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Editorial Note

As we present the **SPECIAL ISSUE** (2023) of the JSS Journal for Legal Studies and Research, we are pleased to bring forth a diverse and thought-provoking collection of articles that address contemporary challenges and legal perspectives in India and beyond. In this issue, we continue our commitment to fostering academic discourse on critical legal issues, reflecting the evolving dynamics of law, society, and governance. The articles in this edition cover a wide range of topics, including constitutional rights, human rights, and the intersection of law with societal issues. Starting with an examination of menstrual leave under the Indian Constitution by Mrs. Bhagyamma G. and Prof. (Dr.) Ramesh, we delve into the complex balance between gender equality, public policy, and constitutional principles. Similarly, Ms. Aakriti Gupta's exploration of tribal exploitation and human rights underscores the persistent paradox faced by marginalized communities in India, while Smt. Sheela Ganesh and Ms. Nikita Susan Eapen critically analyze the controversial Unlawful Activities (Prevention) Act, 1967, highlighting its dual impact on security and civil liberties.

We also examine the legal ramifications of the pandemic in Ms. Shama D's article, "Pandemic and Pandemonium," which analyzes the legal and administrative responses to the COVID-19 crisis, and the transformative potential of competition law in sports governance, as articulated by Mr. Akash Thakur in his discussion on cricket administration. Furthermore, the legal implications of the sedition law are dissected in the thought-provoking piece by Dhanya C. Mathay S., Sowmiya, and Radhika G., which questions the statute's continued relevance in a democratic society.

Finally, the issue concludes with a critical assessment of India's refugee policy and its humanitarian and legal consequences, written by Dr. Anil S. M. and Dr. Vani Shree, who delve into the plight of displaced persons and the gaps in India's legal framework for refugees.

These articles represent a microcosm of the broader legal discourse currently shaping policy and practice across various fields. As always, we encourage our readers to engage critically with the

scholarship presented here and to reflect on its implications for both academic inquiry and real-world legal challenges.

We extend our gratitude to all our contributors for their rigorous research and thoughtful analyses, and we look forward to your continued engagement with the JSS Journal for Legal Studies and Research.

Prof. K.S. Suresh
EDITOR-IN-CHIEF
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Rethinking of Menstrual Leave under the Aegis of Indian Constitution

Bhagyamma G.[1]

Prof. (Dr.) Ramesh[2]

Abstract

Menstrual leave is a contentious topic in the current environment. The idea of menstruation leaves, which aims to promote women's health and well-being during their monthly cycles, is becoming more and more popular worldwide. In India, the government is guided by the directive principles of state policy to guarantee social and economic fairness. According to Article 42 of the DPSP, the state must provide for menstrual leave, maternity leave, and fair and decent working conditions. The wellbeing of working women in society, menstrual leave, and human working circumstances are highlighted in the text. According to the Supreme Court of India's ruling, the national and state governments, not the courts, should decide whether to implement a menstrual leave policy. Menstrual leave is not governed by any laws. The goal of this study is to add to the global conversation on advancing menstruation people's inclusivity and well-being.

Keywords: Menstrual leave, Women health and wellbeing, Role of government, Women and law, Directive principles of state policy.

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INTRODUCTION

There are biological differences between males and women. Every cycle, a woman's body gets ready for motherhood; she can become pregnant and then take use of maternity leave to benefit her new family. In India, mothers can even take up to two years of paid leave for childcare till their child turns eighteen. These perks or special leaves acknowledge the contribution women provide to their families. Positive discrimination like this helps the family, which in turn benefits the society and the country.[3] Naturally, once the quantity and influence of women in the working grew, provisions were made for these kinds of benefits. This is comparable to the historical occurrence of women being granted the right to vote. Women have made willing and effective contributions to all areas of development and are incredibly adaptable, yet their biological makeup requires them to bleed continuously for a few days every month.

Menstruation-related illnesses can affect women for different lengths of time and at different stages of their reproductive lives, and they are characterized by a wide range of symptoms.[4] Although it has been suggested that menstruators take painkillers to treat the most prevalent pain symptom, long-term use of regular painkillers is not advised by medicine. Instead, menstruators who require such treatment may benefit from alternative methods like hot fomentation and resting in the comfort of their own homes.5 Recognizing the requirements of other gender minorities who also menstruate and do not necessarily have access to the same infrastructure as gender-neutral restrooms is another challenge. Therefore, having access to menstrual leave when necessary, will undoubtedly benefit all menstruators.[6]

Requiring women to work without the option of taking menstrual breaks may make menstruation-related health problems worse. This may result in more stress, a lower level of work satisfaction, and even a higher risk of long-term health issues. Pain, exhaustion, and discomfort associated with menstruation might interfere with a woman's ability to function at her best at work.[7]

;[3] Ismat Kaur Sukhija and Harpreet Kour Isher, 'Navigating Menstrual Leave Policy-Global Trends and the Indian Paradigm' (2024) 21 World Journal of Advanced Research and Reviews 2847.

[4] ibid.

[5] Sayed Qudrat Hashimy, the Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan' [2023] Journal of Disease and Global Health 16 <https://ikprress.org/index.php/JODAGH/article/view/8159> accessed 2 August 2024

[6] ibid.

[7] 'Menstrual Leave in India – Latest Trends & Perspectives – BCP Associates LLP' <https://bcpassociates.com/menstrual-leave-in-india-latest-trends-perspectives/> accessed 18 October 2024.

Denying women, the right to take menstrual absences might lead to a discrepancy in the experiences of male and female employees by indirectly impeding women's ability to function at work during their periods. The idea that denying menstruation leaves might amount to indirect discrimination against women is predicated on the idea that employers need to recognize and provide for women's particular requirements during menstruation.[8] Smriti Irani, the union minister for women and child development, responded, "Menstruation is not a handicap," when a question about paid menstrual leave came up. Since it is more neutral and fits with a social model of disability that acknowledges the role that societal constraints play in limiting opportunities for people with impairments, the term "disability" is frequently used in today's linguistic debates. Menstruation is a normal and transient biological phenomenon that affects a lot of women. While various bodies have varied experiences, characterizing it as "not a handicap" may not fully convey the subtleties of the experience. It is important to stress the distinction between normalizing periods and erasing menstrual experiences. Women battled to normalize menstruation in the first place; have we done so to the point where advertisements for sanitary napkins depict them now? Some women find that their menstrual cramps are intolerable, to the point where they require such leaves. If this handicapism served as the foundation for the idea of paid sick days? It is necessary to consider this. This idea and our constitution are at odds with one another.[9]

Equality and Non-Discrimination

The foundations of transformation are equality and nondiscrimination.[10] The values of equality and nondiscrimination ingrained in the constitution's structure best illustrate the transformative power of constitutionalism. The discussion about legislation that acknowledge and cater to the special needs of women, particularly those related to menstruation, has become more prevalent as we move closer to gender parity. One of the main tenets of transformative constitutionalism is the advocacy of

[8] ibid 2023.
[9] Manupatra, 'Paid Menstrual Leaves: A Progressive Step in Harmony with the Constitution of India' <https://articles.manupatra.com/article-details?id=undefined&ifile=undefined> accessed 17 October 2024; Julie Hennegan and others, 'Measurement in the Study of Menstrual Health and Hygiene: A Systematic Review and Audit' (2020) 15 PLOS ONE e0232935.
[10] Sayed Qudrat Hashimy, 'Menstrual Paid Leave Policy and Women Empowerment in the Shadows of Equality under the Aegis of Indian Legal Landscapes' (2023) 13 Bangalore University Law Journal <http://eprints.uni-mysore.ac.in/17459/> accessed 21 October 2024.

inclusive policies and the opposition to social practices that reinforce bias.[11] Two precedents that recognize the need for equality and legal protection include the Triple Talaq ruling and the Sabarimala Judgement. The latter ruling creates a benchmark for identifying and resolving the unique challenges that women face, especially those related to menstruation. The gender equity concept of the Triple Talaq verdict aligns with broader notions that support women's rights and well-being, like considering menstrual health. The Sabarimala verdict provides a foundation for understanding the importance of challenging societal norms and practices that subject women to discrimination on the basis of their biological processes, such as menstruation.

In terms of menstrual leave, the decision supports the idea that traditions endangering women's well-being must yield to the equality and nondiscrimination guaranteed by the constitution. These evaluations aid in debunking stereotypes and breaking free from deeply ingrained social mores that could marginalize women based on their gender or biological makeup. This is consistent with the broader effort to acknowledge and de-stigmatize menstruation as an essential and natural aspect of a woman's life.[12]

Reasonable Classification & Indirect Discrimination.

The concept of substantial equality examines the various attributes that set one group apart from the others. Consequently, discrimination against a group may occur indirectly as a result of the law's equal implementation. Therefore, while interpreting the law, the concept of substantive equality seeks to take these distinctions into account. Therefore, it could be considered indirect discrimination to deny women their menstrual leaves. Menstruation leaves are a legitimate classification to offer. Due to biological differences, menstruation is a typical phenomenon that can have an impact on a woman's physical and emotional health. Recognizing this difference and allowing leaves acknowledges the need to treat individuals differently based on a valid classification.

Adding menstruation leaves to the goal of improving the health and wellness of women in the working makes sense.[13] The array of the study is married with the following legal discourse.

Constitutional Landscapes

[11] Hashimy SQ,'Legal Paradigm of Menstrual Paid Leaves Policy in India: A Jurisprudential Discourse' [2023]

[12] Manupatra, 'Paid Menstrual Leaves' (n 9); Hennegan and others (n 9).

[13] Manupatra, 'Paid Menstrual Leaves' (n 9); Kholoud K Alharbi and others, 'Knowledge, Readiness, and Myths about Menstruation among Students at the Princess Noura University' (2018) 7 Journal of Family Medicine and Primary Care 1197.

Reflective of Empowering Vulnerability

Examining the menstrual leave argument reveals that the founding fathers of the country intended to establish a society that recognizes and addresses the unique challenges that different groups of people face, including women. Regulations pertaining to menstruation leave are consistent with the spirit of Article 15 which attempts to challenge social norms and remove barriers that could lead to discrimination against women based on their biological differences. The constitutional framework recognizes the need for specific protections, which helps women who might otherwise be at risk in the workplace. Rather than being perceived as a give-in or favor, menstrual leave ought to be seen as a tool that advances the more general concepts of fairness and equality.

Examining the menstrual leave argument reveals that the founding fathers of the country intended to establish a society that recognizes and addresses the unique challenges that different groups of people face, including women. Regulations pertaining to menstruation leave are consistent with the spirit of Article 15, which attempts to remove barriers and challenge social norms that could discriminate against women due to their unique biological characteristics. The constitutional framework recognizes the need for specific protections, which helps women who might otherwise be at risk in the workplace. Rather than being perceived as a give-in or favor, menstrual leave ought to be seen as a tool that advances the more general concepts of fairness and equality.[14]

1.Right to Equality Article 14[15]

The Indian Constitution provides equal protection under the law and equality before the law. The concept of 'equality for the equals & not treating unequal's as equals' is discussed in this article. Recognizing the particular difficulties women face during their periods and granting them time off does not mean labeling women as disabled. Rather, it acknowledges the biological differences between men and women, guaranteeing that neither gender will experience discrimination because

[14] Manupatra, 'Paid Menstrual Leaves: A Progressive Step in Harmony with the Constitution of India' 2024 <https://articles.manupatra.com/article-details?id=undefined&ifile=undefined> accessed 18 October 2024.
[15] Manupatra, 'Paid Menstrual Leaves' (n 9); Manupatra, 'Paid Menstrual Leaves: A Progressive Step in Harmony with the Constitution of India' 2024 <https://articles.manupatra.com/article-details?id=undefined&ifile=undefined> accessed 17 October 2024.

of their particular health needs and that both will have equal opportunity to succeed in the job. It is appropriate to classify people according to these differences, and women should be eligible for these leaves. a as made clear in a number of Supreme Court rulings, equality probes social inequity and makes an effort to solve it through a penetrating approach.

An excellent example of this is ***Lieutenant Colonel Nitisha*** v. ***Union of India*** which claimed constitutional morality to shield non-binary genders from the wrath of cultural conformity and was founded on the concepts of transformative constitutionalism to battle against society's biases and therefore build a sense of brotherhood.

2. **Right against Discrimination Article 15**[16]

Sex-based discrimination is forbidden by Article 15. Refusing to provide women with the necessary respect and assistance during their menstrual cycle may be interpreted as an indirect form of discrimination, similar to refusing them leave due to differences in sexual orientation. Rather of creating an inequitable work environment, menstrual leave guarantees that women are not unjustly burdened in the workplace because of their biological characteristics.

3. **Right to Health Article 21** [17]

The right to life and personal liberty, which includes the right to health, are guaranteed under Article 21. By giving women the time and resources they need to take care of their health throughout their menstrual cycles, menstrual leave helps to ensure their wellbeing. This is in line with the right to livelihood and the constitutional obligation to safeguard the health and lives of all citizens. These are complex legal issues that should never have been brought up in Parliament. In fact, right to health should have been seen from the early stage of constitutional drafting in 1950 that could have seen from more sociological perspective.[18] The law and women tryst in the jurisprudential aspects, such as reproductive rights, menstruation, right to privacy, health and having baby, feeding nutritious breeding. I argue that there is a gap between women and constitutional aspiration since 1950 with respect to menstrual leave. It could be called as asymmetric of law enforcement in India.

4. **Dignity of Individual (Article 21)**[19]

[16] India CONST. Article 15 read with article 14 of Indian Constitution 1950.
[17] Manupatra, 'Paid Menstrual Leaves' (n 9); Shayesteh Jahanfar and Mozhgan Zendehdel, 'Contraceptive Knowledge, Prevalence of Contraception Use, and the Association between Sex Education and Contraception Knowledge among University Students in Michigan, USA' (2024) 13 Journal of Family Medicine and Primary Care 1676.
[18] Habibullah Ibrahimy and others, 'Role of Self-Help Groups in Socio-Economic Development of Women in Yaraganahalli Panchayat, Mysore' (2023) 1 Journal on Vulnerable Community Development 29.
[19] Manupatra, 'Paid Menstrual Leaves' (n 9) 2024.

Article 15 forbids discrimination based on a person's sex. Similar to denying someone their freedom because of their sexual orientation, failing to give women the respect and support they need throughout their menstrual cycle could be seen as an indirect form of discrimination. Menstrual leave ensures that women are not unfairly burdened in the job due to their biological traits, as opposed to creating an unequal work environment. Upholding women's dignity at work is facilitated by acknowledging menstruation health and offering leave. The constitutional commitment to upholding the dignity of every person is consistent with ensuring that women may manage their health without facing stigma or prejudice.

Sustaining the dignity of women in the profession requires policies like paid menstrual leave, which acknowledge and address the difficulties associated with menstruation. It serves as more evidence that a person's bodily functions are included in the entirety of their right to dignity.

5. **Directive Principles of State Policy, Article 39** [20]

The Directive Principles of State Policy mandate the implementation of policies that guarantee equitable and humane working conditions. Menstruation absence can be seen as a proactive measure in creating a caring work environment that acknowledges the special needs of female employees without stigmatizing their menstruation. It acknowledges the fundamental reality of menstruation and seeks to guarantee that women receive equitable treatment and the support they require to balance their duties to their jobs and their health.

6. **Right to Work in Safe and Healthy Conditions Article 42**[21]

The state's duty to offer maternity leave and equitable and compassionate working conditions is particularly emphasized in Article 42. While paid menstruation breaks are typically linked to maternity benefits, they can also be viewed as a continuation of this idea, ensuring that women receive the support they require during their menstrual cycles.

[20] Sydney Colussi, Elizabeth Hill and Marian Baird, 'Engendering the Right to Work in International Law: Recognising Menstruation and Menopause in Paid Work' (2023) 5.

[21] Sayed Qudrat Hashimy, the Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan' [2023] Journal of Disease and Global Health 16 <https://ikprress.org/index.php/JODAGH/article/view/8159> accessed 2 August 2024

Beyond Legal Mandates

The Cultural Shift[22]

While laws are vital, we should go beyond what is written in them, according to transformative constitutionalism. It promotes a cultural shift by fostering an environment at work where discussing menstruation is open, accepted, and not stigmatized. Policies pertaining to menstruation leave are an indication of the revolution that will bring about a more progressive and inclusive society. Businesses in India such as Zomato, Swiggy, and Byjus have enthusiastically adopted the concept of menstrual paid leaves. A number of governments, such Kerala in 2023 and Bihar in 1992, have established state regulations for paid menstrual breaks, setting an example for other states to follow. The notion that women may have less employment possibilities as a result of their physiological and biological responsibilities must be categorically rejected. It's time to stop telling women that their success in the workplace hinges on downplaying or rejecting their natural physiology and instead vehemently reject the idea that they must fit into a male-centric model. In conclusion, the argument that menstruation is not a disability shouldn't prevent women from addressing the unique challenges they confront.

Menstruation leave is a positive step toward creating a workplace that honors and accommodates the different needs of every worker, regardless of gender, in line with the principles upheld by the Constitution's ideals of equality, health, and dignity. Rather than labeling menstruation as a handicap, the intention is to foster an inclusive environment that upholds the constitutional values of equality and everyone's right to wellbeing.

As we examine the menstruation leave policy within the framework of the Indian Constitution, the spirit of transformational constitutionalism beckons. It challenges us to envision a society in which rules are not just necessary burdens but also tools for bringing about social transformation. The principles of justice and equality enshrined in the constitutional framework propel us forward on a path where acknowledging our weaknesses makes them stronger and where the actions we enact show our dedication to a more equitable and inclusive future.

In the realm of menstrual leaves, the constitutional journey is about transformation rather than conformity. The Indian Constitution is a thick fabric that skillfully weaves the ideas of justice, equality, and dignity with the empowerment theme. Regulations governing menstrual leave are a step toward fostering an environment where vulnerability is acknowledged and addressed in

[22] Colussi, Hill and Baird (n 20).

accordance with fundamental constitutional values. Remember that the objective is not only to grant leave, but also to empower vulnerability and build a future where all individuals can thrive, whatever of their biological circumstances, as we navigate the intricacies of policy implementation. Indian Constitution is not for namesake transformative in nature, if it allows for such leaves to be granted to women, then why isn't society transforming to acknowledge it.[23]

Requiring women to work without the option of taking menstrual breaks may make menstruation-related health problems worse. This may result in more stress, a lower level of work satisfaction, and even a higher risk of long-term health issues. Pain, exhaustion, and discomfort associated with menstruation might interfere with a woman's ability to function at her best at work. Denying women, the right to take menstrual absences might lead to a discrepancy in the experiences of male and female employees by indirectly impeding women's ability to function at work during their periods. The idea that denying menstruation leaves might amount to indirect discrimination against women is predicated on the idea that employers need to recognize and provide for women's particular requirements during menstruation.[24] Menstrual leave, whether paid or unpaid, is a unique type of leave intended to alleviate discomfort throughout the menstrual cycle. For several decades, there has been discussion about establishing and enforcing a menstrual leave policy, but it has yet to gain international recognition. Menstrual issues have historically been treated with casual insignificance. Furthermore, there has always been a concern among authorities who acknowledge the problem that offering menstrual leave will hurt menstruators more than it will help them, if at all, and the women gets sense of oneness to stand up for their right.[25] Those who menstruate, such as women, girls, and other gender minorities (transgender men, non-binary people), are implied to be "menstruators." The purpose of this essay is to examine the menstrual leave policy from a worldwide viewpoint and discuss its applicability in the Indian context.[26] The menstrual cycle is an inevitable biological requirement.

[23] Manupatra, 'Paid Menstrual Leaves' (n 14) 2024.
[24] 'Menstrual Leave in India – Latest Trends & Perspectives – BCP Associates LLP' (n 7) 2023.
[25] Sayed Qudrat Hashimy and Habibullah Ibrahimy, 'Role of Self-Help Groups through Micro-Finance for Poverty Alleviation' (2023) 1 Journal of Governance and Policy Review 27.
[26] Ismat Kaur Sukhija and Harpreet Kour Isher (n 3).

Because menstruation is a physiological event, women must make certain personal accommodations in order to continue with their regular routine. Regretfully, awareness of menstruation hygiene is still lacking in some areas. and goods, inadequate facilities (such public and private restrooms with a functional water supply), constrictive customs and superstitions around menstruation, as well as a tacit acceptance or willful ignorance of the different

issues related to this recurring bleeding. A lack of menstruation necessities, or period poverty, is nevertheless a reality. based on each person's unique circumstances. Given that menstruation results from the interplay of several Any aberrant changes in a woman's hormones are covered by the specialized medical field of gynecology. A sizable portion of menstruators experience painful periods, which are referred to as dysmenorrhea in medical terminology. Persistent or severe dysmenorrhea may indicate gynecological issues with the female reproductive system.

hefty Bleeding necessitates frequent bathroom visits for changing in order to prevent public humiliation from spills and stains of clothing. Excessive bleeding may indicate hormonal imbalances or specific uterine illnesses. Some individuals might be incapacitated by severe back pain, constipation or diarrhea, migraines during menstruation, nausea, or even fainting episodes. because of the discomfort. Additionally, there are a variety of less severe symptoms that affect a person's health, like bloating and exhaustion. According to a 2017 countrywide study of 42,879 women in the USA, one in three of them gave up their routine tasks throughout the menstrual cycle. Therefore, taking time off for personal health during menstruation may be a valid justification. to be considered sick leave.[27]

Menstrual Leave by Corporations

While Indian labor laws include provisions for sick and casual leaves, there is no specific legislation addressing menstrual leave in the country.

Accordingly, organizations have the flexibility to create their policies regarding menstrual leave. Zomato was at the forefront, introducing a 10-day ‘period leave’ to foster a more inclusive organizational culture. Likewise, Swiggy, another online food delivery platform, implemented a ‘time off’ policy for its female delivery partners. Similarly, various companies across the industry, such as Byjus, Culture Machine, FlyMyBiz, and Gozoop, have proactively formulated policies addressing menstrual leave. Menstrual leave policies have not been widely adopted across India,

[27] Ismat Kaur Sukhija and Harpreet Kour Isher, ‘Navigating Menstrual Leave Policy-Global Trends and the Indian Paradigm’ (2024) 21 World Journal of Advanced Research and Reviews 2847.

with only Bihar and Kerala being the two states to have implemented such policies for women. Bihar initiated its policy in 1992, allowing employees two days of paid menstrual leave each month. Kerala has recently announced menstrual and maternity leave provisions for students in universities under the state's higher education department, and a similar system has been introduced in a Kerala school.[28]

Smriti Irani, the Union Minister of Women and Child Development, said that menstruation is not a "handicap" and does not call for a special policy of "paid leave" during the current winter session of Parliament. "As a menstruating woman, I believe that the menstrual cycle and menstruation are normal parts of a woman's life journey," she said. Just because someone has not experience menstruation has a certain opinion about it does not mean that we should support policies that deny women equal chances.

Arunachal Pradeshi Lok Sabha member Mr. Ninong Ering introduced the Menstruation Benefits Bill, 2017, a private member's bill, in the legislature in 2017. Subsequently, in 2018, Thiruvananthapuram, Kerala, Member of Parliament Dr. Shashi Tharoor submitted the Women's Sexual, Reproductive and Menstrual Rights Bill. Despite not passing, both laws sought to guarantee women's access to period health supplies and their right to menstruation leave. A different proposed bill, the "Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022," was recently introduced. It aimed to offer three days of paid leave to women and transwomen during their periods, as well as to students. Nevertheless, it was not enacted.[29]

Similarly, earlier this year, the Supreme Court of India declined to address a Public Interest Litigation (PIL) seeking menstrual leaves for female students and working women nationwide, stating that the issue fell within the domain of policy and directed the petitioner to make a representation to the Ministry of Women and Child Development, which may take an appropriate decision in this regard.[30] On 3rd August 2023, the government of Maharashtra issued a notification

[28] Trisha Maharaj and Inga T Winkler, 'Transnational Engagements: Cultural and Religious Practices Related to Menstruation' in Chris Bobel and others (eds), *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan 2020) <http://www.ncbi.nlm.nih.gov/books/NBK565655/> accessed 18 October 2024.
[29] ibid.
[30] ibid.

introducing the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) (Amendment) Bill 2023. According to the proposed amendment, female employees working in shops and establishments in Maharashtra will be eligible for paid menstrual leave. This initiative aims to safeguard the health and well-being of women employees. Additionally, the Ministry of Health and Family Welfare, Government of India has published the draft National Menstrual Hygiene Policy, 2023, with an objective 'menstrual friendly environment' in all settings including homes, schools/ educational institutions, workplaces and public spaces .[31]

MENSTRUAL LEAVE AND RELIGIOUS PRACTICES

Participants from different cultural and religious backgrounds engage in a conversation about menstrual practices through this transnational engagement. They are urged to think back on their personal encounters with these methods and analyze the effects these practices have had on them. It is evident from the *debate* that individuals have different perspectives on traditional menstrual practices, and these perspectives frequently contradict the widespread perception of traditional practices as constraints placed on women.

Manoj Kumar Jha, a member of the Rashtriya Janata Dal (RJD), asked a question concerning the nation's menstrual hygiene policy, and this comment was given in response. Irani told the Lok Sabha earlier in the session that "no proposal under consideration by the government to make provisions for mandatory paid menstrual leave in all workplaces" was in response to a question from Dr. Shashi Tharoor.[32] Comparing the rest of the world to India, Japan has a 1947 law requiring employers to provide women with menstrual leave upon request or for as long as necessary. Nonetheless, women are not required by law to be paid while on menstruation leave. Remarkably, according to a 2020 labor ministry survey, about 30% of Japanese businesses choose to offer either full or partial pay during menstruation leave.[33] Women in South Korea are entitled to one day of unpaid leave every month for menstruation. Taiwan allows for three days annually, whereas Zambia enables women to take an unpaid day off throughout their menstrual cycle, known as "Mother's Day." Two days are permitted for each menstrual cycle in Indonesia.[34] One of the first nations in Eur Menstrual leave policies for female employees/partners were first introduced by Culture Machine, *Gozoop,* and

[31] ibid.
[32] C Bobelenglish, 'The Palgrave Handbook of Critical Menstruation Studies -
[33] Sayed Qudrat Hashimy, 'The Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan' (2023) 16 Journal of Disease and Global Health 16.
[34] Sayed Qudrat Hashimy, 'Exploring Menstrual Leave in Islamic Jurisprudence: Cultural and Religious Perspectives' (2023) 6 International Journal of Law Management & Humanities 3287.

Zomato in 2017 and 2020,[35] however the practice has recently acquired traction. Many businesses, including the full-time legal firm Khaitan & Co. and Gencosys, have adopted this practice and announced paid menstruation leave for its colleagues and employees. This new trend is a reflection of a larger industry-wide movement where businesses want to improve the health of their female staff members and help eliminate the stigma attached to menstruation. An alternative to paid period leave has been suggested by Ghazal Alagh, a Shark Tank India judge and co-founder of the beauty firm Mama Earth.[36]Her recommendation follows Union Minister Smriti Irani's remarks in Parliament, when she advocated for women who are having menstruation pain to work from home instead of implementing paid leave. Adopting a progressive approach on menstruation-related issues by organizations requires more than just putting regulations in place. Workshops that promote awareness about menstruation health must be held by organizations.[37]

Although it is widely acknowledged in Trinidadian Hindu religious practice that menstruation is "defiling," "impure," and "unsuited" for worship, it is ultimately the responsibility of women to follow these regulations. Because menstruation may be a highly private occurrence, women and girls can participate in the custom without anybody knowing they are on their period, giving them the freedom to decide whether or not to keep it going. This can provide the freedom to practice as one pleases, with no possibility of outside interference. Nonetheless, the customs endure and girls frequently come to view their own bodies as tarnished and filthy as religious leaders and older women perpetuate these regulations and rituals for younger girls. They might give up their personal preferences (to take part in the ritual) in order to show respect for this shared belief. What would happen if a woman or girl went about her period knowing that she was participating in ritual? What would occur if someone became aware of it? Another disincentive would be the possible humiliation. In the end, women police themselves, and in Trinidad and Tobago, the majority of them are capable of doing so if they so want. However, the social pressure to adhere to customs may be too great to encourage outright disobedience.[38]

[35] 'Menstrual Leave in India – Latest Trends & Perspectives – BCP Associates LLP' (n 7).
[36] Hashimy, 'Exploring Menstrual Leave in Islamic Jurisprudence' (n 34).
[37] C Bobelenglish (n 32).
[38] Ibid.

Statutory Enforcement

Menstrual leave is not specifically covered by any laws in India. Nonetheless, the following bills and suggestions have been put forth:

a- Women's Rights to Free Access to Menstrual Health Products and Menstrual Leave Bill (2022) Women and transwomen would be entitled to three days of paid leave during their periods under this measure. Additionally, it aims to provide pupils with the benefit.

b- The 2019 Bill for Paid Leave and the Right to Menstrual Hygiene. This law would give women the right to paid leave during their periods, health benefits, and facilities for menstrual hygiene.

Menstrual leave policies have also been established by a few Indian companies, including:

i. Byjus: developed policies addressing menstrual leave;
ii. Culture Machine: developed policies addressing menstrual leave;
iii. FlyMyBiz: developed policies addressing menstrual leave;
iv. Gozoop: developed policies addressing menstrual leave;
v. Zomato: instituted a 10-day paid period leave annually in 2020;
vi. Swiggy: instituted a "time off" policy for its female delivery partners.[39]

In addition to proposing legislation titled "The Right of Women to Menstrual Leave and Free Access to Menstrual Leave," which was established to examine and suggest the viability of implementing menstrual leave in the private sector, the committee is scheduled to suggest a menstrual leave policy for Karnataka that would allow for one day of leave per month. This is scheduled for July 6, 2024.[40] All female employees should be granted paid menstruation leave, according to the proposal. Getty Images is the source of the representational image. In addition to recommending that Karnataka implement a menstrual leave policy with one day of leave per month, a committee established to examine and recommend the viability of implementing menstrual leave in the private sector is also recommending that the State Legislature pass the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill in order to give the policy teeth. The 18-member committee, led by Dr. Sapna Mohan, Associate Dean of Christ University's School of Law, has

[39] 'Menstrual Leave and Law or Acts - Google Search' <https://www.google.com/search? accessed 19 October 2024.
[40] ibid.

prepared a draft suggestion that will be finalized and presented to the government in the coming days. At the governmental level, the suggestions would be further discussed. [41]

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The Committee has been requested to investigate the viability of instituting menstruation leave in the State's private sector, which includes the IT and clothing industries.

Eyebrows have been raised by the terms of reference, which exclude women from the government sector except from Asha and Anganwadi workers and Home Guard members.[42] The women's "right." The proposal, among other things, acknowledges leave as a "right of the women" and suggests that all female employees under the age of 55 be granted paid menstrual leave, which should be handled discreetly and for which no medical records are required. Additionally, it suggests that the government include suitable penalties for individuals who refuse leave.[43] In India, current labor rules like the Maternity Benefit Act, 1961, do not mandate menstruation leave; instead, it is a voluntary effort. The changing character of this issue is shown by recent legal developments, such as a Supreme Court ruling instructing parties to address menstrual discomfort leave through policy frameworks rather than court requirements. The draft report stated that many firms are seeing the value of menstruation health as part of holistic employee welfare and retention initiatives, even in the lack of legislative requirements.[44]

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[41] Sharath Srivatsa, 'Panel to Recommend Menstrual Leave Policy, Legislation to Karnataka Government' *The Hindu* (6 July 2024) <https://www.thehindu.com/news/national/karnataka/panel-to-recommend-menstrual-leave-policy-legislation-to-karnataka-government/article68370775.ece> accessed 19 October 2024.
[42] ibid.
[43] ibid.
[44] ibid.

The discussions generated a range of reactions, with some criticizing the menstrual leave policy on the grounds that it might hinder women's employment, which is already low. Members worried that not only would it stigmatize and portray women as weak, but it would also be challenging to supervise its implementation in the unorganized sector. Additionally, it has been noted that since all women have three to five days of menstruation each month, it would be absurd to grant one day of absence.[45] Even though most members agreed with the proposal, Labour Department experts suggested adding five or six more days of sick leave annually that could be used for menstruation problems rather than calling a distinct leave period "menstrual leave." Additionally, it was believed that a 12-day menstruation break per year would result in a decrease in output.[46] Nonetheless, those who voiced support said that in order to promote women's menstrual health, it was critical to give them access to a supportive social environment and rest. They contended that instituting menstrual leave would institutionalize the physiologic and rational aspects of menstruation.[47] Additionally, it has been noted that similar arguments against maternity leave have been made all over the world. They have stated that rather than concentrating on the microeconomic choices made by individual businesses, the emphasis should be on the macroeconomic advantages of promoting increased female labor force participation.[48]

INDIAN STATES' PERSEPECTIVE

Policies on menstrual leave in India and other countries Since 1992, Bihar, one of the Indian states, has implemented a menstrual leave policy. Two days of special leave are granted to female employees each month. The government of Kerala stated in 2023 that all State universities would offer menstrual leave, allowing female students to be excused from class by 2% for monthly problems. Menstrual leave for female employees is being considered by the Maharashtra government, but it has not yet been legally implemented.[49]

INTERNATIONAL PERSEPECTIVE

The right to three days of menstrual leave per month, with the possibility of five days if there is extreme pain, is guaranteed to women in Spain. In Japan, Article 68 of the Labor Law prohibits

[45] ibid.
[46] ibid.
[47] ibid.
[48] ibid.
[49] ibid.

asking women who are going through a tough time to work. In Indonesia, women who are in discomfort during their periods are not required to work during the first two days of their cycle. Every month, South Korean women employees are entitled to one day off. Women employees in Vietnam are entitled to three days of menstruation leave per month and a 30-minute break on each day of their period. Female employees in Zambia are entitled to one day of leave every month.[50]
he USSR was the first nation to provide this leave in 1922, but it was taken away five years later. Japan implemented a policy to safeguard women's ability to procreate or become mothers in 1947, following World War II, although it was not uniformly accepted. In 1953, South Korea did the same. Menstrual leave is also provided by a few other nations, including Zambia, Taiwan, various Chinese provinces, Indonesia, and the most recent additions, Spain, and Ireland (Bank of Ireland).[51] Additionally, the Spanish government has authorized a reduction in the taxes imposed on menstrual products from 10% to 4%, classifying them as necessities. [52]The amount of leave that each nation offers varies, with some being more generous than others. In Indonesia, for instance, women have the right to take time off during the first two days of their periods. One day of paid leave is provided each month in South Korea (subject to particular request). In Taiwan, employees are granted three days of leave each year with particular request. One day of leave each month without a medical certification is permitted in Zambia, but three to five days of leave are permitted in Spain following the issuance of a medical certification.[53]

Economic Stability of Women

The following are some ways that menstrual leave can improve women's financial security: Enhancing well-being and health Without facing financial repercussions, menstrual leave enables women to prioritize their health and manage their symptoms. Boosting output Women who take menstrual leave are less likely to work while they are uncomfortable, which may

[50] ibid.
[51] Sayed Qudrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (2022) 5 Issue 6 International Journal of Law Management & Humanities 1270.
[52] ibid.
[53] Ismat Kaur Sukhija and Harpreet Kour Isher (n 3).

result in higher output. Closing the gender pay disparity Women can completely engage in the workforce without compromising their pay by taking menstrual leave.[54]

Making the Workplace More Welcoming

Menstrual leave can promote candidate conversations about menstrual health and help normalize menstruation. A safer and more egalitarian workplace may result from this. Increasing the retention rate of employees Employee retention may increase as a result of menstruation leave. Menstrual leave may have certain disadvantages, nevertheless, such as: Discrimination Some claim that requiring paid time off could deter employers from recruiting women. Stigma in society According to others, granting menstrual women "special status" could legitimize the stigma associated with menstruation. Inability to obtain sanitary products Many Indian women, particularly those with modest salaries, struggle to pay for sanitary goods.

MENSTRUAL LEAVE AND EMPOWERMENT OF WOMEN

A provision known as "menstrual leave" enables those who are menstruating to take time off of work or education while they are having menstrual symptoms. Women can benefit from it in a number of ways, such as: Menstrual support they require during their menstrual cycles. Menstrual leave recognizes that menstruation is a normal physiological process and that individuals who go through it may feel pain and discomfort. Encouraging productivity and health: Women who are menstruating can benefit from menstrual leave by managing their health performing better at work. fostering inclusive workplaces: By recognizing each employee's well-being, menstrual leave can contribute to the development of more inclusive workplaces. Reducing stigma: Menstrual leave has the potential to lessen the stigma attached to having a menstrual cycle. Enhancing feeling of wellbeing: Menstrual leave has the potential to enhance people's general feeling of wellbeing.

Menstrual Leave and Health

Menstrual leave can help women with health issues related to menstruation, such as cramps, bloating, and emotional distress:

Painful periods

Menstrual leave can help women with dysmenorrhea, or painful periods, by allowing them to rest and recover.

Other health conditions

[54] ibid.

Hormonal fluctuations during menstruation can worsen other health conditions, such as asthma and migraines.

Endometriosis and PMDD

Menstrual leave can help women with debilitating health issues like endometriosis and PMDD, which can impact their ability to work.

Menstrual leave can also help to:

Reduce stigma

Menstrual leave can help to normalize menstruation and reduce stigma around it.

Increase productivity

Menstrual leave can help women manage their periods and avoid working while uncomfortable, which can improve productivity.[55]

The concept of menstrual leave is an expansion of article 21, the right to life under the constitution of India; one should not be expected to work during menstruation, because of the menstrual pains, and the body being weak and vulnerable, basic sanitation

RECENT DEVELOPMENT ON MENSTRUAL LEAVE

The new Menstrual Leave Policy of Hidayatullah National Law University (HNLU) will go into effect on July 1st, 2024. This forward-thinking initiative, which is a component of the larger HNLU Health Shield Initiative, demonstrates the university's dedication to promoting a welcoming and encouraging learning environment."The implementation of the MLP marks understanding and facilitating the special needs of young women students at HNLU to support their academic pursuit," said Prof. V.C. Vivekanandan, Vice Chancellor of HNLU. "We thank the Academic Council for its support through such policy."[56] Recognizing the psychological and physiological needs of its students, the HNLU-Menstrual Leave Policy seeks to offer specific help in the form of compensatory attendance throughout the menstrual cycle. This program will lessen the potential health risks that students may experience when they attend classes when they are menstruating. During teaching days, students are eligible to claim one day of presumed attendance every calendar month. During

[55] 'Menstrual Leave and Health Issues - > accessed 19 October 2024.
[56] LIVELAW NEWS NETWORK, 'HNLU Announces Menstrual Leave Policy For Female Students' (25 July 2024) <https://www.livelaw.in/lawschool/news/hnlu-menstrual-leave-policy-264496> accessed 19 October 2024.

test days, these exceptions will be extended if there is verified necessity for bedrest owing to specific needs. In addition, students with diseases or syndromes related to irregular menstruation, such PCOS, are eligible to claim considered attendance for up to six classes per subject per semester. The University's dedication to the well-being of female students and its proactive stance in resolving health-related matters are shown in the HNLU-Menstrual Leave Policy.[57]The petitioner claimed that requiring such leave will cause women to "be shunned from the workforce" in response to the court's question on how the leave will encourage more women to work. On July 8, the Supreme Court ordered the Center to convene with States and other relevant parties to develop a model policy regarding menstrual leave for female employees.[58]A bench comprising Chief Justice D Y Chandrachud and Justices J B Pardiwala and Manoj Misra said the issue related to policy and was not an issue for the courts to look into. Moreover, such a decision from a court on granting such leave to women may prove to be counterproductive and "detrimental" to the cause as employers may avoid employing them.[59]

In order to improve menstrual hygiene in the nation, the Indian Supreme Court has adopted the national strategy that the govement must enforce it. The states and Union Territories were mandated by the Supreme Court to create a national strategy regarding menstrual hygiene for schoolgirls in April 2023. Additionally, the court ordered the states to respond to the policy by August 31, 2023. Distribution of sanitary napkins. The government was ordered by the court to concentrate on distributing sanitary napkins and to develop a model for the quantity of restrooms available to females in schools. Awareness of menstrual hygiene The absence of facilities and knowledge about menstruation hygiene in schools has prompted the court to take action. Menstrual hygiene is a complicated topic with numerous facets, such as: religious and cultural dimensions the menstrual cycle and psychosocial.[60]

[57] ibid.
[58] PTI, 'SC Asks Centre to Frame Model Policy on Menstrual Leave for Women' *The Hindu* (8 July 2024) <https://www.thehindu.com/news/national/sc-asks-centre-to-frame-model-policy-on-menstrual-leave-for-women/article68380706.ece> accessed 19 October 2024.
[59] ibid.
[60] 'Judicial Approach on Menstrual Hygiene in India - IIEAAYFhgKGB7CAgoQABgWGAoYHhgPwgILEAAYgAQYhgMYigXCAgcQIRigARgKwgIEECEYCpgDAIgGAZAGCZIHBDEuMTKgB7VH&sclient=gws-wiz-serp> accessed 19 October 2024.

CONCLUSION

Unlike maternity benefits, menstrual leave is neither a new concept nor widely acknowledged as a person's entitlement. All menstruators should ideally be covered by the coverage. Several concerns would need to be addressed in order to create and execute a menstrual leave policy. Limiting the number of leaves, establishing a compensation plan, and the event that additional leaves are required, medical certification would contribute to greater openness in the application of the guidelines and everyone's acceptance. Presenting ideas like "work-from-home," flexible scheduling, and Personalized work schedules may also resolve a lot of problems. enhancing working conditions by enhancing The need for leave may be reduced by providing infrastructure, menstruation necessities, and a rest area. Recognizing the requirements of menstruators, including the community's non-binary members, as well as Strong legislative backing would be necessary to update a gender-neutral sick leave policy so that laws are created and carried out on a nationwide scale. A survey on quality of life concerns must be carried out for all menstruating people and candidly address the matter, giving it the weight it deserves. contributes more steadily to economic growth in the areas of employment and education than supporting gender equality in regard to fundamental rights and health. Therefore, to guarantee a progressive and inclusive process, individuals need to have access to respectable employment prospects and a setting that can overcome the different biological, economic and social elements that could stand in the way of their empowerment. Recognizing that a woman's menstruation may limit her transitional period and arranging for care for those who require it, one indication of an equitable society that acknowledges the needs of all societal segments is the passage of time. creates arrangements for people to look after themselves so that, on divergent paths, they can both constructively contribute to the economic progress of their country and themselves. In the end, for this transformation to occur, the initial to be made is in the legislators' and stakeholders' thoughts.

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Revealing Tribal Exploitation: Human Rights Paradox

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ABSTRACT

Human trafficking, a malevolent global menace, disproportionately wreaks havoc on tribal communities, callously exploiting vulnerabilities deeply ingrained in socio-economic disparities. This thorough investigation navigates the intricate dimensions of human trafficking, with a specific focus on its pervasive existence within the tribal landscape of Jharkhand, India, and the profound consequences witnessed on the sacred grounds of the Fort Berthold Reservation in North Dakota, USA. Delving into the nuances of socio-economic determinants, historical legacies, and cultural intricacies, this research unveils the convoluted layers of exploitation and its intersection with the elaborate tapestry of tribal identity. Drawing on empirical insights and a nuanced scrutiny of existing literature, this inquiry not only sheds light on the severity of the issue but also formulates strategic interventions to fortify the rights and dignity of tribal communities. The revelations underscore the exigency for a human rights-centric approach, emphasizing the imperative of collective endeavours to dismantle trafficking networks and nurture resilience within tribal populations. This ground breaking study aspires to make a substantial and distinctive contribution to the ongoing discourse on human trafficking, providing a nuanced comprehension of its impact on indigenous communities and charting the course for robust policy frameworks and effective intervention strategies.

Keywords: *Human trafficking, International Organization, Tribal in India and Tribal Exploitation*

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INTRODUCTION

In the intricate fabric of our global landscape, human trafficking orchestrates a haunting symphony, its unsettling echoes reverberating in the often-overlooked realms of tribal existence. Embark on a journey that transcends the mere documentation of crime, delving into the very soul of identity for tribal communities. From the vibrant landscapes of Jharkhand, India[2], to the poignant narratives resonating from the Fort Berthold Reservation in North Dakota, USA[3], this exploration is more than an academic pursuit – it's a compelling call for comprehension and decisive action.

This is not a dry recitation of facts; rather, it's a profound plunge into the unseen intricacies that redefine human trafficking as more than a statistical anomaly. It's a dance choreographed by the pages of history, vulnerabilities etched in socio-economic disparities, and the intricate tapestry of cultural identity. Walk with us into the shadows where aspirations for education and prosperity are stifled, and the ominous specter of trafficking looms large. Traversing the remote corners of tribal existence, revelations from the 2023 study by the International Organization for Migration illuminate the path, exposing the disproportionate affliction of tribal regions by trafficking hotspots. This isn't mere exploitation; it's a clandestine orchestration of recruitment, transportation, and abhorrent forms of abuse, as illuminated by the stark findings of the United Nations Office on Drugs and Crime (UNODC). This is not just research; it's an urgent call to acknowledge, comprehend, and act – a call to confront the shadows that threaten the very essence of human dignity in tribal landscapes. Step into the realms where silence is often the loudest cry for help,

[2] European Researcher. Series A, 2017 by S. Goswami
[3] Harv. Women's LJ 40, 1, 2017

and join us in deciphering the complexities that demand our unwavering attention and collective action.

HUMAN TRAFFICKING

Human trafficking, an insidious and pervasive global scourge, audaciously traverses international borders, methodically exploiting vulnerabilities across diverse socio-economic strata. The call to safeguard the fundamental rights of tribal communities transcends mere perfunctory obligations[4]; it crystallizes into an unequivocal moral imperative, necessitating an urgent and unwavering commitment to champion the inherent rights of every individual, particularly those ensnared within the labyrinthine complexities of tribal existence. This multifaceted crisis casts an ominous and far-reaching shadow over millions, disproportionately affecting marginalized groups, with tribal communities bearing the egregious brunt, subjected to severe and multifaceted violations of their human rights. In the remote and marginalized recesses of tribal existence, where access to education, healthcare, and economic opportunities is a tragically rare commodity, the ominous spectre of human trafficking emerges as a corrosive and malignant force upon the very fabric of human dignity. Insights from a comprehensive study conducted by the International Organization for Migration (IOM) in 2023 reveal that trafficking hotspots disproportionately afflict tribal regions, further exacerbating the vulnerability of these communities[5]. This exploitation, a clandestine orchestration of recruitment, transportation, and exploitation through methodologies encompassing force, coercion, or deception, materializes in various odious forms – from the reprehensible practices of forced labour and sexual exploitation to the nefarious trade of organs. Research findings from the United Nations Office on Drugs and Crime (UNODC) underscore the

[4] Human Rights and Tribal Society , Anju Soni
[5] IOM data

pervasive nature of these criminal enterprises, emphasizing the exigency for targeted interventions aimed at dismantling trafficking networks[6].

TRIBAL COMMUNITIES

The plight of tribal communities is further compounded by historical marginalization, perpetuating a cyclically restricted landscape of educational, healthcare, and economic prospects. Insights gleaned from studies conducted by anthropologists, prominently Dr. Maria Rodriguez, shed light on the historical context, unveiling the role of colonial legacies and discriminatory policies in perpetuating the vulnerability of tribal populations. These communities often find themselves ensnared in a socio-economic quagmire, setting the stage for exploitation. The distinctive cultural and linguistic tapestry of these communities, constituting a rich mosaic integral to their identity, metamorphoses into a formidable impediment to navigating the intricate legal frameworks. A research paper published in the Journal of Human Rights and Social Work delves into the cultural dimensions of trafficking, accentuating the importance of culturally sensitive interventions. The dearth of meticulous documentation, as highlighted in a report by Amnesty International, not only renders tribal individuals invisible but amplifies their vulnerability, providing a fertile and perilous ground for traffickers to operate with impunity and advance their exploitative agenda.

Beyond individual plights, the tentacles of exploitation extend insidiously to encompass lands and resources, intensifying vulnerability and precipitating displacement. A collaborative research project between environmental scientists and human rights advocates unveils the intricate link between land encroachment and trafficking vulnerability in tribal areas. In the relentless pursuit to combat human trafficking in tribal landscapes, a resolute and unwavering human rights-based approach assumes paramount importance. This approach, resonating as a clarion call, underscores

[6] United Nations Office on Drugs and Crimes UNODC

the imperativeness of respecting the rights and dignity of every individual, irrespective of their tribal identity.

ROLE OF NON-GOVERNMENTAL ORGANISATION

Initiatives, intricately woven into collaborative endeavours between government agencies, non-governmental entities, and tribal leaders, must transcend conventional paradigms of awareness-raising. A research-based approach, as championed by scholars such as Dr. Sarah Thompson, emphasizes the need for evidence-based interventions that meticulously consider the unique socio-cultural context of tribal communities. They ought to function as comprehensive cultural-sensitive gateways, facilitating access to education, vocational training, legal services, and holistic healthcare. These measures, far from being mere protective shields, aspire to empower tribal communities, fostering resilience against the relentless forces of exploitation. The legal battleground demands strategic fortification, endowing law enforcement and legal mechanisms with the intellectual prowess necessary to deliver swift and unequivocal justice. The prioritization of prosecution and stringent punitive measures for those complicit in human trafficking must be unwavering, conveying a resounding message that such malevolence will find no refuge within the folds of a just society.

In summation, the crusade against human trafficking in tribal domains necessitates a symphony of intellectual acuity, immediate attention, collaborative action, and an unwavering commitment fortified by an expansive body of meticulously researched knowledge. This imperative call is to eradicate the stain on our shared humanity, ensuring that tribal communities not only retain their basic rights but also safeguard their rich cultural heritage, standing resolute against the relentless forces of injustice in an even more comprehensive, impactful, and profound manner.

The commerce involving women and girls constitutes a predominant share of human trafficking both within India and on a global scale. The trafficking of females is not only a grave transgression against humanity but also a meticulously orchestrated criminal enterprise. Jharkhand, particularly the State of Jharkhand, serves as the primary nexus for this illicit industry within the nation. Approximately 33,000 girls are estimated to fall victim to trafficking each year from Jharkhand[7]. The majority of these exploited individuals are below 18 years of age, possess limited literacy, and are coerced into labour within households, brothels, establishments, and factories.

Human trafficking stands as one of the most reprehensible manifestations of organized crime, constituting a blatant violation of fundamental human rights globally. It derides the basic rights of the vulnerable population and preys upon men, women, and girls for diverse purposes, including forced labour in factories, farms, private residences, sexual exploitation, and coerced marriages. Traffickers operate with a singular focus on profit, disregarding both legal frameworks and national systems. Whether through abduction or deception, they exploit desperate individuals, transforming their aspirations of escaping poverty into harrowing nightmares. Trafficking pervades across all regions and numerous countries, with identified root causes including socioeconomic inequalities and an escalating demand for inexpensive, disempowered labour. The exploitation of individuals for financial gain has an extensive historical backdrop, predating the establishment of the modern human rights system. Given the widespread nature of the issue in Jharkhand, this research exclusively delves into the causative factors behind the trafficking of adivasi (tribes) women and girls in the Sahibganj district of Jharkhand, India. The focus of this study is concentrated on two specific blocks within the Sahibganj district.

[7] European Researcher. Series A, 2017 by S. Goswami

An article presented by Kathleen Finn, Erica Gajda, Thomas Perin, and Carla Fredericks ***Harv. Women's LJ 40, 1, 2017.*** Where they mentioned responsible resource development and prevention of sex trafficking safeguarding native women and children on the Fort Berthold Reservation. [8] They mentioned that in the epoch-defining year of 2010, an auspicious alignment of cosmic forces revealed the existence of colossal reservoirs teeming with the liquid gold of crude oil and the ethereal elixir of natural gas, concealed within the intricate and vast tapestry of the Bakken shale formation. A noteworthy and undeniably monumental revelation, a substantial expanse of this newfound opulence intricately intertwines within the sacred precincts of the Fort Berthold Indian reservation—an esteemed abode for the venerable Mandan, Hidatsa, and Arikara Nation. This collective embodiment, revered as the "MHA Nation," "Three Affiliated Tribes," or simply, with a hallowed reverence, "the Tribe," stands at the epicenter of this epochal discovery. By the sheer alchemy of time's transformative cauldron, a once modest production of a mere 200,000 barrels per day[9] within the Bakken formation has now metamorphosed into an awe-inspiring crescendo, an unparalleled symphony of 1.1 million barrels of oil daily. This celestial ascent catapults North Dakota to the zenith of its oil-producing prowess, securing its indomitable stature as the second-largest oil-producing state within the expansive mosaic of the United States. Noteworthy, nay, monumental in its impact, this remarkable surge in oil production serves as the linchpin for a seismic recalibration of the unemployment quotient in North Dakota, plummeting to a mere 3.2%—a numerical feat that not only achieves singularity but also stands as an exemplar of minimalism on the vast canvas of the United States. Yet, as the relentless wheels of progress turn, ushering in an era of transformative development, the underbelly of this expeditious exploitation

[8] Harv. Women's LJ 40, 1, 2017

[9] Harv. Women's LJ 40, 1, 2017

of oil and gas resources unfurls a disconcerting revelation—a revelation shrouded in the shadows of unprecedented felonious activities, underscored by a disquieting spike in violent crime. This unfolding narrative of stark contrasts transpires in the immediate proximity and peripheral realms of the Fort Berthold reservation. The causative nexus becomes glaringly apparent as the influx of well-compensated male personnel, diligently toiling in the oil and gas industry, takes residence within improvised lodgings that colloquially bear the nomenclature "man camps." Coinciding with this demographic shift is a profoundly disconcerting escalation in the reprehensible act of sex trafficking—a lamentable trend that not only casts a looming shadow over the sanctity of the land but engenders a palpable increase in the egregious incidents of sexual violence. This sobering reality, an indelible blot on the evolving saga within the expansive region, serves as a clarion call for introspection and decisive action in the pursuit of justice and societal equilibrium.

DISCOURSES AND ISSUES

Who are native women and children on the Fort Berthold Reservation you may ask? Well, The Mandan, Hidatsa, and Arikara Nation, collectively referred to as MHA Nation, stand as venerable custodians of a rich and intricate cultural tapestry. The Mandan people, with a historical penchant for settled agriculture along the Missouri River, are renowned for their earth lodges—a testament to their ingenious architectural prowess. Their societal fabric, intricately woven with clan structures, bore witness to skilled trade networks that stretched across neighboring tribes. Similarly, the Hidatsa, sharing in the confederation with the Mandan and Arikara, manifest a storied history as adept agriculturalists along the upper Missouri River. Their cultivation expertise, centered around corn, beans, and squash, forms the bedrock of their sustenance. Earth lodges, emblematic of their cultural identity, served as resilient sanctuaries against the vagaries of weather.

In tandem, the Arikara, with a nomadic past punctuated by the ebb and flow between villages, [10]enriched the collective narrative with their distinctive language and cultural nuances. Their nomadic lifestyle, intertwined with hunting, farming, and trading, underscored their adaptability in the face of changing landscapes.

The triad of Mandan, Hidatsa, and Arikara, forming the Three Affiliated Tribes, has weathered the tumultuous tides of history with resilience and grace. Their intertwined fates, especially in the crucible of European colonization, reveal narratives of steadfast perseverance and cultural preservation. Today, MHA Nation stands as a beacon of cultural diversity, contributing immeasurably to the heritage of the Fort Berthold Reservation and embodying the indomitable spirit of indigenous resilience.

In short they are the tribal groups, the Mandan, Hidatsa, and Arikara Nation, collectively known as MHA Nation or Three Affiliated Tribes, are indigenous tribal groups. Each of these tribes has its own distinct cultural identity, history, and traditions. They are recognized as sovereign nations with their own governance structures and are part of the larger tapestry of Native American tribes in the United States.What happened to them after this? The Mandan, Hidatsa, and Arikara Nation, venerable stewards of a complex and storied cultural legacy, found themselves at a profound crossroads upon the advent of European contact. The intersection of diverse cultures during the fur trade era heralded not only economic metamorphoses but also a nuanced reconfiguration of trade dynamics. However, this epoch was also marred by the inexorable march of European diseases, exacting a devastating toll on these venerable tribal groups.

[10] MHA Nation

The narrative, replete with the resonances of forced relocations, unfolded as U.S. government policies orchestrated seismic displacements in their ancestral lands. The tribes, once intimately connected with the vast expanses of the Great Plains, witnessed their existence transplanted to reservations, with the Fort Berthold Reservation emerging as a crucible for resilience. Here, the fluidity of traditional nomadic patterns yielded to the contours of settled agricultural practices, navigating the tribulations of adaptation.

In the crucible of change, the imperative of cultural preservation emerged as the linchpin of identity. The tribes, akin to vigilant custodians of a cultural ark, fervently endeavored to safeguard their linguistic heritage, sacred traditions, and communal rites. This unwavering commitment to cultural resilience became an indomitable force, anchoring them against the inexorable tides of cultural erosion.

As the pendulum of time swung inexorably into the contemporary, the Mandan, Hidatsa, and Arikara Nation confronted multifaceted challenges[11]. Socio-economic disparages and the ongoing pursuit of equitable land and resource management cast imposing shadows on their path. Engaging in legal imbroglios and diplomatic negotiations, they ascended to the role of architects of their own destiny, forging a narrative of empowerment and determination.

In the present epoch, the Three Affiliated Tribes stand resolutely at the nexus of tradition and progress, where the echoes of the past harmoniously intertwine with the cadence of a future shaped by their unwavering spirit. Their journey, imbued with cultural tenacity and collective strength, unfolds as an enduring testament to the resilience of indigenous communities amidst the intricate tapestry of history.

[11] MHA Nation

CONCLUSION

In conclusion, this comprehensive inquiry into the intricate facets of human trafficking within tribal landscapes unveils a tapestry intricately woven with socio-economic intricacies, historical legacies, and cultural nuances. From the vibrant realms of Jharkhand, India, to the poignant narratives echoing from the Fort Berthold Reservation in North Dakota, USA, this study transcends mere documentation—it's an unequivocal call for comprehension and decisive action. Our exploration traverses the shadows where aspirations for education and prosperity are stifled, and the ominous specter of trafficking looms large. The 2023 study by the International Organization for Migration exposes trafficking hotspots disproportionately affecting tribal regions, casting light on a clandestine orchestration of abuse illuminated by the United Nations Office on Drugs and Crime[12]. It's not just research; it's an urgent call to confront the shadows threatening the very essence of human dignity in tribal landscapes. This study doesn't merely acknowledge exploitation—it issues an impassioned plea to recognize, comprehend, and act. It resonates with the silent cries for help in tribal realms, deciphering complexities that demand unwavering attention and collective action. As we delve into this pervasive global menace, our findings underscore the exigency for a human rights-centric approach. Policies and interventions must be culturally sensitive, transcending conventional paradigms to empower tribal communities economically, socially, and legally. In summary, the legal battleground must be fortified with unwavering determination to prosecute those complicit in trafficking, sending a resounding message that such malevolence will find no sanctuary in a just society. This study issues a fervent call for an enduring commitment to protect the fundamental rights and rich cultural heritage of tribal communities. It's a symphony of intellectual acuity, immediate attention, collaborative

[12] International organizations for migration

action, and a profound commitment fortified by meticulously researched knowledge. Our shared humanity demands that we stand against the unrelenting forces of injustice, ensuring tribal communities emerge resilient against exploitation and injustice.

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Unlawful Activities (Prevention) Act, 1967: A Double Edged Sword

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ABSTRACT

Terrorism has over the past few decades emerged as the prime problem to the peace, security, unity, integrity and the stability of any nation. After the repeal of the Prevention of Terrorism Act, 2002 in the year 2005, the Unlawful Activities (Prevention) Act, 1967 (UAPA) had been the mainstay of the Indian anti-terror regime. UAPA derives its authority from Article 245 of the Indian Constitution, specifically Entry I of List I, which pertains to the "Defence of India". It has attempted to balance counter-terrorism and human rights which have always been at paradox. The law enforcement agencies are vested with exorbitant power to tackle the exigencies of terror attacks. The irony is that the first and foremost impact of such measures is felt by law-abiding citizens on account of the inroads they make into individual liberties. The present paper makes reference to the 154th, 173rd and 262nd Law Commission Reports which have emphasized the importance of a legislation to fight terrorism. It also deals with regard to how UAPA violates the golden triangle of the Constitution by naming individuals as terrorists, length trial, curtailing the right to dissent, presumption of offence, stringent bail provisions, vague provisions and mere belief of the government is sufficient to prosecute. Reference to International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and Human Rights Convention has been made with regard to analyse the conformity of the Act with human rights. Judicial remarks have also been encompassed within this Article.

Keywords: *Law Commission, Human Rights, Dissent, Sanction, Terrorism.*

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I) INTRODUCTION

Terrorism has existed for centuries, with religion frequently serving as a potent motivator for extremist activities. The widespread nature of this menace makes it a formidable challenge for any nation to combat. The UN Global Counter-Terrorism Strategy, as well as other relevant resolutions of the General Assembly and the Security Council, have taken significant steps to reduce terrorism by demanding that member states take action against designated terrorist organizations, freeze their assets, prevent their entry and transit through their borders, and stop the supply of arms and ammunition. However, the controversial issue remains whether India's anti-terror laws violate the basic rights of its citizens and contravene established criminal justice norms.

II) SCOPE AND EVOLUNTIONARY TREND OF ANTI- TERROR LAWS IN INDIA

In the past, acts of terrorism were considered to be "law and order" issues and were dealt with under existing laws, such as the Indian Penal Code, Criminal Procedure Code, and Unlawful Activities Prevention Act. However, as terrorist activities became more widespread and involved external actors, it was realized that specific legislation was needed to address these issues. As a result, the Terrorists and Disruptive Activities (Prevention) Act, 1987 (TADA) was enacted after the assassination of Prime Minister Indira Gandhi. TADA allowed the government to detain suspects without charge for up to a year, and it assumed that confessions made to police officers were admissible under certain conditions. The harsh bail conditions and detention provisions of TADA were criticized and it was repealed in 1995, although some of its provisions were transferred to the Criminal Law Amendment Bill. However, the bill was not implemented.

In order to boost counter-terrorism efforts, the Indian Parliament passed the Prevention of Terrorism Act, 2002 (POTA) in 2002. The Act was passed as a result of multiple terrorist attacks occurring in India, particularly in retaliation for the attack on the Parliament in December, 2001. Even though its constitutional validity was upheld in ***PUCL v. Union of India***[1], POTA, like TADA, was criticised for its laws regarding incarceration without a trial and an overuse of confessions gained through torture. In 2004, it was subsequently repealed.

[1] (2004) 9 SCC 580: 2005 SCC (Cri) 1905

After the shocking Mumbai attacks on 26/11, the Unlawful Activities Prevention Act of 1967 was revised in 2008 to include acts of terrorism. The amended act broadened the scope of what constituted a terrorist act, including the potential for an attack by any means. Additionally, the revised act allowed for pre-trial detention and granted expanded powers to law enforcement. The 2013 amendment further addressed the transnational aspect of terrorism and included economic offenses. The latest amendment to the act in 2019 was enacted to assist the National Investigation Agency in prosecuting cases related to terrorism while also ensuring alignment with international obligations.

India's anti-terror laws have evolved towards preventive rather than punitive measures. TADA, POTA, and UAPA bear similarity in this regard. However, the conviction rate for these laws has been abysmal, with TADA at 1.11%, POTA at 1.2%, and now UAPA following in their footsteps with a low conviction rate of 2.8%.[2] Nevertheless, the poor conviction rate suggests that there is a need to re-examine the efficacy of these laws and address underlying issues to ensure justice is served.

POTA and TADA had a sunset clause of two and three years respectively but the UAPA is devoid of one or the provisions for mandatory periodic review, the repeal of it will depend on mass movement. Section 43D (2) of UAPA and Section 20 of TADA are also in consonance where in it allows detention without a charge sheet for up to 180 days.

III) INTERNATIONAL EFFORTS

The UN General Assembly under a unique global instrument 'The UN Global Counter Terrorism Strategy' adopted measures to counter terrorism for which the Member States are obligated to provide cooperation at all levels.

The United Nations Security Council through its various resolutions has made an effort to curb terrorism-

- The **1267 Committee** was established by resolution 1267 (1999) for the purpose of overseeing the implementation of sanctions on Taliban-controlled Afghanistan for its support of Usama bin Laden.

[2] National Crime Records Bureau's (NCRB) annual reports during 2015-2020

- **United Nations Security Council Resolution 1373**, at the backdrop of September 11, 2001 attack on the United States. The resolution established the Counter-Terrorism Committee, which comprises all 15 members of the Security Council, to monitor implementation of the resolution. Further, the Counter-Terrorism Committee Executive Directorate (CTED) was formed during March 2004 to assist the Committee. CTED's main role is to enhance the Committee's ability to monitor the implementation of resolution 1373 (2001), raise the counter-terrorism capacities of Member States by facilitating the provision of technical assistance, and promote closer cooperation and coordination with international, regional and sub-regional organizations.

- The resolution 1624 adopted in September 2005In September 2005 also any incitement pertaining to terrorist act.[3]

- Article 4 of **International Covenant on Civil and Political Rights** states that in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.

- International law enforcement agencies such as Interpol and the International Criminal Police Organization are working to coordinate between countries and control terrorism.

IV) CONSTITUTIONAL BACKGROUND

The Unlawful Activities Prevention Act, 1967 (UAPA) derives its authority from Article 245 of the Indian Constitution, specifically Entry I of List I, which pertains to the "Defence of India." The terrorist are waging a domestic war against the sovereignty of their respective nations or against a race or community causing disorganisation in the society. Resultantly, the

[3] Security Council Resolution 1624 (2005) further calls on all States, to deny safe haven to any persons with respect to whom there is credible and relevant information that they have been guilty of such conduct; prevent those guilty of the conduct in paragraph 1 (*a*) from entering their territory; continue international efforts to enhance dialogue and broaden understanding among civilizations and to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters; ensure that any measures taken to implement this resolution comply with all of their obligations under international law, in particular international human rights law, refugee law and humanitarian law.

security and integrity of the countries concerned are at peril and the law and order in many countries disrupted.[4]

Therefore, the Unlawful Activities (Prevention) Act is an anti-terrorism law that was enacted by the Indian Parliament in 1967. It was amended in 2004, 2008, 2012, and 2019 to strengthen the law and make it more effective in combating terrorism. UAPA is an anti-terrorism law that restricts certain fundamental rights in the interest of national security and public order. The constitutional background of UAPA is rooted in Article 19. The freedom of speech and expression, the freedom to assemble peaceably and without arms and the freedom to form associations or unions which is encompassed in this Article can be taken away for a proper governmental objective[5] and restrictions enshrined in Article 19(2).[6] The law allows the government to ban organizations that are involved in terrorist activities and to prosecute individuals who support or are associated with such organizations. The UAPA provides for the creation of a list of banned organizations, which are prohibited from operating in India.

V) INSTANCES OF TERRORISM

Terrorism is a global phenomenon and its tremors are widely felt. It threatens the sovereignty and integrity of a country. Some of the instances of terrorism in India and across the globe are-

- Attacks of September 11, 2001 - Terrorists connected to the al-Qaeda organisation hijacked four commercial airliners and crashed them into the Pentagon in Virginia and the World Trade Centre in New York City, killing approximately 3,000 people.

- Bombings in London: In July 2005, a group of terrorists detonated bombs on multiple buses and trains as part of their attack on London's public transportation resulting in death of 22 and hundreds of people injured.

- 2008 Mumbai attacks: In November 2008, a number of targets in Mumbai, India, including the Taj Mahal Palace Hotel and the Chhatrapati Shivaji Terminal railway

[4] Kartar Singh v. State of Punjab, (1994) 3 SCC 569
[5] Unni Krishnan J.P v. State of A.P., 1993 AIR SCW 863
[6] N.K. Bajpai v. Union of India, (2012) 4 SCC 653

station, were attacked by a coordinated gang of terrorists. 166 people lost their lives in the attacks, while hundreds more were injured.

- Attacks in Paris: The terrorist assault occurred in Paris, France in November 2015 in which the Bataclan theatre and the Stade de France stadium were among the targets. 130 people lost their lives in the attacks, and hundreds more were injured.

- 2019 Pulwama attack: At Pulwama, Jammu & Kashmir, a suicide bomber struck a convoy of cars transporting Indian paramilitary forces in February 2019, killing 40 soldiers.

- Easter bombings in Sri Lanka: In April 2019, a coordinated string of bombings that targeted hotels and churches across Sri Lanka left more than 250 people dead and hundreds more injured.

- Khorasan Province Kabul planned a missile attack and mass shooting took on March 6, 2020. Around 60 individuals suffered injuries, including over 60 fatalities, and both assailants were killed following a confrontation.

- 2023 Bombing of a mosque in Peshawar: On January 30, 2023, a suicide bomber blew himself up inside a mosque in the Police Lines area during afternoon prayers. 101 civilians lost their lives as a result, while more than 200 were wounded.

VI) LAW COMISSION AND COMMITTEE REPORTS

Over the years, multiple suggestions and observations about terrorism have been issued by the Law Commission of India and various committees. They are as follows-

- The **154th Law Commission Report** on "The Code of Criminal Procedure, 1973 (Act No. 2 Of 1974) (Vol. I)", 1996 recommended special procedures for terrorist crimes, stressing the need for a separate investigational strategy.

- The **173rd Law Commission Report** on "Prevention of Terrorism Bill, 2000" emphasized that a legislation to fight terrorism is today a necessity in India, while also acknowledging that the Indian Penal Code was not designed to combat organized crime.

- The **262nd Law Commission Report** on "Death Penalty", 2015 recommended abolishing the death penalty for all crimes except for terrorism-related offenses, and emphasized the need for legal representation, fair trial, and protection against arbitrary detention.

- The **Second Administrative Reforms Commission, 2007** in its 8th report recommended the Government to constitute Review Committees for periodical scrutiny of the cases registered and also to review the prevailing situation in the areas notified as ones affected by terrorist activities.

- The **Rajya Sabha Parliamentary Standing Committee** on Home Affairs in its 205th report, on "Border Security: Capacity Building and Institutions" noted that the Committee was dissatisfied with the progress of the investigation and the National Investigation Agency (NIA) and urged for swift completion of the remaining cases.

- The **Committee on Reforms of Criminal Justice System**, under the chairmanship of Justice V.S. Malimath, conducted a thorough analysis of the existing anti-terrorism laws and recommended the enactment of a central law to deal with organized crime, federal crimes, and terrorism, despite crime being a State subject. Additionally, the committee suggested the establishment of a Department of Criminal Justice to evaluate procedural and criminal law and a Presidential Commission to periodically review the functioning of the Criminal Justice System.

- **National Human Rights Commission, Minorities Commission, International Human Rights Organisations** like Amnesty International and International Natural of Jurists have noted that the anti-terror law suppresses-

  i. Innocent persons being proceeded against or arrested under the Act;
  ii. Minorities being targeted under the Act;
  iii. Bail was not easily obtainable as the provisions of Bill in the Act were illusory; and
  iv. Burden of proof was on the accused.

VII) UAPA AMENDMENTS AND ITS IMPLICATIONS

The main intention of any statute is to serve the ends of justice and to curtail rampant evil in society. Given this, it but obvious that there comes a time when the law needs to be looked at from the eyes of a "bad man", i.e., the person who is before the Court as an accused or a wrongdoer as propounded by the American Jurist Oliver Wendell Holmes.[7] Hence, main objective of enacting the Unlawful Activities Prevention Act, is to provide for the more effective prevention of certain unlawful activities of individuals and associations, and for dealing with terrorist activities.

7.1. Violation of established Constitutional Rights

The main aim of UAPA is to curb terrorism while ensuring it does not violate any constitutional mandate, but certain provision of UAPA has blatantly violated the golden triangle of the constitution.

In ***K.S Puttaswamy v. Union of India***[8], to check arbitrariness three fold classification has been given-

i. Presence of a law
ii. Legitimate aim
iii. Proportionality, guarantees a fair relationship between the objects and the ways pursued to attain them

The Act is ambiguous and not proportional in the following ways-

- **Section 15 of UAPA** states ***"with intent to strike terror or likely to strike terror in people"***, this Act fails to define the word 'terror'. Since terror in simple words means to induce fear, its overbroad analysis can result to a malicious act. Strict interpretation of penal statutes is the rule and an undefined term with a wide scope of analysis will serve to against the legislative intent.

- The 2019 amendments reveals certain inbuilt mechanisms and rights. They are-

[7]Dr. N.V. Paranjape, "Studies In Jurisprudence & Legal Theory", Central Law Agency, 9th Edition, 2019
[8] (2017) 10 SCC 1

a) Right to make an application to the Central Government for removal of names from the fourth schedule.[9]

b) Right to have the application decided in 45 days.[10]

c) Right to apply for review if the application is rejected, to the Review Committee.[11]

d) Right to ensure Review Committee acts in consonance with the principles of judicial review.[12]

Keeping these rights in mind, the government has classified "individual" terrorists into two categories- The first category includes individual whom the Central Government 'believes' to be involved in terrorist activities and have their names published in the Fourth Schedule. The second category includes individuals whose trial charges of being involved in terrorism has been "sanctioned" by the government but names are not published in the Fourth Schedule.[13]

Now, the aforementioned rights are available only to the first category of individuals while the second category of individuals are devoid of this, thus has to suffer a lengthy trial process. It is to ponder about the intelligible differentia while distinguishing grouped persons or goods from the left out ones of the group.[14] The want of clarity and no guidelines for the same has led to a peril violating Article 14 and 21 of the constitution. This has also given rise to a situation where the government has given itself discretion to either publish or not publish names in the Fourth Schedule.

The definition of "unlawful activities" prohibits speech by threat of punishment and by casting a 'wide net'. The 'overbroad' language and vagueness of this section also has a tendency to bring within its fold mere criticism of the government policies or actions of the day without any effect on security, sovereignty and integrity of India. It is an established

[9] Unlawful Activities Prevention Act, 1967, S.35
[10] Procedure for Admission and Disposal of Application Rules,2004, Rule 2
[11] Unlawful Activities Prevention Act, 1967, S.36(4)
[12] Unlawful Activities Prevention Act, 1967, S.36(5)
[13] Unlawful Activities Prevention Act, 1967, S.45
[14] State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75

principle of law that 'vagueness' may invalidate criminal law[15] , and its indiscriminate use by authorities against those critical of the government has made it impossible to secure bail under Section 45(d) (5).

It was noted in ***Sakal Papers v. UOI*** that, "The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution"[16] and it is hallmark of democracy[17], but these sections brings a curtailment of Article 19(1)(a).[18] It is to be noted that the freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution can only be limited under the reasonable restriction by virtue of Article19(2). However, the criticism of the Government and its policies or actions cannot be constituted as a fair ground to restrict the freedom of speech and expression.[19]

Section 2(1)(o) of UAPA can also find it's resemblance it the age old archaic sedition law whose wide misuse has led to its hold in the Vombatkere judgement[20] but sedition only restricts hate speech but UAPA goes a step beyond by restricting all forms of speech. It is to wonder if certain provisions of UAPA have been enacted to stifle non-government conformists.

The iconic case of ***Romila Thappar v. Union of India*** is ideal to demonstrate the misuse of this law against dissenting voices. Three of the arrested people have previously been convicted for charges principally under the Penal Code of 1860, the Arms Act of 1959, and the UAPA Act of 1967.The court ruled that Arun Ferreira was acquitted in all eleven cases brought against him. Vernon Gonsalves was found not guilty in seventeen of the nineteen cases filed against him. Varavara Rao was acquitted in all twenty cases in which he was prosecuted.[21]

Terrorism creates a fragile situation in the country hence restrictions have been imposed as no rights can be absolute. Article 19(2) imposes restrictions for matters relating to the security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to an offence and sovereignty and integrity of

[15] Shreyah Singhal v. Union of India,(2015) 5 SCC 1
[16] AIR 1962 SC 305
[17] Maqbool Fida Hussain v. Rajkumar Pandey , (2008) Cri L.J. 4107 (SC)
[18] S. Khusboo v. Kanniamal, (2010) 5 SCC 600
[19] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574
[20] S.G. Vombatkere v. Union of India , (2022) 7 SCC 433
[21] (2018) 10 SCC 753

India.[22] Now, the line between permissible and impermissible forms is dissent is impossible to draw without referral to the values and social standards of the time.

7.2. Discretion to Name Individuals as Terrorists

The discretion to name individuals as terrorists has international law backing from which UAPA came into existence. The 1267 Committee was established by resolution 1267 (1999) for the purpose of overseeing the implementation of sanctions on Taliban-controlled Afghanistan for its support of Usama bin Laden. Subsequent resolutions provide sanctions including freezing og assets, travel ban etc. The Committee is supported by the United Nations Secretariat and the Analytical Support and Sanctions Implementation Monitoring Team.

The inclusion of names on the list is by-

i. Alleged activities;

ii. Supporting evidences;

iii. Supporting evidence or documents that can be supplied; and

iv. The details of any connection with a currently listed individual or entity.

UNHCR Statement on **Article 1F** of the 1951 Convention, commenting on the listing and delisting process had highlighted that although listing individuals and organizations for their involvement in terrorist activities might be a reasonable effort against terrorism, such procedures in order to comply with human rights must be fair and transparent as well as be based on clear criteria, uniform standard of evidence, independent review mechanism.

Article 4 of the ***International Covenant on Civil and Political Rights of 1967*** provides that nations may deviate from their commitment to protect peoples' civil and political rights only in cases of extreme emergency. In India, however, the central government has failed to demonstrate the urgency of departing from its main mission of providing civil and political rights to individuals. It has failed to meet the criteria of need in seizing anti-democratic

[22]The Constitution of India, 1949

powers, like as labelling an individual as a terrorist and further classifying them into two types.

The recent amendments to UAPA alters Section 35(2) which enables the government to name an individual as terrorist only if it believes that such an individual is related to terrorism. This is irrational as there will be no F.I.R, no charge sheet filed, there will be no trial in a court and there is no conviction but merely because the government "believes" that a person is related to terrorism he will be named as a terrorist. This provision does not qualify the prerequisites of the golden triangle and puts immense danger on the rights of individuals thus is not "just, fair and reasonable".

The criteria for labelling someone a terrorist are not well-defined, and there is no specified time frame for removing individuals from the list of terrorists. This means that unless action is taken by the individual or the government, the person could remain on the list indefinitely. In particular, if someone is convicted of unlawful activity, it is unclear when they will be removed from the list, unlike for unlawful organizations where a denotification period of five years is provided. This violates the principle of innocent until proven guilty and is contrary to the International Covenant on Civil and Political Rights of 1967. While Section 36 of the UAPA allows those labelled as terrorists to appeal, the process is difficult to implement. The reasons for arrest are not communicated to the individual, and there is no requirement for an oral hearing during the appeals process. It has been established by the courts that no arrest can be made because it is lawful for the police officer or the government to do so. The existence of the power of arrest is one thing and the justification for the exercise of such power is quite another.[23]

The review committee under section 35 and 36 is required to apply judicial principles, no such standards are set for the authority granting sanction, thus reducing the independent review prior to grant of sanction to a mere administrative exercise, for which no yardstick are laid down. With 7 days given for this independent review it is a mere eye wash.

[23] Joginder Kumar v. State of UP, AIR 1994 SC 1349

7.3. Bail Not Jail

"*The basic rule is bail, not jail*" is a doctrine laid down by the Supreme Court of India in the landmark judgment of ***State of Rajasthan vs. Balchand alias Baliya***[24].UAPA, however has made "jail, not bail" the rule.

Bail is considered to be an important facet under criminal jurisprudence but **Section 43D(2)** of the UAPA,1967 increases the maximum length of incarceration for a person accused under this law to 180 days, as opposed to the 90-day statutory period allowed under Section 167 of the Criminal Procedure Code (CrPC).

Moreover, the proviso to sub-section (5) imposes a statutory duty on the court or judge not to release an accused booked for terrorist activities or terrorist organisations on bail if the court or judge determines, based on a review of the case diary or the report submitted by the police under section 173 of the Criminal Procedure Code.

In case of an individual whose name is not published in the Fourth Schedule, the mere accusation of having been involved in terrorism is sufficient to invoke Section 43D(5) and leads to denial of the individual's right to bail. Moreover UAPA is not a preventive detention law and there is no reason to deny a person the right to bail merely on the basis of an accusation.

The combined application of Section 43D sub-sections (2) and (5) makes it extremely difficult for anyone charged with terrorist acts and terror organisation to be released on bail. In light of this, the UAPA had evolved into the most formidable weapon in the government's arsenal for targeting dissenters and critics of the government at the time. The Supreme Court in ***Union of India vs. K.A. Najeeb***[25] mentioned the rigorous bail provision under UAPA as another possible ground for the competent court to refuse bail. Recently the Karnataka High Court in ***Muzammil Pasha* v. *National Investigating Agency***[26], has clarified the position of law on this aspect and have held that extending the time period for an investigation without hearing the accused person under the provisions of Section 43-D (2) is a gross violation of natural Justice, such an act is in grave contravention with the settled principles of law.

[24] 1977 AIR 2447
[25] (2021) 3 SCC 713
[26] 2021 SCC OnLine Kar 12688

Supreme Court in ***State though C.B.I.*** **v.** ***Amar Mani Tripathi***, has observed the eight conditions to be followed for the grant of bail. However it is seen that Section 43D(5) is concerned, the existence of a prima facie case is all that is required to keep a person incarcerated without any consideration for the other 7 elements.

Thus indeterminate incarceration of the suspect and denial of bail is considered as an unjust law and prolonged incarceration of the suspect and if the same is to remain on a statute book, the person whose prolonged and indefinite incarceration is sought must be given every opportunity to challenge such incarceration, especially in accordance with abysmally low conviction rates. This action by the legislation definitely goes against the established norms of criminal justice.

7.4. Critical analysis with regard to certain Sections and Amendments of UAPA

→ **Section 37**

It's a citizen's constitutionally guaranteed right to stage a protest peacefully or express one's opinion responsibly. Giving details on the stringent UAPA, Union Minister of State for Home informed the Rajya Sabha, that as many as 4,690 people were arrested in different parts of the country under the anti-terror law in the past three years, out of which 149 persons have been convicted, as per government figures in 2020. A total of 35 people were convicted in 2018, 34 in 2019 and 80 in 2020, it is clear from this report[27] that the conviction is an outcome of an elaborate judicial process and is dependent on various factors, such as the duration of the trial, appraisal of evidence, examination of witnesses. The nature, scope and composition of the Review Committees have been defined under Section 37 of the Act which states that the Central Government can on the discharge of such review petitions, constitute a Review Committee with a maximum of up to three members, one being a chairperson for the committee with a prerequisite qualification of being a Judge of any High Court in India. The problem with an appeal under UAPA, 1967 is that firstly, it has tried well to remove the chances for the judiciary to interfere in the arrests of individuals, secondly, the composition of the Review Committee is arbitrary and the Government has absolute powers to appoint the members of the committee violating the principle of *Nemo Judex in Sua Causa* which also happens to be a Principle of Natural Justice as the qualification of the other two members is unknown which leaves the government with discretion to choose a person who is in their favour. Thirdly, the Committee is also not burdened to provide reason their verdicts.

[27] National Crime Records Bureau Reports, 2015-2020

→ **Section 18**

Sec. 18 of UAPA provides that-

"Whoever conspires or attempts to commit or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act shall be punishable with imprisonment which is not less than 5 years which may extend to imprisonment for life, and shall also be liable to fine."

Since the specific commission of terrorist acts is covered in Sec. 15 and 16, it is clear that the scope of Sec. 18 covers the terrain of actions which are preparatory to or by way of incitement, abetment and conspiracy to commit a terrorist act. The offence of conspiracy is complete just with the "agreement" to commit the conspiracy and the "object" of the agreement itself need not have occurred. Such broad, sweeping and loosely worded provisions permit arbitrary use of its provision to rope in anyone the police want to implicate in any case. It is the corresponding provisions of "conspiracy" in TADA and POTA which were widely abused to arrest and implicate thousands of people who spent many years in jail. The dire situation eventually led to the Supreme Court formulating in ***Shaheen Welfare Association v. Union of India & Ors***[28], a four-fold classification of TADA under trial prisoners. This was based on the specific role allegedly played by each person in the crime alleged against them so that only those classified to be 'hard core' alone were to be kept in jail as under trial and others could be released on bail.

Thus, the abuse of UAPA is symptomatic of the problems arising out of having such blurred and nebulous lines of defining something as serious as terror activity and the attendant law criminalizing it.

→ **Section 35(2)**

Right to Reputation is an intrinsic part of the fundamental right to life with dignity under Article 21 of the Constitution of India and terming/tagging an individual as 'terrorist' even before the commencement of trial or any application of judicial mind over it does not adhere to procedure established by law. The well-defined amplitude of Article 21 of the Constitution

[28] 1996 (2) SCC 616

includes the right to live with human dignity and to live a life which is free from exploitation. It also includes the right to reputation.

A petition filed by the ***Association for Protection of Civil Rights (APCR)*** contended that the new Section 35 allows the Centre to designate an individual as a terrorist and add his identity in Schedule 4 of the Act while earlier only organizations could be notified as terrorist organizations. The amendment does not specify the grounds for terming an individual as a terrorist and that "conferring of such discretionary, unfettered and unbound power upon the Central government is an antithesis to Article 14."

In ***Subramanian Swamy v. Union of India***[29]**,** the court while deciding over the matter considered various landmark judgments including the ***Gian Kaur v. State of Punjab***[30], ***Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others***[31] to come to the peroration of inclusion of the right to reputation under Article 21.

The Court in ***Sri Indra Das v. State of Assam***[32] read down Section 10 of UAPA and Section 3(5) of TADA, both of which made mere membership of a banned organization, criminal. The Court held that a literal interpretation of these provisions would make them violative of Articles 19 and 21 of the Constitution. This was in line with the previous decision in ***Arup Bhuyan's case***[33] where the Court had held that 'mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence'.

Therefore, proper constitutional is of utmost important when a person's fundamental rights are at stake and the law enables preventive detention.

→ **Section 20 and Section 38**

In ***Thwaha Fasal V. Union of India***[34] and ***Union of India V. Allan Shuaib***, in these appeals, the main concern is with the offences punishable under Sections 20, 38 and 39 of the 1967 Act. The person committing an offence under Section 38 may be a member of a terrorist organization or he may not be a member. If the accused is a member of terrorist organization which indulges in terrorist act covered by Section 15, stringent offence under Section 20 may

[29](2016) 7 SCC 22
[30] (1996) 2 SCC 648
[31] (1983) 1 SCC 124
[32] (2011) 4 SCR 289
[33]*Ibid* at 19
[34]2021 SCC OnLine SC 1000

be attracted. If the accused is associated with a terrorist organization, the offence punishable under Section 38 relating to membership of a terrorist organization is attracted only if he associates with terrorist organization or professes to be associated with a terrorist organization with intention to further its activities. The UAPA already insufficiently distinguished between the different offences of membership (Section 20), support, and association with banned terrorist organizations the Court in ***Thwaha Fasal*** has opened the doors to further confusion. In the long run, the Court's reading of the membership crimes in ***Thwaha Fasal*** might prove detrimental precisely because of how close it unwittingly brings these offences with that of conspiracy.

Section 20 and section 38 reads as follows:

Section 20: Punishment for being member of terrorist gang or organisation.—

Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

Section 38: Offence relating to membership of a terrorist organisation.—

(1) A person, who associates himself, or professes to be associated, with a terrorist organization with intention to further its activities, commits an offence relating to membership of a terrorist organization:

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

There is an overlap between sections 20 and 38 of UAPA and it is unclear under what circumstances sections 20 or 38 are to be invoked. Both Section 20 and 38 provides punishment for being a member of terrorist organizations. There is no clear distinction which separates Section 20 from section 38. This results in unnecessary ambiguity and variations in punishments under both sections are without any rationale.

→ **Section 45**

As per Section 45 of the UAPA, no court can take action against offences under Chapters III, IV, and VI without prior sanction from the competent authority. The Supreme Court has held that if there is a want of a proper sanction, the designated court is forbidden from taking cognizance of any offence under the provisions of the act, and any proceeding before the court would be without jurisdiction. Recently, the Supreme Court stayed an order of the Bombay High Court discharging Professor G.N. Saibaba in an alleged Maoist links case under UAPA, as the High Court did not decide the case on merits but rather granted relief to the accused on purely procedural grounds (i.e., want of a valid sanction to prosecute under UAPA). The Apex Court seeks to examine whether an appellate court can discharge the accused on the ground that there did not exist a valid sanction to prosecute the accused under UAPA and therefore the prosecution conducted before the trial court is void ipso facto. It is submitted that if there is want of a valid sanction, the prosecution cannot be sustained, and the court cannot be termed a court of competent jurisdiction. Section 465 of Cr. P.C deals with curable defects in prosecution, but it cannot cure the defect in the grant of sanction when there is no valid sanction at all, and the court proceeds with taking cognizance anyway. The law around sanction and its effect on the prosecution is simple: if there exists a sanction to prosecute, the court can legally and validly take cognizance of the offences, however, the prosecution cannot be sustained if there is want of a valid sanction.

→ **Section 43E**

Presumption of innocence is a kind of restatement of the rule that is applied in criminal matters the public prosecutor has the burden of proving the guilt of the accused in accordance to be convicted of the crime of which he/she is charged. Section 43E of UAPA creates a strong presumption against the accused as mere possession of weapons is sufficient and the law does not consider any other intensions. This would deter any accused from proving that the unauthorized possession of weapons was unrelated to any terrorist activity.

The Supreme Court in the batch of petitions titled ***Vijay Madanlal Chaudhry v. Union of India***[35],under the Prevention of Money Laundering Act, 2002 (PMLA) there is a presumption of guilt against the accused. Section 24 of PMLA, places the burden of proving their innocence accused was challenged as violating the right to life, liberty and fair procedure guaranteed by Articles 21 and 14 of the Constitution.

Based on the analysis provided, it can be concluded that the amendments made to the Unlawful Activities (Prevention) Act, 1967 (UAPA) are problematic and may violate certain fundamental rights guaranteed by the Constitution of India. The amendments, which include the expansion of the definition of terrorism and the power to designate individuals as terrorists, may lead to arbitrary and disproportionate use of state power against individuals, and may also undermine the principle of presumption of innocence. While the government may argue that these amendments are necessary for national security, it is important to ensure that they do not come at the cost of fundamental rights and the rule of law. Therefore, there is a need for a critical examination of the UAPA amendments and their implications for human rights and civil liberties in India.

VIII) UAPA: HUMAN RIGHTS CONCERN

It is important for the government to ensure that any law enacted to combat terrorism does not trample upon the fundamental rights of its citizens. The government must strike a balance between national security and individual rights, and ensure that any law is in line with international human rights standards.

A new age of terrorism has dawned upon us where acts of terrorism are no longer an unforeseen possibility. The major terrorist incidents in India include the 1993 Mumbai bombings, the 2001 Parliament attack, 2005 Ram Janmabhoomi attack in Ayodhya, 11 July 2006 Mumbai train bombings, the 26 November 2008 Mumbai attacks and the Pulwama attack. These close to panic reactions could have serious implications for international and human rights law, as well as humanitarian law. It is essential to distinguish derogations from limitations to human rights, and gross violations of human rights are seen as a necessary effect of most counter-terrorism measures.

[35] (2022) SCC OnLine SC 929

The Human Rights law takes its birth from the United Nations Charter forms the basis of modern international human rights law identifying the respect for human rights and fundamental freedoms as one of the prerequisites for stability and peace.

Article 3 of the **Human Rights Convention** places an absolute bar on subjecting someone to torture or inhuman or degrading treatment and there is no right to detain a suspected terrorist without trial. Article 5 of the Human Rights Convention provides that "no one shall be deprived of his liberty, save in certain specified circumstances, the most material being lawful detention after conviction by a competent court". This has been violated under Section 43D of UAPA, where there is no trial and a lengthy trial period especially for individuals whom the government sanction under Section 45 of UAPA.

International Covenant on Civil and Political Rights, 1967 states that no derogation is possible for Articles-

i. Right to life (Art. 6)
ii. Prohibition on torture, cruel, inhuman or degrading treatment or punishment (Art. 7)
iii. Prohibition on slavery and servitude (Art. 8)
iv. Prohibition on imprisonment for contractual obligation (Art. 11)
v. Prohibition on retrospective criminal punishments (Art. 15)
vi. Right to recognition as a person before the law (Art. 16)
vii. Right to freedom of thought, conscience and religion (Art. 18)

The recent amendments made to the Unlawful Activities Prevention Act (UAPA) have raised serious human rights concerns under the aforementioned conditions. The provision that allows the government to designate individuals as terrorists without a trial or due process is a blatant violation of the right to a fair trial and the presumption of innocence. It also enables the government to target dissenting voices and restrict freedom of expression, which is a fundamental right guaranteed by the Constitution.

The provision that allows the government to seize property without a court order is also a violation of the right to property. The UAPA amendments have been criticized by human rights activists and organizations for their potential to be misused and abused. The use of UAPA against activists, journalists, and peaceful protestors has been on the rise, leading to a chilling effect on free speech and assembly.

Terrorism and human rights are two concepts that are often in tension with each other. On the one hand, terrorism poses a significant threat to human rights, such as the right to life, liberty, and security of person, as well as the right to freedom of expression, assembly, and association. On the other hand, counter-terrorism measures taken by states in response to terrorism can also pose a threat to human rights if they are not implemented in accordance with international human rights law. The challenge is to find the right balance between protecting individuals from terrorist attacks and safeguarding their human rights. The international community must work together to ensure that counter-terrorism measures are effective and proportionate while upholding human rights standards.

IX) JUDICIAL REMARK

The Unlawful Activities (Prevention) Act aims at preventing unlawful activities and associations in India. Over the years, there have been several judicial decisions on terrorism. Some of the notable judicial decisions are-

→ ***Kartar Singh v. State of Punjab***[36], the Supreme Court upheld the constitutional validity of Terrorist and Disruptive Activities Act.

According to the Supreme Court, the Acts fell within the purview of "Defence of India" and were within the purview of Parliament's legislative authority. The Court also maintained the legality of a number of measures, such as the Central Government's authority to designate a region as a "terrorist impacted area," Sections 3 and 4 of the TADA Act's obligation, and Section 8 of the TADA Act. The Court, however, struck down Section 22 of the TADA Act as it violated the fair and reasonable procedure under Article 21 of the Indian Constitution.

The Court suggested several guidelines to the government, such as ensuring that Judges nominated to Designated Courts have a proper tenure of service, and allowing the court to decide on the identification, names, and addresses of witnesses before the initiation of trial. The High Court has the authority to consider bail applications under Article 226 of the Indian Constitution.

[36] (1994) 3 SCC 569

→ In ***Sri Indra Das v. State of Assam***[37] and ***Arup Bhuyan v. State of Assam***[38] where the Court had held that 'mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites violence.

→ In ***National Investigation Agency v Zahoor Amhad Shah Watali***[39]**,** it was noted that the Bench cannot venture into the merits and demerits of the case while assessing bail. Only on circumstances where the accused can prove that there does not exist a "*prima facie*" case against him, bail can be granted

→ The Supreme Court in ***Union of India vs. K.A. Najeeb***[40] mentioned the rigorous bail provision under UAPA and established that the presence of statutory restrictions like Section 43-D (5) of UAPA will melt down when the trial does not take place within reasonable time and even after undergoing incarceration of a substantial duration. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.[41]

The law continues to be a subject of debate and controversy, with many civil society groups and human rights activists calling for its repeal, citing concerns over its misuse and abuse by the state authorities. Hence, the constitutional validity of UAPA has been challenged in the ongoing case of Sajal Awasthi v. Union of India[42].

X) CONCLUSION

Terrorism is a widespread menace that is bigger than the nation itself and veins across the spans of the Earth. Collecting effort of the government as well as the citizens is the need of the hour to curb terrorism. The anti-terrorism laws in India were created as a response to a specific event, with the Unlawful Activities (Prevention) Act, 1967 being one of them. The Act was amended in 2019, which led to concerns about its constitutionality and adherence to international human rights standards. It was contended that the Act violated the rights guaranteed to individuals under the Indian Constitution through Article 14, 19, and 21, as well as contravening international conventions such as the International Covenant on Civil

[37] (2011) 4 SCR 289
[38] (2011) 3 SCC 377
[39] (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383
[40] (2021) 3 SCC 713
[41] (2021) 3 SCC 713
[42] 14 WP (C) 1076/2019

and Political Rights and the Universal Declaration of Human Rights. From the above discussion we arrive to a conclusion that though UAPA enactment is considered to be an efficient tool to unlawful activities including terrorism, it has to be invoked judiciously with utmost care and caution.

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Pandemic And Pandemonium

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ABSTRACT:

The coronavirus pandemic laid its roots in early 2020 across the world, spreading its vile flames across the globe, claiming lives of millions, preying upon the socio-economic vulnerabilities of even more. With COVID-19 being a global health crisis, numerous governments had imposed country-wide lockdowns in an attempt to curb the unrelenting spread of the virus. An unfortunate consequence of people being contained within the walls of their homes, with their friends, family or even by themselves, was the unforeseen rise in the rates of violence and abuse. Men, women, children, and even animals suffered a strenuous ordeal and were victims of brutality. The strong preyed upon the weak and vulnerable, leading to a spike in cases of domestic violence and child abuse reported across the world. The author in this paper attempts to throw light on this disturbing increase of violence the people are subjected to in trying times for humanity and the probable impact it will have on its victims in the future.

Keywords: COVID-19, domestic violence, child abuse, India, mental health

INTRODUCTION

Violence has been an inherent part of human nature since the dawn of time. The first acts of violence can be traced back to the earliest memories of mankind where it began for survival and eventually took the form of wars. Aggression has been an indispensable trait in all animals but it took the form of uncontained violence and bloodshed through humanity alone. The earlier centuries had normalized violence even to the point of it taking away others' lives. Crimes against women and children are forever memorialized in human history, with the advent of patriarchy and misogyny. The economically underprivileged and peasantry were constantly subjected to inhumane treatment by the nobility and aristocracy. Historical

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events like the holocaust during Nazi Germany and the French Revolution have always been tied to bloodshed and numerous attempts at insurgence across the world have resulted in deaths of millions.

The term 'violence' has been derived from Latin word 'violentia' and is defined as "the exercise of physical force so as to inflict injury on, or cause damage to, persons or property; action or conduct characterized by this; treatment or usage tending to cause bodily injury or forcibly interfering with personal freedom" by the Oxford Dictionary.[1]

With the establishment of legal institutions globally, the unrestricted and arbitrary use of violence was outlawed. Yet there were no legal aids to those who were victims of domestic violence within the walls of their homes for centuries and the attempts to curb the same in the present era has still fallen short.

Violence and abuse can take any shape or form- physical, psychological, sexual, and deprivation. While it is easy to identify the physical abuse against individuals, it is nearly impossible to identify the other forms of violence. At times, the victims themselves are unable to recognize that they are victims of abuse. The toxicity within inter-personal relationships is normalized, either by the perpetrator themselves or the society they live in.

VIOLENCE AND ABUSE- STATISTICS:

Corporeal punishments have been an integral part of many cultures in the name of disciplining an individual. Whether it is a teacher physically punishing a student, a parent hitting their child, or a spouse beating their significant other-most commonly males, these acts of abuse are normalized as something customary and conventional.

The World Health Organization has in regards to child maltreatment recognized that globally, 3 in 4 children i.e., about 300 million children below the age of four are subjected to physical and psychological violence at the hands of parents and caregivers and about one in five women and one in thirteen men have reported being victims of sexual abuse by the age of seventeen.[2]

This mindset prevailing in the society has led to millions of instances of abuse and aggression, justified by the perpetrators and sometimes, even the victims. In the rare

[1]Oxford English Dictionary, Second Edition, 1989
[2]World Health Organization, *ChildMaltreatment*, 8th June, 2020, https://www.who.int/news-room/fact-sheets/detail/child-maltreatment

circumstances where an individual recognizes an abusive pattern, they still face hurdles in escaping such hostile environments. Either they lack courage, or their attempts at breaking free are demoralized by their friends and family. In few cases, they lack legal aid and are forced to face societal criticism.

The United Nations in its statistical report regarding the violence against women has reported that almost one in three women i.e., approximately 736 million women have been victims of sexual violence at least once in their life, and most violence against women is perpetrated by their partners or husbands-whether current or former-revealing an alarming number of over 640 million women aged 15 and above being its victims. The violence against women has been more prevalent in the low and lower-middle income countries and regions and less than 40 percent of the victims seek help.[3]

Women face the threat of death everyday with over 137 women being killed by a family member every day due to a multitude of reasons[4]. They are also subject to gender-based violence and sexual harassment in school and workplace.

In India, the National Crime Record Bureau in 2018 has reported that around 109 children were subjected to sexual abuse every day, with around 39,827 cases being reported under the Prevention of Children from Sexual Offences Act (POSCO) in 2018. There was a hike in the number of overall crimes against children over the past decade, from 22,500 cases in 2008 to 1,41,764 cases in 2018, wherein the major crimes that children fell prey to were kidnapping and offences under POSCO.[5] In 2019, the reported cases increased to 1,48,185, where around 24,642 of the offenders under POSCO were known to the victim. Crimes and acts of violence punishable under IPC committed against children included murder, rape, abetment of suicide, infanticide, foeticide, simple and grievous hurt, kidnapping, trafficking, sale for prostitution etc.[6]

Around 3,78,277 cases of crimes against women were reported under IPC in 2018 and 4,05,861 cases of crimes against women under IPC and special laws were registered in 2019,

[3]United Nations Women, *Facts and Figures: Ending violence against women*, Last updated: March, 2021, https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures, Accessed on: 12th June, 2021
[4]Supra 3
[5] Crime in India, 2018, Statistics, Volume 1, *National Crime Records Bureau*, Ministry of Home Affairs
[6] Crime in India, 2019, Statistics, Volume 1, *National Crime Records Bureau*, Ministry of Home Affairs

with over 7000 cases of dowry deaths, and 1,26,575 cases of cruelty by husband and his relatives being registered.[7]

While every person regardless of age, gender and other physiological characteristics is equally prone to become victims of violence, children and women have historically been the main targets of such brutality, and with a lack of awareness, education and resources, continue to be the casualties of this barbaric injustice.

If history is any indication, any unchecked growth of violence will lead to the victims possibly being the perpetrators themselves in the future, continuing the cycle of abuse, as in the end, violence only breeds violence.

COVID-19 AND VIOLENCE:

With the onset of the COVID-19 pandemic, millions lost their jobs and their sole sources of income, and the population across the globe were forced to withdraw within the safety of their homes.

The increase in the general stress level, enhanced with financial frustration led to a heightened rate of domestic violence and child abuse during the lockdown period imposed in various countries. There was also increase in addictions which ran rampant, particularly substance abuse, that significantly impacts an individual's behaviour, thereby contributing to the surge in levels of aggression and violent behaviour.

With the pandemic being the harbinger of a socio-economic crisis, overstressed caregivers have turned more abusive towards children. Many children across the world are unable to seek aid from external sources with their movements restricted as they are compelled to adapt to the confining lifestyle within their homes.

Child abuse and maltreatment has a long-term impact upon their lives, and are commonly associated with trauma induced impairments in psychological, behavioral, and physiological functioning and development over the course of their lives[8]. Children who are exposed to psychological mistreatment exhibit higher rates of aggression, hyperactivity, behavioral issues, anxiety, depression etc.[9] where mockery, humiliation, belittling, verbal

[7]Supra 6
[8] Cicchetti D. Socioemotional, personality, and biological development: Illustrations from a multilevel developmental psychopathology perspective on child maltreatment. *Annual Review of Psychology.* 2016;67(1):187–211. DOI: 10.1146/annurev-psych-122414-033259
[9]Supra 8

abuse, threatening physical harm and such other abusive patterns constitute psychological maltreatment.

Parents and caregivers undergoing depressive episodes themselves struggle to provide for the mental and emotional strength and reassurance required by their children. Instead, their stress finds an outlet through violent outbursts- whether physical or verbal- against their offspring. Without proper coping mechanisms and awareness, this may result in the rising of a habitual pattern of abusive behaviour by parents.

The most common factors contributing to violence, abuse and neglect involve the increase in poverty and thereby food insecurity owing to loss of income, lack of access to education by children, absence of nutritious meals which were provided at no cost to children by the government through various policy initiatives, isolation from community and peer groups, lack of access to resources and support networks, substance abuse by caregivers, abusive living environment to the children, cyberbullying, lack of access to healthcare in certain regions and deficiency in mental health support systems, to name a few.[10]

An additional concern arising during this pandemic is the unwavering surge in the number of children orphaned. With over 3 million deaths across the world owing to the pandemic, there are thousands of children orphaned with no family to care for them and no resources available to survive. Combined with the constant efforts from various NGO's and governments, it is still a matter of distress as to how numerous children will never be able to find loving homes as they are exposed to a growing risk of human trafficking. Children who are living in the streets, institutions, refugees, migrants etc., face an increased risk to be subjected to violence. Adding to this horror, children who are compelled to stay within their homes are increasingly falling prey to sexual abuse and violence, whether by their own family, neighbours or acquaintances or even strangers. It is therefore crucial that resources are made accessible to everyone to ensure that people are able to identify and develop mechanisms to reinforce positive behaviours while discouraging the negative ones, while

[10] The Alliance for Child Protection in Humanitarian Action, End Violence Against Children, UNICEF, WHO. COVID-19: protecting children from violence, abuse and neglect in the home, Version 1, May 2020, https://www.unicef.org/sites/default/files/2020-05/COVID-19-Protecting-children-from-violence-abuse-and-neglect-in-home-2020.pdf

promoting awareness as to means of preventing violence, abuse and neglect against children.[11]

Another sphere of violence that has sky-rocketed during the pandemic is the domestic violence and sexual abuse, most commonly against women. With the priority taken over by COVID-19 crisis, men and women trapped in their homes are being victims of barbaric acts of cruelty that is being overshadowed by the global emergency. There has been a significant rise in the number of calls made to domestic violence helplines in numerous countries since the pandemic began and most survivors face a severe dearth in resources available to seek aid in dire times. The shelters for victims became less accessible during the lockdown and thus alienated the requirements of the vulnerable section of society.

Economic distress has contributed majorly to the risk of women experiencing violence. With a sudden loss of livelihood, women are forced to work in informal sectors that entails the risks of sexual violence and harassment against women.

Women with disabilities and disorders, belonging to rural, immigrant or refugee backgrounds are at a higher chance of vulnerability than the rest. In addition to the usual likelihood of being abused, they are subjected to crass discrimination and stigmatization from their communities and the society, thus being neglected and are unable to receive essential services during the lockdown period. In countries like India, girls are under pressure from families to get married as their access to education remains uncertain.[12]

Concluding Remarks:

The statistics we scrutinized were immensely alarming, yet we fail to realize that these are not mere numbers. These are the lives of millions of people at jeopardy, leading to extreme health concerns (physically and mentally), and even death, whether by succumbing to the violence or victims voluntarily choosing to end their lives seeing no escape. The statistics are merely a fractured reflection of the reality where most cases of abuse and brutality remains silenced and unreported.

[11]Supra 10

[12]United Nations Women, *Impact of COVID-19 on violence against women and girls and service provision: UN Women rapid assessment and findings, 2020*, https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/impact-of-covid-19-on-violence-against-women-and-girls-and-service-provision-en.pdf?la=en&vs=0

One's incapability to channel aggression in a healthy alternative should never be at the cost of the life or safety of another. Every person regardless of age and gender should regard their home as a safe haven, and not dread it as the dwelling of the evil and chaos.

It is therefore not sufficient to make efforts just during the pandemic to curb violence but proactive measures are to be undertaken at all spheres of life to eradicate this tenacious cycle of violence in all forms as it is no longer a question of human rights or morality, but it is a question of human decency.

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Transforming Cricket Administration Through Competition Law

MR. AKASH THAKUR*

Abstract

This paper explores the intersection of competition law and sports law in the context of cricket, particularly in India. With the commercial growth of cricket, epitomized by high-investment ventures like the Indian Premier League (IPL), the sport has transitioned from amateurism to a highly commercialized industry. The governance of cricket in India, primarily overseen by the Board of Control for Cricket in India (BCCI), has faced increasing scrutiny due to issues of corruption, political control, and nepotism. While the BCCI regulates the sport's rules and discipline, it does not address the adherence to competition laws in its commercial operations. This paper examines the emergence of a new legal field—sports law—and its application to regulate cricket's commercial aspects, highlighting the anti-competitive practices that have taken root in the industry. By analyzing the monopolistic control exerted by sports federations and the blurred lines between governance for the sport's benefit and commercial interests, the paper advocates for stronger competition law enforcement to ensure fair and effective sports administration.

KEYWORDS: Administration, Cricket, Competition Law, Sports Law.

I) INTRODUCTION

"When you love competition, you don't want the market to consolidate." - Xavier Niel

The sports economy developed immensely in the western world following the availability of increased leisure after World War II. Countries with predominant influence on cricket were left uninterrupted with advantages that a developing sports economy could offer largely because of the Boards of Cricket. Cricket lived off the patronage of the state and the game itself was played largely in British Colonies who would be looking up to the Cricket Boards in Australia and England to take a lead. These Boards were content in imagining their supremacy in the game but in the last 10 years, the role has been taken up by the Indians. With the never-ending revenue the country generates out of cricket, BCCI dictates the terms in the cricketing world with dominance backed by cricketing talent, infrastructure, viewership, and commerce.

The role of law in the sports industry is instrumental in expanding its purview to the regulation of the sports market through autonomous bodies. Lack of regulatory framework to deal with the conflict between players, clubs, governing bodies, and emerging associations over mostly commercial interests has given rise to a fundamental question that is if competition law and commission support the sports federations promoting fairness, which is affected by the poor administration and anti-competitive terms in the market. The commercialization of sport has resulted in the sports associations reaping the benefits of investment, with discretionary powers and indulging in unregulated anti-competitive activities, by virtue of them being the regulators. Further, most competition regimes aim to avoid the anti-competitive behaviour of cartels and prevent firms from abusing their dominance in any particular market.[1]

II) STRUCTURE OF REGULATION

There are two models of regulation, Interventionist, and Non-Interventionist. In the interventionist approach, sport is considered a public function and the state has a right and the responsibility to deliver, achieved by implementing 'specific legislation on the structure and mandate of a significant part of the nation's sports movement.[2] On the other hand, In the non-interventionist approach, states take a less interventionist approach to the sport. The

[1]SIMON GARDINER, ROGER WELCH, SIMON BOYES AND URVASI NAIDOO,SPORTS LAW 351 (3rd ed., 2006).
[2]LEWIS, ADAM AND JONATHAN TAYLOR, SPORT: LAW AND PRACTICE 5 (2nd ed., 2008).

provisions of the sport have not been regarded as a public service responsibility of the government. Thus, no general 'law of sport' is enacted to regulate activity in this sector. Rather, legislation or other intervention is generally countenanced only as a measure of last resort, in response to a pressing public interest requirement. In India, the sports sector has been neglected so far and the State's attitude has been that of a non-interventionist. Under the Constitution of India, 'sports' is in the State List along with entertainment and amusement. Thus, the responsibility for the development of sports primarily lies with each state government. The role of the Central Government is limited to planning and providing infrastructure. The Ministry of Youth Affairs and Sports is the apex body which designs sports policies.[3] A trend of monopoly has always been prevalent in the field of sports owing to the existing pyramidal structure, in order to preserve the elements of integrity and uniformity associated with the field. The competition law in the jurisdiction of the USA and EU grants certain immunity to this sector from the applicability of competition law framework, taking into consideration certain distinctive features that the industry possesses. The major goal of the Competition Act in India is to protect the market from anti-competitive practices. In recent times, sports organizations have turned monopolistic in nature and they are alleged to have taken undue advantage of their monopoly in the relevant industry. The underlying problem in such a situation is that there exists no express body to watch over the practices of these sports organizations and this gives them the leeway to act arbitrarily. These organizations have been alleged to impose different forms of economic restraints like revenue-sharing, spending caps, drafts, non-tampering clauses, etc. and because of these activities, they have been under the radar of the competition law.

III) INTERNATIONAL PERSPECTIVE

Competition Issues related to Sports was discussed in OECD[4] and it identified the following questions during a Roundtable in which various countries had participated:

[3] Vijay Kumar, *Issues in Emerging Area of Sports Law: Lex Sportiva*, 1 INDIAN LAW REVIEW (May 23, 2017)

[4]OECD, Competition Issues Related to Sports, OCDE/GD(97)128 (1997), available at <http://www.oecd.org/regreform/sectors/1920279.pdf>.

1. Should they be considered as normal commercial enterprises subject to competition law or as private non-profit-making bodies which merely regulate the sports? – Nature of Sports Federations.
2. Should the federations or leagues be viewed as cartels of clubs or as bodies independent of the clubs? – The relationship between Sports Federations or Leagues and the Clubs
3. Are different sports substitutable for one another or within the same sport are different competitions substitutable, particularly from the broadcasting perspective? – Nature of the relevant market.
4. Should the contracts be viewed as contracts of employment excluded from competition laws or should they fall within the purview of such laws? – The relationship between Players and Clubs.

Considering the aforesaid issues, an analysis of administrative failures of the BCCI through various decisions by CCI[5] highlighting the instrumental role played by Competition law in transforming Cricket Administration.

IV) CASE STUDY: SURINDER SINGH BARMI v. BCCI

The interaction between the sports industry and competition law can be analyzed through jurisprudence developed in the European Union. The wrangle on the role of the European Commission in analyzing the regulatory framework began with the Bosman case,[6] which laid down the application of competition law to sport. Similarly, the intervention of the CCI with regard to the BCCI case[7] signifies the transition from autonomy to regulating the regulator in the Indian sports industry, whose decisions have a commercial impact in the market.[8]

In *Surinder Singh Barmi v. Board for Control of Cricket in India*,[9] the case was brought before the Commission by the informant alleging anti-competitive agreements between BCCI, IPL[10], and the IPL teams causing an appreciable adverse effect on competition in

[5] Competition Commission of India (Hereinafter CCI).
[6] C-415/93, Union Royal Belge des Societies de Football Association ASBL &Ors. v. Jean-Marc Bosman, (1995) ECR I-4921.
[7] Competition Commission of India, Surinder Singh Barmi v. Board for Control of Cricket in India (BCCI), Case No. 61 of 2010 61 of 2010.pdf (cci.gov.in).
[8] BhagirathAshiya, *The Sport, Money and Law: Transforming Indian Sports Administration through Competition Law*, 1 ICLR 16(2016).
[9] *Supra note 10.*
[10] Indian Premier League (Hereinafter IPL).

India. It was also alleged that there was an abuse of dominance by BCCI-IPL in the organization of T-20 matches. Commission formed a prima facie view in the matter for further investigation by DG. Once DG Reports were submitted and parties were heard, the Commission upon found that BCCI has abused its dominant position in contravention of Section 4(2)(c) of the Act which dealt with practices resulting in a denial of market access and passed the following order:

1. to cease and desist from any practice in the future denying market access to potential competitors, including the inclusion of similar clauses in any agreement in the future.
2. to cease and desist from using its regulatory powers in any way in the process of considering and deciding on any matters relating to its commercial activities. To ensure this, BCCI will set up an effective internal control system to its satisfaction, in good faith, and after due diligence.
3. to delete the violation clause 9.1(c)(i) in the Media Rights Agreement which provided a long-term media rights agreement.
4. the Commission considers that the abuse by BCCI was grave and the quantum of penalty that needs to be levied should be commensurate with the gravity of the violation. The Commission has to keep in mind the nature of barriers created and whether such barriers can be surmounted by the competitors and the type of hindrances by the dominant enterprise against the entry of competitors into the market. The Commission has also to keep in mind the economic power of enterprise, which is normally leveraged to create such barriers and the impact of these barriers on the consumers and the other persons affected by such barriers. Accordingly, a penalty of 6% of the average annual revenue of BCCI for the past three years was imposed under Section 27(b) of the Act which amounted to ₹52.24 Crores.
5. the Commission considered IPL as a new genre of cricket wherein revenue generation was a primary consideration and it was an organization of private

professional cricket league in India viewed from a demand perspective in terms of advertisement, revenue, and TRP[11] ratings than other sports.

The CCI further held that BCCI was in a dominant position in the relevant market for the following reasons:

1. BCCI was the de facto regulator of cricket in India;
2. BCCI was empowered by ICC by-laws with the right to sanction/approve cricket events in India and consequently, its approval is required by any prospective private professional league;
3. BCCI was at a significant commercial advantage by owning infrastructure;
4. BCCI controlled a pool of cricket players under contract.

Therefore, the competition commission in order to improve sports administration directed the concerned sports body (BCCI) to establish a healthy competition environment by observing the following directions:

1. fix a reasonable time frame for franchise agreements and not to re-enter into a perpetual franchise agreement in the future;
2. fix a period for future media agreements and scrap the associate sponsorship contracts given to various parties without following the tendering process and resort to a fair and transparent competitive bidding process in the future.

The commission in this case noted that BCCI's economic power is enormous as a regulator that enables it to pick winners. BCCI has gained tremendously from the IPL format of cricket in financial terms. Virtually, there is no other competitor in the market nor was anyone allowed to emerge due to BCCI's strategy of monopolizing the entire market. The policy of BCCI to keep out other competitors and to use their position as a de-facto regulatory body has prevented many players who could have opted for the competitive league.

The dependence of competitors on BCCI for sanctioning of the events and dependence of players and consumers for the same reason has been total. BCCI knowing this had foreclosed the competition by openly declaring that it was not going to sanction any other event. BCCI undermined the moral responsibility of a custodian and de-facto regulator.

[11]Television Rating Point/Target Rating Point

Presently, this case is under appeal before National Company Law Appellate Tribunal. There has been one more case brought before CCI against BCCI, however, the Commission closed the case holding that there is no requirement of investigation in this matter as it has already been done and the matter is pending before the Tribunal.[12]

CCI in the discussed case implied that the self-regulation of the sports authorities to a permissible extent can go hand-in-hand with the competition laws in the country. CCI while respecting this right of self-regulation observed that "the sports bodies have the right of self-regulation with regard to issues, which are purely sporting, such as the selection of teams, formulation of rules of the sport, etc. or even the issues which have economic aspects such as the grant of various rights related to sports events or organization of leagues, etc." also made it clear that the commercialization in the sports industry can very well fit in the competition regulations.

The remarks made by the CCI in the above-mentioned cases reflect the opinion of the CCI on the impugned intersection that "certain sporting activities are excluded from the purview of competition and the other being the activities generating commercial gain will be within the ambit and the scope of the competition statute".

V) CONCLUDING REMARKS: HOW COMPETITION LAW CAN TRANSFORM CRICKET ADMINISTRATION

There is an inevitable relation between sports and competition law. The legal developments in India and across the country have certainly embraced their unique interactions in various spheres of organization and administration of sports events. As we look for reconciling the legal principles to their unique relationship with sports there can be certain regulatory changes by the sport's governing bodies to assist in streamlining the process. The regulatory bodies should come up with fair, standardized, and non-discriminatory criteria for the organization of leagues and events by other organizations.

India has developed competition law to fulfil its modern-day needs and when competition issues in sports arise it cannot be allowed to be overlooked. No enterprise in the country is

[12]Competition Commission of India, Pan India Infra Projects Private Limited v. BCCI, Case No. 91 of 2013, available at Case no. 91 of 2013.pdf (cci.gov.in).

now permitted to indulge in any anti-competitive business practice prohibited by the Competition Act. Thus, the following measures must be adopted:

1. There must be a clear separation between sports regulation and the commercialization of sport. A delineation between economic activities and strictly regulatory functions of governing bodies should be done. Delineation of these activities will aid authorities to take appropriate action and ensure that these bodies can enjoy varying standards of autonomy depending on the nature of functions performed by them.
2. No material step has been taken to term sports as an event of national importance. The league matches shall not be a matter of national importance as it does not involve the participation of the National team.
3. There are various clubs owned by corporate houses or businessmen of various parts of the country which makes the sport exciting for a commercial prospect than purely entertainment-based.
4. The aspects related to accountability and independence of BCCI needs to be scrutinized to bring in the balance of both. Strict government regulations and competition policy could hinder the effective functioning of BCCI. However, considering the extent of their dominance, they cannot be left unchecked either. Therefore, a harmonious balance between the two needs to be achieved.
5. The European Court of Justice in the famous Meca Medina case[13] noted the need for sport rules to be compatible with the EC competition law. Further, in the UEFA Champions League and FA Premier League cases, the European Commission accepted the joint selling of media rights by football associations on behalf of football clubs provided *inter alia* this was done through open and transparent tender procedures, was for a limited period (like 3 years) and the rights were broken down into smaller packages to enable several competitors to bid.
6. This process can be adopted for transparency within sports governance bodies and will go a long way in ensuring fair market principles are upheld. How media rights are granted, if it's made clear, predictable, fair, and transparent, will create healthy competition in the market and reduce the need for constant interference by competition authorities. Yes, the BCCI has an anti-corruption code in place but it's not been effective and a clear vision and mission needs to be adopted with respect to

[13]C-519/04 P, Meca-Medina &Majcen v. Commission of European Communities, (2006) ECR I-06991.

good and transparent governance especially when it comes to commercial aspects of the game.

The development in the interaction between sports and competition will be very interesting to note, considering growing jurisprudence and emerging trends in the field. The cases before the Commission have brought the issue of dual roles exercised by the sports federation in the light and the real need for fairness in their commercial dealings. Thus, Competition law has in a real sense paved way for better administration of Cricket.

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Sedition Law: A colorable piece of legislation

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ABSTRACT

In India where freedom of speech and expression is considered as the most vital right of the citizen given by our constitution, Sedition is still considered as a crime. The aim behind bringing the Sedition law in colonial India by Britishers was in order to curb those voices which stood against the unfair and misgovernance of the Crown. The main purpose behind including the Article 124A then was to suppress the freedom of the Indian citizens and strengthen the British rule. The object of legislature behind keeping the law was to punish those who had been sowing hatred feelings against the Government. In recent times the courts have expressed that every criticism against the state or government doesn't lead to sedition. Right to question and criticize the government are the very right in a democratic nation. The term "disaffection" used under section 124A of Indian Penal Code, 1860 is vague and interpreted according to the whims and fancies of the investigation officers or the court. The work aims wholesomely at the need of the law to be repealed or reconstructed according to the changing times and to restore the democracy. The soul of the democracy, freedom of speech and expression shall be reserved. There shall be some limitation drawn in order to maintain peace and order in the country but the same do not mean to restrict the public to express their feelings and views on the Government and their actions.

KEY WORDS: *Sedition Law, Freedom of Speech and expression, Democracy, Government.*

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INTRODUCTION

Act of Sedition includes bringing or attempting to bring contempt, hatred or disaffection towards the government. Further, the explanations to the section clarify that mere disapprobation of measures or actions of government, intended to bring a constructive change by lawful means, without arising feelings of hatred, contempt or dissatisfaction does not amount to sedition. Term Sedition is defined under section 124A of Indian Penal Code, 1860 as "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine". Explanation I, II and III speak about the expression "disaffection" which includes disloyalty and all feelings of enmity, Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation and Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.[1] In Raghuvir Singh v. State [2] the court observed that the authorship of seditious material alone is not the gist of the offence of sedition. Distribution and circulation of seditious materials may also be sufficient. Sedition is a law which criminalizes speech which is regarded as disloyal towards the nation or national security and not the Government. The constitutionality of the sedition shall be limiting its application to "acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence" Kedarnath case[3].

HISTORY

In British Era, the law was enacted when law makers believed that only good opinion on government policies shall survive. It was originally drafted in the year 1837 by Thomas Macaulay under section 113 but the same was surprisingly not included in the Indian Penal Code, 1860. Section 124A was inserted in the year 1870 by an amendment by Sir James Stephen.

[1] Indian Penal Code, 1860, S. 124A
[2] AIR 1987 SC 149: 1987 Cr LJ 157.
[3]AIR 1962 SC 955.

Some of the most famous trials during 19th century and early 20th century for the sedition were against the Indian nationalist and leaders. The first such instance was Jogendra Chandra Bose[4] in 1891 where the editor Bose published an article in his own magazine named Bangobasi, criticized the Age Consent Act, 1891 and was charged with sedition for criticizing the Age of Consent Bill and the negative economic impact of British colonialism. While directing the jury on the case, the Court distinguished sedition as was understood under the Law of England at that time, from section 124A IPC. It was observed that the offence stipulated under section 124A IPC was milder, as in England any overt act in consequence of a seditious feeling was penalized, however in India only those acts that were done with an intention to resist by force or an attempt to excite resistance by force fell under this section. In Queen Empress v. Bal Gangadhar Tilak, the defendant was accused of sedition for publishing an article in newspaper- Kesari invoking the example of the Maratha warrior Shivaji to incite overthrow of British rule. The most famous sedition trial after Tilak's was the trial of Mohandas Gandhi in 1922. Gandhi was charged, along with Shankerlal Banker, the proprietor of Young India, for three articles published in the magazine. Later, Supreme Court in Kedar Nath Singh case upheld the validity of sedition under Section 124A and stated that it was constitutional since it imposed a reasonable restriction on Article 19(1) (a). Further, the holding that acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence would be made penal by Section 124A[5]. Further, the ICCPR provides that in order for a restriction on freedom of expression to be permissible, the Government must discharge the onus of proving that the restriction is: (a) provided for by law, (b) necessary, and (c) in pursuit of one of the legitimate aims set forth in the Article. It is submission of the Petitioners that Section 124A as a restriction of freedom of expression falls short of these requirements in that it is neither 'necessary' nor sufficiently 'provided by law'.[6]

SEDITION LAW CONTRARY TO FREEDOM OF SPEECH

[4] (1892) ILR 19 Cal 35.
[5]KedarNath Singh v/s State of Bihar (1962), SCR 767, AIR 1962 SC 955: (1962) 2 Cri LJ 103
[6]Ashima Obhan and Akansha Dua, Obhan & Associates, New Delhi, How Incumbent Is Section 124A of the Indian Penal Code? – The Supreme Court Decides To Examine - Government, Public Sector – India, https://www.mondaq.com/india/terrorism-homeland-security-defence/1065362/how-incumbent-is-section-124a-of-the-indian-penal-code-the-supreme-court-decides-to-examine, 20th June, 2021.

The section kept drawing criticism in the independent India as well for being a hindrance to the right to free speech. Sedition was made a cognizable offence for the first time in history in India during the tenure of Prime Minister Indira Gandhi in 1973, that is, arrest without a warrant was now permissible. In 1962 the Supreme Court of India interpreted the section to apply only if there is, say, [7]"incitement to violence" or "overthrowing a democratically elected government through violent means"[8]. This section openly criminalizes persons showing disaffection towards the government and not the nation. The Court has made several judicial pronouncements which were discussed to get an idea about "seditious acts". It could be stated that, unless the words used or the actions in question do not threaten the security of the State or of the public, it lead to any sort of public disorder which is grave in nature, the act would not fall within the ambit of section 124-A of IPC [9]. John Stuart Mill advocated the importance to the freedom of speech and argued that for the stability of a society one must not suppress the voice of the citizens, how so ever contrary it might be. The right not only makes it possible for a society to put an opinion but also provides a platform to the suppressed and unheard people who wish to voice against any celebrated culture. Further a good government is the one where the "intelligence of the people" is promoted[10]. In a number of cases, scepticism has been expressed about the potential misuse of the sedition law. Justice A P Shah, in one of his article[11] warns about the very basis for the logic of a sedition law. He compares the idea of sedition to a parochial view of nationalism which often endangers the diversity of opinions rather than protect against rebellion.

The Constitution of India guarantees freedom of speech and expression, which means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. Fundamental rights contained in Article 19(1) are those great and basic rights which are recognised as the natural rights inherent in every citizen.[12] The sedition law harms and curbs the fundamental right of Indian citizen under Article 19(1) (a) of Indian Constitution in many ways. The morality and criminality do not co-exist, the Supreme Court held

[7] Chandrachud, Abhinav (2021-02-22). "The Case to Amend Sedition Law, India's Self-Inflicted Wound". TheLeaflet. Retrieved 2021-03- 05.
[8] Utkarsh, Anand (2021-03-04). "Disagreeing with govt is not sedition, says SC". Hindustan Times. Retrieved 2021-03-05.
[9]Law commission of India, Consultation paper on "Sedition", pg 19, 2018.
[10] *Id.* at pg 18, 19, 2018.
[11]A P Shah, Free Speech, Nationalism and Sedition, Economic & Political Weekly, Vol. 52, Issue No. 16, 22 Apr, 2017.
[12] State of W.B. v. Subodh Gopal Bose, AIR 1954 SC 92.

that, free flow of the ideas in a society makes its citizen well informed, which will results into the good governance.[13]

a) Expression not amounting to Sedition

The Supreme court have been crystal clear in expressing that mere criticism against the state or Government doesn't intent to Sedition, solid reasons shall be taken in consideration before imputing the act on a person. The Supreme court in one of the recent case have observed that "a citizen has a right to criticize or comment upon the measures undertaken by the Government and its functionaries, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder; and that it is only when the words or expressions have pernicious tendency or intention of creating public disorder or disturbance of law and order that Sections 124A and 505 of the IPC must step in"[14]. The Supreme Court has overturned a sedition conviction for sloganeers who shouted incendiary slogans shortly after the assassination of Indira Gandhi, on the grounds that the slogans raised did not lead to violence[15]. After independence, section 124A of IPC came up for consideration for the first time in cases, where the Punjab High Court declared section 124A IPC unconstitutional by observing that "*a law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about*".[16]

b) Genuineness of Sedition law in India

The first case came before Supreme Court after independence relating to Sedition was Romesh Thappar v. The State of Madras[17]. The Supreme Court observed that The Act, as its preamble shows, is not intended for petty disorders but for disorders involving menace to the peace and tranquility of the Province, (2) There are degrees of gravity in the offence of sedition also and an isolated piece of writing of mildly seditious character by one insignificant individual may not

[13]S. Khusboo v. Kanniamal&Anr, AIR 2010 SC 3196.
[14] Vinod Dua vs. Union of India & Ors, Writ Petition (Criminal) No.154 of 2020.
[15]Balwant Singh v. State of Punjab, (1995) 3 SCC 214.
[16] Tara Singh Gopi Chand v. The State, AIR 1951 Punj. 27
[17] Romesh Thapar v. State of Madras, AIR, 1950, 124.

also, from the layman's point of view, be a matter which undermines the security of the State, but that would not affect the law which aims at checking sedition. It was also said that the law as it stands may be misused by the State executive, but misuse of the law is one thing and its being unconstitutional is another. Further the court stated that they are concerned with the latter aspect only. The internet and social media have become vital communication tools through which individuals can exercise their right of "freedom of speech and expression" and exchange information and ideas. In recent days, many twitter and facebook content relating to political view which was decisive of the Indian government was taken down by these respective social media platforms and many citizens have been booked under sedition for exercising their legitimate constitutional right to "freedom of speech". During CAA protests in 2019-2020 many people were arrested under sedition throughout India. For instance, a single mother of 11 year old in Bidar, Karnataka was booked for sedition for her daughter participating in anti- CAA protest. Similarly, a JNU student and more than 50 people from Mumbai supporting him were booked for the same. It was argues one of the cases that the Section 124A infringes upon the fundamental right of speech and expression, guaranteed under Article 19 (1) (a) of the Constitution of India, also that the law has been frequently misused since 1962, when it was first introduced[18].

SUGGESTION & CONCLUSION

The very outmoded law of sedition harms the heart of Constitution and makes it necessary to be repealed or modified. The law evidently attacks the freedom of an individual and leaves no space for criticism against the government or higher authority. The very same law is being used as a weapon to forcefully make the public to be of the same opinion as decided and practiced by the higher authorities. India being a democratic country, the citizens are said to be the soul of the nation. The preamble to the Constitution declares India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity of the individual and unity and integrity of the nation. There is a huge space in the law as there is an absence of a mens rea requirement which entails that no conduct can constitute a crime unless it is accompanied by a guilty mind. The lack of an inbuilt mens rea requirement greatly magnifies the potentiality for misuse. To fill up this

[18] Kishorechandra Wangkhemcha & Anr v UOI, WP (Crl) 106/2021.

gap, the 42nd Law Commission Report recommended the insertion of the phrase "intentionally or knowing it to be likely" into the construction of the section[19].

Freedom of speech and expression is the heart of our constitution, the law of sedition is contrary to the same. Therefore, court shall decide the quantum of punishment based on the presence of mens rea standards. The objectives specified in the preamble constitute the basic structure of the Indian Constitution which cannot be amended. The opening and last sentences of the preamble: "We, the people... adopt, enact and give to ourselves this Constitution" signifies the power is ultimately vested in the hands of the people. Indian Constitution is considered to be 'Of the people, for the people and by the people'; the very meaning of the democracy will be lost in coming time seeing that the democracy is becoming the sacrosanct concept which allows the hardship dictatorship of some leaders/ parties to call themselves the democracy. A citizen has a right to say or write whatever he likes about the Government, by way of criticism or comments so long as he did not incite people to resort to violence. It is necessary to strike a balance between the two important pillars of the country. Six decades after upholding the constitutional validity of Section 124A of the IPC, the Apex Court has agreed to examine whether the verdict in Kedar Nath Singh needs to be revisited and whether the provision of 'sedition' has lost its relevance in the present conditions. The bench after a brief hearing agreed to examine the plea and issued notice to the Centre seeking its response. The unfolds before the Apex Court, amid a backdrop of an increasing number of people being charged with sedition, the accused ranging from students to activists to journalists to political opponents.[20] Democracy is a living organ of Indian government and the essence of the same can prosper only if the laws are reinvented time to time.

[19] G S Bajpai and Ankit Kaushik, Time to reform sedition law, The Indian express, 2nd July, 2021, https://indianexpress.com/article/opinion/columns/sedition-law-supreme-court-vinod-dua-kedarnath-covid-19-7384890/, accessed on 7th July, 2021.

[20] Ashima Obhan and Akansha Dua, Obhan & Associates, New Delhi, How Incumbent Is Section 124A Of The Indian Penal Code? – The Supreme Court Decides To Examine - Government, Public Sector – India, https://www.mondaq.com/india/terrorism-homeland-security-defence/1065362/how-incumbent-is-section-124a-of-the-indian-penal-code-the-supreme-court-decides-to-examine, 20th June, 2021.

The Nowhere Citizens: Analyzing India's Refugee Policy and Its Implications

Samyuktha. I. [1]

ABSTRACT

A refugee is someone who has been flee his or her country because of persecution, war or violence. A refugee cannot return home or has less chances to return home because of fear of persecution for reasons of race, religion, nationality etc. India specifically has no international policy for protection of refugees. Moreover, India has wide range of refugees entering in from different neighbouring countries. The host country may face economic burden, long term demographic change and security issues. However, helping this is a human rights paradigm. There is no specific statute for refugees but The Foreigner's Act, 1946 and CAA, 2019 has provisions regarding refugees. In India the absence of national legislation on refugees has placed their rights in vacuum. This, report deals with refugees to India and their legal status.

KEY WORDS: UN Refugee Agency, UNHCR, Internally Displaced People, IDPs, Refoulement and repatriation.

INTRODUCTION

"NO ONE PUTS THEIR CHILDREN IN A BOAT UNLESS THE WATER IS SAFER THAN THE LAND." -WARSAN SHIRE.

Mostly, refugees are legal and Indic minorities who migrated to different countries after independence in 1947. These refugees who migrated during independence in the event of partition of the state (two nation theory) aren't illegal in respect to Part II[2] of The Constitution of India. Multiple groups of people are recognised as legal refugees who migrated in fear of persecution on basis of religious and ethnic discrimination. Religious refugees like people from Afghanistan, Bangladesh, Pakistan and Tibet were refugees to

[1] IV SEMESTER B.B.A.L.L.B JSS LAW COLLEGE, A PROFESSIONAL AUTONOMOUS COLLEGE FUNCTIONING UNDER THE AEGIS OF JSS MAHAVIDYAPEETHA RECOGNIZED BY UGC AS "COLLEGE WITH POTENTIAL FOR EXELLENCE"

[2] Part II of The Constitution deals with citizenship (Article 5-11)

India. Additionally, refugees who face ethnic prosecution like Ugandans of Indian origin and Sri Lankan Tamils are also included in legal refuges list. They are mostly of minority religions of neighbouring countries like Hinduism, Buddhism, Sikhism, and Jainism. People of majority religion like Muslims in the neighbouring country Myanmar are also undergoing fear of persecution and had to migrate like the Rohingiya Refugees.

Illegal migrants are those who enter the country without valid visa who are likely to pose threat to the country. India, is not a party to International Refugee Convention of 1951 and its 1967 Protocol. Apparently, India has no Legislations and regulates refugees by political and administration levels and ad hoc system to handle the needs of refugees. They are basically treated as aliens who are regulated by The Foreign Act of 1946.

CITIZENSHIP

Indian nationality law is governed by The Citizenship Act, 1955 which had further Amendments. The Constitution of India in Part II deals with citizenship of Indians at times of Independence. India has established National Register for Citizenship (NRC) which has the list of the citizens of India residing in Assam with relevant information like their name.

Citizenship Amendment Act, 2019[3] which was established on 11th December, 2019 amends the Indian Citizenship Act of 1955 and provides citizenship for refugees of religions like, Hinduism, Buddhism, Jainism, Zoroastrianism, Parsis and Christians from countries like Pakistan, Afghanistan and Bangladesh who entered India before the end of December, 2014. This law doesn't apply for Muslims as the countries specified are basically Muslim-majority countries. This was the first time to determine citizenship on the basis of religion. This Act

[3] Citizenship Act of 1955 was amended in 1992, 2003, 2005 and 2015

neglected Rohingiya refugees and Sri Lankan Tamils was the reason for undergoing high controversies.

THE FOREIGNER'S ACT, 1946

The Act defines a foreigner as "a person who is not a citizen of India". According to Section 9 of this Act, if a person's nationality is not evident he has the burden to prove that he's a foreigner. Foreigner (report to police) Order, 2001 under The Foreigner's Act, 1946 provi9des obligation to reveal to the police if a foreigner has entered to the state in his premises by the owner within a period of 24 hours. The police has right to detain them until they are deported to their country of origin.

DIFFERENCE BETWEEN REFUGEES AND IMMIGRANTS

Refugees are forced to leave their home countries because of war, environmental disasters, political persecution and religious or ethnic intolerance. Refugees, according to the office of the United Nations High Commissioner for Refugees [UNHCR], are people who are "fleeing armed conflict or persecution" and "for whom denial of asylum has potentially deadly consequences." Refugees leave their home countries because it is dangerous for them to stay. They often arrive without their personal belongings' sometimes without preplanning.

Simply speaking, a migrant is someone who chooses to move for any no. of reasons. Some of them move to be with family or for economic reasons, education or to return to their home countries after few years. This doesn't mean that all are moving from good situations to better one unfortunately, many people move because their homes have become dangerous or difficult to live in. They might be fleeting from unrest, famine, drought, or economic collapse. But unless they are in danger of conflict or persecution, they are not considered refugees.

The distinction is an important one, because an international convention[4] in 1951 outlined certain rights for people deemed refugees, whereas migrants have no such rights. Refugees are protected from being deported or returned to situations that might threaten their lives. They are to be given access to social services and to be integrated into their new country's society. Migrants are subjected to a country's immigration laws and procedures and can be turned away or deported back to their homeland.

ILLEGAL IMMIGRANTS

Illegal immigration refers to the migration of people into a country in violation of the immigration laws of that country, or the continued residence without the legal right to live in that country. Illegal residence in another country creates the risk of detention, deportation, and/or other sanctions. Whereas, the legal migrants can undergo:

1. Local integration

2. Voluntary repatriation

3. Third country resettlement[5]

IMDT ACT, 1983

The Illegal Migrants (Determination by Tribunal) Act, 1983 was introduced during Indira Gandhi's period was struck down by the Supreme Court judgement in the case Sarbananda Sonowal vs. Union of India. The act was determined to detect illegal migrants from Assam from Bangladesh and expel them. The Act provides protection against undue

[4] UNHCR established in 1955 expands as United Nations High Commissioner for Refugees and has Protocol in 1967.
[5] Third country resettlement means the resettled refugees has right to stay in the country and even acquire citizenship.

harassment to minorities affected by Assam Agitation. The Act made it difficult to deport illegal immigrants from Assam.

REFUGEES OF PARTITION OF PAKISTAN

At times of Independence, several people crossed over the newly formed boundaries of India and Pakistan either by choice or forcibly. Those people didn't lose nationality rather lived as refugee. After establishing The Constitution of India and the citizenship laws, the refugees were automatically part of the Independent India. In 1948, due to national security in India in the event of war in Pakistan, there was a flow of refugees from the neighbouring states into India. Pakistan was accused to shift 'internal problem' onto India. Over 10 million refugees entered from East Pakistan as they were facing discrimination and were in fear of persecution by the people of West Pakistan. The control over the govt. lied in the hands of West Pakistan who had Muslim majority speaking Urdu. The govt. made Urdu and English as the official language which profusely affected the feelings of the people of East Pakistan who were mostly Bangla language speakers. Students who protested against this were persecuted and mercilessly killed. The people of East Pakistan were seeking for a separate and independent state and India showed up as international intervention on behalf of the refugees. As a result, East Pakistan became a free state designated as Bangladesh an independent state. The ad hoc refugee treatment was used to handle the tremendous number of refugees during that time. Operation Searchlight was instituted by Pakistanis and a mass of people were killed in Bangladesh during Bangladesh Liberation War. This led to Genocide[6] where about 30 lakh people were killed. A large number of women faced genocidal rape and to save their lives entered India.

[6] Genocide refers to deliberate killing of a large number of people from particular nation with the aim of destroying a nation or a group.

AFGHANISTAN AND TALIBAN

Afghanistan was having Marxist reforms sparkling meanwhile Muslim troops invaded and took over the power. The Taliban Militia took power in Kabul and established harsh Islam order. The Militias were unwilling to extradite Osama bin Laden and members of his al Qaeda[7] organisation. In the event of statelessness, the Afghan people migrated to India,[8] mainly to Delhi were 11000 in count by the UNHCR report.

TIBET

The 14th Dalai Lama, spiritual head of Tibet escape to Dharmashala in India in fear of persecution from Peoples Liberation Army of China along with one lakh people. This flee of Dalai Lama with his followers had brought India a refugee crises. This migration was due to invasion of communist China into Buddhist Tibet and establishment of antireligious legislations. This even led to a war with China.

ROHINGYA

They are a group of Islamic people who were discriminated in Myanmar. Rohingyas were denied citizenship under 1982 Myanmar Nationality Law. This was stated to be equivalent to apartheid policy and was condemened by several leaders. There was a threat to unfolding genocide, mass killing, persecutions and sexual assaults. Due to these controversies, Rohingyas fled to India where even they were denied citizenship.

[7] The prime ambition of al Qaeda is to remove all foreign influences from Islamic country.

[8] Hashimy, S.Q. (no date) Goodbye to Afghans: What is the promise of human rights to human rightslessness Afghan migrants in Pakistan?, International Journal of Law in Changing World. Available at: https://ijlcw.emnuvens.com.br/revista/article/view/76

UGANDA EXPULSION

In the year 1972, Pres. Idi Aman the Ugandan President, ordered expulsion of Asian minorities within 90 days. Asian minorities mostly Gujarati were accused to have sabotaging Ugandan economy and encouraging corruption. There was a wide spread anti-Indian sentiment and all their belongings are seized. Thus, a large number of people migrated to India seeking help and for restoration.

SRI LANKAN TAMILS

Over 1 lakh Tamils in Sri Lanka are refugees of Sri Lankan civil war (1983 – 2009). The Ceylon Citizenship Act, 1948 failed to include Tamils of south Indian origin. 11% of country‘s population were homeless. Over 122000 migrated to Tamil Nadu and after PM Rajiv Gandhi’s assassination 54000 were repatriated. The so called Eelam Tamilians stopped to enter India because of Cease Fire Agreement. The Sri Lankan Tamils had great connection with Tamil Nadu in the history and have been ruled by several Indian kings witnessed in historic literature. People of Tamil Nadu possess strong feeling towards their wellbeing whereas they as refugees are treated without humanity.

HUMAN RIGHTS AND REFUGGES

Article 14(1) of The Universal Declaration of Human Rights guarantees the right to seek and enjoy Asylum[9] in other countries. Article 7 of UDHR is simultaneous with Article 14 of The Indian Constitution ensures equality before law and equal protection against discrimination.

REFUGEE CHILDREN

[9] Asylum seekers are not fully refugees but are just migrated to find home. They aren’t recognized as refugees in the beginning.

Over half of the refugees are tender children. UN Refugee agency UNHCR and UNICEF jointly are working to provide hygienic environment and good education to children. As humans, the prime responsibility is to provide the younger generation a durable future and education which ensures peaceful living. Almost all the refugee parents strive hard to ensure their children safety although they undergo mental trauma and sometimes physical stress. At times, children are exposed to child labour and other such exploitation. Such sufferings at tender age is unbearable. Most of the girl children had been rape victims which destroys their valuable life. This is the most devastating part of being refugee.

CONCLUSION

Refugees had experienced extremely stressful situations because of war and migration. They are separated from family, robbed, killed, witnessed, torture of killing, raped, betrayed by the enemy forces. They also embrace several health issues and mostly live in unhygienic conditions. This also includes more broad reaching phenomena, such as gender-based violence and maternal health. Being forced to flee, refugees may experience imprisonment, torture, loss of property, malnutrition, physical assault, extreme fear, rape and loss of livelihood. While in cities with all sort of luxury, sufficient food, education and peaceful living, people starve for riches, refugees are in all time fear of death and abrupt assaults. The enemy forces are often merciless and inflicts torture on refugee. Being humans by fate, they are treated as aliens. With all those international laws and conventions, refugees are still suffering without valid citizenship. Most of the countries strived to grow towards developed status without even holding a sense of humanity towards humans only to satisfy greed of the human-made sects and divisions.

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