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EDITORIAL

Over the past seventy-five years, the Indian Constitution has proved to be remarkably enduring and dynamic. The courts of the nation have been repeatedly reformed as Indian society progressed into the new world order; whether through the advent of the Collegium System or the ever-increasing Bench sizes, the Apex Court remains at the center of attention. This year, the Supreme Court of India perhaps experienced one of its most significant periods, proved by the number of cases resolved as well as the recent interpretation of laws, which quite often put it into conflict with the legislature and executive. These fresh challenges, which are seemingly uncharted territory for many high school students, present the need for serious scholarship. Therefore, it becomes necessary to foster an environment which draws upon the intellectual discourse at La Martiniere College in a rigorous and sustained manner.

Our authors objectively address some of the key issues facing Indian and foreign jurisprudence, questions of the Constitution, and contemporary analysis of historical events in the country's short yet remarkable independent history. To make this second volume an avant-garde journal in the field of law, we have included a paper from one of our esteemed alumni, which elevates the core idea behind the creation of this journal: To instil excellence.

The First article, by *Prabhav Tripathi*, who graduated from La Martiniere College in 2021 and is currently studying at the Institute of Law, Nirma University, covers the intricacies of the Evidence Act and the Bharatiya Saksha Adhiniyam with respect to the admissibility of confessions made

in Police custody if the same is proved. Usually, such a confession is not admissible in a court of law due to the potential presence of coercion and undue influence. However, The Indian Evidence Act provided an exception to this wherein if the confession is subsequently proved, it would hold evidential value. The article aims to deliberate upon the concept of a 'fact' and the inclusion of Mental Facts as evidence.

The analysis of the Justice Verma Committee Report by *Devarth Tandan* serves to retrospect upon the bearings of the report's recommendations on legal reform after more than a decade. The report highlighted several crucial shortcomings of the Indian Penal Code that undermine women's basic human rights. Now, after a decade, the resultant changes brought about by the report have reshaped the country's perspective on Sexual crimes. The issues arise when, even after the new criminal laws have been passed, many recommendations of the committee remain ignored. Thus, it becomes necessary to address these shortcomings and analyse the resulting evolution of Indian law in the context of protecting women's rights.

The 50% reservation cap has been a pivotal issue in Indian legal and educational spheres, raising questions about the balance between affirmative action and meritocracy. In their article, *Shauryawardhan Trivedi & Krishna* examins a landmark case challenging this cap, exploring its implications for the reservation framework and its impact on social equity. This analysis sheds light on how the legal battle could reshape the principles of equality and justice in India, addressing ongoing debates about the effectiveness and fairness of the reservation system in higher education and employment.

The fourth article on the Consumer Protection Act by *Kushagra Tiwari*

examines the provisions of the Act, and the potential implications of the recent judgement by the Supreme Court; where it held that advocates would not be held liable under the Act. The article explains the purpose of the Consumer Protection Act, and its aim to provide swift and effective redressal of consumer grievances, along with the exclusion of lawyers from the consumer forum and the potential significance of this ruling.

Virat Pandey in his article "*Right to Information and Electoral Bonds: Transparency vs Anonymity in Political Funding*" covers the making and unmaking of the Electoral Bond scheme. Originally, when the scheme was first introduced, it seemed to be a boon for cleaning the corruption prevalent in election campaigns. However, critics argued that the lack of transparency undermined the citizen's right to information. This paper outlines how the Supreme Court in February 2024, took down the Scheme, declaring it to be unconstitutional while attempting to weigh the privacy of donors and the transparency in electoral funding.

The three new criminal laws, *Bharatiya Nyaya Sanhita*, *Bharatiya Nagrik Suraksha Sanhita*, and *Bharatiya Saksha Adhiniyam* were notified on the 1st of July, 2024. These laws, replacing the colonial era code of criminal justice, which were deemed 'archaic' by proponents of the changes, have sparked some heated debate. The article titled "*Bharatiya Nyaya Sanhita: Much needed change or Legislative Activism?*" by *Devvrat Tilak* attempts to deep-dive into the provisions of the Bhartiya Nyaya Sanhita, which has seemingly retained most of the essential doctrines of the Indian Penal Code, for both good and worse. Notably, the Supreme Court had refused to entertain PILs challenging the new laws prior to their enactment respecting the authority of the

legislation, now, however, it is to see whether the Court would take such a stance amidst calls of boycott by several State Bar Associations.

In a landmark ruling that underscores the judiciary's role in addressing global environmental challenges, the Supreme Court has taken a decisive stance on the adverse effects of climate change. As the world stands at the cliff of an environmental crisis, this ruling not only reaffirms the urgency of mitigating climate change but also places a significant responsibility on policymakers and industries alike. *Jishnu Gupta* studies the significance of this ruling, exploring its potential to shape the future of environmental law, and the broader impact it may have on global climate action.

Keshav Mittal & *Manasvi Prakash Srivastava* in their article titled "*Patent Evergreening Laws in India vs USA*" discover the nuances of patent evergreening, where minor modifications extend patent protections, raising significant issues for innovation and market competition. In the USA, the Hatch-Waxman Act and various court cases have shaped the approach to curbing these practices. Conversely, India's Section 3(d) of the Patents Act directly targets evergreening to promote affordable access to medicines. Understanding these challenge contrasting approaches highlights the global of balancing patent rights with public health needs.

"*Historical analysis of the 42nd Amendment: The Mini Constitution*" by *Shaurya Vardhan Singh* & *Adit Joshi* offers a comprehensive exploration of this controversial amendment, tracing its origins during the Emergency period, its sweeping changes to the Constitution, and its enduring impact on Indian democracy. The article examines how the amendment sought to centralise authority, alter the fundamental rights framework, and redefine the relationship between the judiciary, executive, and legislature.

THE PROSECUTION'S PLIGHT IN INDIA: ANALYSING THE EXCLUSION OF 'MENTAL FACTS' IN EVIDENCE LAW

~ *Prabhav Tripathi*[*]

ABSTRACT

In the Indian legal regime, police investigations are majorly led by confessions as they serve as an important tool in proving the commission of an offence. Confessions help derive valuable clues for an effective investigation of a case and build vital links to establish the status of conviction of an accused[1]. Thus, the entire provisions-based layout that stipulates the procedure on confessions provides the scope of their admissibility and specifies the persons eligible for making them. On the same, two categorical prohibitions were listed in the Indian Evidence Act, 1872. Firstly, the Act prohibits any confession made to a police officer from being proved against the person who made it[2]. Secondly, section 26 does not allow the admissibility of any confession made in custody of a police officer, unless it is made in the immediate presence of a Magistrate[3].

However, the very next provision in the Act, section 27, showcases a point of exception when a fact is discovered consequently to information received

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[1]K. Sreedhar Rao, *Criminal Justice System-Required Reforms*, 43(2) J. I. LAW INST. 155, 163 (2001); Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System* 122 (2003).

[2]Indian Evidence Act, 1872, §25.

[3]Indian Evidence Act, 1872, §26.

from accused in police custody[4]. If a fact is discovered and may be proved, the information extracted in police custody in such circumstances is admitted[5].

An unamended addition of this provision in the Bharatiya Sakshya Adhiniyam, 2023 under section 23 has posed a missed opportunity for better legislative deliberation[6] . However, as the long-existing section 27 of the Indian Evidence Act has served as the basis for judicial precedents and discussions, the same has been analysed in the subsequent part.

The underlying idea encapsulated by this law is that any evidence pertaining to a confession or other remarks made by an individual accused of a crime to a police officer or while in police custody is deemed to be tainted. Nevertheless, if the veracity of this information is confirmed by the identification of a factual evidence, it can be deemed uncontaminated. Consequently, since it pertains directly to the discovered fact, the information becomes provable[7]. Within the framework of the legislation, this particular clause holds significant importance due to its vital nature. The provision enables the prosecution to establish evidence that would otherwise be inadmissible, specifically, some aspects of a confession or information disclosed to an officer while in police custody[8].

LANDMARK DEVELOPMENTS IN INTERPRETATION OF 'FACT'

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[4] VEPA SARATHI, LAW OF EVIDENCE 145-46 (6th edn., 2006); RATANLAL & DHIRAJLAL, THE LAW OF EVIDENCE 525 (23rd edn., 2010).

[5] Indian Evidence Act, 1872, §27.

[6] Bharatiya Sakshya Adhiniyam, 2023, §23.

[7] V. NAGESWARA RAO, THE INDIAN EVIDENCE ACT 174 (2012).

[8] M.C. SARKAR & S.C. SARKAR, LAW OF EVIDENCE 523 & 527 (15th ed. 1999); G.S. PANDE, LAW OF EVIDENCE 151 (5th ed. 2005).

In order for the prosecution to proceed, several conditions must be satisfied[9]. They are:

- The discovery of a fact is essential.
- The discovery should occur as a result of receiving the information.
- The information being sought for admissibility must be directly relevant to the found fact.

It is apparent that the prosecution's capacity to establish an element of the confession or information is dependent upon 'discovery' of a certain 'fact'. Despite this, although the remaining terms and expressions in this section have generated significant legal disputes and judicial scrutiny throughout time, scholars and writers have repeatedly asserted that the interpretation of the term 'fact' has been firmly established in the legal realm[10]. The prevailing viewpoint asserts that the matter was resolved by a ruling issued by the Privy Council in the case of *Pulukuri Kottayya v. King Emperor*[11]('Pulukuri'), and this precedent has been consistently upheld by the Supreme Court in subsequent cases. The term 'fact' as employed in Section 27 has been interpreted to encompass not only a physical object but also the particular place of its discovery, and the knowledge acquired by the accused regarding this location. The aforementioned does not encompass a mental fact or a state of affairs[12].

Nonetheless, the Supreme Court had to deal with the case of *State (NCT of Delhi) v. Navjot Sandhu* ('Afzan Guru')[13], whereby the question arose as to whether some factors, such as mental conditions and the state of things, may

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[9] M. MONIR, PRINCIPLES AND DIGEST OF THE LAW OF EVIDENCE 330 (12th edn., 1999).

[10] BATUK LAL, THE LAW OF EVIDENCE 791 (6th edn., 2012).

[11] Pulukuri Kottayya v. King Emperor, 1946 SCC Online PC 47 (1946).

[12] BATUK LAL, THE LAW OF EVIDENCE 791 (6th edn., 2012).

[13] State (NCT of Delhi) v. Navjot Sandhu, 11 SCC 600 (2005).

be excluded from the purview of Section 27. The Supreme Court conducted a comprehensive analysis of the existing legal framework pertaining to this matter. The provision characterised Pulukuri as a prominent reference on the matter, examined the ruling, and ultimately determined that it served as a precedent supporting the notion that the term 'fact' in Section 27 does not apply solely to physical things, but also encompasses the location of discovery and the accused's awareness of its presence at said location. Subsequently, the court proceeded to examine the diverse array of Supreme Court rulings pertaining to this matter.

It is worth mentioning that the premise established in the Pulukuri Kottaya case has been continuously adhered to. Significantly, as per the court's ruling, it was also observed that the dictum had been consistently upheld, stating that mental facts are not encompassed by the term 'fact' as defined in Section 27. Therefore, the court agreed with the aforementioned legal perspective. The subsequent implication is that the prosecution can only substantiate the related segments of the confession or other information after a physical fact is found. From a perspective rooted in the field of evidence law, this legal principle holds significant importance since it imposes substantial limitations on the admissible evidence that the prosecution can utilise[14].

The paper attempts to establish that the rationale in *Afzan Guru* that has received acceptance from commentators as the appropriate interpretation of 'fact' in Section 27 is limited and argues that the scope of 'fact' extends to mental facts and other non-physical aspects. Such interpretation would exhibit its merits in the form of better impact on police investigations and prosecution proceedings that a court of law would appreciate.

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[14] M. MONIR, PRINCIPLES AND DIGEST OF THE LAW OF EVIDENCE 330 (12th edn., 1999).

WEAK PRECEDENTIAL BASIS

To understand the status quo of the law, there is a need to revisit judicial discussions and decisions that form a part of the developments so undertaken. From the Privy Council to various High Courts to the Supreme Court, the question of interpretation under Section 27 has been dealt with on various levels of hierarchy and at different times.

One of the first cases that recorded deliberation on this provision was *Sukhan v. Crown* that was dealt by a Full Bench of the Bombay High Court[15]. Here, the accused has allegedly murdered a boy who had been wearing ornaments before disappearing. In a confession under police custody, the accused told the officer, "*I had removed the karas, pushed the boy into the well, and pledged the karas with Allah Din.*" Subsequently, the karas were submitted by Allah Din that belonged to the boy as per verification. When the question came before the court regarding the extent of above information to be admitted against the accused under section 27, the majority view declared that the provision referred only to material facts and not mental ones. Hence, only the statement's last part ("*pledged the karas with Allah Din*") would be admissible and the facts that karas were removed and boy was pushed into the well could not be proved as such inclusion would lead to circumvention of accused protection granted by sections 24, 25, and 26 of the Indian Evidence Act[16].

The minority opinion here did not discuss 'fact', rather focused on the scope of 'information' that would motivate officers in discovery of fact. It mentioned how mere phrases that can be selectively proved serve as no

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[14] V.S. Winslow, *Confession, Confirmation and Resurrection: The Rescue of Inadmissible Information to the Police*, 24(1) MALAYA L. REV. 88, 88-118 (1982).

[15] Sukhan v. Crown, 1929 SCC OnLine Lah 141: AIR 1929 Lah 344 (1929).

[16] *Id.*

mentioned how mere phrases that can be selectively proved serve as no information and the other incriminating portions must also be allowed to be proved. A parallel judgement can be found in case of In *re: Athappa Goundan*[17] of Madras High Court.

The Bombay High Court in *Ganu Chandra Kashid v. Emperor*[18] ('Ganu Chandra') took a different jurisprudential path. In case of a stolen property, only the part where the accused confessed about the location of property would be relevant and admissible, and not the part dealing with the share of property and reason for stealing. As per Justice Beaumont, section 27 must relate to some concrete fact[19].

In *King Emperor v. M. Ramanujam* ('Ramanujam')[20], The Madras High Court analysed the discovery of a relevant fact in consequence of the confessional statements and their distinct relation to the fact discovered. Justice Cornish, voicing the majority view, held that 'fact' in Section 27 is to be read with the definition in Section 3 of the Indian Evidence Act to be construed to include a "state of things" in its ambit[21]. The judicial perspective was adopted in *Ravupalli Ramamurty v. Emperor* ('Ravupalli')[22].

Concurring and minority opinions were also pronounced in this judgement, referring to *Sukhan* and *Ganu Chandra* assigning reasons for the same.

The Supreme Court has also taken varied stances in determining the

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[17] *In re:* Athappa Goundan, 1937 SCC OnLine Mad 76: ILR 1937 Mad 695 (1937).

[18] Ganu Chandra Kashid v. Emperor, 1931 SCC OnLine Bom 50 (1930).

[19] *Id.* ¶4.

[20] King Emperor v. M. Ramanujam, 1934 SCC Online Mad 428 (1934).

[21] *Id.* ¶15.

[22] Ravupalli Ramamurty v. Emperor, 1939 SCC OnLine Mad 183; AIR 1941 Mad 290, ¶8-9.

interpretation of 'facts' under Section 27. In *Lachhman Singh v. State*[23] the accused stated that he had thrown the dead body into a specific river. The defence contended that this statement was too open to lead to any discovery. The Court observed that the accused had led the police to the location where the body was thrown. Hence, the statement was considered admissible.

An important case of the Supreme Court regarding mental fact was *Jaffar Hussain Dastagir v. State of Maharashtra* ('Jaffar Hussain')[24]. Here, the confession in police custody leading to the whereabouts of the accused was not taken as a fact in consequence of offence and thus, this information was declared inadmissible. The Court's reasoning in doing so was not that it was not a physical object extraction from the accused's statement, but because it was in nature of a 'state of things' inclining towards the mental facts set.

Deviating from the decision of Madras High Court's full bench in *Ramanujam* which opined that 'facts' are not restricted to material objects, the Supreme Court in *H.P. Admn. v. Om Prakash*[25]('Om Prakash')mandated the 'fact' discovered in Section 27 to pertain to a material or physical fact that is relevant to the information. This further strengthened the proposition of *Pulukuri*, promoting the narrow scope of the provision.

Such oscillating opinions pronounced by the various courts in India while delving into the analysis of Section 27 of the Indian Evidence Act, with frequent reliance on the conservative view, reveals the Judiciary's indecisiveness in this matter. It further shows that *Pulukuri* does not settle the position of this question and that the law still needs to be provided a finality owing to the weak precedential basis that exists. Such comprehensive finality should preferably apply a liberal lens vis-à-vis mental facts that grants

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[23] Lachhman Singh v. State, AIR 1952 SC 167 (1952).

[24] Jaffar Hussain Dastagir v. State of Maharashtra, 1969 2 SCC 872 (1969).

[25] H.P. Admn. v. Om Prakash, 1972 1 SCC 249 (1972).

a chance to the prosecution to fight another day.

INTERPRETATION OF 'FACT' IN THE PROVISION

To develop a deeper understanding about conferring a particular approach in interpreting 'fact' we first have to examine the context in which it is provided in the bare act and peel the layers to reveal the legislative intent.

Section 27 of the Evidence Act, or alternatively the proviso to Section 23 of Bharatiya Sakshya Adhiniyam reads, "Provided that, when any fact is deposed to as discovered in consequence of information received from such a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."
Here, the usage of the word 'fact' bores no prefix to it. Moreover, no specification as to facts in nature of tangible/physical objects or other kinds of facts has been laid down. In the simplest of connotations, 'fact' has been mentioned in the said provision.

A reference to Section 3 of the Indian Evidence Act is necessary to understand the interpretation of 'fact' that is relevant to this Act.

"Fact means and includes- (1) any thing, state of things, or relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious."[26]

If the above definition is incorporated to the understanding of Section 27, it shall show that any-thing, state of things or relation as such that has the ability to be perceived, or a conscious mental fact can be discovered with admissibility in consequence of the information received in police custody. Thus, it poses no boundaries that allow only physical objects and exclude

[26] Indian Evidence Act, 1872, §3.

The application herein that results from the literal rule of interpretation states that a provision must be construed in the natural and ordinary meaning of the words and phrases used[27]. The mischief rule and golden rule further govern the mechanisms of statutory interpretations. However, a simple reference to work of the author of the Act, James Stephens, reflects the absence of any identifiable mischief or defect that the legislators sought to suppress for which common law did not provide an apparent alternative. Thus, the mischief rule clearly will not find application here, though the golden rule might hold some relevance.

Parke J. explains the rule in *Becke v Smith* as:

"It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further."[28]

Thus, the rule of literal understanding of a statute can be avoided from application if it has the potential to lead to a "manifest absurdity or repugnance." Adopting *Pulukuri's* rationale, it could be seen that the judgement ran parallel to the golden rule. Taking into consideration the manifest inconsistency of sections 25 and 26 and their intrinsic principles against the literal reading of Section 27 with 3 of Indian Evidence Act, the court excluded the mental facts and state of affairs from the interpretation of 'facts'[29].

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[27] J. LANGAN, MAXWELL ON THE INTERPRETATION OF STATUTES 28-29 (15th edn., 2007).

[28] Becke v. Smith, 1836 2 M & W 191: 150 ER 724 (1836).

[29] V.P. Sarathi, *Section 27 of the Indian Evidence Act (I of 1872)—Sir James Stephen and Deoman Upadhyaya*, 6 J. I. LAW INST. 332, 332-337 (1964).

Although this argument forces limitation on scope of 'information', yet it does not hold the same strength against 'facts' as they cannot fall in the line of incrimination like the former[30]. A major reason for this is that the Section separates the discovery of fact from the receipt of information, and the two are not coterminous in nature. This, further, nulls down the fears dealt in *Pulukuri* on inclusion of 'mental facts' in Section 27 and its consequent use as a tool of injustice.

ANALYSIS OF 'MENTAL FACTS' AND NEED FOR ITS INCLUSION

Till now, we have seen how the reading of Section 27 with Section 3 and the analysis of the literal interpretation rule safely makes space for inclusion of 'mental facts' deconstructing the concerns of legitimacy in *Pulukuri* and *Om Prakash*. Adding to this proposition, judgements of High Courts and a recent decision of the Supreme Court have casted the dice in favour of inclusion and admissibility. While the law has not been granted finality, these cases help in building the stance regarding the inclusion and discovery of mental facts.

In *State of Kerala v. Babu*[31]('Babu') , the accused who was charged with murder told the police officers while in custody about his purchase of sodium cyanide from a shop. When the police were taken to the shop by the accused, the shopkeeper told them that he had visited the shop twice and purchased a kilogram of Sodium Cyanide. As per the Kerala High Court, the fact discovered was that the accused purchased the chemical from that shop owner, and this involved a mental condition of which he is conscious. This mental fact was discovered when police went to the shop in question and not

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[30] Arghya Sengupta, *Confessions in the Custody of a Police Officer: Is it the Opportune Time for Change?*, 18(1) SBR 31, 31-44 (2006).

[31] State of Kerela v. Babu, 2008 SCC OnLine Ker 707 (2008).

when the statement was made by the accused. Thus, the communication of information and discovery of mental facts was treated differently by the court. Contrary to the popular position of law, it held that mental facts are covered under Section 27 and permitted its admissibility. A similar view was taken in *Firoz Abdul Latif Ghaswala v. State Govt. of NCT of Delhi*[32] ('Firoz') that considered facts which were not in the nature of material objects.

On the same basis, the Supreme Court applied this differential treatment of information and discovery of mental fact in *Mehboob Ali v. State of Rajasthan* ('Mehboob Ali')[33]. The case focused on conviction of accused for possession and use of counterfeit currency and criminal conspiracy. As no recovery was made from their possession, the two accused appealed in Supreme Court on the inadmissibility of their statements under Section 27 wherein information was provided by them but having no material fact in question. In response to the contention of material fact being *sine qua non* to Section 27, the Supreme Court stated that the information furnished from statements of accused led to the identification and arrest of co-accused from whom the fake notes were recovered. Thus, "the embargo of section 27 was lifted herein as the information led to the discovery of fact proving complicity of other accused persons and revealing the chain of circumstances."

Such judicial instances present a promising view that mental facts can be discovered. They can range from conditions that are consciously stated by an accused as in *Babu and Sivankutty v. State of Kerala*[34] to state things as discussed in Firoz and Mehboob Ali, thereafter countering the minority opinion of *Ramanujam*.

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[32] Firoz Abdul Latif Ghaswala v. State Govt. of NCT of Delhi, 2012 SCC OnLine Del 4596 (2012).

[33] Mehboob Ali v. State of Rajasthan, (2016) 14 SCC 640.

[34] Sivankutty v. State of Kerala, 2012 SCC OnLine Ker 31724 (2012).

The aforementioned cases show the necessity of inclusion of mental facts in establishing the chain of circumstances and conviction of accused where the admissibility is given to relevant information not relating to physical facts. The burden that the prosecution faces due to lack of admissible matter though information is apparent but barred in court of law calls for just interpretation of section 27. The reliance of the dominant view on the narrow scope of the provision fails to see the bigger picture by preferring an absolute limitation over a selective admission approach[35]. This, thereby, causes more injustice in the name of preventing arbitrary persuasion against the accused and granting protection while the accused is in police custody.

CONCLUSION

Confessions provide significant evidentiary value, serving as crucial elements in both police investigations and courtroom proceedings. Indeed, they are among the most often used forms of evidence. According to laws, confessions provided to police and the information disclosed while under police custody are generally inadmissible as evidence[36]. Admissibility of a confession or similar information is contingent upon its ability to contribute to the finding of factual evidence. The material that pertains directly to the revealed fact may be substantiated. Undoubtedly, this rule holds significant importance from the standpoint of both the prosecution and police. Nevertheless, it has been widely agreed upon by legal scholars and the judiciary over an extended period of time that this particular exception can only be asserted in cases where the revealed fact pertains to a 'physical fact'. This study presents a critique of the legitimacy of the aforementioned consensus. The consensus is derived from the Privy Council's opinion in

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[35] Dhruva Gandhi, *Clipping the Wings of the Prosecution in a Criminal Trial - An Erroneous Exclusion of 'Mental Facts' from Section 27 of the Indian Evidence Act*, 29(2) NLSI REV. 149, 149-172 (2017).

[36] The Harvard Law Review Association, Developments in the Law: Confessions, 79(5) HLR 938, 1106-1112 (1966).

Pulukuri, followed by successive decisions from the Supreme Court, and ultimately, the verdict rendered by the Supreme Court in *Afzan Guru*.

The available evidence indicates that *Pulukuri* did not definitively resolve the legal question of the inclusion or exclusion of mental facts within the purview of Section 27. Conversely, it had resolved the legal matter pertaining to a separate contentious issue (the extent of the term 'information') that had elicited various viewpoints from the higher courts. Subsequently, it has been shown that the question remained unresolved by the verdicts of the Supreme Court too. Either they had erroneously relied on the opinion expressed in *Pulukuri*, or they had completely neglected to address the subject at hand. In the case of *Afzan Guru*, the court did not conduct an evaluation of the inclusion of 'mental facts' under the term 'fact' as employed in Section 27. The reliance was placed again upon the rulings inclining towards the popular view. Hence, the foundation for determining its legal position was flawed.

This article also undertook an analysis to determine whether mental facts are encompassed within the scope of Section 27, given the unresolved nature of the dispute about their exclusion. The analysis adopted a strict textual reading of Section 27 and Section 3 in order to conclude the inclusion of mental facts. Nevertheless, the text acknowledges that there is room for deviation from the literal norm of interpretation. Hence, a discussion is undertaken to determine the applicability of either the mischief rule or the golden rule of interpretation. Although the mischief rule was deemed inapplicable, there is a potential argument for the use of the golden rule as thoroughly appreciated in the discussion above.

The proposed inclusion to the operation of 'fact' in the contemporary legal system has concerns regarding the compromise the level of protection afforded to those facing accusations, hence increasing the likelihood of resorting to unlawful methods for obtaining confessions. This argument can be effectively refuted considering how the legislation in question directly

acknowledges and responds to this particular concern. To show that the provision works in the most practical and fragile sense, instances from the practical operation of this law were also discussed. All this led to ensure that the integrity of corroborative evidence through physical objects shall remain uncompromised. Thus, for all the above reasons, the article submits that mental facts form a part of the ambit of 'fact' used in Section 27 of the Indian Evidence Act and there is a need for the legislature to revisit the law considering the prosecution's plight.

THE JUSTICE VERMA COMMITTEE REPORT

*~ Devarth Tandan**

ABSTRACT

India has been governed by laws laid down in the Constitution of India for nearly 75 long years. From time to time, this period in the modern history of an independent India has seen dark instances which have necessitated urgent changes in the legal framework of the nations. This has led to there being commissions, committees and reports on multiple counts to suggest amendments and additions to the Indian Constitution.

One such example is the Justice Verma Committee, set up in 2012 following the Nirbhaya gang rape and murder case, which remains one of the most grievous cases of its nature in the brief judicial history of India. Read ahead for a detailed analysis of the Justice Verma Committee Report, including the background of the committee, the main postulates of the report and the legal repercussions of the same.

WHAT WAS THE JUSTICE VERMA COMMITTEE?

The Justice Verma Committee was constituted on the 23rd of December, 2012 following one of the most heinous gang rape and murder cases in the history of modern India – the Nirbhaya Case. The committee comprised of:

- **Justice J. S. Verma**, the former Chief Justice of the Supreme Court of India as the Chairperson,
- **Justice Leila Seth**, the former Chief Justice of the Himachal Pradesh

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High Court, and

- **Gopal Subramanium**, the former Solicitor General of India as a member.

As mentioned in the preface of the Committee Report:
"The constitution of this Committee is in response to the country-wide peaceful public outcry of civil society, led by the youth, against the failure of governance to provide a safe and dignified environment for the women of India, who are constantly exposed to sexual violence. The immediate cause was the brutal gang rape of a young woman in the heart of the nation's capital in a public transport vehicle in the late evening of December 16, 2012." [1]

The Justice Verma Committee Report was submitted on the 23rd of January, 2013, containing recommendations on laws pertaining to rape, sexual harassment/assault, trafficking, sexual crimes against children, medical examinations of survivors, and reforms in the electoral, educational and executive sphere.

2012 DELHI GANG RAPE AND MURDER CASE (NIRBHAYA CASE)

On the 16th of December 2013, a 23 year old physiotherapy intern who was travelling in a private bus along with her friend was brutally raped and fatally assaulted in the Muhirka neighbourhood of Delhi. The victim came to be known as Nirbhaya, meaning fearless in Hindi, to protect her identity. She was subjected to immense torture and sexual violence, including being raped with a metal rod. This cased severe irreparable internal injuries. She and her friend were thrown off the bus and left for dead. Nirbhaya succumbed to her injuries 13 days later in a hospital in Singapore.

[1] Preface to the Report of the Committee on Amendments to Criminal Law (2013).

This brutality of this incident was completely unprecedented and unheard of in India, and it took the entire nation by shock. Widespread nationwide protests ensued, with the nation uniting to demand justice for Nirbhaya and put forward their want of stricter laws to protect women form sexual violence. These protests brought out the deep rooted anger with the rising cases of violence against women, as well as the apathy and inefficiency of the legal and law enforcement system of India.

The government of India recognized the urgent need for legal reform in the sphere of crimes against women, and in response to the nationwide protests following the Nirbhaya case, the Justice Verma Committee was set up tasked with reviewing existing laws related to sexual violence against women, and recommending amendments to said laws. The report provided by the committee a month after its formation laid the foundation for considerable changes in the legal framework of India, especially pertaining to the enhancement of the safety and dignity of women in India.

MAIN RECOMMENDATIONS OF THE COMMITTEE

The key recommendations of the Justice Verma Committee which were also included in the Criminal Law (Amendment) Act of 2013 are:

Rape and Eve Teasing

The committee was of the opinion that the gradation of sexual offences should be retained in the Indian Penal Code, 1860 (IPC). They maintained that rape and sexual assault are not merely crimes of passion but an expression of power and that rape should be retained as a separate offence, not limited only to penetration of the vagina, anus or mouth. It was suggested that attempt to rape or eve teasing must be dealt with in the same manner as attempt to murder, and be punishable with upto ten years of incarceration and fine. This was expressed on page 111 of the Report, wherein it was stated:

"There should be a criminal prohibition of other non-penetrative forms of sexual assault, which is currently not found in the IPC, aside from inappropriate references to 'outraging the modesty' of women." [2]

Furthermore, paragraph 69 of the Report stated that:
"An offence of sexual assault should be introduced to include all forms of non-consensual non-penetrative touching of a sexual nature. Courts will examine the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, threats, intent of the accused and any other relevant circumstances." [3]

The report also tackles the issue of Eve Teasing under Part 1, Chapter Five of the report titled 'Other offences against women.' On page 146, the committee suggests that provisions be included in the Indian Penal Code which criminalise the act of eve teasing.

Amendment to Sections 375 and 376 of Indian Penal Code

Section 375 of the IPC describes the definition of Rape, stating that "rape is sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation, or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case she is under 18 years of age."
The exceptions to Section 375 of the IPC are: when the parties involved are married it shall not constitute rape, and when there is medical treatment or intervention it shall not constitute rape.
The Justice Verma Committee recommended that the exception to marital rape be removed, *"The exception for marital rape be removed ..... The fact that the accused and the victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower*

[2] Report of the Committee on Amendments to Criminal Law, at para. 69 (2013).

[3] Report of the Committee on Amendments to Criminal Law, at 117 para. 79 (2013).

sentences for rape."

Section 376 of the IPC lays down the punishment for committing the act of rape, and is a continuation of Section 375 of the IPC. Earlier, the minimum imprisonment for rape was of 7 years, which was increased to 10 years on the recommendation of the committee. Moreover, the maximum punishment for the same was recommended to be life imprisonment, stating that life imprisonment entailed imprisonment for the 'entire natural life of the convict'. It was also recommended that gang rape ought to carry a minimum sentence of imprisonment of 20 years with the potential for life imprisonment.

The committee advocated for broadening the definition of sexual assault, including Marital Rape. However, this was not accepted at the time by the government and has still not been incorporated. Marital rape is still not criminalized in India, and that remains a controversial issue to this date.

Reforms in Management of Cases Related to Crime Against Women

The major reforms pertaining to management of cases related to crimes against women as mentioned in the Justice Verma Committee report are:

- Fast Track Courts to be set up to ensure the swift delivery of justice in criminal cases pertaining to violation of women's rights. The concept of fast track courts sounds wonderful on paper, however it was poorly and impractically implemented. While some fast track courts were indeed set up, the legal system in India still remains extremely slow and tedious, with most of the cases facing a large amount of delay on a regular basis.

- A Rape Crisis Cell should be set up, which should be notified immediately when an FIR is made in relation to sexual assault, and legal aid and assistance should be provided to the victims.

- There must be a provision to allow for the online filing of FIRs.

- Police officers must be duty bound to assist victims of sexual offences irrespective of the jurisdiction, and a system of community policing should be developed.

Police reforms were highly advocated by the Justice Verma Committee, however while there has been some progress in sensitization training for the police, there are ongoing concerns about the implementation and consistency of these reforms across India.

Amendment of the Representation of People Act, 1951

The Representation of People Act of 1951 provides for the disqualification of an electoral candidate for crimes related to terrorism, untouchability, secularism, fairness of elections, sati and dowry.

The Justice Verma Committee recommended that the filing of a charge sheet and cognizance by the court be sufficient for the disqualification of an electoral candidate under the aforementioned act[4]. It further recommended that electoral candidates should be disqualified for committing sexual offences.

However, as per an ordinance passed by the government, the recommendation of the Justice Verma Committee wherein it was stated that those charged with sexual crimes cannot contest polls was not implemented by the government.

Sexual Assault (with reference to Sections 354 and 509 of the IPC)

Section 354 of the IPC states that "assault or use of criminal force to a

[4] Representation of the People (Amendment and Validation) Act, 2013, Government of India. https://www.india.gov.in/representation-people-amendment-and-validation-act-2013#:~:text=Details%20related%20to%20the%20Representation,short%20title%2C%20commencement%20and%20definition.

woman with the intent to outrage her modesty" is punishable with imprisonment of 2 years. However, the term 'outraging the modesty of a woman' is not defined in the IPC, as a consequence of which where penetration could not be proved, the offence is categorised under Section 354 of the IPC.
The committee recommended that non-penetrative forms of sexual contact should also be categorized as sexual assault, and the ambit of the definition of 'sexual assault' should be expanded to also include all forms of non-consensual, non-penetrative sexual contact[5].

Section 509 of the IPC lays down the punishment for verbal sexual assault, i.e. "uttering any word or making any gesture intended to insult the modesty of a woman" be punishable by imprisonment for 3 years and a fine.
The committee suggested that this section should be repealed[6], and that the use of words, actions or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault.

As a consequence of the recommendation of the Justice Verma Committee Report, the Criminal Law (Amendment) Act of 2013 was enacted, which introduced tougher sentences for the culprits for crimes such as rapes, sexual harassment, acid attacks, voyeurism, stalking and trafficking as well as expanded the definition of 'rape'.

Sexual Harassment
The Justice Verma Committee made some recommendations to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill of 2012, which are:

- The purview of the bill should also include domestic workers.
- Under the Bill the complainant and the respondent are first required to

[5] Report of the Committee on Amendments to Criminal Law, at 109-110 (2013).

[6] Report of the Committee on Amendments to Criminal Law, at 111 (2013).

attempt conciliation. This is contrary to the Supreme Court judgement in Vishakha vs. State of Rajasthan which aimed to secure a safe workplace for women[7].

- The woman who has suffered sexual harassment should receive compensation from the employer.
- The Bill requires the employer to institute an internal complaints committee to which complaints must be filed. Such an internal committee defeats the purpose of the Bill and instead, there should be an Employment Tribunal to receive and adjudicate all complaints.

Amendments to the Code of Criminal Procedure

The committee observed, "The manner in which the rights of women can be recognised can only be manifested when they have full access to justice and when the rule of law can be upheld in their favour." The committee suggested that the proposed Criminal Law Amendment Act, 2012[8], should be modified. "Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality the provisions have to be cognizant of the same," it says. A special procedure for protecting persons with disabilities from rape, and requisite procedures for access to justice for such persons was also proposed.

CRIMINAL LAW (AMENDMENT) ORDINANCE, 2013

Following the submission of the report of the Justice Verma Committee, the Criminal Law (Amendment) Ordinance was passed in 2013, which later became the Criminal Law (Amendment) Act of 2013. This was a significant and constructive reply to the cries of public outrage following the Delhi gang rape and murder case of 2012.

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[7] Vishakha v. State of Rajasthan, (1997) 6 S.C.C. 241 (India).

[8] Ministry of Home Affairs, Rajya Sabha, Government of India, https://www.mha.gov.in/MHA1/Par2017/pdfs/par2020-pdfs/rs-11032020/1959.pdf

This ordinance introduced several key changes in the criminal laws of India, specially the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), the Indian Evidence Act and the Protection of Children from Sexual Offences Act.

CONCLUSION

The Justice Verma Committee was an absolutely necessary and bold step towards improving the legal framework of India, especially with reference to protection of rights of women and protection of women against sexual crimes. It was a much needed and long awaited measure, which was finally catalysed by the tragic Nirbhaya gang rape and murder case of 2012.

Many of the postulates and recommendations of the Justice Verma Committee report were accepted in the Parliament, which led to a positive impact in the nation's legislative and executive structure.

On the flip side, a vast number of the postulates recommended in the Justice Verma Committee Report were either outright rejected or were very poorly implemented, both of which went against the ideal the committee stood for. However, it had a net positive impact on the legal framework of the nation. The committee's work instilled confidence in the legal system among women and empowered victims to speak out and seek justice. It marked a pivotal moment in India's fight against gender-based violence, fostering a broader commitment to women's rights and safety. In what was a turbulent time for all citizens of the nation, the Justice Verma Committee was a spark of hope for all women of India.

THE 50% RESERVATION LEGAL CEILING

~ Shauryawardhan Trivedi[*] & Krishna[**]

ABSTRACT

The Janata Dal government formed the Mandal Commission in 1979, seeking to ensure reservation as a means to address caste inequality and discrimination. The Commission's recommendations, particularly regarding reservations, aimed to uplift the marginalised communities by providing them with equitable opportunities. Almost half a century later, caste-based violence is still on a high, the Census in Bihar highlighted the hardships endured by the OBC populace.

On the other hand, though a minority, loopholes in the reservation policy certainly exist. The case of Puja Khedekar, a poignant example, has the political wings of the country divided. In this environment of confusion regarding one of the central yet unique doctrines of the Constitution, it becomes necessary to understand why the policy of reservation exists in the first place. Along with that, this paper aims to objectively examine the 50% legal ceiling to reservation, a threshold set by the Supreme Court. With increasing demands to reconsider and even scrap this ceiling, driven by the rising socio-economic backwardness of a significant portion of the Indian population — many of whom struggle to afford even three meals in a day[1],

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[1] Abhishek Jha & Roshan Kishore, *Just over 50% of Indians have three meals in a day, Hindustan Times.*

this discussion is more relevant than ever.

BACKGROUND

B.P. Mandal was tasked by India's fourth prime minister, Morarji Desai, to develop a plan for the "welfare of the Backward Classes" in accordance with Article 340 of the Indian Constitution. This was in addition to the existing reservation of 22.5 percent of positions in education and employment for Scheduled Castes and Scheduled Tribes[2]. The Mandal Commission Report recommended 27 percent reservation for the Other Backward Classes (OBCs) in central government institutions based on eleven criteria of socioeconomic deprivation. This report came under intense discussion in the Parliament yet led to no significant action after the fall of the Morarji Desai regime.

It was on August 7th, 1990 that the then incumbent V.P. Singh made the electrifying announcement that the Government was accepting the Mandal Commission recommendation of reservation of 27 per cent of the jobs in all Central Government and public sector institutions. This was quickly followed up by a notification on August 13 which stated that in the first phase, reservations would be made for the "castes and communities which are common to both the lists in the report of the Mandal Commission and the State Government's lists"[3]. It was also stated that a list of these castes and communities would be issued separately. Following this, a committee of about 15 joint secretaries was given the task of getting the State lists, comparing them with the Mandal lists and drawing up the lists of castes and communities which would be eligible for job reservation. As a result, total reservations stood at 49.5%.

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[2] Ministry of Home Affairs, Gov't of India, 22.5 Percent of Positions in Education and Employment for Scheduled Castes and Tribes (1980).

[3] Ministry of Personnel, Public Grievances and Pensions, Government of India, orders on matters concerning OBC(1990).

BACKGROUND OF THE CASE

Indra Sawhney v. Union of India, colloquially known as the Mandal ruling, was a significant Public Interest Litigation case. In 1992, a nine-judge Supreme Court of India Constitution Panel entertained the PIL, which contested the government's decision to carry out the Mandal Commission's recommendations. The PIL claimed that it was unlawful for the government to have decided to put the Mandal Commission's recommendations into effect as it was against Article 14 of the Indian Constitution, which guarantees the basic right to equality.

In the case, the Supreme Court of India considered the following issues:

- Whether caste can form the basis of a distinct class, and whether economic criteria alone can be used to define a class.
- Whether Article 16(4) of the Constitution of India is an exception to Article 16(1), and whether it exhaustively defines the rights of reservation.
- Whether Article 16(4) allows for the classification of "Backward Classes" into Backward Classes and Most Backward Classes or whether it permits classification among them based on economic or other considerations.

ARGUMENTS ADVANCED

The petitioners raised several issues with the policy, specifically relying upon the rationale of equality of opportunity.

One of the main arguments made by the petitioners is that the Indian Constitution does not specifically support caste as a rationale for reservations, even if it does allow equity-based measures for socially and educationally disadvantaged sections. They argued that the larger constitutional ideals of equality and non-discrimination might not be supported by using caste as the main factor for enforcing quota laws.

Article 14, which states that no one should be denied equality before the law or equal treatment under the laws, enshrines the right to equality in the Constitution. The petitioners argued that even while affirmative action is legal, the implementation of caste-based reservations would compromise the principle of equality. They argue that reservations based on caste might subvert democratic ideals and uphold an ongoing system of discrimination, thereby giving rise to new kinds of injustice and animosity among other groups and thereby bringing things back to square one.

COURT'S OBSERVATION

The Indra Sawhney case established crucial precedents. It laid down interpretations of the wide Article 14, 15, and 16 of the Constitution, and established a plethora of terminologies related to Reservation policies. These terms have remained in our language over the last three decades, signifying the importance of this judgement.

Article 14: Right to Equality under Article 14 guarantees "equality before the law" and "equal protection of the laws" within the territory of India[4]. It is of note that the existence of both of these expressions remain unique to the Indian Constitution. The Supreme Court interpreted this provision to mean that while the State is permitted to make reasonable classifications for public good, such classifications must adhere to the principle of equality. The Court acknowledged that reservations are a form of positive discrimination intended to uplift socially and educationally backward classes (SEBCs) and Scheduled Castes/Scheduled Tribes (SCs/STs), but emphasised that these reservations should not lead to undue preference that undermines the rights of others[5].

[4] INDIA CONST. art. 14.

[5] Indra Sawhney v. Union of India, AIR 1993 SC 477, para 43-45.

Article 15: It prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth, while allowing for special provisions for SEBCs, SCs, STs, women, and children. The Court interpreted Article 15 as providing a constitutional basis for reservations but cautioned that such provisions must not compromise the overall principle of equality . The 50% cap was seen as a necessary measure to ensure that reservations remain an instrument of social justice without becoming a tool for reverse discrimination.[6]

Article 16: It guarantees equality of opportunity in matters of public employment and allows the State to make provisions for the reservation of appor posts in favour of any backward class of citizens. The Court emphasised that while Article 16(4) enables the State to provide reservations, this should not compromise the merit principle entirely . Dr. Ambedkar, in his speech to the Constituent Assembly had stated:[7]

> "Then we have quite a massive opinion which insists that although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration"[8].

It was this demand which was mainly responsible for the incorporation of Clause (4) in Article 16.

VERDICT

The court, in a 6:3 verdict, held that the 50% cap to reservation was justified. It segregated reservations into two categories: Vertical reservation, which are

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[6] *Id.* at 70-72.

[7] *Id.* at 78-80.

[8] Constituent Assembly Debates (Nov. 30, 1948), vol. 7, at 7.63.205.

specific quotas for groups like SCs, STs, and OBCs under Article 16(4) of the Indian Constitution, these quotas are distinct and are meant to ensure a certain percentage of opportunities are reserved for these groups and Horizontal reservations, which apply across all vertical categories (e.g., SCs, STs, OBCs, General) and benefit groups like women, physically handicapped individuals, etc. These reservations are adjusted within the existing vertical quotas. However, the bench held that there were certain "exceptional circumstances" wherein this 50% restriction might not apply. The court kept it open-ended, stating that the state can only do so under Article 16(1) if such a provision was necessary in public interest.

The majority of the Northeastern states—Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, and Sikkim, Meghalaya, Mizoram, and Nagaland—also hold more than 50% of the seats due to the increased autonomy granted to them by the Constitution[9] for their governance in the best interests of their native populations.

Another significant and controversial topic of debate, the concept of 'creamy layer' also garnered importance through this judgement and provisions that reservations for members of under-represented groups should only apply to initial appointments and not to promotions, which was later interpreted by the Supreme Court.

POST INDRA SAWHNEY CASE

Following the ruling, several states attempted to push the boundaries of the 50% reservation cap. A controversial but significant exception to the general rule established by Indra Sawhney, Tamil Nadu was one of the first states where the state government went beyond the 50% limit in implementing the Mandal Commission's recommendations. The state's reservation policy was

[9] INDIA CONST. arts 371A-371H.

later protected under the Ninth Schedule of the Constitution to prevent judicial review[10].

Nonetheless, the Supreme Court has taken a more stringent stance against upheld the 50% ceiling and the requirement for respect to constitutional norms when it ruled down a 68% reservation quota for the Other Backward Classes (OBC) in Maharashtra in the *Maharashtra State OBC Reservation Case (2020)*[11].

CONCLUSION

The development of reservation policies in India, as delineated by this ruling and its judicial interpretations, illustrates a multifaceted relationship between constitutional directives and the pursuit of social justice. The imposition of a ceiling on reservations, designed to prevent excessive quotas and the risk of reverse discrimination, continues to be a focal point of considerable legal and societal examination. In the aftermath of the decision, the judiciary has faced numerous challenges regarding this limit, resulting in diverse outcomes. The Supreme Court's decision in this landmark case emphasises the necessity of striking a careful balance between facilitating social advancement for historically marginalised communities and upholding the meritocratic principles inherent in public employment and educational systems. From a constitutional standpoint, the tenets established in Indra Sawhney serve as a cornerstone for interpreting Articles 14, 15, and 16 of the Indian Constitution, which collectively guarantee the right to equality, prohibit discrimination, and promote equal opportunities in public employment. The judiciary's approach has consistently sought to reconcile these principles with the imperative of equity, thereby reinforcing the notion that while

[10] M. Nagaraj v. Union of India, (2006) 8 SCC 212.

[11] Maharashtra State OBC Reservation Case, (2020) 3 SCC 670.

reservations are vital for achieving social justice, they should not eclipse the overarching commitment to equality under the law. As India navigates its changing social landscape and policy dilemmas, the legal precedents set by the case will inform future judicial assessments and legislative initiatives. Nonetheless, the ongoing discussions and legal disputes indicate that the conversation surrounding reservation is far from settled. The principles articulated by the Court, as reiterated in subsequent rulings such as the Maratha reservation case, underscore the necessity of adhering to constitutional boundaries while addressing social inequities. As India advances, the legal and constitutional framework governing reservations will continue to evolve, demanding careful consideration of both historical injustices and contemporary needs. The challenge lies in ensuring that reservation policies are implemented in a manner that genuinely promotes social equity without compromising the foundational principles of merit and equality.

CONSUMER PROTECTION ACT, 2019

~ *Kushagra Tiwari*[*]

ABSTRACT

As soon as a person enters this world, they begin to consume. They need commodities in one form or another throughout their life. So we are all consumers in the truest sense of the word. When we approach the market as a consumer, we expect value for money, i.e. the right quality, the right quantity, the right price, information on how to use it, etc. But it can so happen that the consumer is harassed or deceived.

The *Consumer Protection Act, 1986* was an Act enacted by the Parliament of India to protect the interests of consumers in India. This Act is regarded as the 'Magna Carta' in the field of consumer protection for checking unfair trade practices, defects in goods and deficiencies in services as far as India is concerned[1]. As a result, there is now a vast network of consumer forums and appellate courts throughout India. It has had a big influence on how companies interact with customers and has given the consumers more power. Although it was repealed and replaced by the *Consumer Protection Act, 2019*, the essence of the protection of consumers' rights have been preserved. It was made for the establishment of consumer councils and other authorities for the settlement of consumer's grievances and matters connected with it. The bill has allowed the establishment of authorities, commissions and liability rules to safeguard consumer interests.

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[1] J.N Barowalia, Commentaries On Consumer Protection Act, 1986, 13-15(2000).

WHAT IS A CONSUMER?

Any person who hires or uses services for consideration that has been paid for, promised, partially paid and partially promised, or under any deferred payment system is considered a consumer. This also includes any beneficiary of the services who does not hire or use them for consideration that has been paid for, promised, or under any deferred payment system, provided that the services are used with the first person's consent. This definition is sufficiently broad to cover a consumer who just makes a payment pledge.

RIGHTS OF CONSUMERS

"The customer is your god" is a saying rather prevalent in the consumer goods and services industry. This saying is often flouted and the customers are the victims of deceit, fraud, and harmful business practices that not only endangers their financial interest but sometimes even jeopardises their safety. Illegal and hazardous goods are the two best examples to explain this statement. The main cause of concern addressed by this Act is the issue of customers being cheated by fraudulent goods or deceived by distorted advertising. The Government paid heed to such malevolent pretences and subterfuge, and decided to institutionalise the Rights of the Consumers. According to the linguistic definition, a "Consumer's Right" is the customer's entitlement to sufficient information about the nature, amount, potency, purity, cost, and standard of the product they are using, as well as protection against consumer fraud. Apart from this the Consumer Protection Act and the Ministry of Consumer Affairs[2] describe the Rights of Consumers as the following:

- **Right to Safety:** Protection against marketing of goods and services

[2] Consumer Rights, Ministry of Consumer Affairs, Food & Public Distribution https://consumeraffairs.nic.in/organisation-and-units/division/consumer-protection-unit/consumer-rights

which are hazardous to life and property.

- **Right to be Informed:** To have access to information regarding the quality, quantity, potency, purity, standard, and price of goods or services as the case may be so as to protect the consumer against unfair trade practices.

- **Right to Choose:** To assure access to a variety of goods and services at competitive prices, preventing monopolistic and restrictive trade practices.

- **Right to be Heard:** Their interest shall receive due consideration at appropriate forums. A consumer can make a complaint and have it redressed through appropriate forums.

- **Right to Redressal:** The right to seek redressal against any trade practice unfair or unscrupulous exploitation; this includes redressal for misrepresentation or unsatisfactory services or articles. At present, one is able to file complaints electronically and thus, further ease in redressal with rising accessibility. This means both mediation and verdicts by the Consumer Disputes Redressal Commissions.

- **Right to Consumer Education:** The right to acquire the skills and knowledge necessary to be an informed consumer throughout one's life.

PROVISIONS OF THE ACT

The *Consumer Protection Act of 2019*, spanning over eight chapters and one hundred and seven sections, constitutes the definitive statute for protection of consumer rights. The Act has a myriad of provisions, both major and minor. The following list comprises the principal provisions of the Act:

Central Consumer Protection Authority

The Act provides for the establishment of a Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class. Led by a Chief Commissioner, the authority is responsible for protecting customers from hazardous goods, unfair business practices and ensuring transparent dealings. It is also tasked with propagating knowledge about scams, cheating scandals and fraudulent and deceitful business tactics to instil a general understanding about the potential of irresponsible business and consumerism. The Act also authorises an Investigation Wing under the Central Authority to conduct inquiries and investigations in cases related to the violation of this bill. Some noteworthy powers vested by the Central Authority includes the right to recall hazardous or fraudulent goods, penalise false advertisers, seize any assets or documents pertaining to the violation of this Act and the right to ask an accused person to produce any record, documents, etc.

Consumer Disputes Redressal Commission

This is a structured mechanism created to resolve consumers' grievances, disputes and complaints. The Act establishes a three-tier commission system to quell consumer complaints. The tiers are segregated on the basis of jurisdiction and basis of pecuniary jurisdictions into District, State and National Commissions. Trades worth less than one crore rupees are investigated by the District Commission, between one and ten crore rupees by the State Commission and National Commissions are accountable to investigate cases of over ten crore rupees. Led by a President, the bill dictates that at least one woman must be a member of the Commission at any tier level. The Commission has under its ambit of redressal the resolution of cases pertaining to defective goods, deficient services, unfair trade practices, and excessive pricing. The bill allows for appeals against a tier of Commissioner

to the higher tiers and ultimately the Supreme Court. Orders passed by the Commissions are binding on all parties involved, ensuring compliance and enforcement of consumer rights. Non-compliance with the orders and non-adherence to practices established to safeguard consumer rights can be penalised by the Commission with imprisonment sentences as well as monetary fines.

Mediation and Consumer Mediation Cells

The bill allows for the establishment of mediation cells attached to District as well as State Commissions. Each mediation cell shall be composed of a panel of mediators, each appointed for a five year term. Their responsibilities include maintaining a list of the cases handled by the cell, record of proceedings and disclose certain facts regarding the cases handled by the cell. Such disclosures shall include releasing veracious facts about any personal, professional or financial benefits in the verdict of the case, and circumstances that may affect his independent judgement or impartiality. Following a settlement reached upon by the mediation cell, the Commission shall pass a suitable directive within *seven* days.

Product Liability

The Chapter VI of the Act lists the liabilities of the product manufacturers, sellers and service providers. The manufacturer is liable, in both conscious and negligent cases, for any manufacturing defects, or a defective design. The service provider may be liable for action in case of any negligence causing omission of essential details, faulty services or inadequate warnings. Under this act, the product sellers can be scrutinised to a reasonable extent. They are accountable to charges in case of harmful alterations made by them, negligent and harmful assembling or storage of goods, and if the original manufacturer of a good is unknown.

Country of Origin

The Consumer Protection Act has made it mandatory for every e-commerce

entity to display the country of origin.

THE EXCLUSION OF LAWYERS

Recently, the omission of advocates from the liabilities as a service provider under the *Consumer Protection Act, 2019* has raised a few brows. Section 2(42) of the Act details the definition of a "service" as service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, etc. but does not include the rendering of any service free of charge or under a contract of personal service. On 14 May 2024, in *Bar of Indian Lawyers v D.K. Gandhi*, a Supreme Court bench of Justices Bela Trivedi and Pankaj Mithal held that advocates would not be liable under the *Consumer Protection Act, 2019* (CPA), for deficiencies in service. The judgement overturned a decision of the National Consumer Disputes Redressal Commission. The Supreme Court's 1995 ruling in *Indian Medical Association v. V.P. Shantha*, in which a three-judge panel concluded that physicians were accountable under the CPA, was cited by the NCDRC. The Court requested a reconsideration of V.P. Shantha while reversing the NCDRC's ruling, raising the prospect that in the future, physicians may not be considered under the Consumer Protection Act[3]. While this exemption protects advocates from consumer claims, it has been open to scrutiny and possible revisiting, as it is parallel to discussions relating to the status of medical professionals as service providers under the Act.

The omission of lawyers from the Act is a double edged sword with two main caveats. Firstly, it means that clients cannot misuse the term 'deficiency

[3] V. Venkatesan, Lawyers excluded from the consumer protection law. Are doctors next?, SUPREME COURT OBSERVER, June 20, 2024 https://www.scobserver.in/journal/lawyers-excluded-from-the-consumer-protection-law-are-doctors-next/

in service' in an abstract field such as legal advice to try and remit any losses during the lawsuit in a conniving manner. On the other hand, it opens up an ambiguity of the term 'deficiency in service' and its present inclusion of medical assistance but omission of judicial assistance. The loophole can be leveraged to argue that services like financial advisory, designing, psychiatry and chartered accountancy may also be omitted from the provisions of this Act, apart from the ongoing dispute over the inclusion of medical services. Despite the exclusion of lawyers from the Consumer Protection Act, it does not translate into an exemption from the offences listed under the *Advocates Act of 1961* and the *Advocates (Amendment) Act of 2023*. Some of the offences for which advocates may be put on trial:

1. Professional misconduct
2. Breach of confidentiality
3. Encouraging illegal practices to clients
4. Fraudulent practices.

The definition of 'deficiency of service' is a topic embroiled in treacherous loopholes, controversies and contradictions. Two noteworthy parts of the definitions are 'any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance' and second part which includes any act of omission, negligence or deliberate withholding of relevant information that may harm the consumer. Two such conditions are exemplified below

The First theme for consideration is that the verdict in *Jayantilal Keshavlal Chauhan v. The National Insurance Co. Ltd.*, stated that 'an agreement for hypothecation does not create the ownership right, and as such no complaint can be maintained for deficiency in service'[4]. This means that under the CPA, an agreement for hypothecation does not grant any right in ownership

[4]Jayantilal Keshavlal Chauhan v. The National Insurance Co. Ltd., 1994 (I) CPR 390.

to the lender over the hypothecated asset. Therefore, deficiencies in service relating to an agreement for hypothecation do not fall under the ambit of 'deficiency in service' since the ownership remains with the borrower and only a security interest vests with the lender. It, therefore, follows that the CPA does not recognize any complaint for service deficiencies solely based on hypothecation agreements.

Next we move on to a subject which concerns the students and majority of Indian households. Recently, the National Testing Agency notably delayed releasing the result of the Common University Entrance Test (CUET) held in May 2024 for more than three months. That may land the NTA into a legal battlefield if a complainant seeks legal recourse as the judicial system has formerly ruled that an 'undue delay in declaration of examination result is obviously deficiency in service'[5].

CONCLUSION

Consumer protection rights and market practices within India have gotten a significant fillip through the *Consumer Protection Act, 2019*. The provisions under the Act related to e-commerce transparency and product liability have been very important in light of the rapid expansion of digital commerce. The implementation of CPA 2019 at times to come might present an increasingly vigilant marketplace where prompt action taken against unfair practices could bring much-needed confidence among consumers, thus making the markets fair.

It is evident that this Act still has some disputable sections or definitions which can be resolved, albeit the resolutions may entice further disputes. In the minefield that is legalities, one must come across incendiaries like loopholes to know the peace that is a resolution. In a concise manner, it can

[5]Secretary, Board of School Education, Haryana v. Mukesh Chand, 1994 (I) CPR 269

be stipulated that the *Consumer Protection Act of 2019* has been rather successful in its provisions regarding National Consumer Disputes Redressal Commissions and the role of mediation in solving disputes. It has defined the rights of consumers and has specially dictated the importance of consumer education. Although, it still has to traverse its course through the contention over the inclusion and exclusion of profession from the provisions of this Act. Our optimism beseeches us to believe that the Consumer Protection Act will result in robust action and is poised to endure the test of time to safeguard the best interests of consumers.

Right to Information and Electoral Bonds: Transparency vs. Anonymity in Political Funding

~ *Virat Pandey*[*]

ABSTRACT

The ongoing legal battle over the Electoral Bonds Scheme in India has brought to the forefront a crucial debate: how to balance the right to information with the right to privacy. This conflict, which centers on the issue of political funding, requires the Supreme Court of India to carefully navigate between two constitutional principles: the voter's right to know and the donor's right to remain anonymous. At the heart of this controversy is the Electoral Bonds Scheme, which was designed to address concerns about the influence of unaccounted or "dark" money in political campaigns, while simultaneously ensuring that donors have the privacy they need to contribute freely to political parties without fear of retaliation.

Electoral bonds, which were introduced in 2018, allow individuals and corporations to make anonymous contributions to political parties. These bonds, which are sold by the State Bank of India (SBI) in specific denominations, provide a means for donors to support political causes without having to disclose their identity. Proponents of the system argue that this ensures that political donations are free from the undue influence of

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public scrutiny and that donors can contribute without fear of political backlash.

The introduction of electoral bonds marked a significant change in the way political funding is handled in India. Prior to the introduction of the scheme, political donations were often shrouded in secrecy, with large amounts of unaccounted money circulating in the political system. The electoral bonds system was seen as a way to clean up this process by allowing for a more transparent method of political fundraising, while at the same time protecting the privacy of donors. However, the scheme has been met with criticism from various quarters, with many arguing that it undermines transparency and accountability in the political process.

THE ORIGIN OF ELECTORAL BOND SCHEME

The idea of electoral bonds was first floated in the Union Budget of 2017-18 by then-Finance Minister Arun Jaitley. The government's stated objective was to curb the flow of black money into politics by creating a more transparent system of political donations[1]. Jaitley's proposal was that electoral bonds would provide a legitimate and secure way for individuals and corporations to donate to political parties without having to reveal their identity. The scheme was also seen as a way to ensure that political parties were not beholden to specific individuals or businesses that could otherwise exert undue influence over them.

The bonds, which are available in denominations ranging from ₹1,000 to ₹1 crore, can be purchased from designated branches of SBI[2]. Donors can then transfer the bonds to political parties, which can cash them into their

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[1] Arun Jaitley, *Union Budget 2017-18 Speech*, Ministry of Fin., Gov't of India. (Feb. 1, 2017).

[2] State Bank of India, FAQs on Electoral Bonds, SBI Off. Website (2018).

accounts. The bonds are valid for 15 days, and if they are not encashed within this period, the money is returned to the donor. This system, according to the government, would eliminate the need for political parties to accept unaccounted cash donations and would make the process of political fundraising more transparent.

However, the scheme also introduced significant changes to existing laws governing political donations. One of the most significant changes was the amendment to the Income Tax Act of 1961[3], which exempted political parties from having to maintain records of donations exceeding ₹20,000 if they were made through electoral bonds. This change effectively allowed donors to remain anonymous, as their contributions would not be disclosed to the public. Additionally, amendments to the Representation of the People Act of 1951[4] allowed political parties to keep the names of contributors confidential if they donated via electoral bonds.

PRIVACY VS. TRANSPARENCY: A CONSTITUTIONAL DILEMMA

The introduction of electoral bonds has reignited the debate about the balance between transparency and privacy in political funding. On the one hand, the government argues that the anonymity of donors is essential to protect their privacy rights, especially in a highly polarized political environment where donors could face retaliation or discrimination for supporting certain parties. On the other hand, critics argue that the anonymity of donors undermines the public's right to know who is funding political campaigns, which is essential for ensuring transparency and

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[3] Income Tax Act, No. 43 of 1961, § 13A, amended by Finance Act, No. 7 of 2017.

[4] Representation of the People Act, No. 43 of 1951, § 29C, amended by Finance Act, No. 7 of 2017

accountability in the political process.

This tension between privacy and transparency is not new. The Indian Constitution enshrines both the right to privacy and the right to information as fundamental rights. The Supreme Court of India, in its landmark judgment in *KS Puttaswamy v. Union of India*[5], recognized the right to privacy as a fundamental right under Article 21 of the Constitution. However, the Court has also recognized the importance of the right to information, which is grounded in the freedom of speech and expression under Article 19(1)(a). The Court has repeatedly emphasized that the right to information is essential for a healthy democracy, as it allows citizens to make informed decisions about the actions of the government and political parties.

In the case of electoral bonds, the Supreme Court is being asked to strike a balance between these two competing rights. The Court has already indicated that it will apply the principle of proportionality to determine whether the restriction on the right to information is justified. Under this principle, any restriction on a fundamental right must be necessary, must serve a legitimate aim, and must be the least restrictive measure available. In other words, the Court must determine whether the anonymity of donors is justified in light of the government's objective of curbing black money in politics and whether this restriction disproportionately impacts the public's right to know.

DOUBLE PROPORTIONALITY DOCTRINE

The application of the double proportionality doctrine adds another layer of complexity to the case. This doctrine requires the Court to assess not only

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[5] Income Tax Act, No. 43 of 1961, § 13A, amended by Finance Act, No. 7 of 2017.

whether the government's actions are proportional to their intended objective but also whether the restriction on the right to information is proportional to the harm that the government seeks to prevent. In other words, the Court must evaluate whether the anonymity provided by electoral bonds is a reasonable restriction on the right to information, given the potential harm posed by unaccounted money in politics.

This doctrine has been used by the Supreme Court in several landmark cases involving the restriction of fundamental rights. For example, in *Shreya Singhal v. Union of India* , the Court applied the principle of proportionality to strike down Section 66A of the Information Technology Act, which criminalized certain forms of online speech. The Court held that the provision was overly broad and vague, resulting in a disproportionate restriction on free speech. Similarly, in the case of electoral bonds, the Court will need to determine whether the restriction on the public's right to know is proportional to the government's objective of preventing the flow of black money into politics.

CRITICISMS OF THE ELECTORAL BONDS SCHEME

The electoral bonds scheme has been the subject of significant criticism from various political parties, civil society organizations, and legal experts. One of the primary concerns is that the anonymity provided to donors undermines transparency in political funding. Critics argue that while the scheme was introduced to curb black money, it has instead created a system where wealthy individuals and corporations can make large contributions to political parties without any public scrutiny. This lack of transparency, they argue, raises the risk of quid pro quo arrangements, where political parties may feel beholden to certain donors in exchange for financial support.

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[6] Shreya Singhal v. Union of India, 5 S.C.C. 1, 2015.

There are also concerns that the anonymity of donors allows for the potential misuse of electoral bonds. Since the identities of donors are only known to SBI and, by extension, the government, critics fear that the ruling party could use this information to target political opponents or curry favor with major donors. This fear is exacerbated by the fact that the bonds are sold during specific periods, which have often coincided with elections, raising suspicions that the ruling party may have undue influence over the sale of bonds.

Furthermore, the removal of the cap on corporate donations has added to concerns about the undue influence of corporate interests in politics. Prior to the introduction of electoral bonds, corporate donations were capped at 7.5% of a company's average net profits for the last three years. However, this cap was removed as part of the electoral bonds scheme, allowing corporations to make unlimited contributions to political parties. Critics argue that this gives undue power to large corporations, which can now use their financial resources to exert influence over political parties without the public being aware of it.

The electoral bonds scheme has also been criticized for its potential to facilitate the entry of illicit money into the political system. While the bonds themselves may be legitimate, there are concerns that the money used to purchase them may not have a clean origin. Without stringent checks on the source of funds, critics fear that electoral bonds could become a conduit for laundering black money.

IMPACT ON DEMOCRACY AND THE ROLE OF THE SUPREME COURT

The electoral bonds scheme has far-reaching implications for India's democracy. Transparency in political funding is essential for ensuring that the democratic process is free from undue influence and that political parties

are accountable to the public. The anonymity provided by electoral bonds undermines this principle, as it prevents the public from knowing who is funding political campaigns. This lack of transparency raises concerns about the integrity of the electoral process and the potential for wealthy individuals and corporations to exert undue influence over political parties.

The role of the Supreme Court in this case is crucial. As the guardian of the Constitution, the Court must carefully balance the competing rights of privacy and information in a way that upholds the principles of transparency and accountability in the political process[7]. The application of the principle of proportionality and the double proportionality doctrine will be key in determining whether the restriction on the public's right to know is justified.

In its landmark judgments on privacy and free speech, the Court has consistently emphasized that any restriction on fundamental rights must be reasonable, necessary, and justifiable. The case of electoral bonds presents a unique challenge, as it involves balancing two fundamental rights that are both essential for the functioning of a healthy democracy. The Court's decision in this case will have a significant impact on the future of political funding in India and will set a precedent for how the balance between privacy and transparency is struck in the political process.

CONCLUSION

From a constitutional perspective, the electoral bonds scheme presents a unique challenge for the Indian judiciary. It compels the Supreme Court to balance two fundamental rights: the right to privacy, which shields the

[7] V. Venkatesan, Supreme Court's Decision to Declare Electoral Bonds Unconstitutional Is a Monumental Defense of Democracy, Frontline, https://frontline.thehindu.com/columns/supreme-courts-decision-to-declare-electoral-bonds-unconstitutional-is-a-monumental-defense-of-democracy/article67852053.ece.

identities of donors, and the right to information, which ensures voters can make informed decisions about who is financially backing political parties. The principle of proportionality and the double proportionality doctrine provide frameworks for the Court to assess whether the restrictions on transparency are justified in light of the government's stated objectives of curbing unaccounted money in elections.

The Court's ruling on this issue will have far-reaching consequences for the future of political funding in India. Should it uphold the anonymity provisions of the electoral bonds scheme, concerns about transparency and the potential for undue corporate influence will remain prominent. Conversely, should the Court strike down the scheme or require reforms, it would reinforce the public's right to know who is financing political campaigns, ensuring greater accountability in the democratic process.

In conclusion, while the electoral bonds scheme aimed to promote a cleaner, more transparent system of political donations, its flaws and criticisms point to a need for careful reconsideration. Whether the Supreme Court leans toward upholding the scheme in its current form or mandates reforms, one thing is clear: the intersection of money, politics, and democracy will continue to be a vital issue in India's future. As the country navigates this complex legal and ethical terrain, the ultimate goal should remain the protection and strengthening of its democratic institutions through transparency, accountability, and fairness in political funding.

Bharatiya Nyaya Sanhita: Much Needed Change or Legislative Activism?

~ *Devvrat Tilak*[*]

ABSTRACT

India, that is Bharat, has had a brief history of being governed by colonial laws which led to the 74 years of judicial history of our nation. However, many Indic scholars and prominent figures in our legal history have consistently highlighted the need for a change in the penal laws of our nation. One might wonder as to what was wrong with the pre-existing criminal laws in our nation in the first place that led to the introduction of the newly introduced penal laws in our nation i.e., The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and the Bharatiya Sakshya Adhiniyam which was notified by the National Gazette on 1st July, 2024.

These new laws have now replaced the previous penal laws i.e., the Indian Penal Code, The Criminal Procedure Code (CrPc) and the Indian Evidence Act (IEA) respectively. Now one might think that the introduction of these new penal laws will act as a breath of fresh air for the dilapidated condition of our judicial system where more than 5 crore cases are still pending. Well, the answer to that isn't as easy as it seems to be. The Bharatiya Nyaya Sanhita hereinafter referred to as "BNS" has retained most of the offences from the IPC.

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MAJOR REFORMS OF THE ACT

1. O**ffences against the Body**: The IPC criminalises acts such as murder, abetment of suicide, assault and causing grievous hurt. The BNS retains these provisions. It adds new offences such as organised crime, terrorism, and murder or grievous hurt by a group on certain grounds.

2. **Sexual Offences against Women:** The IPC criminalises acts such as rape, voyeurism, stalking and insulting the modesty of a woman. The BNS retains these provisions. It increases the threshold for the victim to be classified as a major, in the case of gangrape, from 16 to 18 years of age. It also criminalises sexual intercourse with a woman by deceitful means or making false promises.

3. **Sedition:** The BNS removes the offence of sedition. It instead penalises the following:
(i) exciting or attempting to excite secession, armed rebellion, or subversive activities,
(ii) encouraging feelings of separatist activities, or
(iii) endangering the sovereignty or unity and integrity of India. These offences may involve exchange of words or signs, electronic communication, or use of financial means.

4. **Terrorism:** The BNS defines terrorism as an act that intends to:
(i) threaten the unity, integrity, and security of the country,
(ii) intimidate the general public, or
(iii) disturb public order. Punishment for attempting or committing terrorism includes:
(a) death or life imprisonment and a fine of Rs 10 lakh, if it results in death of a person, or
(b) imprisonment of between five years and life, and a fine of at least five lakh.

5. **Organised crime:** Organised crime includes offences such as kidnapping, extortion, contract killing, land grabbing, financial scams, and cybercrime carried out on behalf of a crime syndicate. Attempting or committing organised crime will be punishable with:
(i) death or life imprisonment and a fine of Rs 10 lakh, if it results in death of a person, or
(ii) imprisonment between five years and life, and a fine of at least five lakh rupees.

6. **Mob lynching**: The BNS adds murder or grievous hurt by five or more people on specified grounds, as an offence. These grounds include race, caste, sex, language, or personal belief. The punishment for such murder is a minimum of seven years imprisonment to life imprisonment or death.
The BNS conforms to some decisions of the Supreme Court. These include omitting adultery as an offence, omitting Section 377 of IPC and adding life imprisonment as one of the penalties (in addition to the death penalty) for murder or attempt to murder by a life convict.

KEY ISSUES OF THE ACT

- The IPC provides protection from prosecution to a person of unsound mind. The BNS changes this to a person with mental illness. The definition of mental illness excludes mental retardation and includes abuse of alcohol and drugs. While individuals suffering from mental retardation may be prosecuted, those who are voluntarily intoxicated may be exonerated[1].
- The definition of terrorism includes an act that intends to intimidate public order. This may lead to breaches of peace at the local level being qualified as terrorism.

[1] The Code of Criminal Procedure, 1973, § 330.

- Age of criminal responsibility is retained at seven years. It extends to 12 years depending upon the maturity of the accused. This may contravene recommendations of international conventions[2].
- Several offences overlap with special laws. In many cases, both carry different penalties or provide for different procedures. This may lead to multiple regulatory regimes, additional costs of compliance and possibility of levelling multiple charges.
- Murder by a group of five or more people on certain grounds of identity carries a lower punishment than that for murder.
- The BNS omits S. 377 of IPC which was read down by the Supreme Court. This removes rape of men and bestiality as offences.

THE CASE FOR CHANGE

Addressing Contemporary Challenges

India's socio-economic landscape has undergone significant transformations since the colonial era. The rise in cybercrimes, economic offences, and evolving social norms necessitates a legal framework that can effectively address these issues. BNS, with its modern provisions, aims to bridge this gap.

Ensuring Speedy Justice

One of the most pressing issues in India's legal system is the protracted nature of legal proceedings. By simplifying procedures and leveraging technology, BNS seeks to expedite the delivery of justice, thereby reducing the backlog of cases and ensuring timely resolution.

Victim Rights and Protection

The Bharatiya Nyaya Sanhita's focus on victim rights is a crucial advancement. In the existing system, victims often feel neglected and

[2] Committee on the Rights of the Child, Report, U.N., 1989.

marginalised. By prioritising their protection and compensation, BNS aims to create a more balanced and humane legal process.

CONCERNS OF LEGISLATIVE ACTIVISM

Overreach and Centralisation

Critics argue that the BNS may lead to excessive centralisation of power, potentially undermining the federal structure of India's judiciary. The centralisation of legal provisions might overlook regional nuances and socio-cultural contexts, leading to a one-size-fits-all approach to the criminal justice system

Potential for Misuse

With the introduction of new provisions, there is a risk of misuse and misinterpretation. Critics fear that without adequate safeguards, the BNS could be exploited for political or personal gains, thereby compromising the integrity of the legal system.

Resistance to Change

The legal fraternity, known for its adherence to tradition, might resist the sweeping changes proposed by BNS. Implementing these reforms would require extensive training, capacity building, and a shift in mindset, which could face significant pushback.

BALANCING CHANGE AND TRADITION

Collaborative Approach

For BNS to be successful, a collaborative approach involving legal experts, practitioners, policymakers, and the public is essential. Engaging stakeholders in the reform process ensures that the new laws are well-rounded, practical, and considerate of diverse perspectives.

Phased Implementation

Instead of a blanket overhaul, a phased implementation of BNS could have helped mitigate resistance and allow for the gradual adaptation of the legal system. Pilot projects and incremental changes have shown to pave the way for broader acceptance and successful integration.

Continuous Review and Feedback

Establishing mechanisms for continuous review and feedback can help identify and rectify issues as they arise. This iterative process ensures that the BNS remains dynamic and responsive to emerging challenges.

RANGE OF PUNISHMENTS

The Bill adopts the age-based classification for rape victims from the Indian Penal Code (IPC) and the Protection of Children from Sexual Offences (POCSO) Act, prescribing varying sentencing options for raping minors under 18, 16, and 12 years old[3]. The range of punishments for raping minors across different age groups remains largely consistent with the IPC, POCSO, and the BNS.

In Section 4(b), the BNS proposes that life imprisonment should mean imprisonment for the entirety of the convict's natural life ('whole life sentence'). This eliminates separate punishments for rape and aggravated rape. Section 64(1) prescribes ten years to life imprisonment for rape, while Section 64(2) assigns the same range for aggravated rape, with life imprisonment implying the remainder of one's natural life. Consequently, if life imprisonment always means a whole life sentence, the punishments become identical, potentially undermining the legislative intention behind distinguishing aggravated offences.

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[3] The Protection of Children from Sexual Offences Act, 2012, §§ 4, 6.

Gang Rape of Women Under 18

Section 70(2) introduces a new offence of gang raping a woman under 18, merging sections 376DA and 376DB of the IPC and eliminating age-based distinctions[4]. This change aligns with the POCSO Act's stance, categorizing any gang rape of a minor as an aggravated offence. The new offence stipulates that gang rape of any minor woman is punishable by death or a whole life sentence, whereas IPC currently reserves this for gang rape of women under 12.

BNS's minimum sentence for gang rape, a whole life sentence, exceeds POCSO's minimum of 20 years of rigorous imprisonment. It's noteworthy that a whole life sentence is a possible punishment for gang raping minors under all three legal texts.

Writ petitions challenging the constitutionality of whole life sentences are pending before the Supreme Court. The challenges argue that mandating a whole life sentence without judicial discretion for lesser punishments infringes on the convict's right to a fair trial, making personal circumstances and potential for reform irrelevant[5]. If the impugned IPC provisions are replaced by Section 70(2) of the Bill, the fate of these constitutional challenges remains uncertain. If 'life imprisonment until the remainder of one's natural life' under the Bill excludes powers of remission or early release (as per Sections 475, 476 of BNS), constitutional concerns regarding Sections 376DA and 376DB of the IPC will extend to Section 70(2) of BNS as well.

COLONIAL LANGUAGE

The Bill updates archaic and problematic terms like 'lunacy', 'unsoundness of

[4]The Bharatiya Nyaya Sanhita*, 2023, §70(2).*

[5]Standing Comm. on Home Affairs, Rajya Sabha, Report No. 246, The Bharatiya Nyaya Sanhita (Nov. 10, 2023).

mind', and 'insanity' with 'mental illness'. In Section 64(2)(k), addressing aggravated rape (currently under Section 376(2)(l) of the IPC), 'mental or physical disability' is replaced with 'mental illness' or 'physical disability'. This change excludes women with intellectual disabilities, such as dyslexia or autism, from protection.

The offence of 'word, gesture, or act intended to insult the modesty of a woman' (Section 509 of IPC) is reclassified under Assault and Criminal Force against Women as Section 78 in the BNS. The proposed provision includes electronic displays by stating 'whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman'.

Despite the Bill's aim to remove colonial and archaic terms, phrases like 'modesty of women' persist in Section 78 and Section 73, which punishes 'assault or criminal force to woman with intent to outrage her modesty'. The Justice JS Verma Committee Report recommended penalizing non-penetrative sexual assault under section 354 of the IPC without referring to 'modesty of women', deeming the phrase inappropriate.

CONCLUSION

The Bharatiya Nyaya Sanhita (BNS) is a bold and ambitious step towards modernising India's criminal justice system by shedding away the colonial criminal laws. The BNS promises to not only address contemporary challenges by streamlining procedures and ensuring swifter justice, but also reflects the evolving needs of Indian society. However, on the contrary, its implementation also raises serious concerns about potential legislative activism and the risk of misuse due to misinterpretation because of the presence of ambiguities present

within the law, which must be carefully interpreted and managed.

The success of the BNS as a law, shall always rely on striking a balance between necessary reforms and maintaining respect for pre-existing traditions. This would indeed, require a collaborative approach involving legal experts, policymakers, and community stakeholders so as to ensure that the reforms are not only innovative but also practical and inclusive. According to me, a phased implementation strategy along with a robust mechanism for continuous review and feedback, will play a crucial role in adapting the BNS to real-world challenges and ensuring its effectiveness throughout the Indian subcontinent.

As India moves towards a more just and efficient legal system, the BNS could indeed serve as a transformative change which was needed to address long-standing issues. However, this potential can only be realised through a cautious, foresighted implementation with a commitment towards inclusivity and dialogue. By carefully navigating these considerations, the BNS has the opportunity to significantly enhance the criminal justice landscape by setting a precedent for future reforms which reinforces the principles of justice and fairness in the nation's legal framework.

SUPREME COURT RULING ON RIGHT TO BE FREE AGAINST ADVERSE EFFECT OF CLIMATE CHANGE

*~ Jishnu Gupta**

ABSTRACT

Is it a misplaced desire for citizens of India to aspire for a better quality of life? Should only countries with top-of-the-shelf lifestyles be allowed to continue with their standards of living, regardless of what damage they have caused to the planet in the past or continue to do so in the present? Shouldn't other countries aim to improve their living conditions and standards when they can? Understandably, development comes at a cost borne by Mother Nature, and sometimes paid by man, but does one always have to choose between one or the other? Many developmental projects have taken their toll not only on nature on whom we are totally dependent, but also on the subjects for whom the said projects were designed. After all, environmental degradation does not follow borders. Arbitrarily speaking, what privileged France faces today, we will face tomorrow. France, to maintain its 'high' standard of life, needs a constant supply of electricity, and it depends on 'non-polluting' nuclear powered reactors for the same. The boiling water from these reactors is released into their rivers resulting in increased temperatures of the water, sometimes by almost 3°C, affecting aquatic life.

Will the effect remain limited to France in the larger scheme of things and be limited to her flora and fauna or be ultimately felt by man too? Today, the

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French are enjoying their electricity, but tomorrow they will face a changed ecosystem. After all, there must be many more such instances of industries, the fruits of which are being enjoyed by man today, but will pose a threat to nature and consequently man in the next decades or so. Not all effects of environmental damage can be determined immediately. Will laws be framed to help curb damage to the environment, or should man's comfort and prosperity be more important than the environment?

CONCEPT OF CLIMATE CHANGE

According to the United Nations, climate change is any change in weather or climate pattern over a long range of time either due to natural causes or human activities[1]. Natural causes include volcanic activities, solar flares etc. But the advent of industrialization in the 1800s has led to increased levels of use of fossil fuels like coal, petrol, diesel etc. for the production of energy to run industries, be it in the manufacturing or servicing sector. Burning these fuels generate what are referred to as greenhouse gases like carbon dioxide, carbon monoxide, Sulphur dioxide, methane etc. which create a blanket around the planet. This blanket prevents solar radiation, part of which escapes into the atmosphere. This trapped radiation increases the temperature of the globe, gradually but surely, over a period of time bringing about irreversible changes in the Earth's atmosphere.
Some human activities that cause greenhouse emissions are agriculture and land use, transportation, mining and metallurgy, and generating electricity.

According the UN, the average temperature of the Earth's surface is now about 1.2°C warmer[2] than it was in the late 1800s (before the industrial

[1]United Nations Framework Convention on Climate Change, art. 1, opened for signature May 9, 1992, https://unfccc.int/resource/docs/convkp/conveng.pdf.

[2]World Meteorological Organization, Climate Change Indicators Reached Record Levels in 2023: WMO, https://wmo.int/news/media-centre/climate-change-indicators-reached-record-levels-2023-wmo.

revolution) and warmer than at any time in the last 100,000 years. The last decade (2011-2020) was the warmest on record, and each of the last four decades has been warmer than any previous decade since 1850.

CONSEQUENCES OF CLIMATE CHANGE

Some ways that climate change has wreaked havoc across the globe are by creating severe water scarcity and intense droughts in some places, severe forest fires, rising sea levels and consequently flooding in island nations, melting polar ice, typhoons and tornadoes lashing across several coastal areas and declining biodiversity brought about by loss of habitat. Human beings as well as the rest of the animal kingdom also face an increased risk of new diseases or the re-emergence of diseases long thought to be lost forever. Mass displacement of the human population is also expected in many cases[3].

SITUATION IN INDIA

Despite several instances of glaciers melting or breaking off, an unusual number of tornadoes and typhoons lashing landmasses, several species of flora and fauna becoming extinct, there is still a section of scientists that brush these reports as propaganda by ill-informed environmental terrorists. But such reports have found prevalence in the front pages of newspapers today with more people becoming acutely aware of the travails of climate change. The blatant disregard for the environment in favour of unbridled industrialization, particularly by developed countries, was prevalent in the last century and has largely fuelled the enviable but unsustainable quality of life in these once imperialist Western countries. Now, many previously backward or Third World countries who have developed or bought technologies to drive their economies by embracing industrialization have hit

[3]Imposed and Neglected Uncertainty in the Global Average Surface Air Temperature Index. Energy & Environment. 22. 10.1260/0958-305X.22.4.407.

environmental degradation grows. Therefore, the conundrum: economy or the environment. This economic growth comes with a hefty price tag, unfortunately. Irreversible damage has already been brought about across all continents. A case in point is the large scale destruction of the Amazonian rainforests, swathes of it several times the size of several countries have disappeared and with it several primitive indigenous tribes of people, that depended solely on these forests for their survival besides many varieties of typical flora and fauna. The course of the river has changed along with rainfall patterns over the region. Unfortunately, India has not been left unaffected in the quest for economic progress. The recent landslides in Uttarakhand come to mind. The adverse effects of the changing climatic conditions felt by the local population cannot be quantified, but only acknowledged and estimated[4].

SUPREME COURT JUDGEMENT

Against this backdrop, the Supreme Court of India ruled in M.*K. Ranjitsinh and Ors. vs Union of India* & *Ors.* that people have a right to be free from the adverse effects of climate change. The court derived this right from Articles 14 and 21 of the Constitution, which guarantee the right to life and equality. The ruling also acknowledged that climate change can violate fundamental rights, and that environmental issues should be at the forefront of public and legal discourse. The case, initiated in 2019, saw the aforementioned defendants seeking protection for the Great Indian Bustard and the Lesser Florican and their habitat. The initial 2021 order directed that any transmission line laid down for electrification projects in the area had to be placed underground. The petitioners requested an emergency plan for the protection and recovery of the populations of the Great Indian Bustard and the Lesser Florican. This plan included instructions on the installation of

[4]Intergovernmental Panel on Climate Change, AR6 Synthesis Report: Climate Change 2023, https://www.ipcc.ch/report/ar6/syr.

bird diverters, displacing power lines, solar panels, and wind turbines from places recognized as their habitat. However, solar power and wind energy companies challenged this order, leading to the most recent judgement by the Hon'ble Court. The current judgement recognized the need to update the decisions made in the 2021 verdict, and the need to maintain balance between development and ensuring the protection of the species. Thus, the Supreme Court formed a seven-member committee which would decide which areas are considered a priority, both for placing transmission lines and protecting the habitat of the avian species[5].

The judgement is also significant because it recognizes the measures that need to be taken for the protection of the habitats of the Great Indian Bustard and the Lesser Florican and also the importance of a nation protecting its citizens against the impacts of climate change. The bench of Judges, led by Chief Justice D.Y. Chandrachud, took cognizance of the efforts India has, so far, undertaken on climate change. Focusing on the international initiatives, along with the laws enacted by the centre, the judgement shows the amount of work the Indian state has done so far in this regard. Therefore, the SC, in recognizing an individual's right against climate change as a significant fundamental and human right, has kept up with current international rulings in other countries too. It also safeguarded against any violation of India's commitment to the Paris Climate Change Treaty[6]. And it would be safe to state that the Court has done a remarkable balancing act between economic development and environmental protection. They have managed to take a stand for biodiversity in the times

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[5] Ajoy Sinha Karpuram, How Supreme Court Is Overseeing Conservation Of The Great Indian Bustard. The Indian Express, https://indianexpress.com/article/explained/explained-law/supreme-court-conservation-great-indian-bustard-9234896/.

[6] Paris Agreement (2015, the 12th of December). United Nations Framework Convention on Climate Change, United Nations Organization.

climate change that dictates the adoption of environmentally safe practices. Therefore, a four-way balance between India's development, its biodiversity, its international obligations and the specific target of preserving the home of the Great Indian Bustard and the Lesser Florican has been met. It is, therefore, an extremely significant step towards environmental protection in tandem with human rights. The ruling makes it obligatory for the goverment not only to tackle the damaging effects of climate change, but also fundamental rights to respectable living rights. It highlights the deep-rooted connection between sustainability and human development.

The Court has also recognized its role in ensuring that the government remains on track to fulfil its international commitments to various climate treaties and meets its climate challenges with all the seriousness they deserve. From the many acts passed by the legislative branch to the international agreements India is already in the continuous process of working to preserve the natural environment within its nation while adhering to international standards.

SIGNIFICANCE OF THE RULING

This judgement, overall, paints a positive picture of India's efforts to combat climate change, focusing on the strategic need for the nation to move away from its dependence on fossil fuels for the nation's energy requirements. The ethical aspect of this judgement is that it outlines the rationale for climate change mitigation to be linked to the Fundamental Rights the Constitution granted to the Indian citizenry, under Articles 14 and 21 of the Indian Constitution. The Court also mentions the non-enforceable Directive Principles of State Policy as written in Articles 48A and 51A (g) of the Indian Constitution[7].

[7]Part IV: Directive Principles of State Policy (n.d.). Ministry of External Affairs - Government of India.

Through this link, the Court opined that the adverse effects of climate change have a direct impact on the quality of life of the citizens. The Court also pointed out that despite the present laws and regulations enacted to protect India's natural environment, there is no single umbrella legislation which ensures the holistic right of the citizens to live in a clean environment.

The ruling also highlighted other important points, including:
• India's international obligation to reduce emissions requires the use of renewable energy as a "fundamental necessity".
• The lack of a single climate change law in India could limit the right to be free from climate change's adverse effects.
• The inequalities that result from climate change's unpredictable and asymmetrical impacts, and the lack of access to clean energy, are central to the right to a clean environment.

CONCLUSION

In conclusion, the Supreme Court's landmark ruling on the adverse effects of climate change represents a pivotal moment in environmental jurisprudence and the broader struggle for climate justice. This decision is more than just a legal victory; it signifies a profound shift in the judicial recognition of climate change as a critical issue that demands immediate and sustained attention. By upholding the necessity of rigorous environmental regulations and holding corporations and governments accountable for their contributions to environmental harm, the Court has reinforced the principle that economic growth must not come at the expense of ecological integrity and public health.

In the broader context of global climate governance, this ruling positions the judiciary as a key player in the fight against climate change, demonstrating that the courts can and must play a proactive role in ensuring that environmental laws are not only enacted but effectively enforced. The

decision also resonates beyond national borders, contributing to the growing body of international legal principles that recognize the urgent need for comprehensive climate action.

Now it remains to be seen how the Court will decide in case of class action lawsuits or communities filing suits against the government or state agencies in the face off between Climate Change and any industry necessary to human life but environmentally unsound. Will it continue with its equilibrium that it has maintained so far or hold forth the Right to Life as the most paramount?

PATENT EVERGREENING LAWS IN INDIA VS USA

~ *Keshav Mittal*[*] & *Manasvi Prakash Srivastava*[**]

ABSTRACT

Evergreening of Patents is a significant topic in the realm of intellectual property rights (IPR), particularly within the pharmaceutical industry. This practice involves extending the life of a patent beyond its original expiration date by making slight modifications to the original invention, such as changes in the formulation, dosage, or delivery method. The concept of evergreening is often criticised because it can delay the entry of generic drugs into the market, thus keeping drug prices high and restricting access to affordable medication. This essay provides a comparative analysis of patent evergreening laws in India and the United States, highlighting legal precedents, statutory provisions, and the broader implications of these laws.

UNDERSTANDING PATENT EVERGREENING

Patent evergreening refers to strategies employed by patent holders, particularly pharmaceutical companies, to extend the duration of their patents and maintain monopoly rights over their inventions. This is often through filing extra patents on new methods such as new formulations, new methods of delivery, and the new uses of the drug. Patent law bestows innovation as a temporary monopoly with the purpose of rewarding creative works. Nonetheless, evergreening might weaken the connection between innovation encouragement and buying affordable medicines for the public.

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LEGAL FRAMEWORK GOVERNING PATENTS IN THE USA

The United States has a well-developed legal framework for patents, governed primarily by the Patent Act of 1952 and subsequent amendments. No longer is there talk about novelty in patent law. The United States Patent and Trademark Office (USPTO) grants patents that normally last for 20 years after the application date[1]. However, some of the regulations allow the provision of prolonging the patents or the filing of extra patents related to slight changes (which are called 'evergreening' by the critics).

PATENT TERM EXTENSION

A major U.S. mechanism that enables evergreening is the Patent Term Extension (PTE) section, which is part of the Drug Price Competition and Patent Term Restoration Act of 1984, also known as the Hatch-Waxman Act[2]. The act enables the elongation of a patent period by a maximum of five years to make up for the time lost in the FDA approval procedure. Even though this section was designed to equitably distribute the interests of brand-name drug companies and generic drug producers, it has been used as a means to further extend patent protection through evergreening approaches.

LEGAL PRECEDENTS IN THE USA

Several legal cases in the U.S. explain the patent evergreening issue. A particular instance is *Pfizer Inc. v. Teva Pharmaceuticals USA Inc.*, where Pfizer sought to push the patent life of its blockbuster drug, Lipitor, through

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[1] Patent Act of 1952, 35 U.S.C. §§ 1-390 (1952).

[2] Drug Price Competition and Patent Term Restoration Act of 1984 (Hatch-Waxman Act), Pub. L. No. 98-417, 98 Stat. 1585 (1984).

a secondary patent on a crystalline form of the drug. The court decided in Pfizer's favour, which made the patent extension possible and hence led to the postponement of the entry of generic competitors[3].

The prescribed formulation of the drug, Omnicef, was the concerned patent in another important case, *Abbott Laboratories v. Sandoz, Inc*[4]. The court supported Abbott's patent claims, allowing the corporation to retain market exclusivity, although the basic patent had expired.

CRITICISM OF EVERGREENING IN THE USA

The opponents claim that patent evergreening in the USA usually has the effect of extending monopolies, which keep drug prices high and prevent the development of cheaper generics. The manner in which this is depicted is as a means for pharmaceutical companies to maximise profits at the cost of public health. Thus, the U.S. has been criticised for its legal system which is perceived to be rather lenient on patentable subject matter and its allowance of patent extensions.

LEGAL FRAMEWORK GOVERNING PATENTS IN INDIA

Conversely, in India, the approach to patent evergreening is more strict. The Indian patent system is based on the Patents Act, 1970, which was amended in 2005 to make it TRIPS-compliant. Interestingly, one of the key features of Indian patent law is Section 3(d), which deals specifically with evergreening.

SECTION 3(D) OF THE INDIAN PATENTS ACT

The Indian Patents Act has a characteristic provision, Section 3(d), which

[3] Pfizer Inc. v. Teva Pharmaceuticals USA Inc., 559 F.3d 1371 (Fed. Cir. 2009).

[4] Abbott Laboratories v. Sandoz, Inc., 750 F.3d 1364 (Fed. Cir. 2014).

sets a high bar for patentability in the case of pharmaceutical inventions. It provides that the invention of a variant of a known substance that does not have any additional effect on the existing substance's efficacy is non-patentable. This section of the law was introduced to deter evergreening and to make sure that only real innovations that bring about major therapeutic gains are protected by patents.

LEGAL PRECEDENTS IN INDIA

The most important lawsuit concerning patent evergreening in India is *Novartis AG v. Union of India & Others (2013)*. Here, Novartis argued for the patenting of a modified version of its cancer drug, Glivec, claiming that the new form had improved bioavailability. Nevertheless, the Indian Supreme Court did not allow the patent application, arguing that the modification did not lead to a significant efficacy improvement[5]. This landmark judgement further strengthened India's position against evergreening and emphasised the role of Section 3(d) in checking such practices.

Another significant one is *the F. Hoffmann-La Roche Ltd v. Cipla Ltd (2015)* where Roche patented a drug cancer, Tarceva but Cipla challenged it. The Delhi High Court gave a verdict in favour of Cipla, holding that the modified version of the drug did not accomplish the efficacy standards required according to Section 3(d)[6]. The decision was supported by the work of the government in India on establishing strong measures to prevent evergreening.

IMPACT OF INDIA'S STANCE ON EVERGREENING

[5] Novartis AG v. Union of India & Others, (2013) 6 SCC 1.

[6] F. Hoffmann-La Roche Ltd v. Cipla Ltd, (2015) 64 PTC 1 (Del).

India's firm stance on patent evergreening has greatly affected the country's affected the country's economy and also the world at large. In the country, it has paved the way for the coming in of generic drugs, which has made essential medicines more affordable and reachable to the people. On a global scale, India has been the target of multinational pharmaceutical companies and trade partners' criticism, particularly the United States, which claims that the Indian patent laws are too strict and, therefore, hinder innovation.

COMPARATIVE ANALYSIS: INDIA VS. USA

The different strategies of patent evergreening in India and the USA mirror the priorities in the areas of interest of pharmaceutical companies and public health. In the US, the broad range of patentability criteria and the fact that patent holders can apply for an extension of their monopolies through evergreening is in favour of the interests of the patent holders. This stance has its reasons since it inspires the creation of new ideas and lowers the huge expenses that go into the process of coming up with new medicine.

In contrast, India’s approach prioritises public health and access to affordable medicines. The strict interpretation of patentability under Section 3(d) serves as a safeguard against evergreening, ensuring that only genuine innovations receive patent protection. This approach reflects India's broader public health policy, which seeks to balance the need for innovation with the imperative of providing affordable healthcare.

LEGAL AND ETHICAL IMPLICATIONS

The concept of patent evergreening worries many as it involves both legal and ethical aspects. Legally, it raises the question of whether incentivizing innovation outweighs the risk of monopolistic practices that may compromise public health. Health economists, however, argue that evergreening of patents is an ethical issue in relation to the fact that

pharmaceutical companies favour profit over the availability of life-saving medicines, especially in developing countries where affordability is a big problem.

The U.S. legislation provides for patent term restoration and secondary patents, which can thus maintain the exclusivity period of the company on the market. Indeed, the pharmaceutical industry sees it as an option to encourage innovation but it may also be a factor in the increase of the costs of new medicines and limits the accessibility to generics. The ability of the legal system to interpret what an invention is in such a broad manner allows evergreening to take place, which gives rise to worries about the justness and equity of the patent system.

Indian law reinforced by Section 3(d) of the Patents Act, seeks to differentiate values from those in the OECD countries. India thus seeks to ensure that only genuinely innovative ones obtain a patent. This is done through the imposition of a high bar for patentability. On the one hand, they are concerned about the people having access to cheap medicines; however, this public health agenda leads to criticism for its exaggeration and even undermining the potential for pharmaceutical innovation.

INTERNATIONAL TRADE AND PATENT EVERGREENING

The differences in India's and the USA's patent evergreening policies do not only impact the domestic market but also the international trade and intellectual property rights. The US government has been frequently calling out India’s patent laws, especially Section 3(d), for being minding the TRIPS Agreement, and acting as barriers to innovation. Indian authorities on the contrary claim that their approach which is in line with TRIPS is therefore safeguarded the public health.

THE ROLE OF TRIPS IN SHAPING PATENT EVERGREENING POLICIES

TRIPS has an important part to play in forming the adopted patent policies of member states including those affected by evergreening. TRIPS requires member countries to provide patent protection to inventions in all fields of technology, including pharmaceuticals, but it allows for certain flexibilities to be exercised by countries in which evergreening is restricted[8]. Such cases have been true in India.

Section 3(d) of the Indian Patents Act may be a good example of the fact that TRIPS flexibilities can be used to mould patent laws to fit the country's public health goals. The article shows how TRIPS allows India to restrict patent monopoly extensions through the use of evergreening, which India executes in full compliance with international law.

On the contrary, the way the U.S. utilises TRIPS does not mean its obligations are necessarily breached. The United States has met the minimum requirements of the TRIPS Agreement by a method that allows for patent prolongations and secondary patents resulting in evergreening. This technique shows the divergences in how TRIPS flexibilities are put to use in various countries, predicated on their own domestic priorities and public health goals.

JUDICIAL INTERPRETATIONS AND THEIR IMPACT

Judicial interpretations of patent laws act as a decisive factor in the formation of the evergreening practice. In the U.S., courts have normally endorsed the legitimacy of secondary patents and patent extensions, as the prudent cases *Pfizer Inc. v. Teva Pharmaceuticals USA Inc.*, and *Abbott Laboratories v.*

[7]Agreement on Trade-Related Aspects of Intellectual Property Rights art. 27, Apr. 15, 1994, 1869 U.N.T.S. 299.

Sandoz, Inc. reveal. They have shown up a legal system that allows for everlasting, which is the case of patents' life span increasing in doctors' field.

In a single case, in India, judges have been more strict in their interpretation, as shown in the case of *Novartis AG v. Union of India*. India's Supreme Court's decision to disallow Novartis's patent application for Glivec based on Section 3(d) not only set precedent but also acted as a deterrent for like cases, thereby strengthening India's viewpoint against evergreening. The decision restricted just Section 3(d) standards, but also showed India's determination to not allow the prolongation of patent monopolies to the public's health costs.

ECONOMIC IMPLICATIONS OF PATENT EVERGREENING

The patent evergreening economic effects are actually significant, especially in the drug industry. Considering the U.S., the evergreening can lead to years of market exclusivity, which gives way to the big drug companies earning big through high prices and the limitless generation of profits. This situation can then lead to a healthcare cost increase since either the patients or the providers will have to pay the high prices of the brand-name drugs when there is no cheaper generic drug.

The Section 3(d) in India has helped to stop patent evergreening and enabled generic drugs to enter the market, which lowered drug prices and increased access to essential medicines. Consequently, this has been beneficial to public health, especially for low-income people who can afford the drugs. Nevertheless, India’s tough patent laws are seen as a hurdle to the entry of foreign investors and could even stifle innovation in the pharmaceuticals sector, thus affecting the availability of new drugs.

CONCLUSION

Even though patent evergreening is a controversial topic in the intellectual property rights space, the effect is huge on public health, innovation, and economic development. However, the conflicting strategies of India and the U.S. depict the different priorities and difficulties encountered by both when striving to balance the interests of patent holders and the wider public.

In the U.S., the judicial framework enables patent extensions and secondary patents, which can promote evergreening and the extension of market monopolies. This standpoint, on one hand, is advocated for as a means of motivating innovation, but on the other hand, leads to increased drug prices and limited access to generics.

India's model, Section 3(d) of the Patents Act, gives preference to public health and cheap medicines by placing a high standard for patenting and eliminating evergreening. The procedures utilised in this context have had an enormous positive implication on public health by easing the access to generic drugs, but at the same time, they have been criticised for possibly encouraging discouragement of innovation.

Finally, the issue of patent evergreening makes us realise that the patent policy must be a harmonious approach that encourages actual innovation while ensuring affordable medicines for the public are available. The U.S. and India can actually draw lessons from each other in this context as they search for the right mix of promoting innovation and protecting public health.

Historical impact of the 42nd Amendment: 'The Mini Constitution'

~ *Shaurya Vardhan Singh*[*] & *Adit Joshi*[**]

ABSTRACT

Since the advent of India as an independent republic, it has received considerable attempts to establish a crack on her envisaged structure based on democratic values. However, out of the limited ones successful, the *Constitution (Forty Second) Amendment Act, 1976* stands apart. The size of amending the Preamble, 40 Articles, the 7th Schedule and adding 14 new Articles and 2 new parts was large enough for everyone to call it 'The Mini Constitution'. It is the most readily available topic for discussion among working officials and enthusiasts of the legal discipline.
Deemed the most controversial amendment by many, it cannot be encapsulated into a mere coloured legislative action, and it transcends far beyond it.

This article aims to introspect and analyse the various factors and notions revolving around the 42nd Amendment, 1976, which established a Parliamentary Sovereignty in India, partly established the Centre's hegemony, and suppressed all the other pillars of Democracy, all while at the height of the 1975-1977 National Emergency.

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BACKGROUND

The concept of India as a 'Sovereign, Socialist, Secular, Democratic Republic,' as mentioned in the Preamble of the Constitution of India, has its modern historical roots in the vision of Nehru, which was much advocated for in the early Post-Independence years. However, it was only after his daughter, Indira Gandhi, was sworn in as the Prime Minister of India who materialised Nehru's vision and encoded it into the Constitution under the *Constitution (Forty-Second Amendment) Amendment Act, 1976.*

However, Gandhi's sudden move, which sent shockwaves throughout the country from Delhi, was not just motivated by this. The prerogative of amending the Constitution on a large scale has been deduced by the masses as a move to establish control over the judiciary, which was the only force preventing Gandhi from changing the basic structure of the Indian Constitution.

Raj Narain v. Uttar Pradesh (1975)

In the 5th Lok Sabha elections, following her victory in Rae Bareli, Indira Gandhi's election as the Prime Minister was challenged in the Allahabad High Court by her lost opposing candidate, Raj Narain. Narain claimed that inter-alia Gandhi had used government resources for her election and further claimed that it was a violation of the Representation of People's Act 1971. The Allahabad High Court, on 12 June 1975, found Gandhi guilty under section 123(7) of the Representation of People's Act[1]; it also declared Gandhi's election void. Enraged by the decision, Indira Gandhi approached the apex court, which was vacant at that time. On 24 June 1975, Justice Krishna Iyer of the Supreme Court issued a stay order on Gandhi's

[1] *Indira Gandhi v. Raj Narain Case Analysis*, Legal Service India, https://www.legalserviceindia.com/legal/article-2879-indira-gandhi-vs-raj-narain-case-analysis.html.

disqualification as the Prime Minister.
Just a day after this, on 25 June 1975, citing the prevalence of threats of violence within the country, President Fakhruddin Ahmed declared a National Emergency under Article 352 of the Indian Constitution.

The 39th Amendment of the Indian Constitution

Gandhi's further strengthening of power came in the form of the 39th Amendment on 10 August 1975. The Amendment revised the previously existing Article 71 of the Constitution and introduced Article 329A. This transferred the power to adjudicate or supervise the disputes arising out of the election of the Speaker of Lok Sabha or the Prime Minister to the Parliament by virtue of an established subsidiary body or by law, taking away the previous holder of that power, the Supreme Court of India.

Article 329A (4) specifically granted the Prime Minister and the Speaker immunity from the effect of their elections being declared ultra vires by the judiciary[2].

"No law made by Parliament before the commencement of the Constitution (Thirty-ninth Amendment) Act, 1975, in so far as it relates to election petitions and matters connected therewith, shall apply or shall be deemed ever to have applied to or in relation to the election to any such person as is referred to in clause (1) to either House of Parliament and such election shall not be deemed to be void or ever to have become void on any ground on which such election could be declared to be void or has, before such commencement, been declared to be void under any such law and notwithstanding any order made by any court, before such commencement, declaring such election to be void, such election shall continue to be valid in all respects and any such order and

[2]Swapnil Tripathi, *The 39th Amendment and the Tribunal that Tried the Prime Minister,* The Basic Structure Conlaw, https://thebasicstructureconlaw.wordpress.com/2020/08/10/the-39th-amendment-and-the-tribunal-that-tried-the-prime-minister/.

any finding on which such order is based shall be and shall be deemed always to have been void and of no effect." [3]

Article 329A(4) was struck down by the Supreme Court as it was in violation of the Basic Structure Doctrine[4].
However, this amendment paved the way for the 42nd Amendment.

42ND AMENDMENT: KEY FEATURES

Preambulatory Changes

The Preamble of the Constitution of India, inspired by instances from the Constitution of the United States of America and the French Revolution, was amended under the powers vested in the legislature by Article 368 (1) of the Constitution, which states:

"Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article." [5]

The 42nd constitution amendment added the words 'Socialist' and 'Secular' in the Preamble making it as the 'Sovereign Socialist Secular Democratic Republic of India". The added words depict the very objective of the government i.e. planning of the economy by the state (socialism) and equality for all the religions in the eyes of the state (secularism). However these ingrowths generated controversies whether such ideological words which alter the actual message of the Preamble are necessary or not since some argued that opposed to polycentrism, the constitution has been

[3] Constitution (Thirty-Ninth Amendment) Act, 1975, No. 39, Acts of Parliament, 1975.

[4] Indira Nehru Gandhi v. Raj Narain, (1975) 2 SCC 459.

[5] INDIA CONST. art. 368, cl. 1.

centralised in order to promote a particular political ideology.
The original Preamble emphasised "Unity of the Nation," but the government felt the need to further stress the importance of national integrity during a time of political unrest and regional challenges.

Directive Principles of State Policy

The Directive Principles of State Policy, enshrined in Part IV of the Constitution, serve as guidelines for the government in framing laws and policies aimed at establishing a just social order. Although they are not enforceable by the courts, these principles are fundamental in the governance of the country. The 42nd Amendment expanded and emphasised certain Directive Principles to align with the government's objectives.

Article 39A says that "the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are nor denied to any citizen by reason of economic or other disabilities."[6]

Article 39(f) provides that "children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth should be protected against exploitation and against moral and material abandonment."[7]

This growth had significant effects on the relation between the Directive Principles and the Fundamental Rights within the Indian constitution. It in fact subordinated the interests of the individual to those of the state's socioeconomic aims, thus enabling the executive to pursue policies aimed at

[6]Constitution (Forty-Second Amendment) Act, 1976, No. 42 of 1976, § 8.

[7]Constitution (Forty-Second Amendment) Act, 1976, No. 42 of 1976, § 7.

realising social justice with balanced governance and without any fears of judicial encroachment on its mandate. Nonetheless, such development was not without the fear of deprivation of individual rights as well as the tyranny of the state.

Article 31C

The most objectionable and obnoxious Article inserted by Section (5) of the 42nd Amendment Act was Article 31(C) in the Constitution. It was inserted to provide precedence on specific Directive Principles over Fundamental Rights, in particular, Articles 14 and 19. The original Article 31C sought to extend the line of protection against any fundamental rights of the people as provided in the 14th and 19th article against the laws which were made to give effect to the provisions in 39(b) and 39(c).

Article 39(b): Directs the state to ensure that the ownership and control of material resources of the community are so distributed as to best serve the common good.
Article 39(c): Mandates the state to ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

The idea behind Article 31C was to allow the state to pass laws aimed at achieving social justice and equitable distribution of resources without the risk of these laws being struck down by the judiciary for violating Fundamental Rights.

This expansion gave sweeping powers to the state to enact laws that could override Fundamental Rights in favour of Directive Principles. It fundamentally altered the constitutional balance, effectively placing the Directive Principles above the Fundamental Rights, which were originally intended to be the bedrock of the Constitution. It also meant that the

judiciary's power to review the constitutionality of laws was severely curtailed.

Article 31C has remained a focal point of debate in the Indian Judiciary, questions have arisen whether it even exists anymore after the Supreme Court of India struck down the expanded portion of it in Minerva Mills v. Union of India (1980).
However, the debate between balancing social justice through state intervention and protecting individual freedom continues to exist and has recently been acknowledged by the Hon'ble Court in *Property Owners Association v State of Maharashtra* where the Supreme Court will decide if private property can be considered "material resources of the community" under Article 39(b) of the Constitution.

Fundamental Duties

The 42nd Amendment Bill added a new part IV A called the Fundamental Duties. Whoever enjoys rights is bound to respect certain There has been a societal norm that if one has rights, there is the need to include responsibilities. This was considered acceptable as it would enhance the understanding of accountability of the citizens.

SHIFT IN THE BALANCE OF POWER: THE EXECUTIVE VERSUS THE JUDICIARY

The 42nd Amendment to the Indian Constitution, enacted during the Emergency period (1975-1977), represents a critical juncture in the ongoing struggle for power between the Executive and the Judiciary. This amendment was a deliberate attempt by the Executive, under Prime Minister Indira Gandhi, to assert dominance over the Judiciary, which had been increasingly assertive in its role as a guardian of Fundamental Rights and a

check on governmental power through the *Bank Nationalisation* and *Kesavananda Bharati* Case.

In response, the 42nd Amendment sought to curb the Judiciary's power by making several significant changes. The Kesavananda Bharati case saw A.N. Ray was appointed as the Chief Justice of India superseding Jaishanker Manilal Shelat, AN Grover and K. S. Hegde. This was due to his sole dissenting opinion in the case, and marked the beginning of the debate upon the appointment of judges through the First Judge Case which eventually resulted in the birth of the Collegium System in 1993.

These events highlight the significance of the 42nd Amendment and the circumstances surrounding it, and the opaque shift of power towards the Executive, undermining the Independence of the Judiciary.

CONCLUSION

After exploring the full scope of the 42nd Amendment Act, it is clear that, despite its various shortcomings and controversial changes, it stands as a landmark piece of legislation that cannot be overlooked. It fundamentally transformed the Indian Constitution and introduced a new dimension to constitutional discourse, impacting every facet of Indian governance. While some view it as a symbolic end to Mrs. Gandhi's political era, others see it as a significant reworking of the Constitution. Regardless of the perspective, the influences of this Amendment continue to resonate, and it is these enduring elements that are examined in this analysis.

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