Music Publishing Co. Ltd V. Macaulay (1974)3 All ER 616 at 524. This case is the subject of a very illuminating analysis by Trebilcock 'The Doctrine of Inequality of Bargaining Power: Post- Benthamite Economics in the House of Lords'. For the History of standard form contracts, see Chesire, Fifoot & Furmston's Law of Contract 16th Edition Oxford University Press pp. 26.

Beatson Sir Jack, "Anson's Law of Contract" 29th Edition, Oxford University Press pp. 172

See Chesire, Fifoot & Furmston's Law of Contract 16th Edition Oxford University Press pp. 27

Linhoff, Scope of Compulsory Contracts Proper, (1043) 43 Col. LR 586

Beatson Sir Jack, "Anson's Law of Contract" 29th Edition, Oxford University Press

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Law

THE UTILITARIAN THEORY OF DEMOCRACY: BASE AND IMPLICATION

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ABSTRACT

The word Democracy is denotes limited government which is depends upon Rule of Law and Constitution. It is not new concept which is found thought of Aristotle, Karl Marks and Maciyawali etc. but they were only described in the form of mass government. In 19th century, when arisen utilitarian theory which talk about very important concept 'law ought to be' and checked of 'law as it is' which means positive law must be judged on principle of utility. Utilitarian theory is demand of smart society; there all member of community can achieved greater happiness and less unhappiness. Jeremy Bentham and John Stuart Mill both have believed democracy is excellent and best form of government, which has been considered and acceptable in present legal system. The Utilitarian has propounded different types of government known as democracy which is concern to security, liability, equality, happiness and avoid to pain. The spirit of Constitutional scheme has also incorporated security, equality and happiness or protection of all interest of individuals; we can say weapons of good governance. Without these weapons cannot imagination ideal legal system. Democracy is symbol of protection of human rights, equal protection, protective discrimination, social security and social justice, etc. Utilitarian has promoted all aspect of good governance which is base of ideal democracy.

KEYWORDS : Constitutional scheme, Equality, Security, Rule of law.

INTRODUCTION

Literally, democracy means rule by the mass. The term is derived from Greek 'demokratia', which was coined from demos "public" and kratos "rule" in the middle of the 5th century BC to denote the political system then existing in some Greek citystates, notably Athens. The first of all democratic governance concern to choose of representatives of people by secret ballot, as such, is a number game and the rule of this game is majority rule. In unitary systems contrast markedly with federal systems, in which authority is constitutionally divided between the central government and the governments of relatively autonomous sub-national entities. Democratic countries that have adopted federal system include in addition to the United State, Switzerland, Germany, Austria, Spain, Canada and Australia. The world's most populous democratic country, India, also has a federal system.

Bentham's contribution to the development of liberalism is recognized in three important areas:

a. He produced a critique of Lock's theory of natural rights and provided an alternative foundation of the liberal theory;

b. He produced a new scheme of administrative and judicial organization based on the responsible exercise of power; and finally,

c. He envisaged a political structure designed to achieve the ends of legislation including security, subsistence, abundance and equality, and thereby highlighted the needs and aspirations of the modern democratic State.

According to John Lock the concept of Democracy is base on use of government power in responsible nature. If government is liable any activity of administrative authorities than increases protection of interest at large people as well as group of minorities. Utilitarian has influence by thinker of social contractual theory.

JUSTIFICATION OF THE DEMOCRACY

I. Democracy as Instrumental to Human Development

Aristotle himself took a more favourable view of democracy in his studies of the variety, stability, and composition of actual democratic governments. In his observation that "the basis of a democratic state is liberty," Aristotle proposed a connection between the ideas of democracy and liberty that would be strongly emphasized by all later advocates of democracy. John Lock was an unequivocal supporter of political equality, individual liberty, democracy, and majority rule. Jeremy Bentham and john Stuart Mill provided a philosophical foundation for some of the basic freedoms essential to a functioning democracy, such as freedom of association.

John Stuart Mill in his Book "Considerations on Representative Government (1861)", echoed this ancient view, the first element of good government……being the virtue and intelligence of the human beings composing the community, the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves. The first question in respect to any political institutions is how far they tend to foster in the member of the community the various desirable qualities, moral and intellectual.

In Mill's view, by providing opportunities for all to participate actively in political life, democracy fosters, as no other kind of regime can, qualities of independence, self-reliance, and public-spiritedness. The argument that political participation fosters desirable personal and social qualities in democratic citizens has often been advanced since Mill's time, particularly by advocates of participatory democracy. To determine the relation between regime and personal qualities is a formidable task, and modern social scientists have so far made little advance over the speculations and conjectures of Plato, Machiavelli, and Mill. Although modern theorists have sometimes proposed that a "democratic personality" is either necessary to, or is produced by democratic institutions, attempts to define the distinctive qualities of a democratic personality and to verify its relation to democratic regimes or practices have not met with much success.

Jeremy Bentham analyses legal terms (such as Power, Right, Prohibition, Obligation, Property and Liberty) and attempts to show what, in fact, they mean in the world practice. This is base of democratic government and the principle of utility also maintained jurisdiction of all government organs Jeremy Bentham has to provide the indispensable introduction to a civil code. John Austin also adopted the theory of utility, but he regarded it as falling outside the sphere of jurisprudence proper. It is must not be forgotten that although Bentham was an individualist, his doctrine of utility carried within it the seeds of collectivism as well as theory of democracy. Jeremy Bentham usually appears as an exponent of a version of Classical democratic theory along with such writers as Paine, Rousseau, Kant, James Mill and John Stuart Mill and the

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AN INTERNATIONAL BILINGUAL PEER REVIEWED REFEREED RESEARCH JOURNAL

AN INTERNATIONAL GAP OF TRAVERSING RELATED TO PUBLIC AND PERSONAL SECURITY PRIVACY

Avinash Kumar Babu
Dr. S. K. Chaturvedi

ABSTRACT

This article summarizes the concept and origin of privacy law as it is applied in various jurisdictions around the world. It is providing examples of governmental intervention affecting the privacy rights of individuals and critically examines their suitability and proportionality in light of the environment in which they operate. During the article varying approaches in setting boundaries for privacy laws are analyzed and improvements suggested. Moreover, the privacy challenges formed in the online world are addressed and current developments highlighted.

Keywords : Privacy Law, Governmental intervention, Jurisdiction, Environment, developments.

Introduction

Privacy as perception has been part of the law since the British parliament passed the Justice of the Peace Act in 1361. It marked the commencement of the recognition of individual rights by providing for the arrest of eavesdroppers. This concept was further prolonged to include a course of action for trespass in cases in which private property was seized without a warrant and later a privacy interest in printed etchings, precluding reproduction deprived of the consent of the original owner. At this point in history, the influences in favor of a privacy right were based on the concept of property, forming an integral part of any society. However, no tort for a breach of privacy has yet been recognized in the United Kingdom. In contrast, over the last thirty-five years the United States America stimulated away from the concept of property as the basis for the attachment of a privacy right to a more holistic and individual-focused view. In Europe, the development of privacy laws has been significantly influenced by the human rights approach of the European Convention on Human Rights.

The concept of privacy consists of the three main features, anonymity, and solitude. In particular, the value attached to information varies for the individual to which the information relates who generally has a high interest in its secrecy than a potential passer-by. However privacy is valuable not only to the individual but also to functioning democratic political system and individuals therein as it provides seclusion in which democracy can grow.

As a preparatory point, the right to privacy can found in international treaties such as the Univers Declaration of Human Rights in Article 12, wh expressly protects an individual's privacy. Such provision is also included in Article 17 of International Covenant on Civil and Political Rights well as Article 16 of the Convention on the Rights of Child.

Constitutional Privacy Protection

Through the adoption of the Constitution, concept of privacy was further delayed from what exis at the time under British law by including a constitution right to protection from unreasonable search and seiz by the government. In particular, newer law has foun right to privacy in marital relations through the combi force of the First, Third, Fourth, and Ninth Amendment the United States Constitution. In the famous Griswo case, Justice Douglas formed the opinion that varia

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संस्कृति

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संस्कृति की अवधारणा एवं विधिक संरक्षण

प्रो० रजनीश कुमार पटेल

आचार्य, विधि संकाय, काशी हिन्दू विश्वविद्यालय, **वाराणसी, उ०प्र०**

डॉ० सुधीर कुमार चतुर्वेदी

सहायक आचार्य, विधि संकाय, हेमवती नन्दन बहुगुणा गढ़वाल विश्वविद्यालय, **टिहरी गढ़वाल, उत्तराखंड**

(प्राप्त : १६ दिसम्बर २०२०)

Abstract

संस्कृति जीवन पद्धति का ही दूसरा नाम है, जो किसी समूह की सामूहिकता मे रची बसी होती है और उस समूह की प्रतिष्ठा एवं गत्यात्मकता एवं जीवंतता के प्रति उत्तरदायी भी होती है। संस्कृति उस समूह की परम्पराओं, जीवन शैली, विश्वासों, सोच एवं कृत्य के तरीकों के साथ–साथ उसके भौतिक एवं आध्यात्मिक पक्ष से जुडकर जीवन के अर्थ को स्पष्ट करते हुए न केवल किसी समूह के वर्तमान सदस्यों को उनके जीवन के आदर्शों एवं जीवन जीने की कला का भान कराती है, अपितु जीवन पद्धति के इस ज्ञान को एक पीढ़ी से दूसरी पीढी तक हस्तांतरित भी करती है। अनुभव, ज्ञान एवं जीवन कला का यह अन्योन्याश्रित सम्बन्ध तथा प्रथम पीढ़ी से द्वितीय पीढ़ी की ओर उसका संचलन एवं अंतरण, उस समाज की संस्कृति को सांस्कृतिक विरासत का स्तर प्रदान करता है और उस समाज के चिरस्थायी बने रहने की दिशा में निरंतरित रूप से प्रयत्नशील भी होता है। इस सन्दर्भ में कहना यह होगा कि मनुष्यों ने ही संस्कृति को अवश्य बनाया है, परंतु साथ ही साथ यह भी सत्य है कि संस्कृति मनुष्यों को भी बनाती है। यह प्रक्रिया और यह तथ्य ही संस्कृति को विधिक रूप से संरक्षित करने की आवश्यकता पर बल देता है।

Figure : 00 **References : 40** **Table : 00**

Key Words : संस्कृति, सामूहिकता, विधिक संरक्षण, परम्परा, भारतीय संविधान

भूमिका

इस धरा के समस्त जीव चाहे वे छोटे हों या बड़े हों वे सामूहिकता में रहना पसंद करते हैं। मनुष्य उन सभी जीवों से सर्वाधिक बुद्धिमान प्राणी है, और अन्य जीवों की भाँति ही सामूहिकता इनकी भी पहली पसंद है। जिस प्रकार समस्त जीवों को जीवित रहने के लिए भोजन, जल और वायु की आवश्यकता पडती है, उसी प्रकार यदि यह कहा जाये कि सामूहिकता भी कम महत्वपूर्ण नहीं है, तो यह अतिशयोक्ति नहीं होगी। वास्तव में इसी सामूहिकता ने न केवल मानव प्राणी के विकास को गति दी है, अपितु उसके अस्तित्व को बचाये रखने में भी सहायक सिद्ध हुई है। उन दिनों में भी जब मनुष्य स्वाभाविक रूप से कन्दराओं एवं गुफाओं का निवासी था और भोजन की तलाश में दिन भर इधर–उधर भटकता रहता था, और जब सामाजिकता उसके लिए बहुत मूल्यवान नहीं थी, तथा क्षुधापूर्ति ही मात्र उसका जीवन ध्येय था, उन दिनों में भी वह समूह में ही निवास करता था, जो जंगली जानवरों से उनकी रक्षा के लिए सर्वाधिक महत्वपूर्ण भी था।

यह कहने की आवश्यकता नहीं है कि कालखंड की इस सीमा तक मानवीय समूह में संस्कृति का स्पष्ट अभाव परिलक्षित होता है। इतिहासकारों ने मानवीय उद्भव एवं विकास के काल क्रम को

Environment Protection and E-Waste Management in India

Dr. Haribansh Singh[1]
Dr. S. K. Chaturvedi[2]

Abstract

E-waste is nowadays one of the emerging pollutants which draw the attention of people throughout the world. Management of e-waste is a serious concern for the International community. Pollution caused by it is not only for India but for other developed and developing counties. In absence of any specific legislation on E-waste, the options available are Rules and Regulations made by government in India. The latest introduction of the scheme of the government in the form of E-waste (Management) Rules, 2016 provides an opportunity to look into the existing e-waste management process and also ponder on the effectiveness of the same. The unique feature of Environmental regime in India is to have different legislations on different environmental issues. In order to prevent and control water pollution and air pollution, the Water (Prevention & Control) Act, 1974, the Air (Prevention & Control) Act, 1981 have been enacted by the Parliament. To tackle the issues of environmental protection comprehensively, an umbrella and enabling legislation namely, the Environment (Protection) Act, 1986 has been passed. The Rules of 2016 which replaced 'the E-waste (Management and Handling) Rules, 2011' made under this Act of 1986. There are many issues which require serious consideration and compelling need to make identification and compliance. The matters pertaining to fraudulent traders, environmentally unsound practices and some changes introduced by the new Rules on e-waste management require severe scrutiny and review. Electronic equipments, especially computers, are often discarded by the people from time to time on invention of latest and sophisticated technology which has rendered existing equipments and related knowledge obsolete and undesirable. The process of recycling or collection or taken back policy of e-waste is the need of the hour.

Keywords: *E-waste, Environment, Hazardous waste, Handling, Dealers, Producers.*

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Sanctity of Hindu Marriage and Significance of Rituals

Rajneesh Kumar Patel* and S.K. Chaturvedi†

The philosophy of marriage differs in various points and contexts from society to society, community to community, nation to nation, and religion to religion, but no one can deny the fact that marriage plays its role in a society like an institution and it is not merely social channelisation of natural desires and motivations, but it creates a very strong link of social bondage, duties, and responsibilities. One of the most significant unwavering results of marriage is mutual support and the blame of maintenance of the common domestic settlement. Therefore, marriage as an institution has immense social and legal implications and a variety of commitments and obligations flow out of the marital relationship. In this parlance, it involves legal requirements of formality, publicity, and exclusivity in the form of certain norms for its solemnisation with intent to give its social as well as legal recognition. In every marriage, the procedures of solemnisation, properly known as rituals, is used by society. The rituals of the marriage are the very breathe and heart of the marriages as well as the entire institution, which gives stability to the marriages in the cover of religious force. The paper analyses the significance of the shastric and customary rituals in Hindu marriages.

Introduction

Family is the oldest social institution on this earth of which, marriage is the basis and almost certainly; the only building block. A family is a worldwide cluster, which exists in ethnic groups, rural areas as well as in

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CONSTITUTIONAL PHILOSOPHY OF WELFARE STATE IN INDIA AND LABOUR RIGHTS POST COVID 19

Shradha Baranwal*

Dr. S.K. Chaturvedi**

ABSTRACT

Indian Constitution is based on the principles of Equality, Fraternity and Liberty which is further strengthened by a pro-active Judiciary. In the light of recent challenges posed by COVID 19, various Indian States decided to restrict the labour norms for boosting up the economy based on the understanding that labour norms are anti-thesis to economic development, which is, misconceived. As a matter of fact the concept of Welfare State and labour protection was developed as a need subsequent to instability and agitation both in public and economic life, giving rise to two World Wars and the Great Depression. On these lines it is quite interesting to see how far the Governments in various States could understand the vision of Welfare State and labour protection; and how far deviating from that vision would prove effective or destructive in longer run. This paper attempts to examine the vision of Constituent Assembly, incorporation of Constitutional aspirations and the challenges posed in extra-ordinary situations such as COVID 19 with specific reference to Labour Law Reforms.

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आदिवासियों के मानवाधिकारों एंव संवैधानिक अधिकारों की विवेचना

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सम्पूर्ण विश्व अनेक प्रकार की विशेषताओं एवं विविधताओं को धारण करता है जिसमें भिन्न-भिन्न धर्म, जाति, सम्प्रदाय एवं अलग-अलग भाषाओं को बोलने वाले लोग निवास करते हैं। इन्हीं विविध लोगों में से एक समूह आदिवासी समुदाय का है जो कि विश्व में सबसे अधिक शोषित एवं अभावी समुदाय है, जिनके मानवाधिकार का उल्लंघन निरन्तर होता रहता है। यदि आदिवासियों को प्राप्त मानवाधिकार का अध्ययन किया जाय तो यह बात स्पष्ट होती है कि अन्तर्राष्ट्रीय एवं राष्ट्रीय स्तर पर उनके संरक्षण एवं विकास के लिए बहुत प्रयास किये गये हैं। जैसे कि मानवाधिकार की सार्वभौमिक उद्घोषणा पत्र 1948, सिविल एवं राजनैतिक अधिकारों की अन्तर्राष्ट्रीय प्रसंविदा 1966, आर्थिक सामाजिक एवं सांस्कृतिक अधिकारों की अन्तर्राष्ट्रीय प्रसंविदा 1966, जातीय भेदभाव की समाप्ति पर अभिसमय 1966, महिलाओं के विरुद्ध भेदभाव की समाप्ति पर अभिसमय 1979 तथा अन्तर्राष्ट्रीय श्रम संगठन अभिसमय 1989 संख्या 169 तथा राष्ट्रीय स्तर पर भारतीय संविधान में अनु. 14, 15(4), 16, 16(4क), 17, 19, 21, 23, 46, 225, 243घ, 244, 275, 330, 332, 335, 338, 339, 342, 371 एवं पाँचवीं तथा छठीं अनुसूची इत्यादि उपरोक्त सभी राष्ट्रीय संवैधानिक एवं सांविधिक संरक्षणों के बावजूद आज भी आदिवासी समुदाय के मानवाधिकारों का हनन बदस्तूर जारी है। आदिवासियों के मानवाधिकार के उल्लंघन के सन्दर्भ में मानवाधिकार आयोग के पूर्व अध्यक्ष के.जी. बालकृष्णन ने भी कहा है कि तमाम संवैधानिक एवं सांविधिक संरक्षण के बावजूद आदिवासियों के प्रति असमानता अत्याचार एवं उत्पीड़न की घटनाएँ निरन्तर बढ़ती जा रही हैं।[1]

आदिवासी अर्थ एवं परिभाषा :

सामान्यतः आदिवासी शब्द दो शब्दों 'आदि' और 'वासी' से मिलकर बना है। आदि का शब्दिक अर्थ प्रारम्भ या शुरू होता है जबकि 'वासी' का अर्थ निवास करने वाला। अर्थात आदिवासी वह है जो प्रारम्भ से ही निवास करता हो और इसका शाब्दिक अर्थ मूल निवासी है[2] तथा आदिवासी शब्द अंग्रेजी के एबोरिजिनल शब्द का हिन्दी अनुवाद है। आदिवासी शब्द का प्रयोग किसी भौगोलिक क्षेत्र के उन निवासियों के लिए किया जाता है जिनका उस भौगोलिक क्षेत्र से प्राचीन सम्बन्ध हो परन्तु आदिवासी शब्द उनके लिए भी प्रयोग होता है जो भिन्न-भिन्न क्षेत्र से आकर किसी विशिष्ट भाग में प्राचीन समय से निवास करते हैं।[3]

एन.डी. मजूमदार के अनुसार- 'आदिवासी एक जनजाति परिवारों अथवा परिवार

समलैंगिक सम्बन्धों में रिवेंज पोर्नोग्राफी सम्बन्धी अपराध का चलन एवं उसके विरुद्ध भारतीय कानूनों में प्राप्त संरक्षणात्मक उपाय की विवेचना

डॉ. सुधीर कुमार चतुर्वेदी*, मनोज यादव**

प्रस्तावना– आधुनिक समय में निजता का अधिकार एक अमूल्य अधिकार है। यह अधिकार केवल किसी व्यक्ति की स्वायत्तता एवं गरिमा की सुरक्षा के लिए ही जरूरी नहीं है, वरन् यह एक आवरण है, जो किसी व्यक्ति के जीवन में अनावश्यक एवं अनुचित हस्तक्षेप से उसे सुरक्षा प्रदान करता है, परन्तु हम वर्तमान में ऐसे समाज में रहते हैं, जहाँ लोग एक दूसरे के निजी जीवन में ताक-झाँक करना एवं बलात्कार-उत्पीड़न से जुड़ी फोटोज, विडियोज को देखना, अपलोड करना एवं उसको शेयर करना आनन्द का विषय समझते हैं। इसके व्यापक प्रसार में टेक्नोलॉजी, सोशल मीडिया एवं इण्टरनेट महत्त्वपूर्ण भूमिका निभा रहा है, जिसके परिणामस्वरूप लोग प्रत्येक पहलुओ पर विचार किये बिना अपने व्यक्तिगत जीवन के प्रत्येक पहलू को सोशल मीडिया पर फोटोज, विडियोज के रूप में सहेजने एवं अपलोड करने में लगे हुए है, जबकि हमे यह पता है कि हमारे द्वारा जो कुछ भी ऑनलाइन डिजिटलाइज किया जा रहा है, उससे उसकी स्वयं की निजता खतरे में है। फिर भी; लोग अपने बेडरूम सिक्रेट्स नग्न सम्बंधों एवं अश्लील विडियोज को अपने गैजेट में समेटना एवं अपने पार्टनर एवं मित्रों को भेजना पसन्द करते है। और जब उनके रिश्तों में कड़वाहट आ जाती है, तब एक दूसरे से बदला लेने की नियत से या यौन-गतिविधियों में शामिल करने के आशय से उसे धमकी के तौर पर प्रयोग करते है। जब उनकी इच्छा के अनुसार पीड़िता कार्य नहीं करती है, तब अन्तरंग फोटोज, अश्लील विडियोज को सोशल मीडिया पर शेयर कर दिया जाता है, जिसे समान्य रूप से रिवेंज पोर्नोग्राफी कहा जाता है। इस अपराध से सबसे ज्यादा प्रभावित महिलाएँ, किशोर बच्चे, समलैंगिक एवं एलजीबीटी समुदाय होता है। अत: इस शोध पत्र का प्रमुख उद्देश्य समलैंगिक या एलजीबीटी समुदाय के सन्दर्भ में रिवेंज पोर्नोग्राफी सम्बन्धी उपराध का भारतीय परिस्थितियों में विवेचन करना, मौजूदा कानूनी संरक्षण, उपचार एवं अपर्याप्त कानूनो की चर्चा करना तथा रिवेंज पोर्नोग्राफी सम्बन्धी अपराध के निवारण हेतु सुझाव देना है।

की-वर्ड- रिवेंज पोर्नोग्राफी, सोशल मीडिया, समलैंगिक, एलजीबीटी समुदाय, एन. सी. आर. बी. (NCRB)

रिवेंज पोर्नोग्राफी : अर्थ एवं परिभाषा– सामान्यतया रिवेंज पोर्नोग्राफी दो शब्दों के मेल से बना हुआ है Revenge और Pornography, जिसका साधारण सा अर्थ है- Revenge अर्थात प्रतिशोध, Pornography अर्थात यौन-क्रियाओ का वर्णन करने वाले कामोद्दीपक चित्र या अश्लील साहित्य। अत: साधारण शब्दो मे रिवेंज पोर्नोग्राफी से तात्पर्य है- प्रतिशोध लेने

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AN ANALYTICAL STUDY OF DIFFERENT DIMENSIONS OF THE RIGHT TO PRIVACY WITH REFERENCE TO ARTIFICIAL INTELLIGENCE

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Abstract

As privacy is one of the most important fundamental rights provided to the citizens of the country, it is important to regulate the same in every aspect depending on the background of each case. Artificial intelligence-related issues have been dealt with in various ways where the issues regarding privacy have been covered under various legal provisions and frameworks. The different dimensions of the right to privacy can be witnessed while dealing with the concept of artificial intelligence which is completely based on technological aspects. In this study, the researcher has focused on the topic where the constitutional provisions including the right to privacy have been discussed along with the concept of artificial intelligence. The author has analyzed the technological developments in the present society and has dealt with the topic with the help of case laws and legal provisions.

Keywords: Right To Privacy, Artificial intelligence, Democracy, Personal Data.

Introduction

Artificial intelligence and the right to privacy are two important concepts that are often considered a topic of concern due to their nature of the same. The data which is collected through the means of AI has also raised the issue of privacy which include "freely given informed consent, ability to opt-out, limiting data collection, deletion of data on request", etc. The privacy violations in artificial intelligence have to be carefully analyzed and the required measures have to be taken for the smooth functioning of the whole sector. It can be seen that huge businesses look for technology-based developments for achieving their strategic objectives and building artificial intelligence systems[1]. While dealing with the whole process, it can be seen that certain organizations have not given much importance to building privacy protections into their systems. The rights and freedoms of the individuals are at high risk in the whole AI processing of the personal data as there is a great chance of data breaches within the companies[2].

Literature Review

- Sunitha Abhay Jain & Simran A. Jain, 'Artificial Intelligence: A Threat to Privacy', 8 NIRMA U. L.J. 21 (2019)
  In this article, the author has explained the concept of artificial intelligence where the issues regarding privacy are discussed with the help of case laws and legal provisions. The threat to privacy due to the techniques involved in AI is critically analyzed and the alternative solutions for the same are mentioned.

[1] Sunitha Abhay Jain & Simran A. Jain, 'Artificial Intelligence: A Threat to Privacy', 8 NIRMA U. L.J. 21 (2019)
[2] Karl Manheim & Lyric Kaplan, 'Artificial Intelligence: Risks to Privacy and Democracy', 21 YALE J.L. & TECH. 106 (2019)

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Tribunals in India - A need for Welfare state

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Abstract: Tribunals are an important mechanism for maintaining justice. Justice is the first and most important concept of any democratic country. Tribunals are the important part of our justice delivery plan and tribunalisation is wide concept and very helpful for providing social justice. In India the tribunal system developed by the constitutional amendments, legislation and by the judicial decision of our apex court. Tribunals are quasi-Judicial bodies and work according to the legal norms and principle of natural justice. The tribunal system is growing day by day with the development of the country. The main reason for the development of tribunals is democratic nature of the country, because a democratic country is more responsible for its citizens. Tribunals provide speedy, costless and quality justice which is our basic human right and a fundamental right. There is needed lot of work for development of tribunal system and make it more independent, efficient and responsible, due to which the main object of its establishment fulfilled to provide justice a proper justice. This article focused on the meaning of Tribunal, development of Tribunals and working different types of tribunals in India.

Keywords: Independence, Justice, Quasi-Judicial, Tribunals, Welfare State

Introduction

"Tribunals have certain characteristics which often give them advantages over the courts. These are cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject". – (Report of Franks Committee 1957)

India is a world's largest democratic country and also follows the concept of welfare state, due to the tribunal system developing day by day. This development is a need for this developing country. The main purpose of establishment of tribunals is to solve disputes speedily. It is a basic need of any democratic country to fulfil the requirements of its citizens and maintain the social order as well as justice in society. Justice is a very important concept in any welfare society but it has no meaning when we get it too late. It is very important for justice that we achieve it quickly and without any cost. Sometimes we lose justice by the unimportant reasons like long and time consuming and so costly procedures and sometimes some subjects need perfection so there is need of expertise and without these it is against the true meaning of justice and it is against our basic human right. Prof. Wade stated that- "The social legislation of the twentieth century demanded tribunals for purely administrative reasons; they could offer speedier, cheaper and more accessible justice, essential for the administration of welfare schemes involving large numbers of small claims. The process of Courts of law is elaborate, slow and costly.... Commissioners of customs and excise were given judicial powers more than three centuries ago. Tax tribunals were in fact established as far back as the 18th century." The concept of the Tribunal

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ATMANIRBHAR BHARAT AND MEDIA ETHICS FOR GOOD GOVERNANCE

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Abstract

The general meaning of the Media mode, equipment, direction, information, and the audience is at the backbone of the constitutional democracy. Atmanirbhar Bharat is saying the story of self depend and developed Bharat where everyone aware of rights and responsibility as well as promote vocal for the local concept. Media is a symbol of transparency, self-determination, and accountability and circulates true news and information in the country. Unfortunately, in recent years, media has loosed its target and essence of freedom which should be a barrier for Atmanirbhar Bharat. Atmanirbhar Bharat should be a success in transparency, self-determination, and media ethics also. The paper analyzes fundamental principles of ethics of media, legal boundaries of the freedom of media, and promotes self-resilience, self-advocate, local for vocal, governmental effort. The research methodology adopted by the Author doctrinal data collected from the Ministry of the government of India. The result of the research paper adaptation of the concept of Atmanirbhar Bharat & media ethics is the basis of Good governance.

Keywords: Atmanirbhar Bharat, Media, Transparency, Responsibility, Self-determination, Good Governance.

INTRODUCTION

Atmanirbhar Bharat word is a very comprehensive term indicating adaptation of self-determination, local, a traditional resource for development. In 2020 the Government of India started Aatmanirbhar Bharat Abhiyan or the concept of Aatmanirbhar Bharat. It is the mission to make India Self-reliant. It can be possible transparency and responsibility in individuals as well as the government also. In this context, Media can play a vital role and filling the gap between the public and the planning of the government. According to utilitarian jurists, free media ethics is fundamental for good governance. John Stuart Mill said these concepts fit naturally with media ethics theory and professional practice in a democratic society[1]. John Strut Mill was a classical liberal who criticized British politics for its traditions and practices that encroached on human freedom. Mill's book[2] represented classical liberal negative freedom, that is, restricting coercion and intrusion from the government so freedom can flourish[3]. Individual autonomy is depending on freedom of speech & expression including the right to media limited by the power of the state[4]. Responsible speech is the essence of the liberty granted under article 21 of the Constitution[5]. Atmanirbhar Bharat is a new initiative made in India.

Under the scheme, the Indian Government has adopted the greatest happiness of the greatest number of principles propounded by Jeremy Bentham. Atmanirbhar Bharat specified new dimensions of entrepreneurship, small business, and employment. In March 2019, the Indian government stipulates formalization and creation of new employment has implemented the Prime Minister Rozgar Protsahan

[1] Clifford G. Christians, Utilitarianism in Media Ethics and Its Discontents, Journal of Mass Media Ethics, Exploring Questions of Media Morality, Vol. 22, pp113-131, 2007.
[2] John Stuart Mill, On the Subjection of Women (1869).
[3] Indian Constitution has provided Reasonable Restriction on Freedom of Speech and expression under article 19(2)
[4] Report no. 276, Law Commission of India,(2017).
[5] Ibid.

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Role of DNA Profiling in Criminal Investigation Based Leading Case Laws

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Abstract: Forensic science has a great contribution in crime prevention and criminal justice by fair investigation. Its applications in crime prevention and investigation is essential to know the best possible and nearest justice to put those criminals behind the bars whose tendency is to destroy all proofs and evidences. DNA Profiling/Typing is one of the techniques of forensic technology which is used to investigate and find justice in most of the trials. The present communication deals with the contribution of DNA-Profiling in criminal investigation in Indian criminal justice, its evidentiary value and also the features of DNA Bill 2017. Material (evidences) collected to process, identify and compare to know evidentiary value of evidences. Under forensic science inter se the linkage between occurrence of crime, the criminals, the victims, the weapons, place and time are established whether it may be absence or presence by forensic science. We can say that there is an urgent and silent need for the application of the forensic science in present indian justice system. Forensic science perform many functions like establishing corpus delicti (Body of crime), determines the modus operandi of the crime (Method of doing something) identifies the criminal and also identify the victims. DNA is a hereditary material of each living organism's passes from parents to their offspring through inheritance. In most of the criminal and civil investigations the fair identification of criminals/heirs, parentage and other identification of individuals has been one of the biggest problem. This paper is established on secondary data collected through different online/offline sources and their analysis, which include research papers by different researchers, articles, journals, conference proceedings, periodicals, text books and available digital data analyzed for relevant application of forensic science in law.

Keywords: Law & Science, DNA Profiling in Criminal Investigation, Evidentiary value of DNA, DNA Profiling Bill, 2017

Introduction

Forensic science is combination of all branches of sciences which is applied for the purpose of law in administration of fair play in social, criminal, civil contexts (Katz and Halamek 2006). In Forensic science technology all the tools and techniques are borrowed from different scientific disciplines to provide justice under law. It is a blend of sciences which plays important role in crime detection and investigation (Tewari and Kumar 2000, Sharma 2020). Proper applications of forensic science technology help in all sort of detection of crimes investigation. Today the present scenario of crime investigation and prosecution is very rare in India. A large number of trials in crimes are still waiting for evidences at High court and Supreme Court in India. But due to lack of DNA legislation, Forensic science is not providing exact purpose of investigation in Indian justice system and investigating agencies also face problems due to lack of any procedure in criminal investigation. Regular maintaining of DNA data of offenders helps in speedy and fair

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भारतीय न्यायपालिका द्वारा मृत्युदण्ड या आजीवन कारावास के दण्ड का प्रवर्तन एवं इसकी विधिक स्थिति–एक विश्लेषण

डॉ0 राम प्रकाश*

सारांश (Abstract)

ईश्वर कृत सृष्टि में मानव की सृष्टि सर्वश्रेष्ठ कृति है,यह संसार विभिन्न प्राणियों का अजायबघर है, सभी जीवात्मओं में मनुष्य का स्थान महत्वपूर्ण है, मनुष्यों में भी अलग–अलग प्रवृत्तियां एवं विभिन्नताऐं पायी जाती हैं। समाज में कुछ लोग बुद्धिमान होते हैं तो इसके विपरीत कुछ लोग सामान्य बुद्धि के, इसके विपरीत कुछ बलवान तो कुछ निर्बल। यह सम्बन्ध ही अपने–अपने अधिकारों और सुखों का उपयोग करने में एक प्रवृति समाज में पैदा करता है, जिसे एक अव्यवस्था के रूप में माना जा सकता है। यही अवयवस्था समाज की प्रगति को रोकने के साथ–साथ एक सामाजिक विचलन को भी बढ़ावा देती है।

प्राचीन समय से वर्तमान तक सामाजिक अव्यवस्था को रोकने के लिए एवं प्रगति का मार्ग प्रशस्त करने के लिए सामाजिक, राजनैतिक न्याय उपलब्ध कराने के लिए राज्य तथा विभिन्न सामाजिक संगठनों, कुछ सामान्य नियमों और कानूनों की व्यवस्था की है। उपरोक्त की रक्षा के लिए किसी समाज तथा जिन विधियों का सहारा लेकर एवं उल्लंघन करने पर व्यक्ति को सजा देती है, संक्षेप में उसे ही दण्ड कहा जाता है। जिसके प्रयोग से समाज में शान्ति व्यवस्था की स्थापना होती है। अपराध एवं दण्ड परस्पर अन्योन्यश्रित हैं तथा अविछिन्न घटनाऐ हैं, शायद दुनिया में ऐसा कोई मानव समाज नहीं होगा जहाँ अपराध, अपराधियों एवं दण्ड का अस्तित्व न हो। विभिन्न प्रकार के दण्डों का वर्णन भारतीय न्यायिक प्रणाली में किया गया है, जैसे सामान्य कारावास, आजीवन कारावास। जिसमें मृत्युदण्ड सबसे भयानक व पीड़ाकारी है, जिसका नाम सुनकर अपराधियों के भी प्राण कांपने लगते हैं, कुछ सामाजिक नियमों को तोड़ना गम्भीर अपराध माना जाता है, स्वभाविक गम्भीर अपराध के लिए दण्ड भी गम्भीर होता है। मनुष्य के लिए प्राणदण्ड सबसे बड़ा दण्ड होता है जिसके बाद मनुष्य का अस्तित्व समाप्त हो जाता है। सम्पत्ति, मान–सम्मान आदि सारी वस्तुओं में प्राण सबसे प्यारे होते हैं। किसी अपराधी का जीवन समाप्त करने का अधिकार किसको प्राप्त है, वस्तुतः जिसको प्राण देने का अधिकार है वही लेने का हकदार भी है अर्थात भगवान। **संवैधानिक प्रावधान अनु–21भी कहता है**– "किसी व्यक्ति को विधि द्वारा स्थापित प्रक्रिया के बिना प्राण एवं दैहिक स्वतन्त्रता से वंचित नहीं किया जा सकता है"।

संवैधानिक एवं अपराधिक विधियों के प्रावधानों से यह महत्वपूर्ण प्रश्न उत्पन्न होता है कि किसी अपराधी की जीवन लीला समाप्त करने का कानूनी आधार क्या है, उसके दिये गये दण्ड से क्या पीड़ित व्यक्ति को उपचार मिलेगा? उसका सामाजिक प्रभाव क्या होगा? आदि महत्वपूर्ण पहलुओं पर अध्ययन करना आवश्यक है।

Keyword :- Capital Punishment, Cr.P.c. IPC, **राजद्रोह, विरल से विरलतम्**

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* **सहायक प्रोफेसर, विधि विभाग, हे0न0ग0वि0वि श्रीनगर, गढ़वाल**

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भारत में इच्छा मृत्यु/दया मृत्यु के सामाजिक पहलू एवं न्यायिक समीक्षा– एक टिप्पणी

डॉ0 राम प्रकाश*

*डॉ राम प्रकाश, सीनियर सहायक प्रोफेसर, हे0न0ब0गढ़वाल केन्द्रीय विश्वविद्यालय परिसर पौड़ी

सारांश

प्रायः भारतीय पवित्र ग्रन्थों एवं मान्यताओं के अनुसार जीवन भगवान की देन माना जाता है, क्योंकि सम्पूर्ण सृष्टि के रचनाकर्ता ईश्वर ही हैं, सीधा सा अर्थ है जन्म मृत्यु हमारे हाथ में नहीं है। इसी शिक्षा के साथ हम बड़े होते है और यही सीख बच्चों को भी देते हैं। ईश्वर जब चाहे जीवन वापस ले सकता है। सम्पूर्ण विश्व में प्रत्येक इंसान की मृत्यु चार प्रकार से हो सकती है –

1. प्रकृति द्वारा मारा जाना – दुर्घटना /बीमारी से
2. दूसरों द्वारा मारा जाना – हत्या या हत्या का दुष्प्रेरण द्वारा
3. अपने आप को मार देना – आत्महत्या/ इच्छा मृत्यु द्वारा
4. युथेनेशिया (इच्छा मृत्यु) – असाधारण बीमारी के कारण करा दी गयी मौत या दया मृत्यु

यद्यपि उपरोक्त सभी कारणों से इंसान का जीवन समाप्त हो जाता है परन्तु चौथे प्रकार की मृत्यु जिसे दया मृत्यु /इच्छा मृत्यु के नाम से जाना जाता है एक समाज एवं परिस्थितियों के अनुसार विकसित आधुनिक तरीका है इसके अनुसार पीड़ा से मुक्ति दिलाने के लिए डॉक्टर द्वारा उसके जीवन का अन्त। यद्यपि यह एक पीड़ामुक्त एवं कष्टमुक्त तरीका है, परन्तु किसी व्यक्ति का जीवन समाप्त करना क्या न्यायोचित है। किसी व्यक्ति के जीवन के सामाजिक, पारिवारिक महत्व, का आंकलन करना ईश्वर की इच्छा के विपरीत नहीं है, क्या इसके दुरूपयोग की सम्भावना नहीं है क्या इससे सामाजिक दायित्वों का भंग नहीं हो रहा है, क्या एक नियामक तन्त्र बनाने की आवश्यकता नहीं है। इस प्रकार और अनेकों प्रकार के प्रश्नों का सृजन होना स्वाभाविक है और इनका समाधान कैसे हो सकता है इसका अध्ययन करना ही इस शोध पत्र का उद्देश्य है।

की वर्ल्ड: Active, Passive, Voluntary, Involuntary Euthanasia, Suicide, Abetment, Living Will

पृष्ठभूमि

यद्यपि यूथेनेशिया का इतिहास काफी प्राचीन रहा है। हिप्पोक्रेटस 400 ई0 पू0 के अनुसार – अगर कोई मरीज कहे तो भी मैं किसी जान लेने की दवा नहीं दूंगा और ना ही किसी को ऐसा करने की सलाह दूंगा। अमेरिका में इसे गैर कानूनी बताया है। इंग्लैण्ड में 1935 में यूथेनेशिया कमेटी का गठन हुआ। जर्मनी में हिटलर ने गम्भीर बीमारी से ग्रसित के लिए दया मृत्यु का आदेश दिया। 1939 में प्रारम्भिक प्रतिरोध के बाद अमेरिका के ओरेगोन राज्य में कुछ प्रतिबन्धों के साथ इसे स्वीकार किया। उत्तरी आस्ट्रेलिया की संसद ने स्वय पारित बिल को 1997 में खारिज कर दिया। वर्ष 2002 हालैण्ड (नीदरलैण्ड) ने सर्वप्रथम सक्रिय एवं निष्क्रिय दोनों इच्छा मृत्यु को कानूनी मान्यता दी। इसी प्रकार भारत में इसका प्रारम्भ 1994 में पी0 **रतीनाम बनाम् भारत सरकार** के मामले में जिसमें भा0द0सं0 की धारा 309 के अनुच्छेद 21 प्राण एवं दैहिक स्वतन्त्रता का उल्लघन मानकर चुनौती दी थी, इस प्रकार इसका काफी पुराना इतिहास है। भारत के गौरवशाली धार्मिक ग्रन्थ महाभारत में महान योद्धा भीष्म पितामह को इच्छा मृत्यु का वरदान प्राप्त था वे तब तक मृत्यु शय्या पर लेटे रहे जब तक सूर्य उत्तरायण नहीं हो गया। स्वामी विवेकानन्द ने भी स्वेच्छा से योग समाधि लेकर प्राण त्यागे थे।

अर्थ/परिभाषा

शब्द यूथेनेशिया मूलतः ग्रीक यूनानी भाषा का शब्द है। जिसका अर्थ Eu - 'अच्छी' और Thanatos

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Legal Education Under New Indian Education Policy, 2020

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Abstract:

"Children are the future, educate them well and let them lead the way".

In India, a new education policy typically comes along only once every few decades. The first education policy was in 1968, introduced by the administration under Mrs. Indira Gandhi. This was replaced by the National education policy in 1986, by Mr. Rajiv Gandhi who was Prime Minister at that time. A few years later in 1992, it was slightly modified again by Prime Minister P. V Narasimha Rao, and now in 2020, approximately three decades later, a new education policy with drastic changes has been brought in by the ruling government. The details of the policy were released to the nation after cabinet approval on. It was said that this National Education Policy or NEP 2020, would be a comprehensive framework to guide the development of education in the country.

This research paper is based on secondary data collected through different sources and their analysis, which include research papers by different researchers, articles, journals, conference proceedings, periodicals, text books and digital available data analyzed for relevant application of New Education Policy, 2020

Keywords: NEP 2020, Legal Position, Education, Multilingual, Law Curriculum, Legal aid

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वैश्विक भारत में स्वास्थ्य का अधिकार– एक विश्लेषण

[1]अमरेश रावत,
[2]डॉ0 राम प्रकाश,
[1]शोधकर्ता, विधि संकाय, बी0जी0आर0 परिसर पौड़ी, एच0एन0बी0 गढ़वाल विश्वविद्यालय (केन्द्रीय विश्वविद्यालय) श्रीनगर गढ़वाल उत्तराखण्ड।
[2]सीनियर असिस्टेन्ट प्रोफेसर, विधि संकाय, बी0जी0आर0 परिसर पौड़ी, एच0एन0बी0 गढ़वाल विश्वविद्यालय (केन्द्रीय विश्वविद्यालय) श्रीनगर गढ़वाल उत्तराखण्ड।

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Abstract

प्रसिद्ध कहावत है कि 'स्वास्थ्य ही उत्तम धन है' एवं मनुष्य की सर्वोपरि आवश्यकता है। वर्तमान समय में समूचा विश्व स्वास्थ्य सम्बन्धी चुनौतियों का सामना कर रहा है एवं स्थिति लगातार खराब होने की ओर अग्रसर है। भारत भी इससे अछूता नहीं है। प्रत्येक नागरिक की स्वास्थ्य सुरक्षा करना सरकार का कर्तव्य है, जो भारतीय संविधान की पृष्ठभूमि में निहित है। प्रत्येक नागरिक को सामाजिक, आर्थिक एवं राजनीतिक अधिकार भारतीय संविधान द्वारा प्रदत्त हैं। स्वास्थ्य के अधिकार के अभाव में इन अधिकारों का उपयोग करना असम्भव है। स्वास्थ्य का अधिकार **अनुच्छेद 21** के अधीन जीवन के अधिकार एवं संविधान के नीति निदेशक तत्वों के मूल में वर्णित है। जिसमें राज्य अपनी निति के द्वारा भारत के नागरिकों के स्वास्थ्य को सुरक्षित एवं संरक्षित रखने के लिए कर्तव्यबद्ध है।

मुख्य शब्द– स्वास्थ्य, सुरक्षा, संविधान, अधिकार।

प्रस्तावना

"The health of Nations is more important than the Wealth of Nations" – **विल डुरन्ट**

"सर्वे सन्तु निरामया" –**उपनिषद**

स्वास्थ्य का अधिकार सभी क्षेत्र में मानव विकास की धूरी है। व्यक्ति के सभी सामाजिक, आर्थिक और राजनीतिक अधिकारों का विकास उत्तम स्वास्थ्य पर निर्भर है। प्रत्येक व्यक्ति को अपने स्वास्थ्य एवं उसकी देखभाल करने का मूल अधिकार है। विकलांगता, बेरोजगारी, बुढ़ापा,

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प्राण एवं दैहिक स्वतन्त्रता (भारतीय संविधान का अनुच्छेद 21) के अन्तर्गत निजता का अधिकार (Right to privacy) का सर्वोच्च न्यायालय के द्वारा निर्वचन एवं वर्तमान स्थिति– एक अवलोकन

Interpretation and present Status of Right to Privacy (Indian Constitution Article 21) under the life and physical Liberty through Supreme Court – A Examine/Analysis

डॉ0 रामप्रकाश*

Abstract (सारांश)– गोपनीयता/निजता का अधिकार भारतीय संविधान के अनुच्छेद 21 प्राण एवं दैहिक स्वतन्त्रता का अभिन्न अंग और साथ ही मूल अधिकार भी है। भारतीय नागरिकों को यदि संविधान मे मौलिक अधिकार एवं स्वतन्त्रताऐं दी गई हैं तो साथ–साथ इनके उपयोग एवं उपभोग पर कुछ प्रतिबन्ध भी लगाये हैं, अर्थात एक व्यक्ति अपने मौलिक अधिकार का प्रयोग करके दूसरे के अधिकार का उल्लघन नहीं कर सकता है। यदि एक नागरिक को मौलिक अधिकार प्राप्त हैं तो साथ ही दूसरे के प्रति कुछ कर्तव्य भी दिये गये हैं।

मेनका गांधी V/s भारत संघ– A.I.R. 1978 से पूर्व की स्थिति में वर्तमान में अनुच्छेद 21 में काफी परिवर्तन हो गया है। आज अनुच्छेद 21 काफी विस्तृत रूप में है। अनुच्छेद में प्राण एवं दैहिक स्वतन्त्रता से जुड़े ढेरों अधिकारों को सम्मिलित कर दिया गया है, जैसे – फोन टेप करना, विदेश भ्रमण, मानव गारिमा, दाम्पत्य जीवन, जीविकोपार्जन, पुनर्वास, बंधुवा श्रम तथा निजता का अधिकार। वर्तमान में निजता का अधिकार हमारी न्यायपालिका एवं संसद दोनों के लिए काफी चिन्तन योग्य बिषय बन गया है। क्या इसकी कोई सीमा निश्चित की जाय या निश्चित शब्दों में इसे परिभाषित किया गया है या किया जा सकता है। क्या निजता का अधिकार पूर्ण है। क्या निजता के कुछ मानक निश्चित किये जा सकते हैं। इन्हीं तथ्यों का उत्तर खोजना इस शोध पत्र का उद्देश्य है।

Key Words – निजता/गोपनीयता (Privacy), निर्वचन (Interpretation), दैहिक स्वतन्त्रता (Physical Liberty), अनुच्छेद (Article), पृष्ठभूमि एवं परिचय (Introduction & Background)-

"निजता पर हमले से व्यक्तिमानसिक प्रताड़ना एवं दुःखसे गुजरता है।" 18 वीं शताब्दी में शमूएल वारेन और लुई ब्रोडेस के द्वारा निजता की धारणा को विकसित किया था। उनका मानना था कि जहाँ व्यक्ति भावनात्मक रूप से पीड़ित होता है, यही निजता की पहचान है और इससे अति कानूनी क्षति होती है। इसी के साथ – साथ अमेरिका में व्हिसल ब्लोअर एडवर्ड सोडेन ने अपने विचारों से पूरी दुनिया को **निजता का अधिकार** (Right to privacy) पर सोचने के लिए मजबूर कर दिया उनके शब्दों में 'अमेरिकन सरकार अपने नागरिकों पर अवैध तरीके से निगरानी रखती है इस निगरानी के तहत Govt. नागरिको के फोन नम्बर, ई–मेल, कम्प्यूटर डिटेल एवं दूसरे दस्तावेज जमाकराती है, यह बिना

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Role of DNA Profiling in Criminal Investigation Based Leading Case Laws

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Abstract: Forensic science has a great contribution in crime prevention and criminal justice by fair investigation. Its applications in crime prevention and investigation is essential to know the best possible and nearest justice to put those criminals behind the bars whose tendency is to destroy all proofs and evidences. DNA Profiling/Typing is one of the techniques of forensic technology which is used to investigate and find justice in most of the trials. The present communication deals with the contribution of DNA-Profiling in criminal investigation in Indian criminal justice, its evidentiary value and also the features of DNA Bill 2017. Material (evidences) collected to process, identify and compare to know evidentiary value of evidences. Under forensic science inter se the linkage between occurrence of crime, the criminals, the victims, the weapons, place and time are established whether it may be absence or presence by forensic science. We can say that there is an urgent and silent need for the application of the forensic science in present indian justice system. Forensic science perform many functions like establishing corpus delicti (Body of crime), determines the modus operandi of the crime (Method of doing something) identifies the criminal and also identify the victims. DNA is a hereditary material of each living organism's passes from parents to their offspring through inheritance. In most of the criminal and civil investigations the fair identification of criminals/heirs, parentage and other identification of individuals has been one of the biggest problem. This paper is established on secondary data collected through different online/offline sources and their analysis, which include research papers by different researchers, articles, journals, conference proceedings, periodicals, text books and available digital data analyzed for relevant application of forensic science in law.

Keywords: Law & Science, DNA Profiling in Criminal Investigation, Evidentiary value of DNA, DNA Profiling Bill, 2017

Introduction

Forensic science is combination of all branches of sciences which is applied for the purpose of law in administration of fair play in social, criminal, civil contexts (Katz and Halamek 2006). In Forensic science technology all the tools and techniques are borrowed from different scientific disciplines to provide justice under law. It is a blend of sciences which plays important role in crime detection and investigation (Tewari and Kumar 2000, Sharma 2020). Proper applications of forensic science technology help in all sort of detection of crimes investigation. Today the present scenario of crime investigation and prosecution is very rare in India. A large number of trials in crimes are still waiting for evidences at High court and Supreme Court in India. But due to lack of DNA legislation, Forensic science is not providing exact purpose of investigation in Indian justice system and investigating agencies also face problems due to lack of any procedure in criminal investigation. Regular maintaining of DNA data of offenders helps in speedy and fair

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Athletes' right to a fair trial in 'non-analytical positive doping cases': An analysis

Mukesh Rawat & Soumya Rajsingh

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that took an interest in monitoring conflict situations (Ch. 6) converged in making a new paradigm that has become dominant since the 1990s. This new paradigm, which does not concern itself with the legality of war but rather with the legality of how the war is fought, has become convenient to the United States, which has invented new forms of warfare characterized by drone attacks and targeted killings (Chs. 7 and 8). Furthermore, the author suggests that the endeavour to humanize war has led towards legitimizing the endless war the United States has unleashed on foreign territories.

The book introduces a range of thinkers belonging to both pacifist and humanitarian traditions, spanning across more than a century. Readers acquainted with Moyn's previous work would identify the recurrence of familiar categories of minimalism and maximalism in the analysis. The limitation of the minimalist approach to war (humanitarianism) is explained in comparison to the maximalist imperative (pacifism). Although the discussion focuses mainly on debates that occurred in the United States, any reader would still benefit because the account provides useful insights on an important aspect of contemporary imperial dominance. The book could perhaps have been even more interesting if it had included a discussion on the way in which humanizing warfare might favour imperial states with technological superiority over peripheral states and irregular combatants lacking the sophistication to engage in targeted killings.

Competing interests. the author declares none.

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Children and the Responsibility to Protect

edited by Bina D'COSTA and Luke GLANVILLE. Leiden/Boston: Brill Nijhoff, 2019. xi + 299 pp. Paperback: €92.00, E-Book: €92.00. doi: 10.1163/9789004379534

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Children are generally the most vulnerable group and become more susceptible during times of armed conflict. The existing legal framework has failed to produce the desired results, as around 400 million children are currently adversely affected in various jurisdictions. This work is a timely reminder of the failure on the part of the international community to protect children during armed conflict where they are intentionally targeted, recruited, raped, abducted, and denied humanitarian access. It underlines the need to work at global, regional, and domestic levels for the protection of children.

This book is a collection of edited essays divided into three themes, the first being an analysis of recent global initiatives such as the Responsibility to Protect (R2P) adopted at the World Summit and the Resolution 1612 by the Security Council on Children and Armed Conflict (CAAC), which were both introduced in 2005. The first chapter by Luke Glanville provides a detailed account of evolution and commonalities between these two initiatives and examines the annual thematic reports of R2P up to 2016. The second chapter observes that the R2P may be useful for CAAC practitioners in extreme situations

Accession to the WTO's Government Procurement Agreement:

Opportunities and Challenges for India

*Mukesh Rawat**

In the contemporary era, public procurement has become a central pillar of the international economy. The WTO's Agreement on Public Procurement (GPA) has emerged as a vital tool for harmonising and integrating the global public procurement market. Presently, India is an observer to the GPA, which is a preliminary first step in acceding to the agreement. This article provides an analysis of the regulatory mechanism of public procurement in India. It aims to underline the potential opportunities and legal challenges in the accession to the public procurement agreement. It argues that India should align its procurement policy on the principles of GPA, and accession to it should be a part of its trade policy.

Keywords: public procurement; trade law; WTO; Agreement on Government Procurement and Public Policy; India

I. Introduction

Public procurement is one of the most fascinating aspects of the global economy. It refers to a process through which government agencies purchase products or services for their commercial economy, ie, infrastructure, defence, health, etc, in the course of its day-to-day functioning. Through their procurement policies, governments, along with other public agencies, play a crucial role in shaping world trade at various levels. During the last decade, it has gained significant attention at the national and international level across the globe. It is because government procurement amounts to 10-15% of the GDP of any economy,[1] with the share of public procurement being even higher in developing countries.

The WTO Agreement on Government Procurement, seeks to regulate public procurement for its member countries, it is also known as the Government Procurement Agreement (GPA).[2] The GPA is a plurilateral agreement of the WTO Agreement in Annex IV of the World Trade Organisation (WTO), which consists of a sub-set of WTO member countries.[3] It lays down the legal framework to regulate

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1 J Pérez Gabilondo, 'Module 3.12 World Trade Organisation: Government Procurement' (Course material on Dispute Settlement, United Nations Conference Trade and Development) 3 <https://unctad.org/en/Docs/edmmisc232add27_en.pdf> accessed 10 August 2019. Also see P Lamy, 'Book Forward' in Sue Arrowsmith and Robert D. Anderson (eds), *The WTO Regime on Government Procurement: Challenge and Reform* (CUP 2011) XXVI.

2 Agreement on Government Procurement (signed in 1979 and came into force in 1981), GATT Secretariat 1979 LT/TR/PLURI/2. It was superseded by another agreement known as the Agreement on Government Procurement, Revised Text 1987 (Protocol of Amendments done at Geneva in 1987 and came into force in 1988). At present, The Agreement on Government Procurement 2014 has 20 members. It covers 48 WTO member states (the European Union and its 28 member states are covered by the Agreement but they are considered as one party).

3 Marrakesh Agreement Establishing the World Trade Organisation, art II (3). It defines the legal status of Plurilateral Agreements. It says 'The agreements and associated legal instruments included in Annex 4 are also part of this Agreement for those members that have accepted them and are binding on those members. The Plurilateral Trade Agreements do not create either obligation or rights for members that have not accepted them'.

Government Procurement During Covid-19: Prioritizing Value For Money Over Discriminatory Policies

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ABSTRACT: As the global economy has been severely affected by the COVID-19 crisis, planning and optimum utilization of scarce resources have become a necessity. We are facing one of the worst economic crises in the history of human civilization. Governments have introduced stimulus packages and other policy measures in various jurisdictions to address this issue. These measures aim to pump money into the economy, which leads to increased demand or purchasing power. It is noteworthy that economic stress and stimulus spending complement protectionism at the national levels. This entire process can potentially undermine the work of WTO and RTAs in the promotion and liberalization of international trade. It is detrimental to the economy as it restricts market access, limits competition, and results in purchases of inferior goods and services. It hampers fair competition and efficiency and promotes corruption in the entire procurement process.

On the other hand, some legal challenges exist as adopting protectionist policies implies a deviation from good practices recognized by WTO's GPA, UNCITRAL Model Code on Public Procurement, and RTAs. At the international level, commitments are based on reciprocity, and the protectionist approach invites retaliation by the other countries. This study argues that states should improve their procurement mechanism's effectiveness instead of adopting protectionist measures. It will ensure optimum utilization of the resources, value for public money, and promote good governance during the pandemic.

KEYWORDS: WTO, Trade Law, Public Procurement, COVID-19, Discriminatory Policies, Protectionist measures.

I.INTRODUCTION

In the contemporary era, coronavirus disease 2019 (Covid-19) has severely affected the global economic order and jeopardized several years of developmental progress. Around 3

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BOOK REVIEW

Daniel Girsberger et al. (eds.), Choice of Law in International Commercial Contracts Global Perspectives on the Hague Principles (Oxford Private International Law Series Series – Editors: Jonathan Harris QC & Andrew Dickinson)

Oxford, Oxford University Press 2021, 1376 pp. ISBN 9780198840107

Sai Ramani Garimella[1,2] · Mukesh Rawat[3]

The Hague Principles on Choice of Law in International Commercial Contracts, 2015 ('the Principles'), as noted in the scholarship on the subject,[1] are a unique international instrument. Unlike the traditional path of a convention and the concerns associated with such an effort like the risk of a conflict of standards either with regional instruments or interference with other Hague instruments, the Hague Conference on Private International Law (HCCH) adopted the method of principles that offer, as noted by the editors, invaluable guidance for law reform efforts, for courts involved in matters related to the governance of international commercial contracts, and assist lawyers and parties in drafting effective choice of law agreements. Needless to mention, the Principles exalt the notion of party autonomy, while ensuring that national and international dispute resolution forums are effectively guided on achieving a balance between predictability and flexibility, for example, via mandatory rules and public policy.

Choice of Law in International Commercial Contracts—Global Perspectives on the Hague Principles ('Commentary') is a unique commentary on the Hague Principles—an ambitious, yet meticulous articulation of the rules and state practice on

[1] For instance, Symeonides (2013). p. 873.

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