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ROE V. WADE: A COMPARATIVE STUDY INTO ITS IMPLICATIONS AND THE PRESENT DEBATE

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Abstract

When we talk about women they are entitled to several rights which are claimed by them across the globe these rights include bodily integrity, protection from sexual harassment, fair wages, reproductive rights etc. These rights are recognized and supported by institutionalizing them into law or local custom by some countries whereas they are violated and suppressed by others. Since ancient times the status of women regarding these rights has remained an all-time low, for a long period of time women has been treated as a commodity violating their Human rights the most recent violation has been witnessed in Texas supreme court ruling overturning the historic judgment of roe v wade 1973, Which made abortion legal in the United States , the present ruling is in clear violation of this judgement this article shall analyze the case of 1973 and how the present ruling violates it.

Keywords: Abortion, Judgement, Pregnancy, Privacy, Trimester

Introduction

Abortion is termed a medical procedure that terminates a pregnancy. It is considered an essential healthcare need for millions of women and girls around the world. In an estimate, 1 out of 4 pregnancies turns into abortion every year moreover according to global estimates from 2010 –2014, around 45% of all induced abortions are unsafe[1]. That too, they are performed under unsafe conditions without any proper medical equipment and by unprofessional medics and about 73 million induced abortions are performed every year across the globe with six out of 10 abortions being unintended and only 29% being induced abortions with developing countries worldwide bearing about 97% of unsafe abortions,[2] of which fifty percent occur in Asia.

Abortions are one of the safest methods of terminating unwanted pregnancy if performed under proper medical procedure, but in situations where states restrict abortions then people are left with no choices and are compelled to opt for unsafe methods of abortion. Despite these

[1] Susheela Singh & Lisa Ramirez, *Abortion worldwide 2017 uneven progress unequal* access, Guttmacher institute ,(March 2018). https://www.guttmacher.org/report/abortion-worldwide-2017.
[2] Rachel Benson Gold, *Lessons from before Roe*, Guttmacher policy review, volume 6 issue 1 https://www.guttmacher.org/gpr/2003/03/lessons-roe-will-past-be-prologue.

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restrictions criminalizing abortion, some countries allow (to what is called an exception to these restrictive barriers) women to seek an abortion in cases of pregnancy resulting from rape or incest, in situations where there is a life-threatening risk associated with the pregnancy. Only a minor number of abortions are associated with these reasons; which means the majority of the women and girls living under these restrictive regimes have to undergo unsafe methods of abortion, putting their life at risk.

What do you think about these restrictive barriers made by states? Is it valid for a state to regulate the reproductive rights of women, including the right to abortion? Or it should be the choice of the party? Some argue that it is a matter of private rights of individuals and should be undisturbed, while another section argues that it is the responsibility of the state to protect the rights of the unborn.

These questions were raised in the landmark case of 1973 *Roe v Wade* which led the US supreme court famously make a ruling on abortion rights in which the court recognized the "right to privacy" and also decided that the right to privacy extends to command over pregnancy. In Roe v Wade the court tried to create a framework to balance the state's role and privacy rights so that they may not conflict with each other. Still, even after Roe those who oppose abortion have advocated for stricter abortion laws; still they haven't been able to ban abortion but managed to put certain limitations on it. Influenced by them certain states have placed restrictions on abortions under certain situations such as mandatory disclosure of risk information, and parental notification requirements.

These heated issues have led to the current overturning of Roe v Wade in which the US supreme court in a shocking turn of events has decided to reverse the previous ruling. We shall analyze more about these issues further in detail.

Status of Abortion in the US before Roe V. Wade

The concept of abortion did not just get invented in the United States after the historic judgment of 1973 was written down by the supreme court, on contrary its legality has been a part of a long legal history in the United States. If we trace back its roots, abortion was generally legal in the United States during the mid-late 19th century at least during the first trimester of pregnancy (the period when women could feel the fetus moving in her belly).

The problem started when the American Medical Association came out against abortion soon, after which the Catholic Church also gave a proclamation banning abortion. Influenced by all

these events, congress on March 3, 1973, passed a law known as the Comstock Act[3]. Which defined contraceptive substances as coarse and illicit, it also banned abortion-inducing drugs, making birth control a federal offense nationwide.

Things further started escalating during the 1960s, when the women's rights movement gained momentum, aiming for safe and improved access to contraceptive methods. The movement led to the legalization of abortion in different states. For instance, in 1970 Hawaii became the first state to legalize abortion and other states like Alaska, and Washington also followed suit. They allowed licensed physicians to proceed with abortions on permission before fetal viability. For women seeking an abortion, it was a requirement in all three states to be a resident for at least 30 days before the procedure. New York also repealed its anti-abortion laws but did not had any residency requirements.

All these requirements laid down by states created unending hurdles for women seeking abortion as now they have to travel long distances to get a legal abortion done. Just to put that into picture, a year before Roe v Wade was declared, around 100,000 women traveled from their home States to New York for getting a legal abortion[4]. According to an estimated report from the Guttmacher Institute around 50,000 women traveled more than 500 miles to get an abortion in New York while about 7,000 women traveled for more than 1,000 miles, and even some 250 also traveled up to 2,000 miles coming far away from places such as Arizona Idaho, and Nevada[5].

Access to legal abortions was mostly unavailable until the years fell before Roe v Wade. Before 1973, women were able to obtain the required permission for an abortion by their respective states only if it was proven that such pregnancy will endanger their life. However, in the period between 1967 and 1973, some states allowed legal abortions when pregnancies resulted from rape or incest.

Illegal Abortions

Despite the underlying legal history of abortion in the states before Roe,1973 the primary cause of abortion for American women has always been unwanted pregnancy, thus with this problem mingling the society the best choice for women before 1973 was to go for illegal abortions as

[3] The Comstock Act 1973
[4] History.com Editors, *Roe v wade Decision and* background, History (June 24, 2022) https://www.history.com/topics/womens-rights/roe-v-wade.
[5] Rachel Benson Gold, "*Lessons from before Roe: will past be prologue*" Guttmacher institute, (March 2018) https://www.guttmacher.org/gpr/2003/03/lessons-roe-will-past-be-prologue.

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legal abortion had very limited access to which only women with financial means had some ground.

The number of illegal abortions estimated during the period ranging from the 1950s to 1960s was from 200,000 to 1.2 million per year. According to the data analysis of North Carolina, about 829,000 induced abortions performed in 1967 were illegal[6]. Another method through which we can determine the presence of illegal abortions is the death toll. In the year 1930, the prominent cause for the death of about 2700 women was officially listed as illegal abortions. Such methods of abortion can be humiliating and detrimental at worst as they can cause grievous injury or even death.

Background behind the case of 1973

Obtaining abortion before the quickening period was the method followed in common law in England the same tradition has been followed in the United States, where obtaining an abortion before quickening (a period where fetus movements can be observed) was not an offense, Connecticut inspired by the lord Ellenborough's act (1803) became the first State introducing law banning abortion after quickening.[7]

By the beginning of 1967 around thirteen States allowed access to abortion. While several states restricted abortion procedures, somewhat 31 States opened access to the procedure but only if it was meant to protect the mother's life which included Texas. So how did the case Roe v wade come into the spotlight? Many believe that it was the historic case that made abortion legal. However, Doe v Bolton[8] is considered as the foundation on which Roe v Wade was declared.

In the year 1970 Supreme Court while deciding Doe v. Bolton observed that abortion is valid under three circumstances, if there is a serious threat that forcing such pregnancy will endanger the person's life, or if there is a chance that the fetus will be born with some unrepairable permanent physical or mental disability, or if such pregnancy is the result of rape.

Roe v Wade is indeed a controversial case that has changed the view on abortion in the United States. It all started with Norma McCorvey a Texas resident where it was illegal to undergo an

[6] Rachel Benson Gold & Megan K. Donovan, *Lessons from before abortion was legal,* Scientific American, (September 1, 2017) https://www.scientificamerican.com/article/lessons-from-before-abortion-was-legal/.
[7] The New York Times, *The Dobbs v. Jackson Decision Annotated*, The New York Times,(June 24, 2022) https://www.nytimes.com/interactive/2022/06/24/us/politics/supreme-court-dobbs-jackson-analysis-roe-wade.html.
[8] Doe v Bolton Doe ,410 U.S at 179

abortion unless the pregnancy was a result of rape or incest, which were the least of the reasons in the United States for obtaining an abortion. She was only 21 years old when she became pregnant with the third child. Norma's friends influenced her to falsely claim that she has been raped to get an abortion granted by the state but she failed due to lack of evidence. Norma was then advised to meet two lawyers: Linda Coffee and Sarah Weddington. Both the attorneys filed a federal lawsuit in the district court of Dallas Texas County on behalf of Norma McCorvey the federal suit was filed under the name "Jane Roe" against the district attorney of Dallas County Henry wade. The principal issue raised in Roe v Wade was whether or not the constitution protects a woman's right to control her birth through abortion .

Supreme court, while deciding the case, held that a woman's right to abortion falls under the ambit of the right to privacy, recognized under *Griswold v. Connecticut*,[9] which has been secured under the fourteenth amendment. The court in its judgment introduced the trimester system in which absolute autonomy was provided to the women regarding abortion in the first trimester (first three months) and state's interest was also secured during the second and third trimester under which State was allowed to regulate abortion. Later in the year, 1992 court in *Planned Parenthood v Casey*[10] changed the standard required by States for regulating abortion from trimester system to fetal viability (The period where a fetus can survive outside the mother's Womb) which is usually estimated at around 28 weeks but can also be as early as 24 weeks.

The 14th amendment provides the right to due process available at the state level. Since its adoption, the due process clause has always been used by the supreme court to strike down any state laws or statutes which infringe personal liberties and such issues which are not expressly mentioned under the constitution, just like the right to privacy. The Roe v. Wade case heavily relied on this Clause which concluded that restricting abortion infringes the right to privacy under the constitution by violating a person's choice to abort a birth.

Another significant development that came across Roe v. Wade was an issue regarding when life begins. The court while hearing this issue said: "When those professionals who have trained in their respective fields of Medicine, philosophy, and theology are unable to speculate a valid conclusion, how can the judiciary at this stage of man's knowledge can answer the such question."

[9] Griswold Connecticut (1965),381 U.S. at 479
[10] Planned Parenthood v. Casey (1992), 505 U.S at 833

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So actually, when does life begin? This question must be wandering around your mind right now. When does life begin? Is it at conception or at birth? It is undoubtedly a very difficult question to answer. This question has inherently created confusion between the right to life and the right to privacy. Let us just focus on our primary question. It is a very difficult issue to resolve since different cultures have their own opinions regarding this question. Some argue that life begins at birth. For example, in the Jewish, faith it is considered that life begins at birth. But if we look into the catholic view, they believe that life begins at conception while in the modern day if we ask a doctor his views tend to be that Life begins somewhere before birth. The answer to this question remains sensitive to date, but the court while declaring Texas abortion laws unconstitutional also created a framework of rules so that both the fetus and mother's life could be protected by giving autonomy to the woman during the first trimester in which the woman was free to obtain an abortion without any interference from the government. But also allowed the states to regulate abortion in the second and third trimesters to secure the life of the unborn.

Why the case of 1973 is notable in US history

Roe. v. Wade has a significant place in US history since many people believe that it was the case that legalized abortion in the states but, what they get wrong is that it was not the first case that legalized abortion all it did was change the way the states can regulate abortion and secured abortion in right to privacy covered under the constitution. It was the first case that established that criminalizing abortion can cause injury to women rather than the physician.

The Historic judgment given by the supreme court which struck down anti-abortion laws in the States and legalized abortion created more heat than any other case in the history of the United States. One section of the population influenced by the religious customs of the Catholic Church and other fundamentalist beliefs held against abortion by stating that aborting an unborn is more likely a murder, while the other section of the population believed that American women had a right to choose, whether she bears a child or not and by applying unreasonable restrictions through government on this right violates her freedom and personal privacy.

The decision held in 1973 have created a long battle already in Swing for 20 years which has divided it into two segments, thus those who oppose it describe themselves as "pro-life" and its advocates who have constantly made efforts to prevent its overturning describe themselves

as "pro-choice"[11]. Justice Blackmun who wrote the majority decision has also been threatened for his life in the past by the condemners of the decision.[12] In his letters mailed to him, he has been described as a murderer and compared to Pontius Pilate and Adolf Hitler.

Support in favor of abortion rights has been increasing rapidly even in this 21st century, advocates of Roe have described abortion as a vital part of women's right, bodily integrity, and personal freedom. The majority of opinion polls conducted in the United States in late 2021 have shown that majority of the Americans support abortion with about 60% believe that abortion is reasonable during the first trimester, which drops to 20% for the second trimester.[13]Another Gallop poll estimated as early as May 2022 showed that about 50% of Americans believe that abortion should be legal under some circumstances while 35% believe that it should be legal under any circumstances and the rest 15% believe that abortion shouldn't be legal under any circumstance[14].

Those opposing Roe have advocated for more regressive abortion laws to which they have only been partially successful as these opponents have managed to place certain limitations on abortion under certain situations such as parental notification requirements, and mandatory declaration of abortion risk information; but still they are unable to ban abortion completely, and till date it remains a heated issue in the United States.

As described by Justice Harry Blackmun, "abortion will never be a simple issue. It will remain a debatable topic for years to come because somebody's beliefs on it rely on their opinion of the world and what they believe regarding the beginning of life,".

Current overturning

In a historic turn of events, the supreme court of the United States reversed the landmark Roe v Wade case on June 24, 2022 which declared abortion as a constitutionally protected right under the right to privacy. The overturning was ruled by the conservative majority court in Dobbs v Jackson Women's Health Organization.[15] The court in its findings ruled that the right to abortion is not deeply rooted in the United States' customs and traditions. This decision has

[11] KL Simmons, *The Absurdity of abortion rights being challenged in 2022* , Byrslf (May 3, 2022) https://byrslf.co/the-absurdity-of-abortion-rights-being-challenged-in-2022 .
[12] Elizabeth Olson, *Justice Harry Blackmun who has received numerous death threats*, United Press International (March 4, 1984) https://www.upi.com/Archives/Justice-Harry-Blackmun-who-has-received-numerous-death-threats.
[13] Jean Li & Emilia Thompson DeVeaux, *Where Americans stand on abortion,* Five Thirty Eight (May 6, 2022), https://fivethirtyeight.com/features/where-americans-stand-on-abortion-in-5-charts/.
[14] *Abortion*, Gallop report (May 2,2022) https://news.gallup.com/poll/1576/abortion.aspx.
[15] Dobbs v. Jackson Women Health's Organization, 19-1392 U.S at 597

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eliminated the constitutional right to abortion, which was in force for almost 50 years. Not only this ruling will impact, women but will also change the political landscape in America.

The case Dobbs v Jackson is centered around the Mississippi gestational age act[16], which restricted abortion after 15 weeks. The law was struck down by a lower court because of constitutional protection granted by Roe v Wade, after which the matter reached the Supreme Court. The court in a 6-3 ruling upheld the Mississippi Act overturning the 50-year-old law. The ruling has effectively restored the power of the states to regulate abortion and will enable them to create their policies regarding abortion.

Justice Samuel Alito who has written in his majority opinion that *"Roe was outrageously wrong from the very beginning and its explanations are weak and the ruling had damaging results which are very far from resolving the national issue of abortion, both Roe and Casey has only created heated debates and unreasonable division"*

Around 13 States have already passed "trigger laws" which came into effect as soon as Roe v Wade was reversed, including the Mississippi Act which restricts abortion after 15 weeks. Thus, over the past few decades, many states have tried to introduce anti-abortion laws. While, most of them were declared unconstitutional by lower courts because they were violating Roe v Wade. But now there is a certain chance that they will be implemented.

How it will impact women

Since the overturning, there would be no federal law to obtain an abortion in the United States. Now the sole right to regulate abortion will fall up to the states. Most of the conservative states will bring back the regressive laws which were previously struck down by Roe v Wade in 1973 and the standard of fetal viability will be prohibited. According to an estimate by the New York Times, legislative bodies of 22 states will move a ban on abortion or make access to it difficult, and majorly marginalized poor women will most likely suffer, the report also said that the number of legal abortions in the US will probably be reduced by 14% moreover women seeking abortion even during the early stages will be subjected to criminal penalties.[17]

Such restrictions will further put the burden on women as now they will have to travel long distances to the particular State having access to legal abortion which will not be a viable option for low-income groups thus, will harm those with the least economic resources, further it will

[16] Gestational Age Act, 2018, s41-41-191 (Mississippi code Title 41*)*
[17] New York Times, *How abortion ban will ripple across America ,*New York Times (June 24, 2022) https://www.nytimes.com/interactive/2022/06/24/upshot/dobbs-roe-abortion-driving-distances.html.

affect minorities already facing racism in the state. For example, in Florida, black women constitute about 15% of the population but around 75% in arrests related to pregnancy.[18] This is a dark period for women in the United States, but advocates and supporters are constantly fighting legal battles to protect women from these regressive laws.

CONCLUSION

Obtaining abortion should be the choice of the woman as it places a lot of stress on her and also puts her life at risk, it should be consequently her decision whether to keep the child or not; but this right must not be absolute. It is acceptable that some reasonable restrictions on this right should be there because not only it affects the mother but also the unborn, thus it remains a question whether life begins at conception or birth which hasn't been answered but it should be kept in mind that between these two parallel lines of the customs and beliefs the child also suffers.

The States have a right to regulate the health of their citizens but what should be kept in mind is that such restrictions should be reasonable as we have witnessed in the recent Act of Mississippi which was upheld by the supreme court overturning Roe v Wade; the law makes abortion illegal after 15 weeks, so what happens if the women don't even know about their pregnancy by that period? Such a law will not enable her to end such pregnancy within the timeframe and also what happens if the financial conditions of the family are not enough to sustain a child? By forcing such a child, only burden on the family will increase. Further, we must stand in solidarity and push back against such regressive laws no matter where we live and protect the marginalized who largely suffer. We must rise against the government to turn abortion into an essential healthcare service and also rise for reforms for protecting healthcare individuals so that they are not criminalized for performing abortions.

[18] Jared council, *The Three Biggest Implications For Black Women From Roe V. Wade's Fall,* Forbes (June 28, 2022) https://www.forbes.com/sites/jaredcouncil/2022/06/28.

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THE CONTROVERSY OF JUDICIAL TRANSFERS: ADMINISTRATIVE OR DISCIPLINARY?

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Abstract

Out of the three organs of the government, the Judiciary is perhaps the most accessible and reachable institution that the vast majority of the country turns to almost every day. As the Guardian of the Constitution and the Upholder of Fundamental Rights, the faith of the people must be maintained in the Justice System. This faith is derived from transparency. One of the facets of maintaining transparency in our Justice System is the functioning of Judicial Transfers, especially Judges of the Higher Judiciary. While we do have a well-established system for transfers and appointments in the Indian Judicial System- the Collegium System- which is a careful balance of the authority of the Executive and Judiciary, this system is not without its flaws. Perhaps the most significant flaw in this system derives from its structure and procedures, and the potential of vested interests of a few to override the interests of the nation at large. The want for an open system is not a new one. The majority rightfully believes that more air in the system will cure many of the issues that are currently rotting in the system. The controversy of Judicial Transfers is not new; this issue goes back to the previous century, to the peak of the power struggle between the Parliament and the Judiciary in the 1970s. However, as our nation has progressed, so have our institutions and the demand for more transparency. This article aims to analyse the harmony between the system of checks and balance with respect to the design of judicial transfers in India, examine the controversy surrounding it, and attempt to provide a way forward.

Keywords: Judicial Transfer, Collegium, Transparency, Public Interest, Executive

Introduction

The Judiciary is a central pillar of our country, assisting in the smooth operation of democracy. The Judiciary has contributed to many positive changes in the functioning of the administration that have been welcomed by the population. This makes it all the more critical for the efficiency of a judge to be at its very best.

Transfers in any institution of the state function in a manner that bypasses monotony, improves productivity and efficiency, enhances the skillset by providing exposure, etcetera. In a judicial system, transfers become all the more critical as they become opportunities to beat the inherent

bias we all possess as human beings in order to provide a fairer judiciary. In the case of a transfer, all views of relevant parties must be considered.

All opinions with respect to any transfer should be expressed in writing to be considered by the Collegium. The recommendation is forwarded to the Union Law Minister, who is responsible for submitting the necessary papers to the Prime Minister. The Prime Minister then advises the President on the approval of the transfer.

While necessary, the issue of transfer and appointments has always been a contentious one. The authority of the Executive to make decisions such as these have always come forward as a point of contention, especially in circumstances where the Legislature and the Judiciary have opposing stances. Transfer orders become contentious when the Bar or sections of the public believe that the decision to move a judge from one High Court to another is motivated by a punitive motive. In general, the Supreme Court and the government do not reveal the reason for a transfer. For instance, if the reason is because of a negative opinion about a judge's performance, disclosure would jeopardize the Judge's performance and independence in the Court to which he is transferred. On the other hand, the lack of a reason sometimes leads to speculation about whether the transfer was done because of complaints against the Judge or as a form of disciplinary action for certain judgments that irritated the Executive.

On paper, the process is simple, unbiased and takes into consideration all stakeholders. In reality, the practice may deviate. As the largest democracy in the world, we pride ourselves on the administration of justice in the Indian scenario, but that is not to say that we have not grappled with issues concerning Executive authority and Judicial scrutiny concerning the matter of judicial transfers.

This article aims to examine the provisions that provide for transfers, study the exceptional but arbitrary nature of a few transfers to identify the issues at the heart of the transfers and attempt to provide a way forward.

Background of the study

Transferring judges from one High Court to another is essential to the Judiciary's administrative functioning. The process of transfer of High Court Judges has been enshrined in the Constitution of India[1].

[1] INDIA CONST §222.

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The most conspicuous aspect of the collegium system of judicial appointments and transfers is its obscurity. Transfer orders become contentious when the public believes that the decision to move a judge from one High Court to another is driven by a punitive motive. As a normative practice, the Supreme Court Collegium or the government do not reveal the reason for a transfer.

The language of the provisions of the Constitution in the current instance is not very clear and implies that the consent of a judge to his transfer is not necessary[2]. It cannot be overlooked that the ambiguity in this provision grants an unchecked power to the Executive to make changes in the administrative structure of the Judiciary. It has been acknowledged that the Executive could use this power to undermine judicial independence[3]. To that end, a series of judicial decisions attempted to clarify the matter, which has been analysed further.

It must be noted that these judicial opinions followed the height of the Legislature-Judiciary conflict of the 1970s.

The Indira Gandhi Precedent

The peak of conflict between the Union Legislature and the Supreme Court was during the term of Mrs Indira Gandhi as Prime Minister when the Kesavananda Bharti verdict[4] was given. It would be apt to say that the series of events following this decision was the tipping point of Judicial Appointments in the history of Independent India.

On April 25, 1973, All-India Radio's five o'clock news bulletin announced that Justice AN Ray had been appointed the new Chief Justice of India upon Chief Justice Sikri's retirement. Justices Shelat, Hegde, and Grover were passed over for the position, bypassing the traditional norm of appointment as per seniority. All four judges resigned in protest, even though CJI Sikri was to retire the very next day. In 1977, Indira Gandhi Government chose to supersede Justice HR Khanna for the office of the Chief Justice of India- the lone dissenting voice in the ADM, Jabalpur case[5]- in favour of Justice MH Beg- who upheld the government's stance in the dispute.

While the Indira Gandhi government's attempts to curtail the authority and independence of the Judiciary- with Justice Khanna expressing that *"Mrs Gandhi has stuck a grievous blow to*

[2] Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441.
[3] Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193 ¶74.
[4] Kesavananda Bharati v. the State of Kerala, (1973) 4 SCC 225.
[5] ADM, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521.

the independence of the judiciary"- were effectively reversed in the advent of the Janata Party Government, the damage was done by establishing such a dangerous precedent.

The lesson from this is abundantly clear:

> *"Were the appointment of the Chief Justice to remain in the hands of the Prime Minister, then the highest judicial institution of this country cannot but become a creature of the government of the day[6]."*

Judicial Interpretation

After the Emergency, the Supreme Court got the opportunity to interpret the provisions of Article 222 of the Indian Constitution in 1977[7]. Upholding the majority opinion in the case, Justice PN Bhagwati noted that transferring a judge from one Court to another has the potential to cause significant harm to the individual; the Judge's consent to be transferred was part of the larger legislative scheme.

Three Judges Cases

New events prompted the filing of what became known as the First Judges' Case[8], wherein the Court ruled that "consultation" with the Chief Justice must be "full and effective". However, the argument that the CJI's opinion should take precedence was rejected, even though such an opinion carries much weight.

In the Second Judges' Case[9], a nine-judge Supreme Court panel ruled that "consultation" means "concurrence." This decision established the "Collegium" system. It stated that, as opposed to the CJI's individual opinion, the institutional opinion formed in consultation with the two senior-most Supreme Court judges would be considered. The Third Judges' Case[10] in 1998 expanded the Collegium to a five-member body comprised of the CJI and the four senior-most Supreme Court Judges.

K. Ashok Reddy Case[11]

[6] '*Like A Breath of Fresh Air, In the Last Few Months, The Judiciary, Led by The Supreme Court, Appears to Have Found Its Independence, Writes Ashutosh'* (/www.freepressjournal.in, 2021) <https://www.freepressjournal.in/analysis/like-a-breath-of-fresh-air-in-the-last-few-months-the-judiciary-led-by-the-supreme-court-appears-to-have-found-its-independence-writes-ashutosh> accessed 19 September 2022.
[7] Supra, *note* 3.
[8] S.P. Gupta v. Union of India, 1981 Supp SCC 87.
[9] Supra, *note* 2.
[10] Special Reference No. 1 of 1998, Re, (1998) 7 SCC 739.
[11] K. Ashok Reddy v. Govt. of India, (1994) 2 SCC 303.

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This case, filed before the Supreme Court, specifically dealt with the matter of the transfer of High Court Judges. The three-judge bench, which was also a part of the nine-judge bench in the Second Judges' Case, was satisfied that the Second Judges' Case adequately addressed all of the contentions raised in the case. The absence of norms and guidelines in Article 222 appears to be deliberate, as the power is vested in high constitutional functionaries, "and it was expected of them to develop requisite norms by convention in actual working," the Court ruled. Numerous non-exhaustive norms were developed to have functionaries follow them in order to regulate the exercise of their discretionary power in the matter of Judge transfer, including but not limited to:

i. Consideration of the views of the Chief Justice of the High Court from which the Judge is to be transferred;

ii. Consideration of the views of any Supreme Court Judge whose opinion may be relevant in that case;

iii. Consideration of the views of at least one other senior Justice of a High Court or any other person whose views the CJI considers appropriate, among others.

This case also established that the power of transfer can only be used in the "public interest." Transfers made per the CJI's recommendation could not be viewed as punitive or undermining the Judiciary's independence.

Thus, the practice followed today is that of the Collegium, wherein the opinion of the Chief Justice is determinative. However, this has not come without its fair share of bypass attempts.

A Study in Arbitrariness

Unfortunately, despite having the law laid down in leading judicial decisions, arbitrariness is not absent from judicial transfers.

A Chief Justice Transfer

In November 2021, the Collegium recommended the transfer of Justice Sanjib Banerjee from the Madras High Court- where he was the Chief Justice- to the Meghalaya High Court- a recommendation that met with major controversy[12].

[12] *Supreme Court Collegium recommends transfer of Madras High Court Chief Justice to Meghalaya* (2021) The Hindu. Available at: <www.thehindu.com/news/national/supreme-court-collegium-recommends-transfer-of-madras-high-court-chief-justice-to-meghalaya/article37405285.ece> (Accessed: September 24, 2022).

At the time, Justice Banerjee began his 10-month term at the Madras High Court. He previously served as a judge on the Calcutta High Court. He is scheduled to retire in November 2023, which means that had he not been transferred out, he would have served as chief justice of a significant High Court for nearly two and a half years. He was transferred from one of the largest High Courts in the country to one of the smallest. While all high courts in the country are equal in law, transfers from larger to smaller courts are frequently viewed as punitive.

Justice Banerjee's decisions have frequently chastised the government. He issued several decisions criticising the government for handling the COVID-19 pandemic. During April's second wave of Covid-19 Assembly elections, he admonished the Election Commission for allowing large rallies, wherein he made the infamous "*Election Commission officers should probably be charged with murder"* remark[13]. In another case, he noted that the allegations that the Bharatiya Janata Party had misused voter Aadhaar details for campaigning appeared credible[14]. He also held that specific provisions of the controversial Information Technology (Guidelines for intermediaries and Digital Media Ethics Code) Rules, 2021, issued by the BJP-NDA government at the Centre, would harm media independence and stayed the applicability of these rules[15].

These and other decisions appear to have earned Justice Banerjee the reputation of an outspoken critic of right-wing policies and a staunch defender of secularism's constitutional foundation. Not known for supporting the government or the status quo, Justice Banerjee's observations during court hearings frequently made things for the political class in New Delhi inconvenient.

His transfer was also shrouded in secrecy. The collegium resolution recommending his transfer was passed on September 16 but was not made public until November 9. Multiple entities, including the Madras Bar Association and Justice K. Chandru, former Madras High Court judge, have questioned the one-and-a-half-month delay. His transfer raised concerns that "punishment transfers" that were frequent during the Emergency had hampered the independence of the Judiciary.

[13] W.P.No.10441 of 2021.
Oral Observations: "Your institution is singularly responsible for the second wave of COVID-19. Your officers should be booked on murder charges probably".
[14] W.P.No.7588 of 2021.
Oral Observations: "There appears to be a serious breach by the sixth respondent political party (BJP) in how it conducted its campaign in Puducherry for the forthcoming Assembly elections."
[15] Digital News Publishers Association v. Union of India, W.P.Nos.13055 and 12515 of 2021, Order dated 16.09.2021 ¶3.

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Transfer Of Justice Vijaya K. Tahilramani

Justice Vijaya K. Tahilramani is a former Indian judge and prosecutor who last served as the Chief Justice of the Madras High Court. She holds a stellar record in upholding the principles of fairness and equality. She retired in 2019 after refusing to accept a contentious transfer from Madras to Meghalaya High Court. She famously upheld the convictions of several people for the rape of a pregnant Muslim woman during the Gujarat riots in 2002, criticising investigative authorities for their inaction in the case, and also refused parole for those convicted in the 1993 Bombay bombings.

Testament to her unbiased professional nature, she also declined a request from Devendra Fadnavis, former Chief Minister of the BJP Government in Maharashtra, to head an inquiry into the 2018 Bhima Koregaon incident, citing the fact that accepting the government appointment would be inappropriate for her as a sitting judge of the High Court[16].

The Collegium's recommendation stated that the transfer was made "in the interests of better administration of justice". However, the lack of said "public interest" is evident in the case of Justice Tahilramani. The Judge has acted with dignity befitting a high office, has not been embroiled in any controversy, and has no close relatives practising in Tamil Nadu. The rationale behind the decision of the Collegium is devoid of merit.

The Judge slated to replace Justice Tahilramani was Justice A.K. Mittal, who was superceeded in 2018 by a judge junior to him -Justice Surya Kant- to be "more suitable" for the position of Himachal Pradesh High Court Chief Justice. The Collegium's recommendation that he replace Justice Tahilramani, who has served as acting Chief Justice of the Bombay High Court three times, defies logic.

Karnataka To Allahabad: Justice Jayant Patel

On September 25, 2017, Justice Jayant Patel of the Karnataka High Court resigned after being transferred to the Allahabad High Court. Justice Patel lost his chance to become chief justice of the Karnataka High Court, where he was the second-most senior Judge[17]. He would have been demoted to the third-most senior position on the Allahabad High Court. This was Justice Patel's second transfer. In 2016, he moved from Gujarat to Karnataka, where he served as a

[16] *'Bhima Koregaon Violence: Bombay HC Turns Down State Request To Appoint Sitting Judge For Probe'* (indianexpress.com, 2018) <https://indianexpress.com/article/cities/mumbai/bhima-koregaon-violence-bombay-hc-turns-down-state-request-to-appoint-sitting-judge-for-probe-5058041/> accessed 14 September 2022.

[17] Yamunan, S. (2017) *Supreme Court Collegium should explain why justice Jayant Patel's transfer was in public interest*. Scroll.in. Available at: <scroll.in/article/852239/supreme-court-collegium-should-explain-how-justice-jayant-patels-transfer-was-in-public-interest> (Accessed: September 18, 2022).

puisne judge. How the transfer was carried out has raised severe concerns about judicial appointment transparency. Senior advocate Dushyant Dave claimed political interference in the decision and was eventually served a show cause notice by the Bar Council of India[18]. As Acting Chief Justice of the Gujarat High Court, Patel had directed the CBI to investigate the 2004 murder of Mumbai teenager Ishrat Jahan by Gujarat police officers[19]. They claimed that Jahan and her three companions were plotting to assassinate Gujarat Chief Minister Narendra Modi at the time. The investigation ordered by Patel resulted in the charging of several senior police officers, which embarrassed the state government led by Modi.

His transfer led to the abstention of work by lawyers in Gujarat and those of the Karnataka State Bar Association.

Although the Supreme Court clarified that the decision to transfer Justice Patel was unanimous[20] and in the 'public interest', no explanation was given as to how his transfer was in the larger interest of the public.

Justice Abhay Mahadeo Thipsay

Despite twice refusing to consent to the transfer, retired Justice Abhay Mahadeo Thipsay of the Bombay High Court was transferred to the Allahabad High Court. Justice Thipsay, who holds an outstanding record as a Magistrate, Sessions Court judge, and High Court Judge and is highly regarded by lawyers in Bombay, was sworn in as a Judge in Allahabad High Court. The transfer of Justice Thipsay is the second instance in the aftermath of the Supreme Court's decision in the NJAC case, which raised questions about the Collegium's responsibility to principles of independence, fair treatment, natural justice, and accountability when transferring Judges[21].

The issue of contention in his transfer is a series of verdicts given by him. The government vehemently opposed Justice Thipsay's orders in these cases:

[18] Saxena, N. (2017) *Why BCI's show cause to Dushyant Dave should be immediately recalled?* Live Law. Available at: <https://www.livelaw.in/bcis-show-cause-dushyant-dave-immediately-recalled> (Accessed: October 21, 2022).

[19] Mandhani, A. (2017) *Karnataka HC judge justice Jayant Patel resigns.* Live Law. Available at: <https://www.livelaw.in/karnataka-hc-judge-justice-jayant-patel-resigns> (Accessed: October 21, 2022).

[20] Mahapatra D, '*Justice Patel's Transfer Decision Was Unanimous: Supreme Court'* (timesofindia.indiatimes.com, 2017) <https://timesofindia.indiatimes.com/india/justice-patels-transfer-decision-was-unanimous-supreme-court/articleshow/60931835.cms> accessed 15 September 2022.

[21] Subramanian, R. (2016) Transfer of HC judges despite lack of consent raises questions over fairness of collegium, The Wire. Transfer of HC Judges Despite Lack of Consent Raises Questions Over Fairness of Collegium. Available at: <thewire.in/law/transfer-of-hc-judges-despite-lack-of-consent-raises-questions-over-fairness-of-collegium> (Accessed: September 24, 2022).

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i. Granted bail to actor Salman Khan in the hit-and-run case (which was later upheld by the Supreme Court of India)[22].

ii. Granted bail to Gujarat Deputy Inspector General D.G. Vanzara and Dr Narendra Amin, two accused in the alleged fake encounter of Sohrabuddin Sheikh, his wife Kausar Bi, and aide Tulsiram Prajapati in Gujarat,

iii. Presided over the contentious 2002 Best Bakery case, which was transferred to Mumbai. As a judge of the Mumbai Sessions Court in 2006, Justice Thipsay sentenced nine of the accused to life imprisonment[23].

iv. Released detainees on bail under the Unlawful Activities Prevention Act[24] and the Maharashtra Control of Organized Crime Act.

v. Ordered the disclosure of the call records of the accused in the 2006 Mumbai serial train blasts case despite the Prosecution's submission that the records were destroyed.

vi. Granted bail to an undertrial in the Aurangabad arms haul case as the evidence did not show his involvement in the crime.

The transfer of Justice Thipsay raises ethical concerns because the reasons for transferring him, despite his objection, are not disclosed to the larger public. The decision to transfer him with less than a year until retirement borders on vindictive. Perhaps the gravest concern about Justice Thipsay's transfer is that the Collegium will be forced to cede ground to the Executive. There exist claims that his Annual Confidential Reports, dating back to his time as a magistrate, speak to his outstanding and efficient work.

Whatever the real reasons for his transfer, serious doubts have been raised about the proposition that plurality within the Collegium is an adequate safeguard against bias and arbitrariness[25].

Recommendations

Making Collegium Decisions Justiciable

Judicial transfers are not justiciable, which means that a judge who is transferred cannot challenge the order in the Supreme Court unless the transfer was made without the Collegium's

[22] Anand, U. (2016) *2002 hit and Run case: Same-day bail to Salman Khan justified, says SC.* The Indian Express. Available at: <https://indianexpress.com/article/india/india-news-india/salman-khan-hit-and-run-case-sc-dismisses-petition-seeking-probe> (Accessed: October 21, 2022).
[23] The State of Gujarat v Rajubhai Dhamirbhai Baria & Ors, Court of Sessions for Greater Bombay at Mazgaon, Sessions Case No. 315 of 2004.
[24] Jyoti Babasaheb Chorge v. State of Maharashtra, 2012 SCC OnLine Bom 1460 ¶33.
[25] Supra, *note* 21.

approval, which is an impossible prospect because under the 1993 order[26]. The President does not have the authority to appoint or transfer judges without the concurrence of the Chief Justice of India. The Collegium must initiate the transfer.

It is, therefore, recommended that such decisions be justiciable, with the institution of appropriate authority adjudicating the matter to ensure that equal protection of the law[27] and protection from arbitrary procedure[28] may be extended to those who work towards upholding the letter of the law.

Secrecy Of Decision Making

Perhaps the most wanted reform in the Judicial Transfer is more light, transparency and public access. The lack of transparency and the absence of formal criteria for transfers have several concerning consequences. It is suggested that a structured process be put in place to determine the reasons behind a transfer or appointment recommendation by the Collegium.

The Collegium has frequently been admonished for its lack of transparency. *"I never understood as even a member of the collegium why a particular high court judge is being transferred*," retired Supreme Court Judge Jasti Chelameswar told Bloomberg Quint in 2020[29]. Justice Chelameswar was the Supreme Court's second-most senior Judge and a collegium member deciding on transfers during his tenure. Because the Collegium's decisions are not made public, there is no public scrutiny of the circumstances that led to a decision. Furthermore, the Supreme Court has stated unequivocally that the Collegium is not required to justify its decisions.

It is imperative that the collegium system not consider itself above the safeguards and measures for transparency, accountability, and demographic representation that apply to India's democratic pillars. This is a gaping hole in a system of governance that prides itself on its transparent and democratic functioning. Further, making these decisions publicly accessible will also lead to scrutinising unnecessary interference by the Executive. It will bring about the balance of checks and balances in the Judicial Transfer System.

[26] Supra, *note* 2.
[27] INDIA CONST §14.
[28] INDIA CONST §21.
[29] BloombergQuint, 'Justice Chelameswar On 'Role Of Judiciary In A Democracy' <https://www.youtube.com/watch?v=_QjDxbcl788> accessed 17 September 2022.

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Articulating Public Interest

In the case of the transfer of Justice Jayant Patel, the reasoning given was "pressing circumstances" and "public interest" that necessitated his move to the Allahabad High Court. However, no explanation was provided concerning either of the aspects. In light of the circumstances surrounding Justice Patel's transfer, it becomes all the more important to articulate and publicise what the Collegium means by "public interest" both in a generic and a situation-specific sense.

The faith of an ordinary man in the Judiciary must be maintained, and for that, the larger population must know the driving force and rationale of any such decision.

Conclusion

While the current system is a careful balance of the Executive and the Collegium, that is not to say that this system does not have its flaws. It is time for a call for reform. Without a transparent process for judicial transfers, the collegium system lacks the credibility and legitimacy to be accepted by all stakeholders in the legal system. Transparency will not be established simply by stating that the collegium members will act transparently. It will have to be demonstrated by the process used by the Judiciary to select judges and, further, how the members of the Collegium are chosen.

While both the government and collegium judges are to blame for this conundrum, a blame game will not reach anywhere. The only solution to this mess is to make the system transparent.

PANCHAYAT RAJ: HISTORICAL PERSPECTIVE, DEVELOPMENT AND POST INDEPENDENCE ERA

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Abstract

Change is a universal constant and driven by the same force, society also functions on the same. The society, needless to say, inclusive of its various components, whether it is its organization, functioning, governance, etc., all passed through such variance. The social transformation which society had faced also transformed the way of governance. The socio-political phenomenon had seen a tremendous change in various phases of historic period of India. But one such concept which though got transformed in its structure and functioning is the 'Panchayat System', yet the essence remained constant throughout. There remained various factors which affected this system. The journey from monarchial control to the control of bureaucracy and to the point when it found its place in the grund-norm of country, i.e., in the Constitution of India, had affected the system of panchayat tremendously. Experiments had been conducted on the system and thus, the conclusion could be defined as both the boon and the bane for society. The journey from the ancient till the modern period is not full of glorifying moments, but it had also gone through the dark phase. The dark phase was the time when the said system became extinct. The British rule though, in the later part, tried to revive the system but during dawn of the British rule in India there was the dead end to the system. Panchayat was totally ignored. The revival was need of time. This research paper is meant to deal with the changes which Panchayat System had seen from ancient period till present times and how it covered its' journey during these periods ultimately affecting the governance and narrating the importance of the grass root democracy.

Keywords: Panchayat, Governance, Three-Tier, Constitution, Sabha, Samiti, Parishad.

Introduction

"When the panchayat raj is established, public opinion will do what violence can never do."

—Mahatma Gandhi

Governance of a country is a subjective concept. One single criteria of the governance cannot be made ideal of all. Being a dynamic concept, it keeps changing from time to time and

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according to the need of the society. Many countries have unitary form of government and many others have federal form. Being the unitary and federal is also subject to the size of the territory of the concerned country and the population it holds in it and also the objectives which its founding father had sought to achieve. When the country is comprised of vast territory and huge population, then governing the country mere by a central power is a difficult task. As a result, many a times the system breaks down into various stages through delegation of powers and ultimately the masses have to suffer if proper delegation is not carried out. In the same pattern and realizing the same difficulties, India adopted for the diarchy system which was introduced in India by the Britishers through Government if India Act, 1919. This diarchy system proved to be beneficial in various aspects. Like, it enhanced the people's participation in the Legislature and also the Indian people who were acquainted with the problem of Indian masses became the member of the legislature, which helped in the favorable law making for the Indian society. After achieving independence, India continued to be federal in structure so that the governance of the country can be effectively carried out, but the Constitution Framers kept the binding forces active through giving it a unitary spirit by framing the Constitution in such a specified manner. That is why it is said that the Constitution of India is Federal in nature but unitary in spirit.

Now, a question arises as to what is the need of the Governance? Why the effective governance is so required for the proper functioning of the nation? When it will be needed? If the jurisprudential essence of the governance and the society and its need have to be seen then various jurists can be taken into account. The earlier concept of the governance came into light when the people who were living freely and in the natural state felt the need for the formation of state. Thus, when State is formed then the need of Governance arises so as to protect and regulate the society.

According to Aristotle, "Man is a social being and instinct of his sociability has given rise to the origin of state."

But another theory focused more on the concept of self-preservation. With the advancement of the civilizations the human started to feel threat over his life and property and hence the people started to enter into a sort of social contract.

As per the philosophies of Thomas Hobbes (1558-1679), the human is having an inherent trait of self-preservation and he has a nature to avoid pain and miseries and to meet out his objective of self-preservation and avoidance of pain and miseries he entered into social contract.

On the other hand, another prominent jurist named John Locke (1632-1704), pointed out that the state of nature was the golden age and only property was insecure and to preserve his property, he entered into social contract.

One more distinguished jurist Jean Jacques Rousseau, propounded the theory of the General will and in his theory, he said that "Social Contract is mere a hypothetical construction. Man, only united for preservation of his rights of freedom and equality and to his they surrendered their right not to single individual but to the community which was the general will."

All these led to the formation of society and ultimately the State.

But, State got formed after various developments in the society which took place with the passage of time. These developments took place as a result of war between two communities, annexation of territory, etc. All these factors resulted in the enhancement of the territory which ultimately led to the State formation. But before that the State comprised of the tribe or the community level and the people where lived was ultimately called the village. This was also to be governed as the law and order and the justice have to be properly imparted within the society.

When the State got bigger, the local administration were adversely effected as all the obligations of maintenance of the law and order and the justice delivery system have to be carried out by one man who was termed as King. If we keep aside the western philosophy, and try to look into the Indian ancient society, then we can found that since the time immemorial the local administration system were very much well planned.

Historical perspective of panchayat system

In India the decentralizing of power took place with a view to provide justice or nyaya to each and every person and also for better maintenance of law and order. Since, the time immemorial and from the pre-vedic era the urge to provide justice to people was such that the authorities were divided at various levels for the purpose of administration of justice to each and every individual.

During vedic era, there is no explicit mention about the existence of the judicial organization in separation. But it does not mean that they do not have a feeling of protection of justice. Rather, it appears that the elders acted as a judges and punishment was awarded according to the nature of offence and also according to the local custom and usages. For the same purpose, the mention of Sabha, Samiti, Vidath and Gana can be found in Rig Veda which ranges from (1500-1000 BC). Vedas also record that the Sabha functioned as the court of justice.

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In later vedic period (1000-600 BC), mention can be found of Sabha and Samiti, which were for the control over affairs of State. The importance of justice during this era can be more understood by the extract which is taken from *Mahabharat*[1]*:*

"Maintenance of justice and maintenance of offenders (*Dusta nigrata, sista paripalan*) are also the aspect of the problem of protection. It is the duty of the king to punish wrongdoers and if he neglects his duty, then he would go to hell."[2]

In the epic of Mahabharat it is also laid down that "it is only by coercive action, danda that civilized life could exist."[3]

Manu in his *Manusmriti* talked about – 'Dharmorakshati Rakshitah' ,i.e., He was also of the view that the King is protector of justice and he is *Dandadhar* and he keeps people in perimeters of dharma by penalising the wrongdoer.[4]

As we see in pre-vedic era, there was no distinct autonomous justice centric institution for the delivery of the same, except Sabha, which was at village level. But on other hand in post-vedic era, the administration of justice became centralized. This institution was established in such a way that it remained separate from executive. King was considered as apotheosis of law and as a result of growth of society and being the protector of law and order, be became encumbered with various tasks like protecting the territory and managing the affairs of the State and ultimately the justice delivery system got adversely effected.

To protect the institution of justice and to keep faith in the law of the State, the need was felt to reform the institution which imparted justice. The reform was made and the problem was tried to be sorted out. The solution was delegation of judicial powers. Such delegation of judicial powers was done to the hands of experts at various levels and the King's Darbar became the appellate authority.

On such an event, various Indian celebrated philosophers can be quoted who talked about the Courts and their working patterns. In such a reference, *Brihaspati,* can be quoted, where he categorizes the court into four types:

[1] H.V.Sreenivasa Murthy, History of India, Pg No. 193, Eastern Book Company,Lucknow,13th Edition,2014
[2] ibid
[3] ibid
[4] Supra note 1 at 194.

1. "*Pratisthita:* These were the courts which were established in towns. Generally, these were established at fixed places.

2. *Apratishtha:* These were the Circuit courts.

3. *Mudrita:* Court presided over by the judge, who is authorized to use the Royal Seal.

4. *Sasita:* This was the King's Court."[5]

On the same lines, the reference can be found by the 'Narada', who categoriezes the courts into following types:

1. *"Kulani:* This was the Village councils.

2. *Sreni:* These were the Guided Courts.

3. *Puga or Gana:* These were the assemblies."[6]

Other than these scriptures, there can be found various other things which laid down about the importance of the justice delivery system and how they were maintained. In such a pattern the Inscription of the Sanchi Stone which was made by Chandragupta-II can be taken into account. This inscription talked about the '*Panchamandali*' which was the resemblance of the Panchayat.

Thus, the courts which were established at the lowest level in the villages were called the Village Panchayat. These panchayats were infused with carrying out the administration of the village but the main task was to carry out the judicial works as they were given such powers. '*Kautilya'* called the presiding officer of the Panchayat as the '*Gramvriddha*'.[7] Besides, this he was known by other names also in various other areas such as, Gopa, Gramabhojaka, Gramani, Gramyaka, Gramakuta, Pattanika, Mahantaka, Mahatakka. The work which was expected to be done by the village panchayat was that of imparting justice to the inhabitants of the village in case need arises. According to *Yagnavalkya,* these village courts had the sanction of king behind them.[8]

[5] Supra note 1 at 195.
[6] Ibid.
[7] Supra note 1 at 200.
[8] Supra note 1 at 82.

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Talking about the panchayat system, the briefest discussion can be found of the Cholas administration. The panchayat system of the Cholas depends upon the type of the village. The classification of the village in the Chola administration was of two types:

1. Ur Village

2. Brahmadeya Vilage

'Ur' village was a common village and the the assembly which was formed in this village was also known as 'Ur'. It was consisted of each and every member of the village excepting the untouchables. This assembly carried out all the works of the administration including justice delivery.

When the 'Ur' village was considered as ordinary village then at the same time on the other hand 'Brahmadeya' village was considered to be of utmost significance. 'Brahmadeya' village were the 'Agraharas' that were granted by the kings to the Brahmins. Here the assemblies were also different. These were called 'Mahashabhas'. One of the peculiar features of the 'Mahasabha' was that it was an autonomous body having election system.

After the members of 'Mahasabha' have been elected then various committees had been formed regarding various portfolios. One of those committees was the judicial committee, which was known as 'Nyayattar'. The task of the 'Nyayattar' was to settle the disputes and to deliver the judgments. This was not the end. The judicial system was well planned and as a result, the appellate system was also established. The king being the fountain head of justice was vested with the power to hear appeal. The appellate power was vested with the King as a result of the delegation of power. The dignity and the important work of Panchayat does not remained confined only to the ancient India, but also it continued to play an important role during medieval times. The other peculiar feature which appeared in the medieval times was that the judgment given by the Panchayat used to be become final and generally it did not have the appellate power. The punishment which they inflicted included fines, public degradation or reprimand or ex-communication.

In the same manner, the elegancy of the Panchayat system carried to maintain its dignity in British era also.

Panchayat system during British regime

When the Britishers started to establish their reign in India, then there came various phases in which the judicial system developed. This development was according to need of time. The more territory Britishers annexed the more reform in judicial system was needed. With the annexation of another territory the governance of the concerned territory became the subject area of the Britishers. For such purposes Britishers established various institutions for resolving the dispute between residents and among Britishers and other section of people. For such purpose the Britishers established various courts such as Sadar Diwani Adalat, Sadar Fouzdari Adalat, Sadar Nizamat Adalat, Moufassil Adalat, etc. But establishing these types of courts proved beneficial only to those who were resident of the nearby area and who had proper and sufficient resources. These adalats were established in the city-area or in the district areas and the persons who resided in far off villages suffered difficulty in reaching these courts. This demanded them hefty amounts and hence the justice remained difficult to reach till them.

There was a hit and trial method. When the Bengal was annexed the suggestions regarding the establishment of the Panchayat system was made.

But the actual changes were brought when these adalats started to face the heavy work load and hence the justice started to become delayed. Justice delayed is justice denied. Moreover, this was also showing the lack of efficient administration. Hence, it was the need of time to reform the judicial system. The main thing for which the judicial system was craving was the decentralization of judicial powers. Separation of judicial power from that of executive and legislature was also the immense need of time.

In particular, with the expansion of territory under Madras Presidency, the judicial work before Sadar Adalat increased enormously and the judicial work which was vested in Sadar Adalat and in Governor and his council started to find it difficult to dispose off the case. With all these problems in the mind various steps have been taken to properly regularize the judicial system. But all those changes did not solve the problem. Ultimately, the Company's Director in 1812, took note of arrears of District Adalat and gave suggestions to again adopt the ancient usage of Indian justice delivery system. So, the Company's Directors suggested for adjudication of small suits by the Panchayat System.

"By giving sanction and aid of our authority to the ministration of 'potails' and headman, assisted by panchayat or juries to which the people have been accustomed, we should provide for more efficaciously for speedy and equitable division of questions of limited value, than we

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could hope to do by any Regulation to be carried into effect through the tedious process of courts, constituted on principles of our 'zilla' tribunals."[9]

The already established various established judicial establishment incurred heavy expenditure, and thus, in dispatch of 29th April 1814, Company's Director complained the same. They also focused on problem that English judges being not accustomed by the custom, usages, languages and habits of the Indians, so proper justice is difficult to impart. They suggested for the appointment of the Indian origin judges, so that they can efficiently dispose off the case related to cultural and local problems. Indian judges being aware about the Indian society and hence could accordingly deliver the judgment which is suitable as per the local conditions. They emphasized that in pre-British indigenous system 'patels' acted as a judge, magistrate and collector within his village in former capacity he settled disputes, assisted in important cases by a panchayat. Therefore, they suggested authorizing the district and village panchayat to hear and determine certain suits.

For carrying out the said suggestions and to elaborately examine the situation the Directors of the company appointed, a commission under the Chairmanship of Sir Thomas Munro. The commission was having the full power to observe the judicial system and to suggest reform for the flaws, if present any.

Munro was supporter of paternalist school. He was in favor of the fact that the Indian culture should be preserved and the Britisher's governance policies should not be applied for their own good. He wanted to preserve the very culture and traditions of India and wanted to adopt the local administration policies of India. In fact the idea of establishment of Panchayat system was itself advocated by the Munro and the Director's were impressed with his idea. That was the reason due to which Munro was appointed as its head. In a report, dated 15th August 1807, Munro had observed, "… the trial by panchayat is as much common law in India in civil matters, as that by jury is of England. No native thinks that justice is done, where it is not adopted."[10]

In 1814, Munro Commission went to Madras and carried out substantial investigation in existing affairs of State. Commission gave various advises and on basis of those advises

[9] Justice G B Patnaik, Yasobant Das, *et. al.(eds.), Outlines of Indian Legal and Constitutional History* 222(Lexis Nexis, Gurgaon,2014)
[10] Ibid.

various suggestions were enacted through multiple Regulations in 1816. Few most prominent changes carried out through regulations were:

- Village headman was authorized to hear petty suits.
- The powers which were given to native judges were extended.
- A legal recognition was granted to the village and district panchayats.

The age-old institution of Panchayat for adjudication of suits was also revived. They could try any suit without limitation of amount or value, upon the agreement of both parties to that mode of trial.[11]

Though, these provisions as to establishment of Panchayat was suggested and proposed but the Governor-general-in-council had a dissimilar regarding the same as the Governor-General-in-council was in support of the Cornwallis tradition. Cornwallis was not in support of Panchayat system and he wanted to implement the judicial system as was in fashion in England. In regard to the Panchayat the Government's view was that village panchayat formed "the institution of rude and barbarous tribes, rather than of countries with a dense population and in which the trade, commerce, and agriculture and consequent opulence was widely diffused."[12]

Another step was taken by the Britishers for the establishment of local self-government when Lord Mayo, the 4th Viceroy of India assumed his office in 1869. He remained in office till 1872. For increasing the efficiency in the administrative set-up and to increase the arrears for the government and to reduce the expenditure and for the overall better justice delivery system, the year 1870 marks the leading light. For fulfilling such purposes, Lord Mayo issued a Resolution.

However, the Lord Mayo's Resolution only acted as lodestar, but the real protagonist was Lord Ripon. Due to his Resolution on the Local Self Government, he was called as Father of Local Self Government. On May, 18, 1882, Lord Ripon issued the resolution for the same. The only drawback of this resolution was that the resolution was more urban centric. It lacked the focus on the rural area.

In the year 1907, Royal Commission on was established under the chairmanship of Sir H. W. Primrose. This commission advocated for the delegation of the administrative set-up at the village level. This suggestion was further supported by the Montague-Chelmsford Reform (1919), wherein local self-government became the domain the provincial ministers. The

[11] Supra note 9 at 223.
[12] Supra note 9 at 225.

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development in the field of panchayat system saw a more significant change after The Government of India Act, 1935.

Development of panchayat system in post- independence era

Congress Party has always advocated for the Panchayati Raj bodies. Even our Father of the Nation, Mahatma Gandhi was staunch supporter of the establishment of the Panchayat Raj bodies. The fore-fathers of the Indian Constitution, with the objective of establishment of these concerned bodies has inserted Article 40 of the Indian Constitution which says, "The State shall take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government."

When, India got independence, then the first Prime Minister of India, Pt. Jawahar Lal Nehru, with the aim of fulfilling the establishment of full-fledged Panchayat System adopted the American 'Block Model'. This system was adopted to secure the participation of people in the local self-government system. Under this system, the Community Development Programme was launched in 1952. Under this programme, Block Development Officer was appointed for each block so as to look after the proper carrying out of the said programme. Various objectives were planned to be fulfilled in the said programme. Few of the objectives are:

- Proper enforcing of the health benefit programme.
- Providing adequate primary education in the villages.
- Imparting training to farmers for adopting efficient method of agriculture.
- Imparting training to people for making them capable and self-reliant. etc.

There were certain drawbacks due to which the programme which was enforced with high aspirations had not been able to meet the desired results. The biggest drawback was the high amount of involvement of the bureaucracy, which ultimately resulted in the reduced participation by local people. The link which was desired to be established through this system between the local people and the administration was not able to meet its' desired aims and aspirations.

Any change in any implemented programme or any alterations or any new policies cannot be enforced merely by declaring it. Rather a proper planning and thinking are required to be done before bringing it into form. Proceeding on the same pattern, Central Government had appointed another committee. This committee was appointed to recognize the drawbacks of the prevalent system and for suggesting the reforms for the removal of such drawback. The

committee was Balwant Rai Mehta Committee. It was established in 1956. After understanding all the drawbacks, the committee suggested for the reforms. Various major reforms were:

1. To distribute between villages and district a three – tier structure of local self-government. More specifically Grama Sabha at village levels, zila panchayat at block level and Panchayat Samiti at Block level.

2. These bodies should be given real powers to exercise at the levels on which they are established.

3. These institutions should be vested with duty to enforce the programmes of social welfare at these levels.

4. Proper financial resources should be provided to these institutions so that they could properly dispose off their duties.

These recommendations were submitted by the committee in 1957. In 1958, National Development Council accepted the recommendations of the Balwant Rai Mehta Committee and asked the states to adopt for democratic decentralization. The peculiar features of every tier at each level are as follows:

4.1. **Grama Panchayat or Sabha:** It is the lowest unit and it comprises of all the adult members of the village or it can also be the cluster of villages falling under Gram Sabha. It is elected for a period of 5 years. Numbers of members differ from State to State. But one thing which remains common in all the states regarding Gram Sabha is the tenure. The tenure of Gram Sabha is 5 years. Another ambiguity exists as to the source of the income of the Gram Sabha as it is not clearly defined anywhere and it also differs from one state to another state. The basic source of income in general cases are the tax which is collected by the body concerned such as octri taxes, house taxes, vehicle tax and taxes generated from the sale and purchase of animals etc. Many a times, the State also provides finances to the Sabha for implementing effectively various programs at village levels.

Gram Sabha or the Gram Panchayat is vested with the duty to perform following three functions:

4.1.1. Civic Amenities: It consists of managing and maintaining the proper sanitation system, drainage system and drinking water system. It also manages the proper lightning, transport and school for village children.

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4.1.2. Developmental Work: It is also the duty of the Gram Sabha to develop infrastructure as to tanks, irrigation system, ponds community halls, roads, etc. This is all done to increase the facilities for the village people so that it would be convenient for them to participate in the main stream of the society.

4.1.3. Social Welfare Activities: All the activities which are associated with the welfare of the village people are carried out and promoted by the Gram Panchayat. Social welfare activities such as, animal husbandry, family planning programmes, maintain of birth and death record, etc.

Besides, Gram Sabha there is various places where Nyaya Panchayat are also established. The members of these Nyaya Panchayat are elected by the members of the Gram Sabha. These Nyaya Panchayat are authorized to hear and decide the cases which relate to petty offences in both civil and criminal matters. They are authorized to impose fines but not authorized to impose punishment of imprisonment. This facility of hearing of petty cases before Nyaya Panchayat is essential for the village people so that they do not have to bear heavy financial burden in hiring a lawyer and they do not have to feel uncomfortable in complying with the processes of the court. In pleading before Gram Panchayat there is no need of lawyers, as only the victim and accused can argue for their cases. Generally, there is no provision as to appeal of the decisions of the Nyaya Panchayat but many States also lays down the provision as to appeal in small courts.

4.2. **Panchayat Samiti:** It is the next body after the Gram Sabha. In the wake of democratic Decentralization, it comes in middle of the Gram Sabha and Zila Prishad, or at intermediate level. Panchayat Samiti is organized at block level. It is given various names as according to the areas and the States. The various names are like Anchlik Parishad, Anchalik Panchayat, Zonal Samiti, etc. The organizations of this body do not have a specified organization and structure. It differs from one State to another, and in every different state the composition differs. But in such a difference, there comes certain similarities such as, in many areas the composition is of all the heads of the Gram Panchayat. A provision as to reservation of seats for the purpose of the representation of the people of Schedule Caste, Schedule tribe and other backward classes and also of women have been made. The representation of all the caste and sex is ensured so as to provide for the effective participation and equal opportunity for the development to every person of the society. On the same lines, as general practice, the Samiti at various places is also elected by the members of the Gram Sabha. The head of the Samiti is

elected by members from among themselves and the head is known by various names in various parts of the country, like, Chairman, Block Pramukh, Pradhan etc. These Samiti are established at Block level and thus, therefore for the proper regulation of this bodies, the Block Development Officer (B.D.O.) are appointed as the Executive Officer of the Panchayat Samiti. The other officers who assist B.D.O. in carrying the plans properly are other officers such as Assistant Development Officer and Gram Vikas Adhikari. Furthur, the expenses which the Samiti incurred are provided by the State Government so that the Samiti can carry out its functions properly and effectively. The Panchayat Samiti has to perform various functions such as:

1. To control and keeping a check on the workings of the Gram Sabha.

2. To curb the expenses and the budget of the Gram Sabha that is not a real necessity.

3. To chalk out the plans for the development of the Block in such a way so that every person is benefitted in one way or the other.

4. To properly implement the Community Development Program at the Block level.

4.3. **Zila Parishad:** This is the top most level of the three-tier local self-government system. This is established at the district level. This is the link between the other two bodies, that is, Gram Panchayat and the Panchayat Samiti on one hand and the State Government on the other hand. It also helps in maintaining the co-ordination between the Panchayat Samii and the Gram Panchayat. The composition of the Zila Parishad also differs from State to State, but the difference is not very noticeable. The general composition is found to be the same. The constitution of the Zila Parishad consists of:

1. Gram Pradhans of all the Gram Panchayat in the concerned district.

2. Elected Members of the State Legislative assembly in that district.

3. Elected members of the parliament from constituencies wholly or partially falling in the district.

4. District Development Officer (he does not have voting rights).

5. Co-opted members representing the women and backward classes.

6. Representatives of the Schedules Caste and Schedules Tribes.

7. Chairman of District Co-operative Bank as co-member.

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At many places the manner of constituting the Zila Parishad is different as they are elected by the members of Panchayat Samiti at block level. The head of Zila Parishad is elected from amongst the members who want to be elected as the head. The members of the Parishad casts the vote to those members who desire to become the head and thus, the head is elected from amongst themselves.

The Zila Parishad has to perform various functions. Such as:

1. To look after the policies of the Panchayat Samitis.

2. To take report on the development and implementation programmes of different social welfare policies.

3. To inform he State Government of time-to-time basis of all the steps taken in regard to social welfare programmes.

4. To organize the meeting of the Gram Pradhan and Block Pramukh, and to take feedback about their respective steps taken for implementing various programmes.

5. To distribute the funds received from the State Government to Panchayat Samitis.

6. To convey the information received from the State Government to Panchayat Samiti and to Gram Panchayat and also to convey the information and data received from Panchayat Samiti and Gram Sabha to State Government.

All the functions of the Zila Panchayat is carried out from the funds received from the State Government and also the State Government submits the annual budget for the Financial year so that the work of development and community development programmes can be carried out unperturbed.

The working of the Local self- government started to be carried out effectively and properly and the establishment of this system proved to be beneficial for bringing the people residing in village into main stream of the society. But, still there lacked the effectiveness and the regular working condition of these bodies. Such lacuna had to be filled. Thus, for such purpose, a committee was established by the name of Ashok Mehta Committee in 1977 by the Janta Government. The object of the committee was to examine the functioning of the Panchayati Raj Institution and to suggest the drawbacks from which it is suffering and the suggestions thereof.

After examining all the drawbacks, the committee submitted its recommendations in the year 1978. The recommendations of the committee were such that it completely changed the parameters of the Balwant Rai Mehta Committee. Some of the recommendations of the Ashok Mehta Committee are as follows:

1. To establish Gram Panchayat for every village, there should be established a Panchayat for the collection of multiple villages which will be called as 'Mandal Panchayat'.

2. To establish only two-tier Panchayat system that is, one at district level and another at Mandal level.

3. The Mandal Panchayat have to be composed of 15 members who have to be elected directly and will also consist of two representatives of women community and the representative of the farmers.

4. Seats have also to be reserved for schedule caste and schedule tribes.

5. The constitution of Zila Parishad has to be consisted of six types of members:

1. Heads of Mandal Panchayat.
2. Member representative of co-operative societies and municipalities.
3. Two women representatives.
4. Representatives of Scheduled caste and scheduled tribes
5. Two co-opted members of which one would belong to teaching community and the other would belong to area of having knowledge and interest in rural development.
6. Elected members of State Legislature and of Parliament as ex-officio members.

6. Head of Zila Panchayat shall be elected from amongst themselves for the period of four years.

7. There should be a separate body known as monitoring forum for the promotion of interest of socially and economically backward classes etc.

Though, various recommendations were made by the Ashok Mehta Committee, but it was not accepted by the government.

Panchayati Raj 73rd Constitutional Amendment Act, 1992:

It took approximately four years to the Parliament to have an effective discussion and for passing the 73rd Constitutional Amendment Act in the year 1992. Till now, the status enjoyed

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by the Panchayat was only a matter of policy but now after Seventy-Third constitutional amendment act the status of the Panchayati Raj System became that of constitutional one. Along this amendment another amendment was also passed that is, 74th constitutional amendment which deals with urban local self-government act but that is not our area of concern. The 73rd Constitutional Amendment became applicable in whole of India except some parts, that is, Meghalaya, Nagaland, Mizoram, and other hill states. The provisions have been little bit amended for the purpose of making it effectively applicable in the Union Territory depending upon their peculiar conditions of such areas.[13]

Through Panchayati Raj 73rd Constitutional Amendment Act, 1992, a new part, that is, Part IX is being added in the Constitution. This Part IX consists of 16 Articles. Through this amendment eleventh schedule has also been added in the Constitution. By providing the constitutional status to the panchayat, the panchayat became authorized to perform all the activities which are provided to it in the Constitution like levy of taxes, administrative control, etc. It also made it necessary to hold elections in the 5 years on regular basis. For holding these elections regularly an independent body, that is, State election Commission has also been established. By inserting provisions regarding reservation, the reservations of seats for the women have been made compulsory. The women have to be given 1/3rd reservation in these bodies at all level. Also, the minimum age to acquire the membership of panchayat has been reduced to 21 years.

In regard to the Eleventh Schedule, the Panchayat have been given full powers to take steps to implement the social and economic development programmes as enumerated in Eleventh Schedule.

Other dimension of panchayat

Though, the Panchayat as a basic body of the local self-government is backed by the Constitutional validity but there are various other local custom bases panchayat which does not hold any legal recognition but have only a support of custom and ideologies of orthodox persons.

Basically, the point of contention is the Hindu Marriage Act, 1955. The Khap Panchayat is a quasi-judicial body. These Pancayat are more in the function in Western Uttar Pradesh, Rajasthan, and in most areas of Haryana. These Khap Panchayat are against the Hindu Marriage

[13] https://niti.gov.in/planningcommission.gov.in/docs/reports/sereport/ser/bihinter/st_bihch11.pdf

Act, 1955 and the marriage age, Gotra system, etc. as under Hindu marriage Act and tries to carry out their own decisions according to their own made rules. The Khap Panchayat receives more of condemnation rather than upraising. The basis of this condemning the working of khap is the orthodox, illogical and biased decision. Most of the concern of Khap Panchayat is formulating the rules against women and against couples who are already wed inter-caste and inter-religious criteria or who aspire to enter into a bond of love marriages. At the last, girl suffers. All this is also supported by the family of the girl. They also, to protect their so-called dignity kills their girls by forcing them to drink insecticide or any other chemical or specifically poison itself. Many times, they are burnt also. Because the orthodox societies who favor this type of panchayat consider that the girls are the sole basis of all the misconduct and defamation caused to their families.

Problems and Suggestions as to Panchayati Raj Institution:

Problems:

The biggest problem which is faced by the Panchayat Institution is the election of the members on the party lines. Mostly those persons are elected as members of the Panchayat who belongs to the ruling party of the State. Moreover, the hierarchical system also works as the influence of a particular family remains to be prevalent in the panchayat area, which ultimately creates the fear in the mind of people that if they do not vote for the particular candidate then it could result in the adverse effect to the voter. Also, the purchased vote is prevalent, which means the exercise of the mal-practices in the elections. Though these practices are mostly curbed in the eyes of law but in sad reality it is still in practices. Thus, corruption and nepotism work very well in these elections. Also, the high involvement of the bureaucracy makes the programme not as effective as it was dreamt of. The lack of spreading of awareness and non-fulfillment of the promises made by these bodies cause the village people to surmise about the utility of the Panchayati Raj Institution.

Suggestions:

The Panchayati Raj Institution could be made more effective by adopting various steps:

1. By providing financial autonomy to the panchayat.

2. By keenly observing the election process and by establishing the proper investigating agency so that they can catch the persons engaged in mal practices.

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3. Certain changes have to be made in the institution so that the interference of the bureaucracy can be diminished in the working of these institutions.

4. Spreading the awareness about the working of these institutions among the village people so that they could participate properly in the working of the institution.

5. People should be encouraged to have information about the social and economic welfare programme, so that they could get to know about their rights and duties properly.

INTERPRETATION OF REVERSE PAYMENT PATENT SETTLEMENT AND ANTITRUST LAWS IN PHARMACEUTICAL INDUSTRIES

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ABSTRACT

The idea of Reverse Payment Settlement came into the limelight after the essential features of the Patent holder came into the forefront. It has recently gained prominence due to the challenges that have arisen due to the ongoing uncertainty and unfair advantage the inventor, patent holder, or the corporation has gained by participating in anti-competitive and antitrust policies. It is vital to understand the history and meaning of the reverse payment patent settlement to properly comprehend what it implies and what might comprise such agreements. It also discusses why the parties have reached such agreements and what they signify. The article mainly describes the competitive policies of the USA on Reverse payment patent settlement via the ANDA and the principle it gave rise to by implementation or suspension of the generic business from creating a specific product and engaging the entity via monetary payment. The payment will be equal to the period during which the generic company's production is hampered and the cost incurred due to the litigation. As a result, it is a reverse payment or an exception, as an infringement usually pays the patent holder. The pharmaceutical sector creates many issues due to the miscarriage of competitive policies in drugs and medicines. We are all aware that access to health care is the most important policy issue for communities. The industry's therapeutic value typically defines it and the rationality it is marketed. Due to new drugs in the market and their exclusivity period from the generic medicines sold, accessibility became one of the prime concerns in the pandemic period. As covid-19 hit the world's hard right to get healthcare, fundamental rights are being violated. So, in this article, the author will explain the need for a regulatory system in the country by way of specific guidelines to ensure that these techniques do not impede competition in the country.

With it, the economy at large, which is affected at first examination, it is evident that when it comes to the general public's healthcare, cannot to extend the exclusivity provided by patented pharmaceuticals for drug corporations' unilateral economic motivations. The article discusses the value and necessity of a policy framework and the challenges of applying and implementing these words. The impact on India and its competition is significant.

Keywords: Reverse Patent settlement, competitive policies, Competition Laws, Intellectual Property Laws, Drugs, Competitive Policies

Introduction

In the current Pandemic situation, have we wondered about the outcome if the prices of the medicines are excessively priced? Furthermore, the structure and dynamics of the pharmaceutical and innovation sectors substantially impact the variables that contribute to this outcome. Despite the immense expenses of R&D in generating new therapies, Pharma companies must guarantee that new ideas are successfully patented to offset the costs and increase earnings by retaining an exclusive license to produce, market, and sell the patented drug until the period expires.

It has offered the patent holder and the allegedly generic drug company infringing on it a competitive advantage. [1] These agreements are becoming more common, particularly in the pharmaceutical industry, when a business develops a novel treatment and seeks exclusivity for a specific period for its sale to recoup its investment in its trial or others. It has created a problem with the accessibility and availability of essential medicines hampered the economy. The pharmaceutical drug domain consists of a brand medicine, a high-priced patented real innovation of the innovator drug firm, and a generic medication, which chemically duplicates the brand drug in dose and strength but is less expensive in patent protection. A medication market contains both brand and generic medicines, mainly competing on price. The availability of generic pharmaceuticals greatly aids in delivering affordable healthcare to the general public.

Research Methodology

The research is purely Doctrinal, analytical & exploratory. In this study, the researcher is trying to evaluate the concept of Reverse Payment Patent Settlement based on various judicial precedents and legal concepts. Over here, the researcher uses the doctrinal method of research where the authors collected all the information related to the first chapter from various articles, journals, e-books, and other secondary sources.

The second part explore about Covid-19 and competition Law over the patenting in pharma sector how it affects Therefore, the researcher must establish the legislation's lacunae by providing suitable examples and judicial precedents.

[1] Neelasha Nemani & Anmol Awasthi, REVERSE PAYMENT PATENT SETTLEMENTS: NAVIGATING THE ANTITRUST LIABILITY IN THE PHARMACEUTICAL INDUSTRY, 26.

Meaning of Reverse Payment Patent Settlement

Reverse Payment Patent Settlement is not a new concept, but it has been applied in recent times to get payment from the Patent owner without causing any infringement.

It refers to an agreement between the inventor and the claimed patent infringement. They do it in a way the former compensates the latter. As a result, it is unusual that the infringing party must always pay the party who owns the patent. The parties reached this agreement because the party allegedly infringing the patent by producing the identical product is disputing or questioning the validity of the patent holder's claim. The critical problem in this respect is exclusivity, which is the information given to the public. [2]

The product's inventor has exclusivity regarding their invention in the field. Still, when another manufacturer develops the same and sells it at a significantly lower price, it infringes on their right. It takes away their exclusive right to sell their invention for a set period. Engaging in such an investment will not realize the innovator's profit if he sells at a lower price. The problem now is that if the claimed infringer is found to be infringing, the cost of suing will be much higher, considering the patent's validity. As a result, the inventor frequently favors such agreements to prevent the party from making the purported invention during exclusivity and pay the price determined by such calculations.

Historical Perspective of Reverse Payment Patent Settlement

According to the regulatory framework effective in the U.S., the Reverse Payment Patent Settlement concept has evolved from the enactment of the Drug Price Competition and Patent Term Restoration Act or Hatch-Waxman Act of 1984. This act was primarily responsible for the proliferation of generic pharmaceuticals in the pharmaceutical business, which unwittingly promotes reverse payment settlements, and will study the legislative methodology in establishing the legitimacy of settlements of this kind.

Regulatory Framework under Hatch-Waxman Act 1984

The generic company contested the FDA[3] certification of the abbreviated new drug application (ANDA) in the U.S. The patent holders had six months of exclusivity. The problem was that the generic firm might sell or produce the medicine alongside the original patent owner or the

[2] Data Exclusivity - Intellectual Property - India, https://www.mondaq.com/india/information-security-risk-management/79418/data-exclusivity (last visited Jan 21, 2022).
[3] Center for Drug Evaluation and Research, *Center for Drug Evaluation and Research | CDER*, FDA (2020), https://www.fda.gov/about-fda/fda-organization/center-drug-evaluation-and-research-cder (last visited May 2, 2022).

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innovator as it won the lawsuit. It resulted in the development of an agreement between the two, in which the patent holder paid the generic firm an amount equal to what it would earn over the six months. The generic business agrees not to create or manufacture the ANDA during the six-month exclusivity period in exchange for the money. [4]

In essence, the Hatch Waxman Act set up a shortened path regarding generic medicine authorization and commercialization,

It allows generic pharmaceutical companies to submit an Abbreviated New Drug Application (ANDA)[5] to the Food and Drug Administration (FDA) stating that the generic medicine provided by them was bio-equivalent to its brand-name drug counterpart and included the same active components previously authorized FDA.

It assumed the concept behind the ANDA technique to save money and avoid the time-consuming testing and approval of generic pharmaceuticals to accelerate their entrance into the market, hence ensuring drug competition and the availability of low-cost generic medications to customers[6]

Regulatory Framework of the European Union

Unlike the United States, the European Union does not have laws like the Hatch-Waxman Act. Patents are issued and enforced at the discretion of the member nations.

As a result, to enforce any patent, the originator/manufacturer would have to commence infringement procedures in each member state's courts, making patent litigation a costly experience. If the patent case is decided against the branded manufacturer, it risks losing a significant market share. The demanding nature of patent enforcement for branded medicine manufacturers is the fundamental cause of reverse patent settlements. [7]

Reverse Payment Patent Settlement current scenario in Indian Pharmaceutical Sector

[4] Do Reverse Payment Settlements of Brand-Generic Patent Disputes in the Pharmaceutical Industry Constitute an Anticompetitive Pay for Delay? - EconBiz, https://www.econbiz.de/Record/do-reverse-payment-settlements-of-brand-generic-patent-disputes-in-the-pharmaceutical-industry-constitute-an-anticompetitive-pay-for-delay-drake-keith/10012458375 (last visited Jan 21, 2022).

[5] Center for Drug Evaluation and Research, *Abbreviated New Drug Application (ANDA)*, FDA (2022), https://www.fda.gov/drugs/types-applications/abbreviated-new-drug-application-anda (last visited May 2, 2022).

[6] Center for Drug Evaluation and Research, *Center for Drug Evaluation and Research | CDER*, FDA (2020), https://www.fda.gov/about-fda/fda-organization/center-drug-evaluation-and-research-cder (last visited Jan 21, 2022).

[7] Pharmaceutical Sector Inquiry.pdf, https://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/staff_working_paper_part1.pdf (last visited May 2, 2022).

The monopoly period intends to cover the expense of the clinical data and the associated expenditure. The data exclusivity grants the inventor to manufacture the drug exclusively for a set time once a new medicine has been approved. However, if the generic firm is authorized to produce, they will depend on the data to obtain permission and begin making at a lower cost. [8] The inventor will not reap the advantages of his investments or recoup the cost of the new medicine created at this stage. This exclusivity grants to an inventor who invests time and money in testing the functionality of a product and its industrial use to get a patent.

Because it has been established that healthcare is a fundamental right, this gives birth to consumer welfare. As a result, the availability of a safe product for use is required. Clinical studies are conducted for this aim. It has been determined that if the original pharmaceutical business sued the infringing generic manufacturer, they would suffer much more significant losses. They may potentially jeopardize the patent's validity. As a result of these factors, the reverse payment patent settlement is entered into to prevent generic pharmaceutical companies from developing such new pharmaceuticals in the market by paying them a specified sum. They run the danger of infringing on the patent.

When the new medicine is related to an exceptionally prominent condition or is required immediately, the drug's accessibility becomes a concern. With the recent occurrences of the COVID-19 or the coronavirus that has spread worldwide like a worldwide epidemic jeopardizing lives, it is even more vital to access these types of settlements between the parties. Because these agreements exist, the product will have a monopoly over the vaccine due to the exclusivity term of the patent holder, and customers would be unable to profit from it. It will do more significant harm because the product was not available and accessible at the time, and they were expensive on the market.

The generic companies had already reached such an agreement. The first legal issue is the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement. India is a party and must adhere to its laws and articles. As a party to WTO and TRIPS, India is required to comply with the obligations of the WTO and TRIPS and cannot, therefore, violate them. In the case of such agreements, it did extend the patent holder's privilege from 7 to 12 years. Such treaties intend to restrict the introduction of the generic product [9] to the customer to manipulate the

[8]McKinseyPharma2020ExecutiveSummary.pdf, https://online.wsj.com/public/resources/documents/McKinseyPharma2020ExecutiveSummary.pdf (last visited May 2, 2022).

[9]IEEE Xplore Full Text PDF, https://ieeexplore.ieee.org/ielx7/2/6515539/06515565.pdf?tp=&arnumber=6515565&isnumber=6515539&ref=a

whole market. As a result, reverse payment patent settlements are regularly alluded to as pay for delay settlements or treaties. The patent holder compensates the generic business for the delay in entering the market. It is also vital to make specific pharmaceutical improvements during data exclusivity and market dominance.

Reverse payment patent settlements are often known as pay for delay settlements or agreements [10]. The patent holder compensates the generic business for the delay in entering the market. It is also vital to make specific pharmaceutical improvements during data exclusivity and market dominance. As a result, there is a need for a regulatory system. The concerns are numerous and cannot be resolved by allowing patent holders and generic companies to collaborate and disrupt the market. It will undoubtedly lead to the economy's destruction and the failure to achieve the goal of people's welfare. As a result, healthcare will be unavailable at the appropriate moment, disrupting people's lives and burdening the availability of necessary new treatments.

In India, a policy framework in the form of precise rules is required since competition legislation is controlled by the Competition Act and must be maintained. It encourages healthy competition in the country and guarantees that no one has an unfair advantage or a dominant position in a particular fashion. It must strengthen the legislation in these areas since the negative impact on these medications and new developments are undeniable, and consumers suffer. Another aspect is that it tends to overshadow the patent's expiration [11] since exclusivity can continue. By forming a monopoly, they can control the situation in their favor.

As a result, the term of exclusivity, the patent period, should be established in the agreement or the patent itself. The innovative firm may recoup costs while still working alongside others to enter the market. It will maintain healthy competition and compliance with antitrust legislation by preventing dominance and halting sales exclusively by the innovative firm.

Regulatory Framework of Competition Law- Position in India

To date, no Indian court has issued an official judgment on the legitimacy of reverse payment arrangements in India. Nonetheless, given the recent sanctions levied by the European Commission on Indian generics for conducting reverse payment transactions, the Competition

HR0cHM6Ly9pZWVleHBsb3JlLmllZWUub3JnL2Fic3RyYWN0L2RvY3VtZW50LzY1MTU1NjU= (last visited Mar 26, 2022).

[10] Njideka Chukwu, Regulatory Responses Against Reverse Payment Agreements in the Pharmaceutical Industry, 28.

[11] Reverse Payments: Shadowing Patent Term Expiry! - Patent - India, https://www.mondaq.com/india/patent/893822/reverse-payments-shadowing-patent-term-expiry (last visited May 2, 2022).

Commission of India (CCI) has actively observed behavioral misuse in the Indian pharmaceutical business. [12]

In the pharmacy sector, any arrangement between innovators and generics to delay or prevent the generic medication from entering the market may be subject to the If it causes or is likely to cause an AAEC on the Indian medicine market, it is subject to the Competition Act. These types of international treaties may be declared anti-competitive under Section 3(1), India's general provision prohibiting anti-competitive contracts and requiring a rule of reason analysis to establish AAEC in the relevant market, or Section 3(3), it expressly prohibits enterprise-to-enterprise lateral collaborations. [13]

It enshrines the per se unconstitutional analysis without the need for AAEC [14] to establish. As a result, a reverse payment agreement that directly or indirectly influences medication price, or restricts or supervises drug development, supply, and markets, will be deemed anti-competitive.

Assume they have the effect of reducing effective competition in the relevant medication market. Such agreements could be investigated further under Section 4 of the Competition Act, which prohibits the abuse of a dominant position. However, given the continuous interaction between IPRs and Competition Law, the catch here is Section 3(5) of the Competition Act, which gives comprehensive protection from antitrust investigations for IPRs.

Contractually, this would imply that the innovator drug business might apply reasonable restrictions to prevent generics from infringing on its patented medication; however, if this can be extended, it must include reverse payment arrangements during the patent term questionable. Since it is widely known that Intellectual property laws cannot circumvent competitive analysis outside the amount of restriction granted, the study concludes that Section 3(5) of the Competition Act cannot be interpreted in a way that eventually supports patent evergreening. It helps the negative impact such reverse payments may have on patients and the healthcare sector. The Actavis case analysis said a valid patent does not automatically shield a reverse payment arrangement from competition analysis.

[12] Vaibhav Choukse: Sweetheart deals that hurt consumers | Business Standard Column, https://www.business-standard.com/article/opinion/vaibhav-choukse-sweetheart-deals-that-hurt-consumers-114091501332_1.html (last visited Jan 21, 2022).
[13] Promoting access to medical technologies and innovation Intersections between public health, intellectual property and trade, https://www.wto.org/english/tratop_e/trips_e/trilatweb_e/ch4d_trilat_web_13_e.htm (last visited Jan 21, 2022).
[14] Section 19(3) in the Competition Act, 2002, https://indiankanoon.org/doc/1671507/ (last visited Jan 21, 2022).

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Judicial Interpretation

Even though the validity of reverse payment agreements in India remains unsettled, a case that spurred the need to address the problem was a Delhi High Court judgment requiring reconciliation between two parties. [15] ***Hoffman-La Roche***, a Swiss innovator, and Cipla, an Indian generic, to settle Cipla's alleged patent infringement of Roche's Tarcevatablets by manufacturing its generic version. Surprisingly, the Court confirmed the legality of Roche's, and Cipla was deemed not to infringe on it. Although the mediation failed, if the settlement conditions had resulted in Cipla not selling its generic medication, Under the provisions mentioned above of the Competition Act, the CCI would have had the Suo Motu competence to examine the settlement conditions. An examination of pharmaceutical cases demonstrates that foreign inventors mostly employ permanent injunctions and evergreening patents (intellectual strands) to ensure the exclusive sale of their brand items in the Indian market. However, the authors predict that, when it comes up for review, the Indian judiciary would use a rule of reason approach, like ***Actavis***, rather than the European Union's per se illegal approach, in assessing the anti-competitive nature of reverse payment agreements.

Conclusion

At the outset, it can conclude that Reverse Payment Patent Settlement works as a form of settlement where an inventor and the infringer's generic companies collaborate to prevent the generic company from making the infringer's specific new product. As a result, collect the cost of investment through data exclusivity. It also avoids litigation, which would be more damaging to the innovator than entering a standstill settlement by providing a predetermined estimated sum to the infringement. The gaps occur in the form of a high product price and the formation of a monopoly when healthcare is acknowledged as humans' fundamental right. It raises how such reverse payment patent settlements entered between parties should be regulated.

[15] F. Hoffmann-La Roche Ltd. And Anr. vs Cipla Limited on 19 March, 2008, https://indiankanoon.org/doc/64813/ (last visited Jan 21, 2022).

BOOK REVIEW

SOPHY K. JOSEPH, CUSTOMARY RIGHTS OF FARMERS IN NEO-LIBERAL INDIA: A LEGAL AND POLICY ANALYSIS, OXFORD UNIVERSITY PRESS, NEW DELHI, 2020 [PP. XVII+325], PRICE 1395 INR. ISBN 978-0-19-012100-6

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> *"It was the best of times, it was the worst of times, … the period was so far like the present period, that some of the noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only."*
>
> --- Charles Dickens, A Tale of Two Cities (1859)

While narrating the chronicles of contemporary agrarian reforms in the neoliberal India, economic historians may resort to similar Victorian rhetoric from the English literature mentioned above. It appears more so after three Bills, e.g., the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act of 2020, the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act of 2020 and, last yet not least, the Essential Commodities (Amendment) Act of 2020- enacted immediately thereafter- came into force with proclaimed legislative agenda: to market agrarian produces easier than ever before. Indeed, all these statutes went enacted after publication of this book. The author, therefore, could not add value to inaugural edition of her treatise. Like the readership, the reviewer will look forward to her commentaries upon these statutes in the next edition of this book. With her inquiry, however, she has deciphered governmentality of the neoliberal statecraft toward so called 'liberalization' (read corporatization) of hitherto protected agrarian economy in India; thereby got her prognosis documented in this treatise. Instead of getting outdated, therefore, the newly initiated agrarian regime proves her foresight; prudent enough to predict the neoliberal governmentality towards common farmers in India beforehand.

Let us glimpse upon the book at a glance. The title has had intent to get its jurisdiction limited to customary rights of farmers in neoliberal India. Thus, the author has specified her research foci with clear and unambiguous nomenclature. Agriculture constitutes one among those fundamental enterprises the civilization initiated with; long before statecraft went introduced and the sovereign secured command over others in the public lifeworld. The customary rights

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of farmers, therefore, comprise basic human rights; something not endowed by the law of the land. The author thereby juxtaposes two poles apart regimes to expose how the inclusion of farmer's rights under the private property regime defeats their natural rights vis-à-vis production or reproduction of plant variety for the humanity; followed by far-reaching implications upon food security or sovereignty of the society. Whether and how far these basic rights of plant breeders are secure in neoliberal India appear moot points of the treatise. The author interrogated the neoliberal agrarian regime in India on its rise; thereby advanced her candid position with legal and policy analysis followed by her conclusion against the private property regime in plant variety. Whether and how far her cynicism went objective enough comprise research questions and answers stand divided; with both consent and contest in response to her conclusion respectively. The cynicism has had argumentative castle of its own and the same is apparent on the face of record after the series of farm enactments to bring in neoliberal political economy in agrarian India toward promotion of privatization (read monopoly) in seed and plant variety. Besides, the author demonstrates how the international regime turns aggressive against its national counterpart to penetrate worldwide seed enterprise into India. At the same time, in its jealousy to condemn neoliberal economics, whether and how far the author went out of proportion to get welfare politics fortified- with subsidy politics perpetuated- deserve attention of the veteran readership.

In first chapter, after the conceptual background of agrarian political economy in India went drawn- followed by chronicles of green revolutions- one since 1960s and another on its rise, the author introduces issues and arguments against the backdrop of polemics on political economy of seeds and varieties during the period of transition from planned development to liberalization. International conventions and their impact on the Indian policy regime is explained to analyse the evil influence of international trade lobby in regulating the agrarian sector. The author has had two major observations: (i) conflict between diversified international regimes, e.g., trade and intellectual property regimes to facilitate giant Inc. on one side and human rights regimes to safeguard the vulnerable on the other; (ii) highhandedness extended by these international trade and intellectual property regimes to get the agrarian regimes of otherwise sovereign developing states compromised. Consequently, under the disguise of trade liberalization, the paradigm shift lubricates foreign invasion by giant market player to get non-competitive market player, local/indigenous farmer, expropriated by default. With the passage of time, by courtesy market-driven economics, food price ought to shoot through the roof to gross detriment of food security/sovereignty dwindled; thereby take crop- the most essential

commodity- out of reach for the commoners. With the withdrawal of neoliberal state from the scene in the name of market economy, state of affairs ought to get worsened since neoliberal state drives stoic policy to witness such unholy as bystander. With its people underfed, India ought to get subverted from within.

In second chapter, while problematizing the common concepts, the author has identified agrarian labour as those in the lowest rungs of the economic ladder in terms of wages, employment, skill, and training. The author finds that agricultural workers have been left out of statutory benefits of agrarian policies With illustration, she has clarified that these peripheral yet critical stakeholders of the peasantry fall short of getting included to the statutory definition of farmers since their activities need not be cultivation of crop itself but making the soil fertile, maintaining the moisture in the soil, increasing water-holding capacity of the soil and such others. She thereby exposes unjust policy to ignore contribution of labour on the soil with the crops since time immemorial; thereby treat them unskilled workers and, therefore, not farmers in technical sense of the term. What she has mentioned resembles the Marxist theory of alienation in practice. In Economic and Philosophic Manuscripts (1844), Marx stated estranged labour and its consequence:

"The alienation of the worker in his product means not only that his labor becomes an object, an external existence, but that it exists outside him, independently, as something alien to him, and that it becomes a power on its own confronting him."

The author thereafter turns to rights discourse to put farmers' customary rights to place. To her, these rights matter mainly because (i) farmers are the source of genetic diversity and ancillary knowledge about agriculture; (ii) they are the developers of genetically rich plant varieties; (iii) food security highly depends upon the activities of the farmers; and (iv) realization of farmers' rights is important for well-being of the huge population of our country. With these premises, the corollary conclusion that any policy—whether economic, political, or social—on the ground of economic growth, globalization, productivity increase, should not interfere with activities of the farming community ought to get contested since she herself endorsed interference: "minimum support price should be provided, and market prices should be supervised", with the intent of interventionism as derivative to this end.

Besides, the territoriality in 'common heritage of mankind' principle is extended too far to cover biological diversity against well-established usage of this technical term. Indeed, she cites prior literature where argument to get the common heritage principle extended to

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biological diversity- preserved and promoted by plant breeders since time immemorial- was advanced. The adventure, however, falls too short to get well-settled usage of a term; despite getting engineered by the avantgarde arguendo.

In third chapter, the history of agrarian political economy since independence is drawn in vivid details. Minute structural analysis, followed by analysis of the status of farmers, deserves appreciation. In particular, comprehensive overview of the given state of affairs in India and the world, shift in successive policy regimes with the passage of time, e.g., Nehru, Shastri, Mrs. Gandhi before, during and after the third national emergency (after she was back to power), Rajiv Gandhi, last yet not least, after Rajiv Gandhi; while liberalization-privatization-globalization initiated its ordeal in last three decades. Perhaps the best part in her treatise, the chapter presents agrarian history of India in a nutshell with minute details of all major crossroads vis-à-vis shift in the agrarian policy regime India has witnessed so far; till emergence of the market in neoliberal India.

The fourth chapter engages enriched discourse comprising political thoughts on rights-intellectual property rights of the farmers in particular. The author has put her glimpses upon John Locke's labour theory, Jeremy Bentham's utilitarian theory, libertarian theory, and the like, thereby fortified her position that the monopoly under intellectual property rights regime offends distributive justice. She has cited Adam Smith to get her position corroborated that even classical capitalism set aside monopoly rights as it would result in poverty. The poverty of philosophy in an otherwise unproblematic regime vis-à-vis international trade thereby turns apparent; so far as monopoly rights against the farmers are concerned. The author has put plant breeders' rights and farmers' rights to contrast; thereby exposed agrarian diplomacy of the Western Inc. to get the intellectual property promoted by barefoot farmers across the Global South since time immemorial alienated- if not expropriated- from the market. The neoliberal statecraft in India has accelerated aggressive international trade politics to put livelihood of the unorganized local farmers to peril. Here lies reasoning behind upheaval against the neoliberal farm regime in India since the same is pregnant with potential to leave livelihood of the peasantry unsettled. While those with financial stability ought to suffer from the uneven competition ahead, those with financial instability are left with no other option but to struggle for survival. Taken together, farmers appear firm enough to push the corporate farm regime to retreat and the circumstance has placed her treatise to contemporary relevance.

In the same chapter, availability of farming-breeding art in public domain as traditional knowledge practice apart, the author raises her concern against getting agrarian practices customized to a foreign legacy; something for developed and, therefore, dominant states in the West. Instead, with cue from jurisprudence of National Commission for Farmers, she advocates sui generis regime; something befitting to the soil and those appurtenant and, therefore, instrumental to progressive national development. Besides, applicability of intellectual property discourse stands set aside by the author since the same excludes farmers from otherwise legitimate rights upon their farm produces on technical counts. The systemic injustice with impunity constitutes core focus of her treatise and the same stands substantiated with relevant extracts from history, politics, economics, philosophy and the law as another societal institution.

Accordingly, in fifth chapter, the author exposes poverty of jurisprudence in legislations enacted in contemporary India and the neoliberal agrarian politics to drive vested interest to gross detriment of public interest; thereby getting plant genetic resources privatized despite the same fitting into global commons since the same often than not developed by successive generations of barefoot farmers otherwise faraway from formal education. Thus, taken together, the farm acts offend social justice; something otherwise construed as a basic feature under the Constitution of India and, therefore, non-negotiable while these farm acts indulge in compromise of the same. The author raises another arguendo; of equal treatment to unequal players- like corporate plant breeder and barefoot farmer- in conflict with the doctrine of reasonable classification under the Constitution of India. The contrast resembles one between Gulliver and Lilliputians, a classic literary rhetoric drawn by Jonathan Swift in Gulliver's Travels (1726); similar to the contemporary rift between corporate Inc. and the peasant protest. A corollary innuendo may get translated to a concern that these newly enacted farm laws subvert the constitutional governance; something inimical to food security/sovereignty of India. Besides, she attracts attention of her readership toward recent foreign policy vis-à-vis foreign direct investment and free trade agreement. With reasoning of her own, she finds these recent FDIs and FTAs in agricultural products detrimental to national interests of India since the same unsettle vast population (65%) engaged in agriculture. Her study helps the readership understand the background of peasant protest in context.

The following remedies are recommended to safeguard farmers' rights: (i) land reforms (ii) institution of cooperatives (iii) panchayati raj (iv) revival of public sector enterprise in seed research, preservation, distribution and food grain procurement (v) regulations on seed pricing

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(vi) innovative limits upon the monopoly over plant genetic resources (vii) community approval on transfer of resources. In her conclusion, the author imports directive principles of state policy, thereby resorts to a restatement that farmers' access to seeds and plant genetic resources is imperative to put core constitutional principles vis-à-vis distribution of material resources and de-control over the means of production to fruition. Public access to agricultural raw materials is indeed sine qua non to attain distributive justice- named 'economic justice' under the Constitution- through harvest. With specific reference of the judgment of the Supreme Court of India in Novartis case, the author demonstrates apposition of judiciary in respect of restriction of laissez faire on the common property resources.

At bottom, the treatise unfolds postcolonial rights advocacy vis-à-vis political economy of agriculture in the neoliberal India with special reference to farmers' customary rights. In regional setting of the South-Asian subcontinent, agrarian economy has had features poles apart to the Occidental parallel. In major village civilizations of the Global South, more than production, farm went perceived as a laboratory with patronage of the nature toward creation of better crops with higher nutritional value and, albeit, by sustainable production practices. No wonder that agriculture was appurtenant to culture. Traditional agrarian economy thereby balanced public access to food and public health with food alike since time immemorial. With their respective regional settings, therefore, farmers in the Global South cannot get equated to workers, nor farmhouse fits into warehouse since they carry diversified genres of civilization. Despite getting blessed with criteria for production, e.g., land, labour, capital of traditional knowledge with plant breeders and social entrepreneurship institutions like panchayats, sui generis agrarian economy deserves different legal and policy regime to fit into regional soil of the subcontinent; something hardly achieved by the experiment with state subsidy.

Behind otherwise unproblematic sarkaari scheme vis-à-vis Minimum Support Price, paid by Agriculture Produce Market Committee, welfare economics suffers setback out of populist politics to gross detriment of state exchequer. Besides, in its spiral effect, subsidy imports dependency syndrome; thereby spoils welfare economics. Thus, farmers may and do fall prey to the boobytraps of economism while they vote for the populist outfits with parochial agenda to release state subsidy and serve vested interest, with little concern for public interest; something unsustainable enough for the farmers themselves. The author avoided the void. Except left-wing approach to the subject, she engages no objective inquiry upon other reasoning behind the paradigm shift to neoliberalism; as if corporate politics is one and only factor behind the shift. She deserves credit elsewhere while, through legal and policy analysis,

she unfolds corporate politics as predominant factor; along with its overarching outreach to influence otherwise sovereign institutions of state apparatus; thereby get the system subverted well within the very democratic governance we are obsessed with.

The neoliberal reforms, however, ought to bring in more harm than help to the farmers. Due to uneven competition between Gulliver and the Lilliputians, as mentioned earlier, systematic impoverishment of otherwise independent farmers within systemic quicksand- followed by spiral rise in farmer suicides after getting trapped to the odious obligations set by unscrupulous players- appears on the wall to gross detriment of the market itself. Moreover, reduction of farmers to workers in the farmhouse ought to bring in alienation from agricultural production; followed by decline in traditional knowledge; instrumental to origin and development of the civilization to date. such a discursive fallacy- followed by odious endgame the neoliberal state indulges in- constitutes the crux of her treatise. More than welfare economic mythology, the treatise deserves credit for her razor-sharp analysis of the neoliberal politics run by corporate predators from behind; with potential to put the food security/sovereignty of India into checkmate. Sooner the statesmen take cognizance is better for the citizenry. The neoliberal polemics against present praxis- that welfare economy has had loopholes of its own- is a point apart and cannot legitimize manholes with potential to cause larger casualty.

After recent development, the Farm Laws Repeal Bill, 2021 is pending for endorsement of the Parliament. The struggle for sustainable farm governance in India cannot end here since larger issues and challenges within the given political economy remain unattended. Indeed, liberal politics fell short of getting its premises acceptable to policymakers. After public (mis)perception, neoliberal politics is but a ploy to put ploughmen to peril; while no third trajectory appears in sight by either side.

In similar occasions, studies comprising analysis of private property rights over seeds and plant varieties from human rights perspective often than not stand vitiated by partisan approach. The author deserves credit since her work has transcended the lapse with jurisprudent reasoning and prior literature in support of arguments advanced by her. She recognizes farmers as keepers of the civilization- much more than mere agrarian workers- thereby reiterates their contribution; something critical to conservation of plant genetic variety since time immemorial and graduation of the same till date. Acknowledgement of credit for adoption of plant and invention of variety- due to umpteen generations of farmers- has elevated the treatise to a newer

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height; by courtesy, recognition of traditional farming knowledge and its continuity as tribute to hitherto civilization toward sustainable agrarian development vis-à-vis food security.

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