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Rima Ghosh, Dr. Jayanta Ghosh & Dr.
Santanu Panda

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Life: Assessment of Human Rights

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Comments and contributions are sought from academicians, lawyers, students and professionals. These should be sent to the Editor at the following address:

Dr. Shambhu Prasad Chakrabarty
West Bengal National University of Juridical
Sciences, Kolkata
Room No. 22, WBNUJS,
12, LB Block, Sector 3, Salt Lake City, Kolkata-
700098
Email: crsgpp@nujs.edu/spc@nujs.edu

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Message from the Vice-Chancellor



The NUJS Journal of Regulatory Studies has been conceived as a premier journal for publication of research in the field of law and public policy. In an increasingly data driven world, public policy oriented research centred on thorough theoretical concepts with the analysis of empirical data is imperative. This journal aims to provide a platform for innovative researchers whose data driven research creates knowledge that is conducive to the creation of long term strategies and goals for policymakers in India and abroad.

The Centre for Regulatory Studies, Governance and Public Policy (CRSGPP) actively engages stakeholders for the formulation, analysis and oversight of public policy. This journal reflects the

ethos of CRSGPP and reflects its commitment to democratic values, academic excellence and legal research of contemporary relevance.

The Journal presently publishes articles on issues of national and international relevance in consonance with the aforementioned objectives. I hope that CRSGPP continues to enlighten the legal fraternity, policymakers as well as members of the public as it continues its journey of excellence and innovation.

-Prof. Dr. N.K. Chakrabarti

Editor's Note



The NUJS Journal of Regulatory Studies started its journey in 2016 to promote legal research focusing on policy formulation. In 2019, the journal gets a new dimension with the priority inclusion of cutting edge empirical research papers from across Asia.

The new board of editors accompanied by a robust peer review team gives the journal the much needed international status. Additionally, the new shape of this open access online journal authorizes the access of the entire edition as a single file.

The journal explores through its research papers the various challenges and highlights various human rights issues. The platform of NUJS Journal of

Regulatory Studies provides the young minds to find solutions beyond convention and also gives the right impetus to the centre to explore avenues to recommend such policy formulation to the concerned forum.

I am really thankful to the authors for such vivid contribution. I also take this opportunity to thank the esteemed members of the Advisory Board, Editorial Board, Peer Reviewers and my entire team who has worked relentlessly to finish the work in time.

-Dr Shambhu Prasad Chakrabarty
Head and Centre Coordinator

Sustainable Development for Quality Life: Assessment of Human Rights

Rima Ghosh, Dr. Jayanta Ghosh and Dr. Santanu Panda

Abstract

Human rights and Sustainable development are two important approaches that can work hand in hand to further substantive gender equality. Human beings should be able to lead and enjoy a carefree life, the humanity should become capable of respecting finiteness of the biosphere, and neither the aspirations for good life nor the recognition of biophysical limits should preclude the search for greater justice in the world. Man's greed attack nature, environment and ecology and wounded nature backslashes on the human future. Humanity stands a defining moment in history. As we are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and the continuing deterioration of the ecosystems on which we depend of our well-being. Earth's resources are finite and there are ecological limits to growth which unless alter our ways, will sooner rather than later be exhausted. Environment and human beings are inter-related both cannot be excluded from each other. Ever since man came to this earth, there has been an in born and intrinsic tendency to save his person and property. Expressed differently, the protection of one's person and property is inherent in nature of

man. Human rights are those rights, which any human being on this earth must enjoy because of his being a human being. The most fundamental of all rights is threatened by environmental degradation and unsustainable development- the right to life. Right to life being foremost human right implicated right to live without deleterious and perilous invasions of pollution, environment degradation and ecological imbalances. Environment today is no longer a scientist's esoteric but one of the paramount legal concerns, jurist's curative commitments and focal agenda of modern socio- legal order.

Keywords: *Development, environment, Human Rights.*

Introduction

In this article we have made an attempt to realise the human rights for the sustainable development. The expression "Human Rights" were first seen in the charter of the United Nations which regarded it to for promotion and fostering human Rights as one of the basic goals of United Nations.¹Chapter III OF

¹Carozza, P.G. and Philpott, D., 2012. The Catholic Church, human rights, and democracy: convergence and conflict with the modern state. *Logos: A journal of Catholic thought and culture*, 15(3), pp.15-43.

THE Indian Constitution can be said to be India's declaration of human Rights.

Human rights are those rights that have been assigned to any human being from the day he has been born into this world irrespective of his caste, creed, language, sex, colour or any other considerations.² Each and every person has its own dignity and value. These values and dignity of every person are recognized in the fundamental worth by acknowledging and respecting human rights. These rights are set of principles that are concerned with equality and fairness. They are about to live a life free from any kind of fear, harassment or any kind of discrimination.³

Human rights can be referred to basic rights that people from around the world accepted it to be essential to lead a life. These include the right life, the right to a fair trial, freedom from torture and other cruel and inhuman treatment, freedom of speech, freedom of religion, and the right to health, education, and an adequate standard of living.⁴ These basic human rights are same for all the people. For this reason human rights are considered to be "Universal".

Human rights are regarded as an important part of the society as through this only people interact with each other it may be in their family, college, workplace, in politics and international relations.⁵ It is vital therefore that people everywhere in the

²Ishay, M., 2008. *The history of human rights: From ancient times to the globalization era*. Univ of California Press.

³Burchardt, T. and Vizard, P., 2011. 'Operationalizing' the capability approach as a basis for equality and human rights monitoring in twenty-first-century Britain. *Journal of human development and capabilities*, 12(1), pp.91-119.

⁴Cingranelli, D.L. and Richards, D.L., 2010. The Cingranelli and Richards (CIRI) human rights data project. *Hum. Rts. Q.*, 32, p.401.

⁵Ruggie, J.G., 2004. Reconstituting the global public domain—issues, actors, and practices. *European journal of international relations*, 10(4), pp.499-531.

country should know what is human rights are. If people better understand human rights, it is easier for them to promote justice and the well-being of the society.

Sustainable Development

The term "sustainable development" was first used at the time of Cocoyam Declaration on Environment and Development in the early 1970's. From that time it has come in the high light of international organisations for achieving environmentally benign or beneficial development.⁶ The concept of sustainable development evolving in the 70s and especially in the 80s of the last century. Sustainable development is a development which means to meet the need of the present day without harming or compromising the needs of future generations to meet their own needs. The concept of sustainable development can be interpreted in many different ways, but at its core is an approach to development that looks to balance different, and often competing, needs against an awareness of the environmental, social and economic limitations we face as a society. Therefore, while thinking for present, the future should not be forgotten. The natural resources which are being used for today should be used in such a way that it can be kept for future use. We owe a duty to future generations and for a bright today, a bleak tomorrow cannot be countenanced.

Sustainable development is a concept which mostly relies or depends on the three important principles of sustainability which are known as economic, social, and environment. And when there is a

⁶Murphy, D.F. and Bendell, J., 1997. *In the company of partners: business, environmental groups and sustainable development post-Rio*. Policy Press.

proper balance between these three pillars it can immensely give rise to development. But it is quite necessary that there should be proper and systematic planning and approached for ensuring development. Here the term 'development' means an integration of development and environmental imperatives. In this context it is deeply concerned with the fundamental of human concerns like poverty, environment, equality, democracy, development and peace. Sustainable development's main goal is to meet the basic needs of poor people and to abolish all kinds of obstacles and oppression that give rise to violence and war. The environment and development are for people, not people for environment and development.⁷

When there is a Sustainable development, it is also important that people should lead a quality life and a life is said to be quality when life has the opportunity for steady productive employment and financial independence to own a home and retire with self security and to reside in a healthy environment and it is only the human being who should take the responsibility to shape up his future in his own hand and it should be according to the society's will.⁸ Sustainability is related to the quality of life in a community that is the economic, social and the environmental system that makes the community are should be healthy, meaningful for life for all the people residing in present and in future.⁹

Complete sustainable development is achieved through a balance between all these pillars,

⁷Ibid. P.35

⁸Centre canadien de gestion and Drucker, P.F., 1995. The age of social transformation.

⁹Cortese, A.D., 2003. The critical role of higher education in creating a sustainable future. *Planning for higher education*, 31(3), pp.15-22.

however, the required condition is not easy to achieve, because in the process of achieving its goals each pillar of sustainability must respect the in-

terests of other pillars not to bring them into imbalance. So, while a certain pillar of sustainable development becomes sustainable, others can become unsustainable,

Especially when it comes to ecological sustainability, on which the overall capacity of development depends

The notion of development is related to the past western concept of imperialism and colonialism, and in that period it implied infrastructure development, political power, and economic policy, serving imperialists as an excellent tool for marginalization and diminishing the power of certain countries (Tangi, 2005).

“Environmental Law” is an instrument to protect and improve the environment and to controller present any act or omission polluting or likely to pollute the environment”.¹⁰

- The Environment (Protection) Act, 1986¹¹

The Environment (Protection) Act , 1986 permits the Central Government to protect and enrich environmental quality, control and reduce pollution from all sources, and prohibits or restrict the setting / or restrict the industrial facility on environmental grounds. It was enacted in the year 1986 with an objective of providing and improvement of the environment.

- The Air (Prevention And Control of Pollution) Act , 1981¹²

¹⁰ Ibid. P.622

¹¹ The Environment Protection Act 1986

The Government of India passed this Act in the year 1981 to clean up our air by controlling pollution. The main motive of this act was to take appropriate steps for the preservation of the natural resources of the Earth which among all other things includes the preservation of high quality air and ensures controlling the level of air pollution.

- The Water (Prevention And Control of Pollution) Act, 1974¹³

This act was adopted by the Indian Parliament with the vision of prevention and control of water pollution in India. It is a comprehensive legislation that regulates agencies responsible for checking on water pollution and ambit of pollution control boards both at the Centre and States level.

Environment in the context of Human life

There is a strong relationship between environment and human being as where ever we go we are surrounded by nature and the environment it exists. But man's impact on the environment is big issue in our life which is neglected, as human are responsible for causing damage on the earth.¹⁴ Due to advancement of technology and industrialization humans have greatly had a negative impact on the environment such as air pollution, water pollution, habitat destruction, the burning of rain forest, and land pollution.¹⁵ Due to this it changes the biophysical environments and ecosystem, biodiversity, and natural resources caused directly

and indirectly by humans including global warming and environmental degradation.¹⁶

There is a connection between human rights and sustainable development. In this connection right to people act as a trademark because if the people in the society are not given their rights then there won't be any kind of development.¹⁷ Right to people not only mean their fundamental right but right to lead a quality and healthy life with dignity and self-confidence and respect. Every citizen of a country should be given opportunity to entitle to participated in, social, cultural and political development, in which all human rights and fundamental freedom can be fully realized.¹⁸

People can lead a quality life only when their community or where they are living the area should be clean. By this we mean clean environment and this clean environment can only be achieved when there is a protection against noise nuisance, air pollution, pollution of surface waters and the dumping of toxic substances.¹⁹ As man is assigned with fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and therefore it is man's responsibility to protect and improve the environment for present and future generations.

¹² The Air Prevention and Control Pollution Act, 1981

¹³ The Water Prevention and Control of Pollution Act 1974

¹⁴ Dewey, J., 2002. *Human nature and conduct*. Courier Corporation.

¹⁵ Steinfeld, H., Gerber, P., Wassenaar, T.D., Castel, V., Rosales, M., Rosales, M. and de Haan, C., 2006. *Livestock's long shadow: environmental issues and options*. Food & Agriculture Org.

¹⁶ Lambin, E.F., Turner, B.L., Geist, H.J., Agbola, S.B., Angelsen, A., Bruce, J.W., Coomes, O.T., Dirzo, R., Fischer, G., Folke, C. and George, P., 2001. The causes of land-use and land-cover change: moving beyond the myths. *Global environmental change*, 11(4), pp.261-269.

¹⁷ Fournier, S., 1998. Consumers and their brands: Developing relationship theory in consumer research. *Journal of consumer research*, 24(4), pp.343-373.

¹⁸ Donnelly, J., 1999. Human rights, democracy, and development. *Hum. Rts. Q.*, 21, p.608.

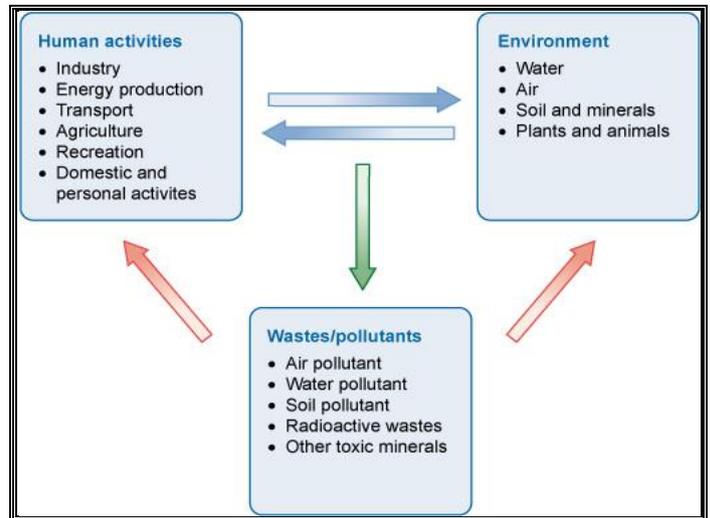
¹⁹ Mitchell, G. and Dorling, D., 2003. An environmental justice analysis of British air quality. *Environment and planning A*, 35(5), pp.909-929.

In the modernization period the relationships between environment and human rights are being deteriorated. The exercise and enjoyment of human rights is good and it is necessary for full development as human being.²⁰ As because due to human rights people can enlarge their inherent traits, aptitude, talent and scruples to meet their objects and religious needs. Life, livelihoods, culture and society are essential aspects of human subsistence and their maintenance is a fundamental right. Destruction of environment leads to violation of human right.²¹

*According to Preamble of UN Charter, “Man is both creature and moulders of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social, and spiritual growth... Both aspects of man’s environment, the natural and the mandate, are essential to his well-being and to the enjoyment of basic human rights – right to life itself”.*²²

Human beings are the centre of sustainable development. “Earth shall exist but human would not” They are entitled to healthy and productive life with nature. This means in everywhere nature plays a vital role whether it is of human beings or their right

After the discussion we have come to the real scenario of the human activities with the environment which are the prime red light of the pollution. The following symmetric diagram shows the actual relationship.



Growth of Sustainable Development Jurisprudence

Rio De Janerio’s Declaration of Environment and Development in the year 1992 it was proposed that the concept of sustainable development has become one of the important principles in the modern human civilization. In this view human being plays a major role in any kind of development in the society.²³ Therefore human being should lead a healthy productive life in harmony with nature. In harmony with nature means that while people using natural resources for their own benefits they should not destroy the nature. In this global world due to the invention of technology and industrial revolution it gives rise to more industries and factorise.²⁴ At one given point it is good to say that it lead to the development in the society but this development causing harm to the environment because in each and every places there has been factories coming up, no places are left empty and leads to cutting down of trees as there won’t be any greenery in the surroundings and it leads to globalization. And this globalization is harming the

²⁰ Monshipouri, M., 2001. Promoting universal human rights: dilemmas of integrating developing countries. *Yale Hum. Rts. & Dev. LJ*, 4, p.25.

²¹ Röpke, W., 1963. *Economics of the free society*. Ludwig von Mises Institute.

²² Preamble of UN Charter

²³ Redclift, M., 2005. Sustainable development (1987–2005): an oxymoron comes of age. *Sustainable development*, 13(4), pp.212-227.

²⁴ Smith, N., 2010. *Uneven development: Nature, capital, and the production of space*. University of Georgia Press.

environment as well as human being. So people have to understand that they are harming to themselves as because environment and human being are related to each other and their consequence is vice versa.²⁵ To achieve a quality life there should be balance between nature and human beings. In this regard right to development not only means development of society but also development of human being in a healthy surroundings in their present and in future generations. Special priority should be given to the developing countries in terms of all over development because in these countries they face the major problem of poverty. To achieve development in the nations the poverty should be reduced.²⁶ So it can be stated that peace, development and environmental protection are interdependent and it is responsibility of each of the individuals of the country and all the individual should co-operate in their own essential way.

In this context the concept of Sustainable development can be more precisely be understood by eminent economist proposals of Frank – Dominique Viven²⁷ According to his view point.....

- Sustainable growth is essentially important for the sustainable development. The resources should be used in a systematic and in a proper way without wasting, so that the production capacity of the economic well-

²⁵Oliver-Smith, A., 2013. Theorizing vulnerability in a globalized world: a political ecological perspective. In *Mapping Vulnerability* (pp. 29-43). Routledge.

²⁶Grindle, M.S., 2004. Good enough governance: poverty reduction and reform in developing countries. *Governance*, 17(4), pp.525-548.

²⁷ Viven , F.D ., 2008 Sustainable development : an overview of economic proposals. SAPIEN. S. Surveys and perspectives Integrating Environment and Society,(1.2).

being should be ensure in the same level as it is used in present generation should also be generated for future generation as well. This deeply directs that the existing society should remain stable from generation to generation; which will give rise to constant flow of wealth and resources over time. The capacity of production of any country is prepared and made up by following the stock of amenities, knowledge, skills, general level of education and the level of training as well as in stock of available natural resources.²⁸

- Socio-environmental constraints are kind of environmental issues which take place within the economic development In this context inefficiency act as in a less developed countries as producers are not able to produce more goods at an average cost. This is due to financial crisis and failure of apply to technology to production. And this give major problem to the below poverty line people in the country to meet their basic needs. Another important factor in this regard would be population that is considerable constraint on economic growth. As in any developing countries there is too high rate of population for the country's current resources or may be the growth of population is gradually or slowly declining due to war, famine or disease. Moreover in many developing countries there is a lack of real capital as this countries 's economies do not have

²⁸bid

sufficient capital to engage themselves in public or private investment.²⁹

- A social inequality is a concept of inequalities which creates obstacles in the process of development in the society. In a world in which more people are leading under poverty, extreme inequalities, both within and between countries, remain immense and urgent for many around the world. There are still more than 800 million people living in extreme poverty, while 1% of the world's population controls more than 50% of its wealth.³⁰

Social relationships, levels of social cohesion, including trust and social capital, are lower in more unequal societies. Indicators mainly about the women's status and equality also tend to be worse. More unequal societies have more property, crime and violence, especially homicides. Human Capital, scores on the UNICEF index of child well-being are significantly worse in unequal countries and decline as inequality rises. Maths and literacy scores are also lower and younger people drop out of education, employment and training, and more teenage girls become mother.³¹ Social mobility is restricted by inequality - equality of opportunity is increased by greater equality of outcomes. More equal countries tend to have higher rates of innovation, probably because of greater social mobility.³²

²⁹Ibid

³⁰Ibid

³¹Wilkinson, R. and Pickett, K., 2018. And another thing...: Towards a more equal society. In *Politics UK* (pp. 70-74). Routledge.

³²Ibid

Economic progress and stability, poverty reduction is compromised by income inequality. The International Monetary Fund states that reducing inequality and bolstering longer-term economic growth may be 'two sides of the same coin'.³³ In rich and poor countries, inequality is strongly correlated with shorter spells of economic expansion and less growth over time. Inequality is associated with more frequent and more severe boom and bust cycles that make economics more volatile and vulnerable to crisis.³⁴

The notion of human rights attributes value to every human being. This right is for all individual to have equal rights, and that jeopardy of the right of any single individual challenges the "individual" aspect of human rights.

Tiber Macham "Human Rights are universal and irrevocable elements in a scheme of justice. Accordingly, justice is the primary moral virtue within human society and all rights are fundamental justice"³⁵

Kant Baier, "Human Rights as those moral rights whose moral ground and generating factors are the same, namely being human in some relevant sense."³⁶

D.D Basu, "Human Rights as those minimal rights which every individual must have against the State or other public authority by virtue of his being a member of the human family, irrespective of any other considerations".³⁷

³³Chang, H.J. and Grabel, I., 2014. *Reclaiming development: an alternative economic policy manual*. Zed Books Ltd..

³⁴Ibid

³⁵ Tiber Macham, Prima Facie. Natural (Human) Rights 1976, Journal Of Value Inquiry No.2 119-131

³⁶ Kant Baier, (Ed) Chapman, Human Rights, Nomos, XXIII, 1981 New York Press. p.7.

³⁷ D.D Basu, "Human Rights in Constitutional Law", 1994, Prentice Hall, Delhi, p.5.

Apart from this view of different jurist on human rights, the Universal Declaration of Human Rights 1948 refers Human Rights as intangible rights of all members of the human family.

Role of Judiciary

Right to life and Right to Live in Healthy Environment

Article 21 of the Indian Constitution provides a fundamental right to its citizen that is right to '*life and personal liberty*';³⁸. This right is considered as the heart of the fundamental. As right to live means any person has been given the freedom lead to his life. For leading a life there are some basic requirements which are needed to be possessed by common man. The basic requirements are food, clothes, shelter etc. Moreover right to life can be said to leads a life of dignity, it means person should have minimum education to compete in the society as a respect citizen and also dignity means life with self-confidence and the term a life of dignity means to resides in a proper and clean environment, that should be free of any danger of disease and infection. In this regards it introduce a fact that there is a relationship between life and environment. Every person should live in a healthy which is free from any kind of disease, if the citizen of the country are fit and fine then the country will progress in long run and there will be development in the country. Healthy environment means an environment free from any kinds of pollution and disturbances. In this globalization world the growing up of industries, factories , real estate causing lot harmful effects to the environment .As due to increase of this modernization, people have

³⁸ Article 21 provides: "No person shall be deprived of his life or personal liberty except according to procedure established by law

fascination of modern equipment's due to which vehicles increasing day by day and this cause air pollution and polluting the environment and results to many disease. Again the advancement of housing complex that is real estate due to which the trees are being cut down immensely in a rapid manner which is reducing the greenery of the environment. All these are causing immensely affecting the environment. And in this kind of environment people can live healthy.

Right to livelihood is also a part of Article 21 of the constitution, as because right to earn for livelihood is considered as part of life. The judicial explanation has further broadened the scope and ambit of Article 21 by adding "right to livelihood" with "right to life".

To understand the concept of Article 21 the following judicial explanation with case laws are summarized as follow:-

The first indication of recognizing the right to live in healthy environment as a part of Article 21 was visualized from the case of *R.L. & E. Kendra, Dehradun v. State of U.P.*³⁹

In this mention case the Board of Rural Litigation and Entitlement Kendra, Dehradun and class of people residing in Dehradun filed an application before the Supreme Court towards the issue of progressive mining which is depriving the Mussoire Hills of trees and forest cover and accelerated soil erosion resulting in landslides and blockage of underground water fed many rivers and springs in the valley. Due to this circumstance the Honourable Court ordered the registry to treat the

³⁹ A.I.R. 1985 S.C. 652 (popularly known as Doon Valley case)

letter as writ petition under Article 32 of the Constitution.

This is the first case of its kind in the country involving issues relating the environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range, but also in their implications to the welfare of the generality of people living in the Country.⁴⁰

T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad⁴¹

This was a case filed before the Andhra Pradesh High Court. It was considered as an important just that decided that it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gift without life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Article 21 of the Constitution.⁴²

Thus, right to live in healthy environment was specifically declared to be a part of Article 21 of the Constitution. In this case, the petitioners prayed that the land kept for recreational park under, the petitioners prayed that the land kept for recreational park under the development plan ought not to be allowed to be used by the Life Insurance Corporation or Income Tax Department for

⁴⁰ Id., at 653

⁴¹ A.I.R 1987 A.P. 171

⁴² Id., at 181 (emphasis supplied)

constructing residential houses. The Hon'ble High Court of Andhra Pradesh also explained that environment law succeeded in unshackling man's right to life and personal liberty from the clutches of Common Law theory of individual ownership.⁴³

In *Subhash Kumar v. State of Bihar*⁴⁴, the Supreme Court observed:

Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of pollution free water and air for full employment of life. If anything endangers or impairs that quality of life in derogation of law, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.⁴⁵

In *K.C. Malhotra v. State*,⁴⁶ it was held that right to live with human dignity is the fundamental right of every Indian citizen and, therefore at least minimum conditions ensuring human dignity. Accordingly, the Court directed there must be separate sewage line from which the filthy water may flow out. The drainage must be covered and there should be proper lavatories for public convenience which should be regularly cleaned. Public health and safety cannot suffer on any count and steps to be taken as Article 47 makes it a paramount principle of government for the improvement of public health as its primary duties.

In *N.D. Jayal v. Union of India*,⁴⁷, the Supreme Court has once again reiterated that right to clean

⁴³ Id., At 180

⁴⁴ (1991) 1 SCC 613

⁴⁵ Id., At 604

⁴⁶ A.I.R 1994 M.P 48

⁴⁷(2004) 6 SCC 588

environment and right to development are integral parts of human right covered under Article 21 of the Constitution . Therefore, the concept of ‘sustainable development’ is to be treated as an integral part of ‘life’ under Article 21. The weighty concepts like intergenerational equity, public trust doctrine and precautionary principle, which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

The right to livelihood as a part of right to life under Article 21 was recognized by the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation*,⁴⁸ In this case, the petitioners, a journalist and two pavement dwellers were being removed from the Bombay pavements. The main argument advanced on behalf of the petitioners was that evicting a pavement dweller or slum dweller from his habitat amounts to depriving him of his right to livelihood, which is comprehended in the right guaranteed by Article 21 of the Constitution as deprivation of their livelihood would tantamount to deprivation of their life and hence unconstitutional. It was further argued that no person can be deprived of his life except “just, fair and reasonable”.⁴⁹ The petitioners also contended that the State is under an obligation to provide citizen the necessities of life and, in appropriate cases, the Courts have the power to issue or orders directing the State in affirmative action, to promote and the protect the right of life. Social commitment is the quintessence of our Constitution which defines the conditions under which liberty has to be enjoyed and justice has to be administered. Therefore directive principles, which

are fundamental in the Governance of the country, must serve as a beacon light to the interpretation of the constitutional provisions.⁵⁰

CONCLUSION

The article conclude that the sustainability of the human being is comes only through the respect if rights of living. Sustainable development that considers the five capitals, in particular the natural capital supports quality of life and implies its improvement. Sustainable ecological development can be defined as maintenance and improvement of the quality of life of the current and future generations. Sustainable development focuses on a “good” life for all humans living today and for future generations in harmony with the environment. Quality of life has several components, including physical, mental, social and spiritual. It is also used in a collective sense to describe how well a society satisfies people’s wants and needs. However, it is generally assumed that this “good” life can only be maintained in the long run when natural limits, such as the carrying capacity of ecosystems and resource availability, are respected. In this way, the sustainable development tconcept extends the perspective from today to the future, from here to the people on the entire planet and from human beings alone to their coexistence with the natural environment.

Sustainability and quality of life daily lives are based on various data that is related to such things. To achieve a sustainable society and pass on to the next generation the quality of life that the current generation enjoys. It is necessary for to promote

⁴⁸ A.I.R. 1986 S.C. 180

⁴⁹Maneka Gandhi v. Union of India, A.I.R. 1978 S.C 597

⁵⁰ Olga Tellis v. Bombay Municipal Corporation, A.I.R. 1986 S.C. 180 at 189-190. The petitioners relied on the directive principles mentioned in Articles 39(a) and 41 of the constitution.

sustainable use without exhausting all of the natural resources, and to keep a healthy environment without excessive environmental impacts on the Earth, because natural resources support lives and the Earth is the foundation of survival.

The right to housing is the economic, social and cultural right to adequate housing and shelter. As shelter is one of the basic needs of human beings without it, it is almost not possible to carry on any other kind of activity.⁵¹ Governments should provide adequate housing for their people, not only because it is their right, but because it is an investment it helps to guarantee a healthy, satisfied work-force and defuses social pressures that might lead to civil unrest.

Right to food is a human right safeguarding the right for people to provide food for themselves in dignity, considering that minimum food is available, that people can access it, and that it adequately meets the individual's dietary needs. The concept right to food is to safeguard the right of all human being from hunger, food security and malnutrition.⁵²

Moreover it is a fundamental right of a citizen should be free from hunger and access to safe and nutritious food. Several key human right principles are fundamental to guaranteeing the right to food. The food should be available in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptances within a given culture. Moreover food should be physically and economically accessible in

ways that do not interfere with the enjoyment of other human rights. The distribution and production of foods should be in such a way that it should be secure and accessible for present and future generations.

When we are talking about sustainable development for quality life it means that there should be quality of life which means two important concept right to food to the people and right to shelter. Every human being has the right to have a minimum standard of living which includes food, shelter, medical care, and clothing.

It is very necessary for the present generation to think for the future generation needs. As sustainable development means a development that meets the needs of the present without compromising the ability of future generations to meet their own needs. But there arise many questions how and in what ways and in what direction should sustainability will ensure for future. It has been accepted as a viable concept and to eradicate poverty and improve the quality of human life living within the carrying capacity of the supporting system,

The needs and limitations imposed by technology society on the environment's ability to meet the present and future needs, It also requires meeting the basic needs of all deprived people in this world and extending to all, the opportunities to satisfy their aspirations for a better life. The real aim must be to improve the quality of human existence to ensure people to enjoy long, healthy and fulfilling lives. Sustainability can be achieve by cooperation, an ethic global citizenship and shared responsibility through natural eco-cultural processes, may foster the development and maintenance of a balanced,

⁵¹Choguill, C.L., 2007. The search for policies to support sustainable housing. *Habitat International*, 31(1), pp.143-149.

⁵²Chilton, M. and Rose, D., 2009. A rights-based approach to food insecurity in the United States. *American Journal of Public Health*, 99(7), pp.1203-1211

healthy total community-plants and animals, as well as human groups.

Rima Ghosh is a LLM student at Amity Law School, Amity University, Kolkata, Dr. Jayanta Ghosh is an Assistant Professor, School of Law, Amity University, Kolkata and Dr. Santanu Panda is a Research Assistant in Asiatic Society, Kolkata.

Inter-country Adoption: Challenges And The Way Forward

Pratishtha Yadav

Abstract

The present paper discusses the concept of inter country adoption in India. Every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. There are cases wherein the children are left abandoned, neglected, deserted or surrendered by their biological parents or where the biological parents could not afford the upbringing of their child and hence relinquish the rights over their child in favour of orphanages, adoption agency or children's home.

In such cases, adoption of children assumes pivotal importance as through the process of adoption, such children can be placed in the family system through which they can learn the necessary societal norms for their overall well being and development. The institution of family also helps in acquiring and retaining a sense of identity and security in such children. Thus, adoption is considered to be one of the efficient mechanisms of providing home to the homeless and child to the childless.

The paper further throws ample light on the international legislative framework of the intercountry adoption. It discusses the challenges pertaining to intercountry adoption such as identity issues, economic/ financial hardships, medical issues, physical or appearance

discomfort and limited or inaccurate information regarding child's background. Lastly, suggestions are provided to deal with the challenges relating to intercountry adoption.

Keyword: *Adoption, intercountry, children, family*

Introduction

Children deserve the best that mankind is capable of, especially in terms of providing a family where the loving care, affection and attention of the parents help the child to grow and develop to the fullest. "Adoption", the act of affiliation by which the relation of parentage is legally and permanently established between persons not so related by nature, has emerged as the best alternative in absence of the natural family. It fulfils not only the needs of the adopted child but also of the adopting parents. It is a way of conferring the privileges of parents upon the childless and advantages of parents upon the parentless.¹

International Adoption as defined in Black's Law dictionary² is an adoption in which parents domiciled in one nation travel to a foreign country to adopt a child there, usually in accordance with laws of the child's nation. International adoption became popular after World War II and escalated after the Korean conflict because of the efforts of humanitarian program working to find homes for

¹ Encyclopedia Britannica.

² Bryan A. Garner, *Black's Law Dictionary*, 53 (Thomson Reuters, New Delhi 8th Edn, 2015).

children left orphaned by the wards. More recently prospective parents have turned to international adoptions as the number of healthy babies domestically available for adoption has steadily declined. International adoption is also termed as transnational adoption or inter-country adoption. The European Seminar on Inter-country Adoptions, May 1960 defines Inter-country Adoption as an adoption in which the adopters and the child do not have the same nationality and wherein the habitual residence of adopters and the child is in different countries.³ In this type of adoption an individual or couple becomes the legal and permanent parent(s) of a child who is a national of a different country.

Inter-country adoptions are of two types. In the first place the reciprocity of recognition exists as enshrined in Hague Convention⁴ whereby due to an international treaty adoption taken place in one country is recognised in another country. In the second place, the reciprocity of recognition does not exist wherein two methods are used to effect an inter-country adoption. According to the first method the child must be adopted in the country of origin as a pre-condition for his/ her leaving the country of origin besides he/ she has to be adopted again in the receiving country according to local laws. Under second method the child needs special permission to leave the country of origin following which the child is adopted in the receiving country. India follows second method to effect the inter-country adoptions.

³ European Seminar on Inter-country Adoption, May, 1960

⁴ Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions, 1965.

Intercountry adoption must be differentiated from Trans-cultural and Inter-racial adoption, as the latter refers to adoption of a child by an individual or couple from a different race/ethnicity or comes from a different cultural set up that of the child. For illustration a Polish child being adopted by an English parent is a trans-cultural adoption and if an Australian couple adopts a Black child, it is a trans-racial adoption. However, these terms may mean same or overlap in many of the cases.

Intercountry adoption involves the transfer of children for parenting purposes from one nation to another and exhibits the extreme form referred to as 'stranger' adoption by contrast to relative adoption wherein a step parent adopts the child of his or her spouse or a member of the child's extended family adopts the child whose parents have died or unwilling to parent. These types of adoptions are generally uncontroversial as the adopted children stay within the traditional biological family network and the adoptive parents are normally considered as generous and caring who have taken responsibility of such children. Whereas in intercountry adoption adoptive parents and children represent lines of differences involving not only biology but also socio-economic class, race, ethnic and cultural heritage and nationality.

Adoptive parents are relatively well off whites from richer countries and adoptive children are coming from less privileged ethnic and racial community from poorer countries of the world.⁵

⁵ Elizabeth Bartholet, "International Adoption, chapter in "CHILDREN AND YOUTH IN ADOPTION, ORPHANAGES, AND FOSTER CARE", edited by Lori

Presently the receiving countries are the countries of Western Europe, Canada, and the United States wherein issues such as higher rate of infertility and the increasing cost of infertility treatment provide an alternative to couples and usually in the country of origin an increase in population, extreme poverty, and poor economic status of parents result in the abandonment of children.⁶

Intercountry Adoption In India

India is signatory to both, the CRC and the Hague Convention. The primary law which relates to the issue of adoption under the Hindu System is the Hindu Adoption and Maintenance Act, 1956 (HAMA). The Juvenile Justice (Care and Protection of Children) Act, 2000 and all the Amending Acts (2006, 2010, and the latest being in 2015) guarantee those rights to an adopted child which are recognized under the Hague Convention. The 2000 Act did not, however, define adoption, and the term was added in the 2006 Amendment. This was a major development as up till adoption by a non-Hindu was guided by the Guardians and the Wards Act, 1890.

The question regarding the validity of inter-country adoption was first debated in the well-known case of *Re Rasiklal Chhaganlal Mehta*⁷ whereby the Court held that inter-country adoptions under Sec 9 (4) of the Hindu Adoptions and Maintenance Act, 1956 should be legally

valid under the laws of both the countries. The adoptive parents must fulfil the requirement of law of adoptions in their country and must have the requisite permission to adopt from the appropriate authority thereby ensuring that the child would not suffer in immigration and obtaining nationality in the adoptive parents' country.

The Supreme Court of India in a public interest litigation petition *Laxmi Kant Pandey v. Union of India*⁸ the Apex Court stated that every child has a right to love and be loved and only if a child is brought up in a family will he grow in an atmosphere of love and secure moral and material security. But if it is not possible for the biological parents or other kins to look after the child or if the child is abandoned by the family then adoption of the child is best way out for the security of the child and had framed the guidelines governing inter-country adoptions for the benefit of the Government of India.

A regulatory body, i.e., Central Adoption Resource Agency (CARA) was recommended and accordingly set up by the Government of India in the year 1989. Since then the CARA has been playing distinguished role in the matters related to intercountry adoption. It has come up with guidelines several times to streamline the process and procedure of intercountry adoption. The latest CARA guidelines are popularly known as Adoption Regulations, 2017 promulgated by the Government of India and notified on 16th January,

Askeland. ISBN # 0-313-33183-9. Greenwood Publishing Group Inc., (2005).

⁶ D. Howe, P. Sawbridge, and D. Hennings, "Half a Million Women", New York: Penguin, 1992.

⁷ AIR 1982 Guj 193.

⁸ AIR1984 SC 469

2017 in exercise of the powers conferred by the clause (c) of section 68 read with clause (3) of section 2 of the Juvenile Justice (Care and Protection of Children), 2015 (2 of 2016) and in suppression of the guidelines governing adoption of children, 2015. CARA Guidelines also states that intra-country adoption is preferred first. As per CARA Guidelines only three type of children is recognized as adoptable namely, those children who have been surrendered, those who are abandoned and those who are orphans and are under the care of some specialized adoption agency.

In the judicial pronouncement of *Craig Allen Coates v. State* through Indian Council for Child Welfare and Welfare Home for Children⁹ it was stated that if the adoptive parents fail to provide proper reasons and motive for adoption of the child from another country then the adoption would not be permitted. One of the issues which crop up in intercountry adoption is finding suitable potential parents for the child. In the case of *Karnataka State Council for Child Welfare v. Society of Sisters of Charity St. Gerosa Convent*¹⁰ the Apex Court expressed that finding Indian parents for adoption should be preferred so that the children grow up in native surrounding and retain their heritage and culture.

Bombay High Court in *Varsha Sanjay Shinde & Anr. v. Society of Friends of the Sassoon Hospital*

*and others*¹¹ held that once a child is approved by an Overseas couple after the due procedure is followed, the same child cannot be shown to other Indian parents and that such Indian Parents then cannot claim any right or priority to get the child merely because they are Indian Parents and preference should be given to them over Overseas Indians and Foreign Couples. Although the main issues was decided the Court kept the petition pending in order to see the compliance of directions given by the Court for giving the child to the Overseas Indian Couple and to ensure that the Indian Parents (Petitioners) also get a child expeditiously.

International Legislative Framework: The Convention On The Rights Of The Child, 1989 And The Hague Convention, 1993

Internationally the Convention on the Rights of the Child (CRC) deals with issues associated with intercountry adoption. It is also regulated by the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, 1993 and the same been ratified by majority of countries in the world. Article 21 of the CRC requires the adopting parents to ensure that the child who is being adopted enjoys the same level of standards and projection to those who are existence in the case of national adoption.¹²

¹¹ Writ Petition no. 9227 of 2013 Decided on 18th October, 2013

¹² Article 21(c), The Convention on the Rights of the Child, 1989.

⁹ 162(2009) DLT 605
¹⁰ ILR 1991 KAR 3543

The CRC recognizes the importance of real parents and family in the life of a child and emphasizes that the State should assist them in safeguarding the rights of the child in case of difficulties faced by them. Despite best efforts by the State and it is found that the child is still suffering the care of a family that the concept of alternative care of the child comes into the picture.¹³ Hence intercountry adoption should be opted only when the State is found to be unable to ensure that the child cannot be cared for in a proper manner in the country of origin. The Committee on the Rights of the Child which ensures compliance with CRC has expressed its concern over violation of intercountry adoption standards in many countries and suggested that the Hague Convention be ratified by them.

The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) is an international agreement to safeguard intercountry adoptions. Concluded on May 29, 1993 in the Hague, the Netherlands, the Convention establishes international standards of practices for intercountry adoptions. The Convention aims to prevent the abduction, sale of, or trafficking in children and it works to ensure that intercountry adoptions are in the best interests of children. The Convention recognizes intercountry adoption as a means of offering the advantage of a permanent home to a child when a suitable family has not been found in the child's country of origin. The

¹³ Article 20, The Convention on the Rights of the Child, 1989.

Hague Convention is based on two principles governing the protection of the children intended to be given in international adoption, namely, establishing of safeguards to ensure that intercountry adoption is in the best interest of the child and to establish a system of cooperation between the contracting states to ensure that the safeguards are respected.¹⁴

According to the Convention, the system of cooperation is to be regulated by the Central Authority of the contracting country who deals with the matter of adoption and serves as a principal agency for intercountry adoption issues with other countries. The Hague Convention further lays down the subsidiary principle that states that intercountry adoption should be adopted only when the safety of the child in the State of origin cannot be ensured yet first of all placement of the Child within the country of origin must be given the primacy.¹⁵ Other guidelines of the Hague Convention look into the fitness of the adoptive parents, a restriction on private adoption, prohibition of contact between the adoptive parents and the real parents before the child has been pronounced adoptable by the Central Authority and ratification of the Hague Convention by all the countries.

The Convention require the Central Authority to ensure that the child is mature enough and of proper age to be adopted, the child has been

¹⁴ Preamble and Article 1, The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993.

¹⁵ Article 4, The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993.

informed about the adoption and consequences of such adoption and the consent of the child has been taken and it has not been taken through inducement by compensation or payment of any kind.¹⁶The information of the child's origin, his or her medical history and information regarding the real parents of the child should be preserved but access to such data should be restricted.¹⁷ The monitoring of the Hague Convention is the responsibility of the Special Commission which comprises all the signatories.¹⁸

Challenges In Intercountry Adoption

Fathomless challenges surface when the child joins the new home and the adoptive family experiences the special parenting needs and responsibilities pertaining to nurturing of the child adopted from another culture. Health and development issues may be faced in the early years while issues related with adoption, identity and racism do call for parental attention as the child grows. The adoptive families require support which may include adoptive parent support groups, interaction with local ethnic communities, visits to the child's country of origin, programmes run by the adoptive agencies and support to ethnic heritage by adoptive parents groups and parenting resource materials such as books, video tapes etc. Openness in adoption may provide for additional support for families of children who have found

homes through transnational adoption and for adopted adults. However, the local adoption laws and policies may hinder exchange of information allowing the contacts between birth parents and their children given in adoption. Those who support transnational adoption face hard realities at times. On the one hand media sensationalize transnational adoption in the matters of child abuses, trafficking etc. and present minority of criminal cases as norms governing the field while on the other government bureaucracy is not willing to address even simple reforms which could solve the limited problems faced by concerned.

1. Identity issues

International adoption also reflects a larger, growing trend toward multiracial and multi-ethnic families, who face unique challenges in the upbringing of children of different ethnic and racial heritages. Research suggests that same-race and trans racially adopted children begin to become aware of racial differences, as well as their adoptive status, as early as 4–5 years of age). As trans racial adoptees grow older, they develop a more coherent understanding of what it means to look physically different from their parent. At the same time, they may begin to experience feelings of loss of birth culture and family history and the growing awareness of racism and discrimination in their everyday lives. This feeling of loss, in turn, has been found to be associated with greater depressive symptoms and lower self-worth among domestically and internationally adopted preadolescents. Similarly, uncertainty about one's ethnic identity and perceived

¹⁶ Article 4 (d), The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993.

¹⁷ Article 30, The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993.

¹⁸ Special Commission on the Practical Operation of the Hague Convention of 29 May 1993.

discrimination are related to greater psychological distress and lower self-esteem among international adoptees. Many studies report international adoptees' confusion about their race, ethnicity, and cultural identity, and experiences of racism and discrimination¹⁹

2. Economic/Financial hardships

In many cases, poverty and financial hardships often drives biological parents or family to give away the child for having financial gains or because of the belief that adoption of the child will have better future prospects for him /her. This leads to permanent removal of a child from the original family and handed to a completely different and unknown family having different culture, language, ethnicity etc. This may lead to many difficulties for the child whether social or medical.

3. Medical issues

Many researchers have shown that internationally adopted children face greater risk of possible exposure to infectious diseases or other illness, malnutrition²⁰ or failure to thrive, which adoptive parents may not be fully aware of or prepared for at the time of adoption. Many children may display developmental delays or cumulative cognitive deficits depending on their age, the impact of the quality of care they have received prior to adoption, or the length of pre-adoption institutionalisation ²¹These children face learning a new language under great communicative pressure and are likely to need specialised

assistance in developing the particular knowledge essential to thriving in their new cultural context ²²

4. Physical or appearance discomfort:

Another report suggested that adjustment problems among their children at approximately the same levels as were reported by the parents of interracial adopted whites. Yet, evidence also showed that extra-family forces, for example societal racism, did negatively impact adjustment outcomes. Particularly, experiences of discrimination generated feelings of appearance discomfort. The research suggested that black and Asian children, who appear unmistakably different from whites, are most likely to encounter such societal discrimination. Again, this can result in social anxiety and depression for the child.

5. Limited or inaccurate information about a child's background

Ideally, the intending parent or couple should be provided with accurate and detailed information about the child that has been matched with family. However, it's important to understand that this information may not always be available. Also, information provided by the country of birth about the child's background, age and health may not always be complete or accurate. Some overseas countries have limited capacity to investigate and assess a child's social and medical background. In some cultures, there remains a social stigma about children born to unmarried parents. This sometimes leads to children being abandoned and/or a lack of information being recorded to

¹⁹(Mohanty&Newhill, 2005; Silverman, 1997; Vonk, 2001).

²⁰Altemeier, 2000.

²¹Juffer et al., 2005; Mason & Narad, 2005; Serbin, 1997; Weitzman & Albers, 2005.

²²Gindis, 2005; Mohanty&Newhill, 2005.

protect unwed mothers. This, in turn, opens the way for a child's circumstances to be misrepresented, based on the notion that a younger child with an uncomplicated social and medical background has a greater chance of being adopted.²³

Hence, the future of transnational adoption will be decided by the perception of its success held by the associated officials and the public in the adopted child's country of origin. Thanks to many countries around the world who are considering to ratify the provisions of Hague Convention on Inter-country Adoption and a multilateral treaty of cooperation and controls and the same may reassure the parties involved that the rights of the children and birth parents associated in transnational adoption are honoured. It is expected that the Convention should put an end to the fears pertaining to abuses of adopted children as organ donors, child pornography and child prostitution etc. which make the process unstable and deny the love of a permanent family to the children who could get benefit from adoption. Of course keeping in mind the large scale criminal cases related with child trafficking around the world, the Rights of the Child, 1989 Convention requires that the Intercountry adoption will receive only the last priority while searching for the foster home for thousands of homeless children around the globe. Intercountry adoption may be highly expensive, time consuming and uncertain. If the hurdles and challenges associated with

intercountry adoption are taken care of, then it will innumerable families joy and satisfaction of parenting.

Way Ahead And Suggestions

International adoption could serve as a life changing process for the parent who is adopting along with the child by securing his/her future with better care. Challenges and difficulty associated with International adoption can be tackled well if handled with responsibility. Below are few suggestions –

a. Cultural socialization²⁴ refers to the manner by which parents address ethnic and racial issues within the family, specifically, the ways parents communicate or transmit cultural values, beliefs, customs, and behaviours to the child and the extent to which the child internalizes these messages, adopts the cultural norms and expectations, and acquires the skills to become a competent and functional member of a racially diverse society (R. M. Lee, 2003). Adoption agencies and authority must check if the parent or individual is prepared to adopt the child mentally, especially when it is a transnational/racial/cultural adoption. Training and guidance should be given by such authority which will prepare the parent to handle the child with responsibility.

b. Sensitization: Places like schools, hospitals and colleges must be utilized well to sensitise students and staff regarding racial differences. This will solve the problem to a large extend and

²³Available at: <https://www.intercountryadoption.gov.au/thinking-about-adoption/considerations/challenges/>.

²⁴Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2398726/>.

possibility of discrimination or bullying with the child by his/her neighbours, peers, employer etc. Besides all personnel dealing with intercountry adoption need to be seriously sensitized so that revised guidelines are followed in letter and spirit in which they were laid down.

Conclusion

Inter-country or transnational adoption may become the best option for orphan children to start a fresh life in a new country. But when the country of domicile for these children does not have any proper law to show them their destiny, violation of their rights is very much definite to take place. The country desperately needs better laws and guideline for inter-country adoption. The authorities need to ensure thorough checks of every adoption agency to ensure that they are protecting the child's rights as has been provided in the constitution and the Juvenile Justice Care and Protection Act, 2015. Every child has a right to life, home and education. It is essential that the authorities not only make laws to provide safer transnational adoption to the children but also to ensure safety of the child even abroad.

The malpractices involved in inter-country adoption actually do not lie in the established procedures but primarily with men who man the system. The real solution lies in men mending themselves. The de-humanized bureaucracy and people in authority need to re-imbibe human values. It is further suggested that every child should be included in a DNA data bank right after birth, and this should be mandatory and not an option.

Several Indian families who lost their children in international adoption cases have travelled abroad after having discovered that their children are residing in Europe. But to no avail, as the courts in EU countries have unfortunately not allowed such verifications or reunions based on the argument that it can be traumatic for a child to be confronted with its past. But had DNA tests already been done, nevertheless, it would have been easier to identify who the biological parents of those children are. There is no guarantee that children get a better life in the West and if citizens of the Western countries want to help the orphans and the abandoned children then they can come and stay with them and perhaps help in the reunification process during which a mother and her child are provided help.

The solution is not to separate the child from the mother thereby exposing it to a lifelong traumatic experience exemplified in the case where the death of a three-year-old adopted girl from India, Sherin Mathews, in Texas in the United States has sent shock waves across the globe and once again highlighted the vulnerable situation of adopted children. Sherin, who had a developmental disability supposedly choked on the milk forcefully administered by her adoptive father. The police is still investigating the case and this is just one among many adoption scandals that are tormenting Western countries.²⁵

Pratishtha Yadav is a Ph.D. Research Scholar at Maharishi Arvind University, Jaipur (Raj.).

²⁵ Mrutyuanjai Mishra in Mind The Gap, Times of India, October, 27, 2017.

A Re-Look At The Mandate Of Equality

Prantik Roy & Vijoy Kumar Sinha

Abstract

Some measure of discrimination among people is legitimate, and even mandated under the conception of a just society. The difficulty, however, arises from the menacing effects of longstanding illegitimate and immoral bases for discriminating among people such as, gender, race, and class. Equality is a much contested concept, and undoubtedly can be judged by comparing some particular aspect of a person with same aspect of another person. Hence, the measurement of equality solely depends on choice of the variable, that is, income, wealth, status, opportunities, freedom, dignity, rights etc., in terms of which comparisons are made. The idea of equality was even conceived by the ancient Greek philosophers around fifth century B.C. Political Philosophers like John Locke, Rousseau, and Tom Paine have advocated equality as constituting the very basic natural right of man. Natural equality of man was practically recognised in the 18th century's Declaration of the Rights of Man issued by the National Assembly of France and likewise in the United States Declaration of Independence. History testifies that by the time the Constitution was adopted, India was a society divided deeply along the religious, caste, sex, language and many other lines. With the adoption of the Constitution, however, it became a constitutional mandate for the State to secure for all Justice,

Liberty, Equality and Fraternity, the very ideals, upon which the Constitution is founded. In this backdrop, the present study seeks to trace the concept of equality as conceived by various authorities and under various international instruments. The study, in nutshell, also seeks to examine the constitutional provisions.

Keywords: Equality, Justice and Liberty

Introduction and Background

All men are not created equal. This assertion seems wrong, even immoral, as modern liberal thought has established the inherent, equal worth of every person. But true *equality* among people cannot be achieved because there are natural inequalities among us. We recognise that one individual may have greater inherent literary or athletic talent than another or superior beauty or strength. These talents, in a just society, should be rewarded even though they have no moral significance.

Therefore, some measure of discrimination among people is legitimate, and even mandated under the conception of a just society¹. The difficulty, however, arises from the menacing effects of longstanding illegitimate and immoral bases for discriminating among people such as, gender, race, and class. Over time, these differences

¹N. Lillibridge, "The Promise of Equality: A Comparative Analysis of the Constitutional Guarantees of Equality in India and the United States", 13 *WMBRJ* 1301 (2005).

compound, so that the child born into a relatively privileged family often gains certain advantages without any demonstration of superior talent, ability, or moral worthiness².

Natural *equality* of man was practically recognised in the Declaration of the Rights of Man issued by the National Assembly of France. It said: “Men are born, and always continue, free and equal in respect of their rights”. A similar statement is found in the United States Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal”. Universal Declaration of Human Rights proclaims: “the inherent freedom and equality in dignity and rights of all human beings”³.

The idea of *equality* was even conceived by the ancient Greek philosophers around fifth century B.C. They gave a conception of universal law for all mankind under which all men are equal and which is binding on all people. They stressed the ideas of individual worth, moral duty and universal brotherhood⁴. Political Philosophers like John Locke, Rousseau, and Tom Paine have advocated *equality* as constituting the very basic natural right of man.

History testifies that by the time the Constitution was adopted, India was a society divided deeply along the religious, caste, sex, language and many other lines. The most disreputable among the division was the practice of untouchability, relegating a class of people to a status of virtual slavery. And somehow law was acquiescent in

certain area, or was silent in certain sphere permitting or perpetuating the division of society. More specifically law was whether customary or otherwise, more actively used as an instrument for the continuance of the said division. As to rights, during those days, it was an exclusive preserve of a handful few. And religious practices were aiding and assisting such privileges and subjecting other classes of people to dictates of such privileged ones. To be very specific status of women was mostly deploring, they were treated as inferior on the basis of sex and denied a dignified existence, and in such perpetuation religion had the foremost role.

With the adoption of the Constitution, however, it became a constitutional mandate for the State to secure for all *Justice, Liberty, Equality and Fraternity*, the very ideals, upon which the Constitution is founded. In this backdrop, the present study made an attempt to trace and examine the concept of *equality* as conceived by various authorities and under international and domestic instruments.

Objectives Of The Study

The present study, thus, undertaken with the following aims and objectives:

- To define and analyse the concept of “*equality*”;
- To trace as to how the concept of “*equality*” is conceived by various authorities;
- To trace the concept as proclaimed under various international instruments; and
- To examine the constitutional provisions in Indian context.

² *Ibid.*

³ Universal Declaration of Human Rights, art. 1.

⁴ N. Aggarwal, *Jurisprudence (Legal Theory)* 296 (Central Law Publications, Allahabad, 10th edn., 2014).

- To introspect judicial responses on the mandate.

Methodology

The present study is an analytical construct, and data for this study have been collected from diversified sources which include existing *secondary* sources such as, books, research papers, publications of relevant national and international organisations and other published web based resources. The data gathered from various sources have been reviewed and analysed thoroughly using, wherever needed, illustrations and/or case studies, and findings thereon are recorded sequentially in line with objectives and purposes set out in the study.

Conceptual Framework

Undoubtedly, human beings differ from each other in many different ways. Not only do they differ in their social circumstances, but also in their personal characteristics, physical and mental abilities. The important question to be addressed, therefore, is: in what sense can all human beings be regarded as equal despite the differences in their physical, psychological and emotional capacities.

Equality, undoubtedly, can be judged by comparing some particular aspect of a person with same aspect of another person. Hence, the measurement of *equality* solely depends on choice of the variable, that is, income, wealth, status, opportunities, freedom, dignity, rights etc., in terms of which comparisons are made.

Consequently, *equality* is a much contested concept. Our first task hence is to provide a clear definition of *equality* in the face of widespread conceptions about its meaning as a political, economic, social or moral idea. The term “*equality*” signifies a qualitative relationship. It essentially signifies correspondence between a group of different objects, persons, processes or circumstances that share the same attributes in at least one respect, and not necessarily in all respects. For example, some people may have *equality* in terms of income or wealth but they may not be equal with respect to happiness or opportunities or so on.

Barker comments, “Equality, after all is a derivative value. It is derived from the supreme value of the development of personality in each alike and equally, but each along its own different line and of its own separate motion”.

The ideal of *equality* is basically a leveling process. In its negative aspect it means absence of any discrimination based on class, caste, creed, race, religion, gender etc., yet *equality* has positive connotation as well, thus, in its positive aspect it stands for the provision of adequate opportunities.

Broadly speaking, we may comprehend *equality* in terms of civil *equality* (that is, equal civil rights to all citizens); political *equality* (equal political rights to all and equal access to seats of political power); social *equality* (*equality* of status and absence of discrimination in the eyes of law on account of one’s race, colour, caste, creed, sex and place of birth; economic *equality* (equal

access to social goods, adequate *equality* in terms of income, wealth and other economic opportunities).

International Mandate Of Equality

Preamble to the United Nations Charter proclaims to reaffirm faith in *equality*. It declares: “we the people of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women ...”

Article 1 of the Universal Declaration of Human Rights again states on *equality*. It proclaims: “the inherent freedom and equality in dignity and rights of all human beings”. Article 2 of the Declaration states that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as, race, colour, sex, language, religion, political opinion etc.

Thus from the perspective of *equality*, it is evident that the international instruments, be it Charter of the United Nations, or Universal Declaration of Human Rights, basically seeking to ensure its effective recognition and observance in terms of dignity and rights.

The International Labour Organisation (ILO)’s mandate of *equality*, however, rests upon opportunities *for* its goal is to promote equal opportunities for both men and women. The four ILO key Conventions in this behalf are the Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Workers with Family

Responsibilities Convention (No. 156), and Maternity Protection Convention (No. 183)⁵.

ILO’s gender *equality* mandate is too set in the context of a range of international instruments advancing *equality* between men and women. These include, *inter alia*, Charter of the United Nations, 1967 Declaration on the Elimination of Discrimination Against Women, 1979 Convention on the Elimination of All Forms of Discrimination Against Women, 1997 United Nations Economic and Social Council’s Agreed Conclusions on Gender Mainstreaming, 1995 Beijing Platform for Action and its Follow-Up, Millennium Development Goals, and Sustainable Development Goals.

Constitutional Mandate Of Equality

The ancient India legal order was based on The ancient India legal order was based on sovereignty of *Dharma*. Ancient *Dharma* did not discriminate between persons on the basis of his religious following, caste or creed. It said that *Dharma* is all pervading as expressed in the maxim *Satyam Shivam Sundaram* namely, it embraces all truth, and all beauties of life

Thus, the principle of *equality* was well enshrined in the ancient law of India. But the concept of *equality* as envisaged in *Smritis* and *Dharmashastra* did not mean mathematical *equality*. Instead, it referred to *equality* in the matter of protection and security to every person. The functioning of the society was modeled on

⁵ILO and Gender Equality, available at <https://ilo.org/gender/Aboutus/ILOandGenderEquality/lang-en/> (visited on 12/11/2018).

the principle of division of labour. The *Varna Vyavastha* as it is misunderstood and exploited today for personal gain was not meant to divide the society into different classes but it was devised on the sound economic principle of division of labour⁶.

Advent of British rule in India, however, brought about radical changes in the then existing legal system. During British rule, plenty of changes were made in the economic and social structures of Indian society. Though the quality of life of women during this period remained more or less the same, some substantial progress was, however, achieved in eliminating inequalities between men and women. Britishers established their supremacy over the Indian people. Britishers recognised that there was existence of legal system prior to their arrival, yet gradually succeeded in implanting their legal system. Equality before law as we understand under Indian Constitution is an aspect of Rule of law understood under British system.

However, the struggle for independence was over by 15th August 1947. But the attainment of independence was not an end in itself. It was only the beginning of struggle, that is, the struggle to live as an independent nation and also to establish democracy based on the ideas of *Justice, Liberty, Equality* and *Fraternity*. The need of the Constitution forming the basic law of the land for the realisation of these ideas was paramount. Therefore, one of the first tasks undertaken by independent India was framing the Constitution.

⁶N. V. Paranjape, *Indian Legal & Constitutional History* 8-10 (Central Law Agency, Allahabad, 2015).

The ideals of *Justice, Liberty, Equality* and *Fraternity* are enshrined in the Preamble itself. In Part III of the Constitution these concepts are enshrined as fundamental rights made enforceable which are virtually identical in terms with the Universal Declaration of Human Rights. The ideal of *equality* which by then became an international mandate was recognised under the Constitution of India. Among others, it was made a goal by the founding fathers before the Indian State, which is evident from the Preamble itself *for* it proclaims: to secure to all citizens “*Equality of Status and Opportunity*”. By this solemn declaration *equality* became foundational goal of the Indian State.

Article 14⁷ of the Constitution embodies the general principles of *equality before law* and prohibits unreasonable discrimination between persons. It lays down that “the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India”.

Thus, it caters to the object set out in the preamble towards achieving a classless egalitarian society by adopting two distinct concept of *equality* borrowed from two different leading legal systems, which at last meet at a particular point to bring about *equality* in the society. The concept “*equality before law*” is of English origin seeks to eliminate special privilege and establish supremacy of law which is an off shoot of Rule of Law. And the concept “*equal protection of the laws*”, however, has been inspired by the 14th Amendment to the American Constitution.

⁷ INDIA CONST. art. 14.

While *equality before law* is a somewhat negative concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also equal subjection of all classes to the ordinary law of the land, that is, among equals the law should be equal and should be equally administered “*like should be treated alike*”. On the other, *equal protection of the laws* is a positive concept implying *equality* of treatment in equal circumstances, that is, all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws “*like should be treated alike and not that unlike should be treated alike*”.

Courts in India have upheld legislation containing apparently discriminatory provision where discrimination is based on a reasonable basis. By reasonable, it is meant that the classification must not be arbitrary, but must be rational⁸. However, the Hon’ble Supreme Court has drifted from the traditional concept of *equality* which was based on reasonable classification and has laid down new concept of *equality*. Bhagwati, J., while delivering the judgment⁹ propounded the new concept of *equality* in the following words:

“*Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinal limits. From a positivistic point of view, equality is antithesis to arbitrariness*”.

⁸Chiranjit Lal v. Union of India, AIR 1951 SC 41; Dhirendra Kumar Mandal v. Superintendent and Legal Remembrancer of Legal Affairs, AIR 1954 SC 424; K. Thimmappa v. Chairman, Central Board of Directors SBI, AIR 2001 SC 467.

⁹E. P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555.

In *Maneka Gandhi* case¹⁰, Bhagwati, J., again quoted the new concept of *equality* propounded by him in *E.P Royappa* case, thus:

“.... *Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinal limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence*”.

In *International Airport Authority* case¹¹, Bhagwati, J., reiterated the same principle in the following words:

“*It must ... therefore, now be taken to be well-settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality*”.

Whatever be their content, but one dominant idea common to both *equality before law* and *equal protection of the laws* is that of attainment of equal justice. Both the expressions are integral to the concept of *equality*. Patanjali Shastri, C. J., observed¹²:

“*The second expression is corollary of the first and it is difficult to imagine a situation in which the violation of equal protection of laws will not be violation of equality before law*”.

Article 14 contains the general principle as to right to *equality* outlawing discrimination in general way. The protection of article 14 is

¹⁰ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

¹¹ R. D. Shetty v. Airport Authority, AIR 1979 SC 1628.

¹² State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.

extended to all persons- citizens and non citizens. The Supreme Court itself maintained no distinction between the two expressions. It did not consider the first expression for its substantive application as distinct from the second. It is evident from the decided cases that sometimes the Supreme Court referred to both the expressions,¹³ sometimes to the first¹⁴ or the second¹⁵ only, and sometimes to the article itself,¹⁶ always meaning the same thing, that is, equal protection of the laws. This position was made clear by the Court in *State of Uttar Pradesh v. Deoman Upadhyaya*¹⁷ in which it observed:

“Article 14 ... is adopted from the last clause of Section 1 of the 14th Amendment of the Constitution of the United States of America, and it may reasonably be assumed that our Constituent Assembly when it enshrined the guarantee of equal protection of the laws in our Constitution, was aware of its content delimited by judicial interpretation in the United State of America ...”¹⁸

That to effectuate this general principle more specific and elaborate provisions, that is, Articles 15, 16, 17 and 18 have been made to cover specific discriminatory situations as offshoots of general principle contained in Article 14.

Article 15¹⁹ secures citizens from every sort of discrimination by the State, on specific grounds of religion, race, caste, sex or place of birth or any of them. However, this Article does not prevent the State from making any special provisions for women or children. The new clause 5 provides that nothing in Article 15²⁰ or in sub-clause (g) of clause (1) of Article 19²¹ shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally Backward classes of citizens or for the Scheduled Caste or the Scheduled Tribes in so far as such special provisions relate to the admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.²²

The above amendment has been enacted to nullify the effect of the three decisions of the Supreme Court, that is, *T.M. Pai Foundation v. State of Karnataka*,²³ *Islamic Academy v. State of Karnataka*²⁴ and *P.A. Inamdar v. State of Maharashtra*.²⁵ In *T.M. Pai Foundation* and *P.A. Inamdar* cases it has been held that the State cannot make reservation of seats in admissions in privately run educational institutions.

¹³ *Bidi Supply v. Union of India*, AIR 1956 SC 479

¹⁴ *Bashesar Nath v. Commissioner of Income Tax*, AIR 1959 SC 149.

¹⁵ *Lachmandas Kewalram Ahuja v. State of Bombay*, AIR 1952 SC 235.

¹⁶ *Jyoti Prasad v. Administrator for the Union Territory of Delhi*, AIR 1961 SC 1602.

¹⁷ *State of Uttar Pradesh v. Deoman Upadhyaya* AIR 1960 SC 1125.

¹⁸ *Id.*

¹⁹ INDIA CONST. art. 15.

²⁰ INDIA CONST. art. 15, cl. 5.

²¹ INDIA CONST. art. 19, cl. 1.

²² INDIA CONST. art. 30, cl. 1.

²³ *T.M. Pai Foundation v. State of Karnataka* AIR 2003 SC 355.

²⁴ *Islamic Academy v. State of Karnataka* AIR 2003 SC 3724.

²⁵ *P.A. Inamdar v. State of Maharashtra* AIR 2005 SC 3226.

Article 16²⁶ assures all citizens *equality* of opportunity in matters of public employment and prevents the State from any sort of discrimination on specific grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, yet this Article provides autonomy to State to grant special provisions for the backward classes, Scheduled Castes and Scheduled Tribes for posts under the State, and also reservation of posts for people of a certain religion or belonging to a certain denomination in a religious or denominational institution.

In *Air India v. Nargesh Mirza*,²⁷ the petitioner challenged the validity of the regulations under which they could retire at the age of 35 years or if they got married within four years of their service or on first pregnancy on the ground that they were discriminatory and violative of Articles 14, 15 and 16 of the Constitution. While the Court held that the provisions on pregnancy bar and the retirement and the option conferred on Managing Director were unconstitutional as being unreasonable and arbitrary and violative of Article 14, it upheld the validity of the provision prohibiting the Air Hostess to marry within four years of their service as there was no unreasonable and arbitrariness in that provision. It is by all standards a “very sound and salutary provision”.

In a landmark judgment in *M. Nagraj v. Union of India*,²⁸ a five judge Bench of the Supreme Court has unanimously held that the constitutional amendments by which Article 16 (4A) and 16

(4B) have been inserted flow from Article 16 (4) and do not alter basic structure of Article 16 (4). The petitioners have challenged the constitutional validity of the Constitutional 85th Amendment which retrospectively provided reservation in promotion as violative of the principle of basic structure of the Constitution as laid by the Supreme Court in *Kesavananda Bharati v. State of Kerala*.²⁹ They also said that by providing reservation in promotion with consequential seniority would impair efficiency in administration as provided in Article 335 of the Constitution. Thus, the main issue before the Court was whether the impugned constitutional amendments violate the principle of basic structure and thereby obliterate the constitutional limitation requirements laid down by this principle on the power of Parliament. Thus, the main issue in the case concerned the extent of reservation.

On the other, Article 17³⁰ abolishes untouchability, yet Article 18³¹ abolishes use of titles other than military and academic distinction. So, Article 14 constitutes the genus whereas specific provisions stated above are its species. The Constitution under Article 32 as well as under Article 226 provides for remedy on account of infringement of such rights. The Hon’ble Supreme Court observed³²:

“The Rule of Law embodied in Article 14 is the basic feature of the Constitution and hence, it

²⁶ INDIA CONST. art. 16.

²⁷ *Air India v. Nargesh Mirza* AIR 1981 SC 1829.

²⁸ *M. Nagraj v. Union of India* AIR 2007 SC 71.

²⁹ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225

³⁰ INDIA CONST. art. 17.

³¹ INDIA CONST. art. 18.

³² *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

cannot be destroyed even by an amendment of the Constitution under Article 368”.

The Constitution is supreme and all three organs of the government viz., Legislature, Executive and Judiciary are subordinate to and have to act in accordance with it. Parliament and the State Legislatures have the power to make laws within their respective jurisdictions. This power is, however, not unqualified in nature. The legislative power of Parliament and the State Legislatures has been subjected to certain limitations. The power derived from Articles 245³³ and 246³⁴ to make laws has to be exercised keeping in view the limitations outlined under Article 13³⁵ of the Constitution and any violation thereon will make the laws *ultra vires*.

In addition to these clear fundamental rights provisions, numerous other provisions complement the idea of *equality* in broad terms. Article 38 includes the following provision: “The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations”. The succeeding Article 39 lays down certain principles of policy to be followed by the State in this behalf namely, securing equal right of men and women to an adequate means of livelihood including equal pay for equal work for both men and women, distribution of ownership and control of the material resources of the community to the

³³ INDIA CONST. art. 245.

³⁴ INDIA CONST. art. 246.

³⁵ INDIA CONST. art. 13.

common good, and so on. Article 39A³⁶ focuses on securing operation of the legal system which promotes justice on a basis of equal opportunity.

Article 42³⁷ incorporates provision on maternity relief that seems to be in line with ILO’s mandate as being mentioned hereinabove. Article 43³⁸ emphasises on securing to all workers, a living wage. Article 45³⁹, on the other, emphasises on securing early childhood care and education for all children until they complete the age of six years.

Article 46⁴⁰ also falls under this rubric in demanding protection of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

It should be noted, however, that Articles 38, 39, 39A, 42, 43, 45 and 46 mentioned above appear in Part IV of the Constitution. Articles in this part are not enforceable by the courts, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The Hon’ble Supreme Court has reiterated⁴¹ the same principle that the Fundamental Rights and Directive Principles are supplementary and complementary to each other and the provisions in Part III should be interpreted having regard to the Preamble and Directive Principles of State Policy.

³⁶ INDIA CONST. art. 39a.

³⁷ INDIA CONST. art. 42.

³⁸ INDIA CONST. art. 43.

³⁹ INDIA CONST. art. 45.

⁴⁰ INDIA CONST. art. 46.

⁴¹ Unni Krishnan v. State of A.P., (1993) 1 SCC 645.

Yet again, it is the fundamental duty⁴² of every citizen to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

Thus, Constitution of India in essence seeks, to promote, and to secure to every citizen, *equality* as to status and opportunity. In general, the Constitution of India itself prescribes the legal system of the country to guarantee and promote fundamental rights of the citizens, and respect for the ideals upon which it is founded.

Conclusion And Suggestions

The Constitution of India clearly reflects a group-oriented approach to *equality*. The modern democratic Constitution came into effect on January 26, 1950. Its preamble pledges to secure *Justice, Liberty, and Equality* and to promote *Fraternity*. *Justice* is specifically described to be of three types, not only political but economic and social as well. *Equality* is of not only equal opportunity but also of status. *Justice* and *Equality*, as thus defined, between them, cut the very roots of caste.

However, the system of reservations remains one of the most fervently debated aspects of the general compensatory discrimination program. Many opponents of reservation policies also believe the policies are colonial in character. The first such policies were actually developed under the colonial rule. Promoting gender *equality* and improvement in the status of women are

specifically stated to be central goals of development and social policy in India. Since independence, the commitment is reinforced by constitutional mandate. India also ratifies various international Conventions and human rights instruments committing it to secure equal rights of men and women. Despite the presence of these instruments and legislative measures adopted both at the central and state levels, women in India are far behind the men in most indicators of human development.

Today Rule of Law in India is on the verge of losing its grounds as a compelling norm of social order because it is not the “*government of law*” can rule the country rather it is the “*government of wise man*” rule the country. Rule of Law, in fact, failed to achieve *equality* in pluralistic society like India, and there exist a number of factors which in general responsible for this state of affairs.

Equality before law is correlative to the concept of Rule of Law for all round evaluation of a healthy social order. Rule of Law is diluted when politics is not treated as an instrument for public welfare but as an instrument for private gain. Indeed, during the past few decades the increasing competitiveness in Indian politics has flattened upon the Rule of Law time and again.

Further, there are instances of arbitrary actions, biasness and maladministration on the part of municipal administrative organs which impact very negatively on the principle of *equality*. There exist an irresistible number of complaints directly

⁴² INDIA CONST. art. 51A, cl. e.

related to the work of public administrative bodies.

The Constitution has provided a system of checks and balances. In this endeavour, the perseverant role of the judiciary is notable. A few examples of how our judicial system has ensured justice is clearly seen in the creation of new avenues seeking remedies for human rights violations through PIL pleas and promotion of genuine interventions by the judiciary in the areas of protection of backward classes, gender *equality* including transgender issues, prostitution, bonded and child labour, etc.

Those apart, other bodies such as the National Human Rights Commission and State Human Rights Commissions and various NGOs have made contributions in preventing human rights violations and abuses. But these are still not adequate. Consequently, the need of the day is reform and in the process all must play a proactive role.

Prantik Roy is a LLM student at Amity Law School Kolkata, Amity University, Kolkata and Vijoy Kumar Sinha is a LLM student at Kazi Nazrul University, Asansol.

Federal System and the dispensation of the Coalition era

Ankita Shaw

Abstract

Federalism is an instrument of power sharing between independent authorities viz. union and state. Coalition regime is withal an expedient of power sharing. Logically, it can be inferred that both federalism and coalition government should be complimentary to each other. The object of sharing power in both the perspectives is common, therefore, a student of politics or law may infer logically that coalition Government is always supportive of Federalism. The fact, however, is otherwise in Indian Federalism. One of the major focus of attention in any discussion of Indian polity and governance in contemporary times is the dynamics of federalism under the new dispensation of the Coalition era that prevails in India. This article makes an endeavour to explore the various facets of the dynamics of federalism, the concept of welfare nation propagated by each political party, good governance and a myth under the new coalition era, role and demand of state autonomy and peripheral topics and sub topics. It is in reference to this context that the present article focuses on the necessity of carrying out a futuristic inspection of Centre-State relations in context of a new era of majoritarian government and coalition politics along with the governance at the Centre. Furthermore, this article also explores the paradox of Federalism and Coalition Government in India and lastly, the

author makes an attempt to suggest the ways and means to evolve a mechanism for a healthy Union-State relation in India.

Keywords: *Federalism, power-sharing, re-decentralization, majoritarianism*

Introduction

Federalism is considered to be an instrument of power sharing between the independent authorities viz. The Union and the State. An incipient trend of coalition form of a Government, in the developing nations having parliamentary form of a Government has been emerging. The coalition form of Government is also a means of power sharing. The coalition is to identify the federal division of powers with sub-national pluralism. In a developing nation like India coalitions have become an inevitably ineluctable and indispensable part of the national and regional regime. The unifying source is power of these kinds of Government is power. Logically, both federalism and coalition government should be complimentary to each other. As the object of both the forms of the government is power sharing a student of law or may be political science may assume and postulate that coalition government is always supportive and auxiliary of the federal system en masse. However, it is otherwise in the Indian constitutional system. The constitution of India promotes federalism however, with a vigorous and a strong union. The uni-federalism

that subsists in the Indian Constitutional system is an innovation in itself because it consciously conceived a strong union vis a vis state. This strong union concept becomes a misnomer and a myth with the coalition government. The coalition in the union challenges the cabinet form of the Government. Consequently, it can be verbalized that federalism and coalition form of government is not complimentary to each other and for that matter are not supportive of each other either. This paper fixates on the paradox of federalism and coalition government in India while also emphasizing on the question that what constitution proposes, coalition disposes.

One of the reality of contemporary politics in India is the coalition government in recent times. The influence of such form of a government is not just considered to be marginal but indeed a voluminous one. This form of a Government impacts on the decisive role in the formation of government. The emergence of multiparty politics challenges the monopoly of big democratic parties. Coalition Government in an entire perspective may be held to be a merit for a democracy because the democratic participation becomes more vibrant and living. However, it should be noted that 'everything that glitters is not gold'. One of the major demerits of having a coalition government is instability. Instability is antithesis to development. It is not just the political instability that is considered to be worrisome, what is all the more vexing is that the coalition government also challenges the very substratum of the constitution that is federalism and the parliamentary system of governance.

All federal systems encounter problems and imbalances in the area of centre-state relations; irrespective of how detailed and elaborate is the distribution of the functions and resources between the two levels¹. This paper deals with coalition politics and federal processes in India and has underscored the role of political parties, regionalism and party system influencing the structures and dynamics of federal polity in India².

Provenience of the Federal Form of Government in India

Accentuation is to be given on the aspect that the framers of the Indian constitution were not as free as, say, the framers of the United States constitution. The framers of the United States constitution had only a few principles and declarations to guide them. In contrary, the framers of the Indian constitution and the constituent assembly majorly functioned proximately within the phrenic and mental framework of what was given in the Government of India Act, 1935. The Act had provided with a strong unitary bias. India, as a nation, till independence was unitarily governed strongly favorable to the Central Government. Therefore, it is on this basis that the constitution of India makes the Center stronger than the states and hence, provides a quasi-federal polity to the nation. This is how federalism became a permanent process in India leading the judiciary also to analyze it as one of the rudimentary and basic features of the

¹M.G. Khan, *Coalition Government and Federal System in India*, 64|The Indian Journal of Political Science|167, 168 | (2003), available at <https://www.jstor.org/stable/418557>, last seen on 14/11/2019.

²*Ibid.*

constitution of India³ which cannot be amended⁴. However, India aimed to follow the kind of cooperative federalism wherein the states decisions and consent regarding important policy decisions were taken. There is yet another divergence from the cooperative form of federalism. Cooperative Federalism has now become a thing of the past with the recent trend of election of wherein Bharatiya Janata Party has claimed a majoritarian form of a Government. India as a nation has an experience of coalition government both at the centre and the state level. Furthermore, the coalition that is formed is neither stable nor strong therefore, they neither know how to live or how to die.

According to the keen observation to the recent trends federalism has become aeonian process in India with a strong and vigorous centralized propensity by its constitution itself. The pattern of centre-state relations has transmuted to a certain extent categorically after the conception of coalition government emerged even at the state level. It is at this juncture that it is important to study the transmuting dimensions of the federal process.

Power Sharing and Federalism

For an overall development of a nation the scholars and the constitutional bandits have suggested two forms of government that is unitary form of government and federal form of government. Unitary System has one power centre and there is no paramount role of the state unit. However, federal system is considered to be one

which accentuates upon the aspect of distribution of powers where the powers are distributed between the centre and the state unit. Framers of the Indian Constitution had the perspective that for a sizably voluminous nation like India the better choice that could be made was of federalism which would apportion powers between the state and the union. Logically Federalism should promote coalition government and vice versa. This, however, is not correct. The federalism as a form of government and the coalition government are conceptually inconsistent in India if not completely contradictory to each other. To understand what this inconsistency and erraticism is all about one needs to understand what federalism meant to India.

Federalism and Constituent Assembly of India

While introducing the *Motion re Draft Constitution* on 4th Nov. 1948, Dr. B.R. Ambedkar had said⁵:

“If a copy of a constitution is placed before the student of the constitutional law is sure to ask two questions: Firstly, what is the form of government that is envisaged in the constitution; and Secondly, what is the form of the constitution?”

To the first question per se he informed that we are to form a parliamentary form of a government as we are used to it during the British raj. To the second question he observed:⁶

“The Draft constitution is, federal Constitution in as much as it establishes what may be called a Dual Polity⁷. This Dual Polity under the proposed

⁵ VIII Constituent Assembly Debates 31, 32

⁶*Ibid* At 33.

⁷Anurag Deep, *Coalition Government and Uni-Federal Nature of the Power Sharing: (Whether Federalism is*

³KesavanandaBharati v. State of Kerala, AIR 1973 SC 1461.

⁴*Ibid*.

Constitution will consist of the Union at the center and the states at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution.”⁸

Ambedkar had avowedly admitted that the draft presented by him envisages a federal form of a Constitution. However, the irony of the situation is that nowhere in the Draft Constitution presented or for that matter even in the present constitution, the word ‘federal’ or ‘federations’ has been used. It is on this contrary note that the author emphasizes that Article 1 of the Indian Constitution⁹ mention about India being a ‘Union of States’ and it does not mentions about it being a federation. This in general means that the framers desired to give states less power in comparison to the centre.

Constitution commands a strong centre-vis-a-vis the state

Elucidating to the paradox, Ambedkar had opined that the use of the word union was deliberate. “The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation and that federation not being the result of an agreement no state has the right to secede from it. The federation is a union because it is indestructible¹⁰.”

Promoted), 54| Journal of the Indian Law Institute|84, 85| (2012), available at <https://www.jstor.org/stable/43953527>, last seen on 14/11/2019.

⁸*Ibid.*

⁹ Article 1, the Constitution of India.

¹⁰VIII Constituent Assembly Debates 43.

By incorporating federal features B.R.Ambedkar, endeavoured to ensure the power sharing by states, but the sharing of power is only to a limited extent. In the Indian Political System this power sharing must respect the dominance of union over states because it is the command of the constitution of India.

Power sharing distinguished from the U.S.

U.S. has been defined as an ideal form of federalism, wherein K.C. Wheare has described India as quasi-federal. Wheare calls the type of distribution of powers between the centre and the state unit and being independent in their own sphere, as an ideal form of federalism. In the words of K.C. Wheare¹¹, “ By federal principle I mean the method of dividing powers so that general and regional governments are each, within a sphere, co-ordinate and independent.”

Indian Constitution makes distribution of powers between the Union and the States on the basis of Schedule VII read with article 246¹² of the Constitution. The distribution however, is not made on the basis of the federal principle as the Union comparatively has been given more powers when compared to the states. It is on this basis that K.C. Wheare in his book describes India as quasi-federal. Furthermore, other constitutional experts describe the Constitution as ‘federal with unitary feature’ or ‘sui generis’ etc. This unique nature of the Indian Constitution cannot be disputed. The form of the government in India is beyond

¹¹ K.C. Wheare, *Federal Government* 10 (4th Ed, 1963).

¹² Article 246 (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any matter enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”), the Constitution of India.

reasonable doubt a departure from the tradition concept of federalism as found in U.S.

Both the coalition form of a Government and the federalism form of the government have to function under the Constitution of India. For the federalism form of the government the pre-condition that lies is that there should subsist a written constitution however, there exists no such pre-condition for a coalition form of the government. As an illustration Britain as a nation has no constitution but there exists a coalition form of government. However, where there exist a written constitution both the coalition form of government and federalism have to observe the words and spirit of the constitution. Considering this as a paramount factor what needs to be emphasized is that the spirit of the constitution does not sanction equal power sharing between the centre and the state. The Constitution of India has various provisions commanding a strong bias in favor of Union despite having federalism. These provisions¹³ makes the Constitution of India a complete departure from the U.S model of federalism. This federalism has been declared as a component of rudimental feature of the Constitution of India.¹⁴The framers of the Constitution of India had a desire to have a strong centre and this is considered to be a universally accepted fact. The framers made it a point to incorporate the best features of all the then available constitutions of the various countries all over the world, irrespective of the fact whether they were unitary or federal. Therefore, it must be

¹³ Article 249 and 250, the Constitution of India.

¹⁴ S.R. Bommai v. Union of India, AIR 1994 SC 1918.

said that 'Uni-federalism is a constitutional innovation'. It contemplates power sharing wherein the centre shares far more stronger power than the state units.

Overpowering nature of a coalition government in the state than in a Center

From the post-independence to 2014, the Indian political system has witnessed more of a powerful coalition government in the states rather than at the Center. State Governments have emerged as a major power with the coalition form of a Government. However, in a similar situation the Center has not been able to emerge as a powerful governing institution concretely prior to the year 2014 and post-independence period. Few of the developments that may be noticed under the following circumstances are as follows:

- a) That the coalition polity has in the recent times emerged as a strong challenge to the cabinet form of the government, where Prime Minister is considered to be the first among equals. A. Raja had not resigned for the sake of the power and insistence of the Prime Minister but had only resigned at the desire of his political boss that is Karunanidhi, former chief minister of Tamil Nadu.

The very dictate and the power of the cabinet form lies in the aspect of Prime Minister's privilege to make an individual a minister, and no party or a person or unit ought to have dictated his terms in the very formation of the council of Minister. However, the coalition form of government challenges both the ideas *i.e.*, federalism and cabinet form. Every other aspect of the Central

Government is dictated by the coalition form of Government. The paradigm shift of the powers to the states indirectly and impliedly had become a matter of concern in the during the said period in a developing nation like India. With this it appears that the distribution of powers laid down in the constitutional scheme was highly and embarrassingly perturbed. The Government during the said period had failed to become uni-federal in many states in lieu of the nation and the constitution providing for uni-federalism.

Recent Trends

It may be recalled that the Congress party had fulfilled the role of a hegemon between the year 1952 and 1989. Albeit amidst post Indira Gandhi period BharatiyaJanataParty came to power but only to last for a short duration. By 1980, the Congress Party was again in power. The recent trends of the forms of the Government specifically at the central level seems to be more fascinating than the formation of the state Governments. It has been recently witnessed by the nation as a whole that in the 70 years of the independence of India it was only after years that the 2014 election provided for a majority government by making the BJP as the power house to govern the nation with 282 seats surmounting more than two thirds of the total 572 seats. Furthermore, in the recent 2019 election the nation witnessed yet again a majority Government with BJP again conquering the powers in its own hands. The working of the federal system can only be understood when an evaluation of the role of the party in power at the centre is done.

a) Evaluation of the Majoritarian coalition politics and Centralizing tendencies under the regime of Modi Government

With the BharatiyaJanata Party claiming the first single party majority in the lower house in the past three decades, India appears to have entered a new dominant party system antithesis of what coalition government that had been existing in the nation for the past three decenniums. This form of a Government has been premised on a unique set of principles exhibiting a clear break from what appeared to have been existing before. Federalism and a cabinet form a government in India specifically, are the products of controversies, debates and deliberations. There had been a perpetual debate over whether the country's politics was experiencing a paradigm shift.

Most of the BJP's promises of decentralization of powers have not been implemented and on the contrary it results into centralization of powers for the following reasons mentioned.

Firstly, the focus in the first phase by the Bharatiya Janata Party was reluctantly relied on the acche din (good times), rapid economic magnification, creating millions of jobs, and revitalizing India's moribund investment cycle.¹⁵ However, large parts of the election promises related to the economic growth failed to revitalize in the Modi's first term in office. Growth in India's per capita gross domestic product (GDP),

¹⁵Milan Vaishnav, *Indians Expect an Economic Superman, Bloomberg Opinion* (12/05/2014), available at <https://www.bloomberg.com/opinion/articles/2014-05-12/indians-expect-an-economic-superman>, last seen on 14/11/2019.

while solid, was by no means stellar.¹⁶ Low inflation became a boon for the urban consumers leaving behind adverse consequences for the rural wages which had largely stagnated under the regime of Modi Government.

Secondly, a report of the National Sample Survey Organization (NSSO) emphasized on the joblessness that spiked to unprecedented levels during the period of 2017-2018.¹⁷

Thirdly, the introduction of making Bengali and Malayalam languages compulsory in the State of West Bengal and Kerala has been a reactionary step towards the Union's decision of promoting Hindi as a language throughout the nation.

Fourthly, the introduction of the Goods and Services Tax is yet another policy which undermines the quasi federal structure of India. The major issue in India has been the fiscal imbalance between the states and the centre. The accentuation must be laid down that the resource collection and mobilization potential is concentrated within the Centre whereas the socio economic obligations and responsibilities are centralized with the States. The discretionary power has ceased to exist with the states so that they can mobilize for the amelioration of the socio economic conditions of the states respectively. There should have existed some discretionary power with the states for the resource mobilization

¹⁶Arvind Subramanian, *India's GDP Growth: New Evidence for Fresh Beginnings*, *Indian Express*, (12/06/2019), available at <https://indianexpress.com/article/opinion/columns/indias-gdp-growth-new-evidence-for-fresh-beginnings-5774138/> last seen on 14/11/2019.

¹⁷*Troubling Unemployment Data, Leaked in January, Now Released Post-Elections*, *The Wire*, (31/05/2019), available at <https://thewire.in/economy/official-data-unemployment-2017-2018>, last seen on 14/11/2019.

to the extent it did not affect the national taxing system. With the alteration of the taxing powers between the states and the centre there was a desideratum to amend and redesign the current fiscal federalism in India. Fiscal federation to be elaborated as a concept would mean applying federal principles in fiscal relations between the federation and units. Fiscal imbalance in India is because of the mismatching of the revenues that are to be distributed among the various states in existence. Furthermore, due to strong majoritarian Government the Centre is able to command greater share in the public funds and hence it leads to vertical fiscal imbalance¹⁸. Customarily and most often than not the states lack funds in proportion to the obligations that they are entrusted with. The states in the present scenario have to heavily rely upon the Centre for aids, grants and revenue sharing. In the words of K.C. Wheare¹⁹:

“State governments are overloaded with expenditure responsibilities and expectations, whereas they are not endowed with enough resources to finance public expenditures. The economic reforms have amplified the vertical fiscal imbalances in the Indian federation”.

The credence in the current scenario lies in the aspect that the prelude of dual GST reform system in India has led towards an incrementing tendency towards centralization of fiscal powers. The concern of the state lies even today, that is after an

¹⁸ Shreya Jain, *The Goods and Services Tax (GST) Regime through the lens of Fiscal Federalism in India*, ILI Law Review, Summer Issue 2016, available at <http://ili.ac.in/pdf/paper14.pdf>, last seen on 14/11/2019.

¹⁹Ranbir Singh and A. Laxminath, *Fiscal Federalism Constitutional Conspects* 5 (2005).

year of implementation of GST that the taxing powers of the states have been diluted which does not get compensated by the Centre for as the quotas of the taxes of states from the Central Government has not changed substantially over the past few years. The implementation of GST under the Modi regime and centralization of the fiscal policies leads towards the centralization of powers in the hands of the majoritarian form of a Government.

Fifthly, the Central Government failed to take the consent of all the states regarding announcement of demonetization (a term that is used for describing the abrupt withdrawal of the 500 and 1000 Rupee Note) scheme.

Sixthly, after the BJP claimed yet another majority in the year 2019, it moved forward with another decision and again without the consent of the states and this time it was with the abrupt decision to revoke the special status of the state Jammu and Kashmir into two Union Territories. Paying scant and negligible regards to the conceptual understanding of parliamentary democracy that still prevails in India, the Government has heaped humiliation on the regional people. It has been a brazen and temerarious assault on the cooperative federalism that persists in the very nature of Indian Constitution. This is likely to bring in a lot more alienation amongst individuals from various states in the nation instead of establishing an integration and leading towards the union of states as enshrined in the Constitution of India. It is to be understood that genuine unity can never be achieved through coerced centralization and all the fiats as mentioned above. Kalhana in his

twelfth century piece Rajatarangini had observed that “Kashmir can be conquered by power of spiritual merit but never by force of soldiers.” However, it seems that the current Government has failed to understand the principle behind the same. Even today, that is after 4 months of such a decision the schools, the economy, the internet and basic communication and mere living of content lives is affected in the region with still thousands of police roaming in and about the nooks and corners of the roads apprehending that any unpleasant situation may arise.

These aspects and policies definitely threaten the diversity and federal principles. The centralizing policies initiated by the Modi Government not only goes against the institutional architecture, but also contravenes the political trajectory of a country which continues to be defined in different varied states.

b) Detailed evaluation of the past and the present structure of the Coalition form of Government

Coalition Government in India has shown an extensively higher economic growth when compared to the majoritarian form of a Government. The coalition form of a Government may not cause policy paralysis. However, what remains to be the bulls eye for good governance may further shift from the capital New Delhi to other more progressive states like Andhra Pradesh and Telangana. Coalition dynamics definitely necessitate the requirement of intra party consultations consequently, decelerating the decision making power on behalf of the

Government, however there exists checks and balances in the coalition form of a Government. This checks and balance and the policy making and the economic growth has failed to develop in the majoritarian form of Government that is led by the Bharatiya Janata Party in the recent times. Furthermore, such rigorous scrutiny of the policies in the coalition form of a Government makes the measures passed more sustainable which automatically fails to take place in the Majoritarian form of a Government. The policies at both the central and the state level should be viewed with precaution as they further advance the politics of majoritarianism.

The re-decentralization of power that the Modi Government's administration has followed in the past five years partly expounds why India is now considered to be a case of centralized federalism, like Australia. This march towards the centralization of powers in the hands of one party and moreover, one man, partly reflects the ideology of the Bharatiya Janata Party. This ideology is the vision that the world strives to impose the culture of the majority community of India on everyone else.

It is in the obvious manner that the Modi Government thinks of cooperative federalism as a thing of the past and the inflicting of majoritarian power over the nation.

Proposal for a Course of Action and

Concluding Remarks

During the times of coalition politics that prevailed in the nation when there did not exist any majoritarian government was more of the aspect wherein the states played a significant role.

However, with the contemporary phase of the politics prevailing in India, wherein for the past two terms BJP has claimed the majoritarian power, the power significance has shifted from the states and to the centre.

The political power dynamics about the centre-state relations has changed drastically over the past seven decenniums. There has been a huge demand of restructuring the state and centre relation wherein the states are given extensive power to vocalize about their demands to lift the socio-economic condition of the states. This autonomy is suggested to be given to the states in order to lift from the kind of subordination and dependency and to give them greater shares of power and authority both. It can further be emphasized that the nation can develop and be strong only when the states are also strengthened and given their share of autonomy with certain checks and balances in order to restrict tyranny in the nation. Presently, the centre has been interfering in almost every aspect of the state government's rule which needs to be curtailed. The misuse of the power under Article 356 of the Indian Constitution which provides for the Presidential Rule when the President gets satisfied that there has been a breakdown of constitutional machinery in a state. This particular power has been proved to be disadvantageous for the states in the contemporary times. The centre should make an attempt to only provide with leadership, recommendations and suggestions to the states.

With regards to the kind of federalism, it needs to be understood that the Indian Federal System changes with the change in the party system at the

centre. The strong inclination of the Constitution of India is itself counterbalanced by different kinds of forces in the system. With the Modi Government in the rule, the states once again have lost the autonomy to vocalize their demands and further have been subordinated to the extreme level which obviously did not prevail in the coalition form of Government.

To provide with the concluding remarks, the author would like to emphasize that the centre-state relation under the rule of the coalition form of government is much more harmonious when compared to the one party dominant system.

Ankita Shaw is a fourth year student of BA.LLB at School of Law, KIIT University, Bhubaneswar.

Relocation of Rohingya refugees

Abhijeet Nandy

Bangladesh authorities of Tuesday, October 22nd, said that they are planning to shift the thousands of Rohingya refugees, who are presently staying at the congested camps in Cox Bazaar district, to an island on Bay of Bengal. Cox Bazaar's high level government administrator Kamal Hossain said that they have prepared a list of 100 families who have agreed to shift to Bhasan Char Island. The government has decided that this shifting of 1lakh refugees will be done in phases.

Hossain said that they are planning to start this process from late November or in December. He further added that the Bangladesh government will not intimidate or pressurize the Rohingya refugees to accept this plan. Rather the government will peacefully try to persuade them to accept their idea of relocation to this island. Under the umbrella of a multimillion dollar project, the government have already started several constructions on the island which includes homes, schools, mosques etc.

This plan of relocating the Rohingyas was first discussed in 2015 but nothing major was done in that direction at that time. Although this received many criticisms from various organisations including the UN, which pointed out how frequently this island gets flooded, the idea was never set aside. Even many Rohingyas didn't

support this plan initially. But after the huge incoming of Rohingyas from Myanmar since August 2017, they started to show their support to this plan. The poor living conditions of the camps have primarily contributed to change their mind regarding this idea of relocation.

Attempts to begin repatriation of Rohingyas were made in August but due to safety concerns the Rohingyas declined to go back to Myanmar. The U.N. advised the Myanmar government to establish confidence among the Rohingyas in order to execute the process of repatriation.

The Rohingya Muslims have presented several demands to Myanmar, which is mainly a Buddhist country, which includes citizenship, safety and the return of their land and homes. But the Myanmar government has declined all their demands and labelled them as 'stateless.

Last year an UN investigation team accused the top army commanders of Myanmar of genocide, war crimes etc. which the Myanmar government have dismissed.

Abhijeet Nandy is a Research Assistant at the Centre for Regulatory Studies, Governance and Public Policy, West Bengal National University of Juridical Sciences, Kolkata.
